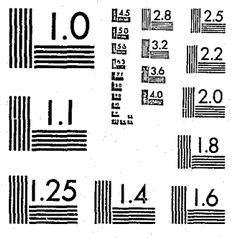

PLEA NEGOTIATION IN JUVENILE COURT

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ABSTRACT

The following report analyzes and discusses the findings of a twenty-two month study of plea negotiation in juvenile court. The study was conducted in Philadelphia.

The research poses a number of significant observations. First, plea bargaining has been a badly defined and wrongly documented phenomenon. Changes are recommended in order to truly understand and explain plea negotiation. Second, plea bargaining exists in a number of forms in juvenile court. Even more important, a larger concept, mitigated justice, accounts for the juvenile court's heavy reliance upon informal resolution of cases. Third, juvenile court judges divide into one of three legal-oriented groupings which seems to influence their plea bargaining behavior. Defense attorneys and prosecutors plea bargain for many different reasons in juvenile court. At the same time, there are many obstacles frequently standing in the way of completing a deal in juvenile court. Juvenile court personnel have not tended to respond vigorously in ascertaining the fairness, accuracy and voluntariness of juveniles' guilty pleas. Finally, contrary to established doctrine, plea negotiation can be philosophically accommodated in juvenile court practice.

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In Memory of My Grandparents,

Mr. & Mrs. Daniel J. McCauley, Sr.

I. INTRODUCTION: THE PROBLEM OF STUDYING PLEA NEGOTIATION IN JUVENILE COURT

There are two fundamental problems which must be addressed before we can begin to examine plea negotiation in juvenile court. The first difficulty lies in plea negotiation itself. In many respects it is relatively easy to understand in that it involves little more than a defendant's decision to plead guilty pursuant to an agreement he has reached by negotiating with a state official.[1] As a result of careless treatment in the field and in the literature, however, plea negotiation is one of the most complex and most misreported topics of contemporary criminal justice. The many classificatory and empirical impediments to understanding plea negotiation are explicated and resolved in Chapter 1.[2]

The second obstacle concerns the dilemma facing anyone who associates plea negotiation with the juvenile court. Simply stated, the two institutions do not seem to belong in the same sentence let alone in the same building. Chapter 2 explores the immiscible nature of plea negotiation in juvenile court. The data collected as a result of this study will resolve this problem.

Negotiation appears to have as much, if not more, of a role in the contemporary legal world as the traditional concepts of advocacy and litigation. It seems that compromise and settlement dominate nearly every facet of law, whether it is civil or criminal. This study demonstrates that negotiation has invaded yet another legal forum: the juvenile court. The following report documents the who, what, where, and why of plea negotiation in juvenile court.

CHAPTER 1: MAKING SENSE OF PLEA NEGOTIATION

When it is reduced to its basic elements plea negotiation is merely one of a number of methods through which criminal disputes are resolved. Plea negotiation is, nevertheless, an extremely controversial item. It is desperately defended and vehemently attacked by those who see plea negotiation, alternatively, as the salvation or the damnation of the criminal justice system. Others regard plea negotiation more dispassionately, claiming the system can survive with or without it. The subject obviously evokes a broad spectrum of perspectives and emotions. It should not be surprising, then, that there is considerable ambiguity and debate concerning virtually every aspect of plea negotiation.

A. Search For The Proper Title

There is even uncertainty as to what to call plea negotiation. The practice has been given, during the last several decades, an assortment of names, none of which is completely appropriate. Plea negotiation was originally known as compromising or settling a criminal case (Miller, 1927: Polstein, 1962). These words are too broad to provide an adequate description of the exchange that occurs, however. For example, a compromise or settlement can be achieved in a case without a plea of guilty. Furthermore, these terms can be easily manipulated to insinuate impropriety (e.g., justice is compromised, the defendant's case was settled).

Lesser pleas (Weintraub and Tough, 1942), another older phrase, fails to accommodate sentence arrangements where the level of charge is not adjusted. Plea copping (Kuh, 1966) was probably a popular term at one time among convicts and some court personnel. It does not describe the interaction between the state and the defendant, however.

Moreover, as a street-oriented derivative of stealing, plea copping is unattractive in its own right, and can be misconstrued as the defendant's ability to "get over" on the system.[3] Plea agreements (ABA, 1968) has never been extensively used, perhaps because it is too passive to capture the hard-line dealing (and coercion) that sometimes occurs.[4]

Perhaps the most derogatory title that has been given to the defendant's bartering his guilty plea is plea gambling. By pleading guilty the defendant gambles in two capacities. First, he wagers that the state can establish his guilt without his assistance. Second, the defendant calculates that he is better off, for whatever reasons, not contesting the state's case. According to this account, however, nearly every type of guilty plea is gambled.[5] Thus, plea gambling has too general an application to be of use in defining solely the negotiated guilty plea. Furthermore, it evokes a negative image (Weinreb, 1977: 85), and, understandably, is only sparingly used (Scott v. United States, 1969).

Plea bargaining is the name most frequently attributed to the state's dealing for guilty pleas. Unfortunately, it, too, is pejorative (e.g., the system bargains with criminals). Moreover, bargaining is a middle of the road term. It is too strong to describe the numerous deals that are accomplished almost automatically. It is too weak to portray the many "bargains" that are secured through excessive pressure and threats. Finally, it is arguable that often neither party has actually been the recipient of a bargain.[6]

Plea negotiation is a recent innovation that is less inflammatory, if not less misleading, than the other titles. Like bargaining,

negotiation fails to capture the extremes: the routine deal and the coerced bargain. Nevertheless, next to plea bargaining, plea negotiation is the most widely recognized name. Due to their familiarity and to the absence of a satisfactory alternative, plea negotiation and plea bargaining will be used interchangeably throughout the remainder of this report.

B. Definitional Hurdles

At least if we agree what to label plea negotiation we can turn our attention to its more important definitional problems.[7] The trouble centers around the countless different ways in which plea negotiation is defined throughout the country. Plea bargaining has been constantly scrutinized since at least 1956 (Newman, 1956). Nevertheless, no single definition of plea negotiation

> is universally accepted by practitioners in the field. On the contrary, there is a variety of special definitions of this phenomenon and special uses of this phraseology, not only between but within jurisdictions (Miller et al., 1978: 1).

Generally, there are two sources of difficulty that pertain to definition. First, there is little agreement as to what to include and what to omit from the phrase plea bargaining. Definitions range from the overly-narrow to the excessively-broad. Second, there is only marginal concurrence in how to organize the substance of plea negotiation. For the sake of convenience these interrelated problems will be considered in reverse order.

1. Typology Troubles

A conclusive indication that plea negotiation labors under definitional constraints is the disorganized manner in which plea bargain typologies have been constructed. Observers have intertwined the three major axes of plea negotiation (the who, the what, and the how) into various convoluted types of plea bargaining. For example, the Georgetown Institute of Criminal Law and Procedure recently conducted a nationwide survey of plea negotiation and determined that there are two types of plea bargaining: explicit and implicit.[8] While implicit was largely ignored, explicit bargaining was further subdivided into five types which are different combinations (and further subcombinations) of who negotiates (i.e., the judge and/or the prosecutor) for what plea bargains. Charge modifications and sentence recommendations were cited as the two types of plea bargains (Miller et al., 1978: xiii-xiv).

Writing on his own, one of the Georgetown study participants argued for the adoption of a "four dimensional cross-classification that reveals the variety of plea bargaining systems...(McDonald, 1979: 387-388)." He amended the Georgetown formula by adding a fourth (whether the agreement is treated as a legal contract) and fifth (the amount of haggling permitted) axes to the typology network (id.:386). Meanwhile, one source concentrated solely on the who criterion and identified only two forms of plea bargains: prosecutorial and judicial (McCoy and Mirra, 1980: 896-898).

Alschuler focused mainly upon the same material as the Georgetown study and fashioned "four types of plea bargaining systems, in each of which the trial judge assumes a different role (1976: 1061)." In addition, he introduced a unique factor (or a sixth typological axis) in his framework: the specificity of the judge's promise (id.: 1061).

Actually, only the imagination limits the number of variables (axes) upon which plea negotiation can be seen to rotate.[10] Restraint is surely necessary; otherwise, academic chaos prevails. Clarity would seem to dictate that when we talk of the types of plea bargains we should restrict our discussion to the what criterion. What is it that is exchanged for a plea of guilty? In addition to the guilty plea, what else is bargained? The answer produces only two types of plea bargains: charge and sentence bargains (Comment, 1956: 205-206; Moley, 1928: 122-123; Vetri, 1964: 898; Alschuler, 1979a: 3, 1979b: 213). There are, in turn, a number of different charge and sentence bargains, but they should not be juxtaposed with who does the negotiation. They are independent also of the method through which the negotiation takes place, which brings us directly to a related obstacle in defining plea bargaining.

2. Plea Bargains Without Bargaining

In retrospect, the decision to classify a guilty plea based on the defendant's hope that the judge will reward his plea as "implicit" plea bargaining was unfortunate (Newman, 1966; Heumann, 1975). It is a supposed plea bargain that lacks an essential component: bargaining. Actually, the "implicit" plea bargain does

not represent another method of plea bargaining. Rather, it is another type of guilty plea since it is the guilty plea and not bargaining that the two items have in common. Although it is only one of a number of guilty pleas that are incorrectly identified as plea negotiation, the "implicit" plea bargain warrants special treatment.[11]

Inasmuch as the guilty pleas in "implicit" plea bargaining are not physically bargained, identifying them as such exaggerates the number of guilty pleas that are supposed to have been obtained through plea negotiation.[12] Attaching the phrase to non-negotiated guilty pleas forces plea bargaining to accommodate very dissimilar activities. Consequently, a definition, which attempts to account for these varied events, ends up so vague as to be of limited practical use. For example, the Georgetown survey described plea negotiation

> as the defendant's agreement to plead guilty to a criminal charge with the reasonable expectation of receiving some consideration from the state (Miller et al., 1978: 1-2).

This may be an acceptable version of what is involved, generally, but it offers little detail of what occurs, especially in explicit plea bargaining,[13] and it provides no clue as to whether the describer is talking about "implicit" or explicit plea negotiation.

Employing the one term (plea bargaining) to describe the two types of guilty pleas encourages observers to regard all guilty pleas as an undifferentiated mass, the entirety of which is attributed to plea negotiation. This is conceptually and quantitatively incorrect, particularly because some guilty pleas are

neither "implicit" nor explicit plea bargains.[14]

This is not to imply that "implicit" plea bargaining completely distorts the predictable exchange between defendant and judge. Admittedly, there is an "understanding" that the judge will ordinarily sentence the defendant more leniently because the latter has decided to forego rather than to demand trial. Judges tend to sentence guilty pleas differently for a variety of reasons (Comment, 1956). Consequently, it can be said that a defendant who pleads guilty usually enjoys a rewarding "arrangement" with the judge (or has, in effect, "bargained" with the system).

Nevertheless, the pivotal question in "implicit" plea bargaining is, "what factor determines its presence?" Is it enough that the defendant has pled guilty, hoping to be rewarded? Or, must the judge render a lenient sentence in order to comprise an "implicit" plea bargain? In other words, is an "implicit" plea bargain compromised or negated simply because the judge does not come through with a reward? The answer seems obvious. The defendant's subjective wish, however ill-founded, is all that is required of an "implicit" plea bargain.[15] The judge's disposition is irrelevant since the sentencing decision cannot alter the wishful character of the guilty plea.[16] The dispositional outcome merely reflects, positively or negatively, upon the sagacity of the defendant's plea.[17]

The central feature in "implicit" plea bargaining is thus the guilty plea and not any exchange (negotiation or reward) between the defendant and judge. Since the verb, bargain, means

to negotiate or to come to terms, then, by definition, we can infer that it takes at least two parties to agree to perform some action in order to constitute a bargain. By pleading guilty, the defendant has agreed not to contest the case. In "implicit" plea bargaining the judge has not agreed to do anything, however.[18] He has made no commitment. In fact, he is conceptually forbidden to make a commitment since once the judge obligates himself, pre-conviction, he has participated in an explicit plea bargain.

Even if we were to view the judge's reward as a necessary part of an "implicit" plea bargain, there are reasons not to call this "exchange" bargaining. First, the "understanding" that leniency will be extended to unsolicited guilty pleas is neither automatic nor inevitable. Despite the statistics, there is never a guarantee in "implicit" plea bargaining that any one defendant will be rewarded for his guilty plea. Furthermore, the defendant has absolutely no control over how extensive the reward will be.

Of course, neither the certainty nor the amount of the defendant's reward adequately distinguishes "implicit" from explicit plea bargaining.[19] The distinction lies in the fact that, in "implicit" plea bargaining, the accused has bargained with no one and has no proposed agreement, however tentative, in-hand prior to entry of the guilty plea. This is what makes the issue more significant than just an exercise in semantics.[20] From the suspect's viewpoint, the difference can be crucial. If the sentence handed down by the judge does not correspond with

the defendant's estimation of proper reward, the latter's displeasure will most likely be as final as his guilty plea. Armed with only an "understanding," the accused will find it very difficult, if not out of the question, to claim convincingly upon appeal that the trial judge has reneged on his end of what is a nonexistent bargain, or has violated the defendant's reasonable expectations in sentencing. The ability to devise a remedy for the defendant's dashed hopes is truly limited.[21]

Conceptual integrity would be better served if the phrase "implicit" plea bargaining were no longer used. There is no bargaining per se in "implicit" plea bargaining, and, as such, it is a contradiction in terms. Thus, uniform use of most of the names associated with the practice becomes even more problematic.[22] Furthermore, "implicit" plea bargaining unnecessarily burdens plea bargain typologies with another axis (i.e., the how).[23]

Even the adjective, "implicit," is easily misinterpreted. The Georgetown study, for example, believed it saw a resemblance between "implicit" and explicit plea bargaining.

> Implicit bargaining is usually made very explicit! That is, defendants are told clearly by someone -- usually their lawyers, but sometimes by judges, prosecutors, police officers, or others -- that they had better plead guilty or they will be punished more severely if they go to trial (Miller et al., 1978: 7, emphasis supplied, citation omitted).

Yes, "implicit" and explicit plea bargaining overlap,[24] but not due to the amount of information available to the accused when he pleads guilty.[25] How clearly (which does not

translate into explicit) the defendant is aware of sentence differentials and rewards is immaterial to plea bargaining, in general, and, in particular, to distinguishing "implicit" from explicit plea bargaining.[26] Even if he knows nothing of the judge's sentencing practices, the defendant still "implicitly" plea bargains if he tenders a guilty plea, hoping to be rewarded for not demanding trial.[27]

Reclassifying "implicit" plea bargaining would serve several worthwhile purposes. Ideally, a redesignation such as plea accommodation would eliminate the preceding points of confusion. The word, accommodation, is particularly suitable in that it expresses the structural paradox of the adversary criminal court: a defense counsel can aim to promote his client's welfare (i.e., seek lesser punishment) while simultaneously placating the system's purported needs (viz., guilty pleas). More important, accommodation distinguishes this one-sided defense tactic from that of bilateral bargaining, while the guilty plea remains the proper common denominator.[28]

The distinction gives notice that the abolition of plea negotiation proposed in some jurisdictions has no necessary bearing on a corresponding demise of plea accommodation. In fact, as experience has demonstrated, there can be an inverse relationship between the two types of guilty pleas.[29] The separation also highlights that plea accommodation should be examined in conjunction with rather than as a subset of plea negotiation.[30] Finally, by forcing our focus away from bargaining and towards guilty pleas we can hope to resolve the second way in which plea negotiation is too broadly defined.

3. Plea Bargains Without Pleas

The second manner in which the definition of plea negotiation is over-inclusive complements the first. This time the necessary ingredient that is missing from the plea bargain is the guilty plea. One of the initial articles written on our subject was appropriately entitled, in part, "Guilty Plea Bargaining," (Vetri, 1964). As time passed, however, the word guilty was no longer associated with the term. This omission has produced a phrase that is convenient to use but costly nevertheless.

There is cause to believe that the position which ascribes the guilty plea an unessential place in plea negotiation is fairly widespread. One attorney wrote in a source frequently consulted by the legal community that plea bargaining should be defined as any arrangement

> whereby a criminal charge or potential criminal charge is resolved in some fashion other than by a trial on merits...(Segar, 1978: 76, emphasis supplied).

This disregard for the fate of the criminal charge suggests that many varied activities are perhaps being mislabelled as plea negotiation, thus exaggerating its presence in the criminal justice system.

That is precisely what the Georgetown study found. It unearthed system officials who use plea bargaining to refer to negotiated cases that are actually nol prossed. As explanation, the Georgetown people cited the similarity between the nol pros and the plea bargain (Miller et al., 1978: 4-5, 78-79; McDonald,

1979: 389).[31] Of course, the dissimilarity is even more striking since, unlike nol prossing, plea negotiation requires the defendant's ever-important act of self-conviction.[32] In light of this obvious and crucial distinction it is interesting that a prominent figure in the Georgetown survey considered the major drawback of his group's plea bargaining definition to be its "arbitrary" limitation to guilty pleas (McDonald, 1979: 388).

Another bargain-oriented situation which, despite the absence of a guilty plea, has been included within the plea negotiation category is the court structure which penalizes the choice of jury vis-a-vis bench trial (White, 1979; Alschuler, 1968). Here, a defendant usually guarantees himself a lesser sentence if convicted by a judge rather than by a jury. As such, bench trial represents a "bargain" or trade-off. Nevertheless, it is not a plea bargain, especially since not only is guilt not admitted, but acquittal upon trial is always possible. Similarly, Mather notes a practice in Los Angeles in which the defendant "submits on the transcript" of the preliminary hearing. It is implied that the accused gets a better "deal" if convicted in this manner rather than by a bench or jury trial. The chance for acquittal is ever-present, however, so it would be incorrect to associate this expedited trial method with plea bargaining (see Mather, 1979).

4. Plea Bargains Without Pleas Or Bargaining

The final example of an over-extended definition of plea negotiation is captured nicely in McDonald's argument that the phrase should be linked with virtually all non-trial dispositions,

regardless of whether the defendant pleads guilty or negotiates any matter with the state.

> The concept of plea bargaining should not be restricted to either pleas or bargains... (1979: 385).

Accordingly, he devised a definition broad enough to accommodate all instances of pretrial diversion (Id.: 390).[33] Although the all-encompassing description McDonald gave plea bargaining may serve his goal of highlighting state exercise of coercion (Id.: 391), it violates the natural boundaries of plea negotiation. Under this model, plea bargaining might well be used to explain every case that does not reach trial, and thus lose altogether any meaningful identifying purpose.

5. Plea Negotiation Under-Defined

At the other end of the spectrum, plea negotiation is too narrowly defined whenever nonessentials are required before an individual will acknowledge that a plea bargain has taken place. A few years ago definitions in the literature regularly specified the prosecutor as the only party eligible to represent the state in plea negotiations (Note, 1970: 1389; Note, 1972: 288; LaGoy, Senna, and Siegel, 1976: 436).

Even recently there has been an example of this (Segar, 1978: 76). It is surprising that definitions would be so limited, especially now in the face of abundant evidence that other system personnel, particularly the judge, actively negotiate pleas with defendants (Alschuler, 1976; Miller et al., 1978: 30-31).[34]

A good deal of the under-defined problem has emanated from accounts that exaggerate the success of abolition efforts. Prose-

cutors have been known to report the elimination of plea negotiation in their jurisdictions when either bargaining over multiple charges has continued unabated, or sentence bargains have merely replaced charge reductions (Miller et al., 1978: 8-11). Interestingly, one district attorney announced a ban on plea negotiation while simultaneously authorizing his staff to bargain in both weak and informant's testimony cases (Berger, 1976).[35]

The Georgetown study discovered several system officials who were reluctant to admit that plea bargaining occurred in their courts. One prosecutor denied that his office engaged in plea negotiation because his staff was always prepared to go to trial. Another district attorney maintained the same because his personnel did not haggle over charges with defense counsel. Instead, sentence recommendations were readily exchanged for guilty pleas. A judge argued there was no plea bargaining in his court because he was not bound by the prosecutor's sentence proposal. It truly was immaterial that he had rejected only one recommendation in ten years (Miller et al., 1978: 12). Another judge would not call his actions plea bargaining because incarceration was not a likely sentence when he negotiated with defendants (Jaspin, 1981). There are undoubtedly countless others in the academic and practical fields who commit similar mistakes because an unsubstantiated view holds that one extraneous item or another is necessary before a negotiated plea of guilty is really a plea bargain.

As we have seen, errors have been made both ways. Plea negotiation has heretofore been an elastic concept that, on the

one hand, is cited to explain phenomena to which it does not belong, while, on the other hand, it is denied recognition in its most obvious manifestations. Plea bargaining needs a definition that is simple enough to be manageable and yet sufficiently complex to distinguish it from other relevant material. This would not only give plea negotiation conceptual integrity, it would let us know where plea bargaining really does and does not exist.

6. Plea Bargaining Re-Defined

The first useful matter to recognize is that, contrary to appearances perhaps, the guilty plea is the whole and plea negotiation the part. Whereas every plea bargain must involve a guilty plea, not every guilty plea must be negotiated. Understanding this encourages us to focus upon and develop a typology of guilty pleas. A subset of this typology necessarily concerns the negotiated plea, which, methodologically (i.e., the how axis), can now be represented in its one true form: explicit. The typology also affords a position for the guilty plea which, although not negotiated, is tendered with a reasonable expectation of reward for not contesting the case. The typology is not fully developed here because only "implicit" and explicit plea bargaining have to be accounted for.[36]

TYPES OF GUILTY PLEAS

1. Negotiated Guilty Pleas (Plea Bargains)
   a. Charge Bargains
   b. Sentence Bargains
2. Tailored Guilty Pleas (Plea Accommodations)

Tailored was chosen as the adjective to describe the guilty plea

in plea accommodation because it expresses a unilateral or one-sided fashioning of the guilty plea by the defendant or defense counsel.

Plea bargaining can now be defined as the situation in which the defendant agrees to plead guilty to a criminal charge in exchange for some charge and/or sentence consideration from the prosecutor and/or the judge.[37] Plea accommodation involves the accused who pleads guilty to a criminal charge with the hope of being sentenced more leniently than if he were convicted at trial specifically because he believes that the judge "rewards" pleas of guilty. Together, these two types of guilty pleas account for a vast proportion of the cases resolved in criminal court. Even now that they are properly identified and separated, however, it will not be easy to determine precisely what that proportion is.

C. Documentation Obstacles

The descriptive laxity that has characteristically surrounded plea negotiation inevitably causes us to have little confidence in the accuracy of attempts that have been made to document it. This is regretable since the documentation effort is quite a struggle in itself. Perhaps the most obvious problem is the relative invisibility of plea accommodations. Unless one questions the defendant or defense counsel, it is impossible to determine if a plea accommodation has occurred. The Georgetown study maintained, nevertheless, that a statistical analysis would produce a reliable indication.

> An objective determination would require an analysis of sentencing patterns and a showing that defendants who pled guilty consistently received lighter sentences than those who went to trial when everything else was held constant...(Miller et al., 1978: 27).

This approach does not indicate whether plea accommodations exist. For one thing, the guilty plea sample is almost definitely contaminated by the presence of negotiated guilty pleas, some of which were likely exchanged for lighter sentences. Even when all the non-negotiated guilty pleas are isolated, it is impossible to derive a valid "objective determination" of plea accommodation from the Georgetown formula. It provides no way in which to ascertain whether a guilty plea is a straight guilty plea, a plea accommodation (or tailored guilty plea), or something else altogether.[38] An "objective" sentencing analysis reveals, at most, judges sentencing differently depending upon the method of conviction. It cannot address a defendant's hopeful expectation in pleading guilty, which is the most, and, indeed, the only essential attribute of plea accommodation. Even if judges tend to sentence guilty pleas more leniently does not automatically mean that <u>that</u> factor brought about a defendant's decision to forego trial.[39]

The subjective method adopted by the Georgetown survey also fails to provide a conclusive answer.

> A subjective determination would simply require a finding that defendants in a jurisdiction believed that implicit bargaining occurred...(Miller et al., 1978: 28).

This inquiry will not inform us how many suspects participated in plea accommodation. Rather, it will disclose only how many defendants are aware of the practice.[40]

Obviously, ferreting plea accommodations out of the mass of non-negotiated guilty pleas is no easy task. Unless defense counsel

records the defendant's aspirations on the case file, timely interviewing is the only process through which we can detect the presence of plea accommodation. But, of course, interviewing is cumbersome and time-consuming. Understandably, most commentators have relied upon inference. If a guilty plea is non-negotiated, it is assumed that it is a plea accommodation. We simply cannot know how accurate that inference is.

Detectibility does not present the same problem in plea negotiation. Plea bargains are increasingly becoming recorded facts in criminal court.[41] Reporting style is the major documentation barrier in plea negotiation.[42] For many years plea bargaining has been quantitatively represented as the percentage of convictions that has been obtained through guilty pleas (Illinois, 1929; Moley, 1928). But that statistic simply contrasts guilty plea convictions with trial convictions.[43] It says nothing about trial acquittals and cases nol prossed before adjudication, all of which deserve consideration vis-a-vis cases that are plea-bargained.[44] As it is currently presented the statistic even requires an assumption that all the guilty pleas were negotiated. Unfortunately, despite its obvious flaws, this percentage has been uncritically accepted as an indication of the rate of plea bargaining.[45]

The plea bargaining rate should not juxtapose all guilty pleas with successful prosecutions. Only negotiated guilty pleas should be counted in the numerator of the plea bargaining equation. The denominator should contain all cases which survive screening (Nardulli, 1978: 51). This figure would tell us just how many cases are actually plea bargained.

In the current state of the art plea negotiation is shapeless, conceptual clay that must be molded anew by each person regarding it. Plea bargaining thus assumes whatever appearance the individual sculptor prefers to give it; there is little consensus as to the proper finished product. A bystander cannot be certain that any person or article is discussing the correct topic, and he may become convinced that no two accounts have ever reviewed similar material. Chaos has reigned in both literature reports on and field usage of the term, plea negotiation. Now that we are at least aware of the problems in the definition and documentation areas, we can turn our attention to the difficulty in conceptually linking plea negotiation with the juvenile court.

FOOTNOTES

[1]Plea negotiation involves a variety of arrangements that can be made between the defendant and a number of state officials. Consequently, no description of the topic can be very specific. This definition is more narrow that most (cf., Miller et al., 1978: 1-2), however, because it anticipates several changes in the state of the art that are advocated in Chapter 1.

[2]Chapter 1 focuses on plea negotiation exclusively in the criminal court. This is unavoidable since the adult context is the only one in which plea negotiation is currently known. Thus, the numerous conceptual problems that exist are adult court problems and must be resolved in that area.

[3]Some critics insist that plea bargaining allows all defendants to "get over" on the system (Callan, 1979). Some defendants will succeed while others will fail to "get over" because of plea negotiation. Since incompetent and/or corrupt system officials, faulty jury verdicts, lenient sentences, the exclusionary rule, overcrowded institutions and quick parole all contribute generously to defendants' getting over, there is certainly no reason to single out plea negotiation.

[4]The title search suffers the same handicap as the definition effort (cf., text in note 1, supra). There is such a broad range of activity involved in plea negotiation it is difficult to find a single phrase sensitive enough to accommodate the diversity.

[5]Perhaps the only guilty plea that falls outside of plea gambling is the straight guilty plea offered as a result of the defendant's remorse. Thus, plea gambling may accommodate too much.

[6]That is, the state does not necessarily conserve resources or achieve the unattainable; the defendant does not necessarily better his predicament through self-conviction than through challenging the state's case. See, generally, Alschuler (1968).

[7]As the following sections demonstrate, the task of determining the nature and extent of plea bargaining, without a universal definition, is very difficult, if not impossible. Problems cannot be clearly identified, and remedies, if they exist, will remain evasive as long as plea bargaining language is enigmatic. In other words, we can hardly expect to agree to do something about plea negotiation when we cannot even agree on what it is.

[8]Newman and NeMoyer (1970: 372-373) identify the two types as overt and implicit. Bond (1982: ch. 1, p. 14) calls the two explicit and tacit.

[9]For unstated reasons McDonald (1979) ignored the what axis while borrowing the who and the how factors from the Georgetown typology.

[10]Additional variables include: the why; the when; the sentence (in versus out); and, the coerciveness axes.

[11]For example, another non-negotiated guilty plea is the straight guilty plea which is offered from remorse or resignation, and not with an aim to reduce punishment (see Lefstein, 1981: 489). Admittedly, it is rare today. As a guilty plea, however, it is quantitatively linked with all other guilty pleas, which are all inferred to be instances of plea bargaining (Heumann, 1978: 158). Nevertheless, the "implicit" plea bargain is most assuredly the most statistically significant of all non-negotiated guilty pleas, and, thus, it is this guilty plea that is the major focus of this section.

[12]Interestingly, "implicit" plea bargaining has an opposite and equal effect. In the event that all guilty pleas in a jurisdiction would fall in this category a system official could claim that his court operates without plea bargaining. Technically, this assertion would be accurate. It would have to be made tongue in cheek, however, unless, of course, the official could show the state paid no price whatsoever (i.e., leniency) for the guilty pleas. The Georgetown study discovered a district attorney who said there was no plea bargaining in his court in the good old days even though "implicit" plea bargaining had flourished (Miller et al., 1978: 12-13). The point is that "implicit" plea bargaining allows plea negotiation to be underreported as well as over-defined.

[13]For example, since "implicit" plea bargaining involves only the judge on the state's part (and even he is not currently involved), while explicit can involve the prosecutor or the jduge, a general definition must shy away from mentioning the concerned parties. Similarly, differences with respect to the type of reward (e.g., explicit charge or sentence bargains versus "implicit" sentence discounts) require vague, over-general definitions (cf., Miller et al., 1978: 1-2).

[14]The straight guilty plea, for example, has nothing to do with plea negotiation but statistically, of course, it is associated with all the other guilty pleas, which, in turn, are linked with plea bargaining.

[15]An established practice of rewarding guilty pleas is not even a requirement. It is not unreasonable for a defendant to believe that he will fare better by pleading guilty even though he has no statistical evidence to support this belief. To be sure, the judge who wants to maintain a steady flow of guilty pleas realizes that, generally, he has to reward a significant proportion of guilty pleas (or really slam trial convictions). Nevertheless, the judge always retains the option to "burn" a number of defendants who plead guilty. Thus, any particular defendant will still have to hope that he is not going to be the judge's example or guinea pig.

[16]Consider, for example, a case where the judge decides that the defendant before him deserved no leniency, despite the guilty plea. He gives the defendant the same disposition he recently gave a similarly situated defendant who was convicted by jury trial. In retrospect, the defendant who pled guilty gambled and lost. This event would still be labelled an "implicit" plea bargain regardless of the fact that the strategy backfired on the defendant.

[17]It may be impossible to determine the wisdom of a guilty plea. Often, there will be no way to calculate if the sentence given the guilty plea represents a reward (i.e., is the sentence more lenient than that which would have been given a trial conviction?), and just how extensively the reward was influenced by the guilty plea (i.e., did other factors contribute to the reward besides the guilty plea?).

[18]"Implicit" plea bargaining may be bilateral, but only sequentially so. The judge may reciprocate and reward the defendant's guilty plea. The judge is not legally or ethically bound to do so, however. Thus, the "arrangement" is only potentially two-sided. An

activity like this, which may be the defendant's better "bet" (vis-a-vis trial), but is still unilateral and conjectural should not be linked with an event called bargaining.

I agree with Alschuler who says that when a judge "hints" to counsel about a sentence differential in his case or who operates exclusively with a sentence schedule (which penalizes trial convictions), then explicit plea bargaining has occurred (1976: 1092-1099). Here, the judge has communicated a commitment to counsel.

[19]Incomplete sentence bargains are explicit arrangements that offer the defendant only a prospect of reward. Similarly, it is possible that a defendant may achieve a better sentence by throwing himself on the mercy of the court (an "implicit" plea bargain) than he would have by actively negotiating with the district attorney or the judge. Nevertheless, the defendant who negotiates a guilty plea usually narrows the parameters of the charge and/or sentence he faces. "Implicit" plea bargaining is more like throwing the case up in the air, relying on the fact that standard operating procedure usually breaks the fall.

[20]McDonald (1979: 385) has claimed: "Because the literature on plea bargaining disagrees about a definition of the concept, many differences in findings and opinions are more semantic than substantive..." The topic is so misunderstood that it is impossible to determine what causes differences in findings and opinions.

[21]Considering the importance and supposed finality of a guilty plea, the relative availability of remedy for broken explicit bargains and the improbability of determining the existence of, let alone relief for, "broken" "implicit" plea bargains is not an insignificant distinguishing point.

In (explicit) plea bargaining there are two foreseeable circumstances which would constitute a broken agreement. The prosecutor or the judge could welsh on his promise. The relief, here, is obvious. As the United States Supreme Court held, in Santobello vs. New York (1971), either the bargain must be fulfilled or the defendant must be allowed to withdraw his guilty plea. A more likely and more complicated occurrence is the situation in which the judge's sentence "violates" the optimism for leniency the accused has derived from negotiating with a system official. Herein lies the basic problem of the incomplete sentence bargain. For instance, the prosecutor may agree to recommend probation, and, once he does this, the explicit bargain is fulfilled. Nevertheless, the judge is not bound by that (incomplete sentence) bargain and may decide that incarceration is required. Relief is also possible in this case. Without great difficulty, the defendant can be allowed to withdraw his guilty plea (Federal Rules of Evidence, 1978: Rule II(e)).

A defendant who engages in an "implicit" plea bargain has bargained only with the odds, however. If dissatisfied with the result, he

can never cite a specific violation of any accord, or even of any tentative indication or promise. He does not have access to explicit bargaining's contractual-like controls over the fate of his sentence. Absent an abuse of discretion on the part of the judge, the accused stands little chance that a higher court will rescind what only hindsight has shown to be an improvidently granted guilty plea.

[22]Section A, supra, discussed the difficulties of finding a proper title for the subject matter. If "implicit" plea bargaining is retained as a category name, all of the terms (except plea gambling) become even more inappropriate. For example, plea bargaining is handicapped enough without its having to explain situations in which there is no bargaining.

[23]Since "implicit" plea bargaining is actually a type of guilty plea rather than a method of negotiation, the how axis can be removed from plea bargaining typologies.

[24]There is common ground that can cause confusion between "implicit" and explicit plea bargains. "Implicit" and incomplete sentence (explicit) bargains share an uncertainty in the ultimate disposition. Unlike complete sentence bargains in which a definitive disposition package accompanies the guilty plea, incomplete sentence bargains offer no necessary commitment as to sentence. In this context, incomplete sengence bargains are similar to "implicit" plea bargains. The two are nevertheless distinguishable.

[25]And, except for the trial judge, the source of the information is irrelevant as well. If the defendant's decision to plead guilty is based solely on unambiguous data about the judge's sentencing practice transmitted to the defendant by his attorney, the prosecutor, a police officer, a friend, a relative, a priest, a cellmate, or an episode of "Hill Street Blues," the "plea bargain" is no less "implicit" than if his guardian angel had instructed him. The defendant still pleads guilty, here, with only a hope and without negotiation or promises. If, however, the trial judge communicates to the defendant that the sentence will be more severe if there is a trial conviction rather than a guilty plea, the defendant's choice to plead guilty represents an explicit plea bargain.

The nature of the information is also crucial. If the prosecutor says he will do something to the defendant if the latter refuses to plead guilty (e.g., invoke a habitual offender statute as in Bordenkircher v. Hayes, 1978), the defendant's guilty plea amounts to an explicit plea bargain. If the district attorney tries to encourage (or to intimidate) the defendant to plead guilty by relating horror stories (however accurate) of the judge's sentencing policy for trial convictions, the guilty plea represents an "implicit" plea bargain. The defendant pleads guilty without any promises or assurances.

[26]It is not paradoxical that one defendant can be a well-informed "implicit" bargainer while another is an extremely ignorant explicit bargainer.

[27]To be a meaningful participant in plea bargaining ("implicit" or explicit), the accused must be more or less cognizant of what he is doing for what reason (i.e., pleading guilty with the intent to reduce his punishment). The incentive to bargain is too vital a part of plea negotiation to suggest that the defendant could plea bargain in a motivational vacuum (i.e., the accused has no idea why he pled guilty).

[28]A reclassification would allow new avenues of thinking to be explored. A conceptual reformulation would be possible. We have already discussed "implicit" plea bargaining's broadening effect on plea negotiation. Well, the term has a confining nature as well. The current state of the art dichotomizes guilty pleas into "implicit" and explicit plea bargaining (Heumann, 1978: 158, 1979: 219). Plea negotiation, then, is the only category we have to explain myriad guilty pleas, some of which are far removed from the negotiation of a plea. Meanwhile, "implicit" plea bargaining operates as a "catch-all" for non-negotiated guilty pleas, no matter how the latter differ, structurally. The phrase, "implicit" plea bargaining, is simply too narrow to encompass the broad range of non-negotiated guilty pleas which, although not encouraged by judicial sentencing practices per se, are nevertheless motivated by the identical defense objective: to decrease the defendant's punishment by way of the guilty plea.

[29]Currently, when a jurisdiction announces that it has removed plea bargaining from its court system the assertion is, at best, only partially correct. Those maintaining this position have not been meticulous enough to specify that only explicit bargaining has been prohibited (Rubinstein et al., 1980). Observers are properly skeptical (Miller et al., 1978: 11). A candid admission by a jurisdiction, however, that its goal is to outlaw plea bargaining while plea accommodations will remain lawful (and will probably increase), would be more accurate and should be better received by the academic community.

Rubinstein et al. (1979) found that the guilty plea rate did not fluctuate greatly when plea bargaining was proscribed in Alaska. Obviously, one type of non-negotiated guilty plea (and plea accommodation is the most likely candidate) replaced the formerly valid, negotiated guilty plea.

[30]Until now, "implicit" plea bargaining has generally been ignored in deference to its more glamorous cousin, explicit plea negotiation. Thus, although plea accommodation is a separate entity, it is usually given only token consideration before it is swept under the larger rug of plea bargaining. Reclassification would serve to emphasize the differences

between the two, and should limit the possibility that plea accommodations will be forever disregarded.

Although plea accommodations are a major concern of this study, simplicity dictates that many section headings and discussions will refer only to plea bargaining. This is done purely for convenience.

[31]Nol prossing a case frequently involves negotiation (e.g., for the defendant's testimony) and, therefore, shares this quality with plea negotiation. Nol prossing can even be a "subset" of plea bargaining as when the prosecutor drops one charge in exchange for a guilty plea to another charge. Although many times there will be an overlap, it is important to distinguish the case that is dismissed from the one that is adjudicated via the guilty plea of the accused.

[32]Although nol pros negotiation is closely related in orientation and operation to plea bargaining, the former definitely deserves a separate identity. The Georgetown study agreed, but decided to call it disposition bargaining (Miller et al., 1978: 4-5, 78-79). This was not a fortunate choice. Disposition bargaining says nothing about what happened to the case, and, more important perhaps, it is too easily confused with sentence bargaining since, in criminal justice parlance, sentence and disposition are interchangeable. Actually, nol pros negotiation and/or dismissal bargaining (Jones, 1979: 112) suffice as titles. At the very least, nol pros negotiation should not be confused with or allowed to inflate the instances of plea bargaining.

[33]Several years ago Morris had gone even further than this by suggesting that plea bargaining could be applied to situations ranging from police discretion to the authority exercised by parole officers.

> In a wider sense, plea bargaining begins on the streets as the first confrontation between suspect and citizen, if it occurs, or suspect and the policeman, when it occurs, and continues through to final discharge from parole supervision...(1970: 233).

Pretrial diversion may entail examples of negotiation (e.g., defendant pays restitution in exchange for a dismissal of the case), but can never, by definition, involve plea bargaining since there can be no conviction if a case is to be diverted. More important, pretrial diversion for some cases can be automatic. Defendants may be referred to programs as standard operating procedure which calls for no negotiation. Plea bargaining, then, should not be the concept that is forced to accommodate and explain such an activity with which it differs greatly. For more discussion on this topic, see Chapter 6, infra.

[34]This point is important to remember especially concerning attempts to prohibit plea bargaining. Obviously, the cooperation of a number of people will be required to make abolition possible. Defense counsel's ability to turn to the judge during periods when the district attorney has instituted a no-bargain policy may mean that, instead of eliminating plea negotiation, one network (judicial) has merely replaced another (prosecutorial).

[35]Of course, these are two of the primary situations in which prosecutors want to bargain. See Chapter 8, Section A, infra.

[36]The typology is fully developed in Chapter 6, infra.

[37]Depending upon the situation, it may be impossible to specify all the parties involved in plea bargaining. For example, in some localities the police may play a significant role in bringing about a plea negotiation. The Georgetown study found rare instances where court clerks would steer the defendant's case to a lenient judge in exchange for a guilty plea (Miler et al., 1978: 31). It is possible that arrangements regarding the defendant's plea could be made even with the complainant. For the most part, however, their power and authority over the defendant's fate guarantees that the prosecutor and the judge will be the two individuals with whom the accused is most likely to plea bargain.

[38]As we will see in Chapter 6, infra., there are a couple of non-negotiated guilty pleas in addition to the straight and the tailored guilty plea (i.e., plea accommodation). These guilty pleas operate without reliance upon a judicial reward policy. To the extent that they (or the straight guilty plea for that matter) are present in any jurisdiction under statistical analysis, the findings pertaining to plea accommodation will be distorted.

[39]For the defendant who wants to plead guilty out of remorse or to save money, and for the defense attorney who wants his client to plead guilty to silence the victim, a judicial policy of rewarding guilty pleas may be of secondary importance only.

[40]Evidently, the Georgetown personnel saw no need to distinguish awareness from participation.

> If defendants believe that the implicit bargaining exists they will act accordingly and plead guilty in expectation of a lighter sentence (Miller et al., 1978: 28).

[41]One of the measures employed to regulate plea bargaining is the recording of the agreement between the parties. On the federal level the agreement must be transcribed (Federal Rules of Evidence, 1978: Rule II(e)).

[42]Another reporting problem that will not be reviewed in the text is the way plea bargaining is presented as a homogeneous blob. All plea bargains are considered the same. Some deals are certainly less pernicious (or more reasonable) than others, but the literature has generally not allowed for that distinction.

[43]This is really a biased statistic. Whereas every guilty plea is a conviction, the outcome of the trial varies. Thus, even if the number of trials equals the number of guilty pleas, the acquittal potential in adjudication virtually guarantees guilty pleas a superior proportion (i.e., more than 50%) of the amount of convictions.

[44]Consider, for example, a hypothetical universe of thirty cases in which ten are nol prossed, ten are guilty pleas (all bargained), and ten go to trial. Thirty-three percent of the cases in this universe were plea bargained. Certain manipulations will produce significantly different figures, however. If we exclude from consideration the cases that were nol prossed, the rate of plea negotiation jumps to fifty percent. When we focus exclusively on the conviction ratio, moreover, the figure ranges anywhere from fifty (if every trial ends in conviction) to one hundred percent (if no trial ends in conviction). Depending upon one's bias, the plea bargaining rate could be presented as low as thirty-three or as high as one hundred percent.

[45]The A.B.A. is one source which has translated the proportion of convictions obtained by guilty pleas into an overall rate of case disposition.

> The plea of guilty is probably the most frequent method of conviction in all jurisdictions; in some localities 90 percent or more of the criminal cases are disposed of in this way...(1980: ch. 14, p. 4).

Other authorities have been more direct and have claimed that plea bargaining itself accounts for as much as ninety-five percent of the cases resolved in criminal courts (Kress, 1974: 82; Alschuler, 1976: 1063).

CHAPTER 2: THE UNLIKELY ASSOCIATION OF PLEA NEGOTIATION AND JUVENILE COURT

Although we may now be better prepared to understand what plea bargaining is and how it should be quantified, juvenile court still remains virtually the last place we would expect to find traces of it. It is ironic that plea negotiation and juvenile court appear to diverge for they share some interesting parallels. When Dean Miller wrote about the compromise of criminal cases in the 1920's he observed that plea bargaining seems to have emanated from the same late nineteenth century spirit of humanitarianism that had contributed to the rise of juvenile court. Both phenomena were portrayed as measures which tempered the harshness of the criminal justice system (1927: 25); both were noted for their individualized and flexible approach to the problems of criminal offenders (Moley, 1928: 124).

Another feature that plea negotiation and juvenile court have in common is that they have required that a price be paid for their tempering effect. The accused who chooses to plea bargain in exchange for leniency from the state surrenders the various rights associated with trial. For several decades the juvenile defendant had been required to make even more substantial sacrifices. In order to receive the state's regenerative care (a la juvenile court) the youth was forced to relinquish nearly all the constitutional rights granted his adult counterpart (Antieau, 1961; Paulsen, 1957, 1962). Although the In re Gault (1967) and the In re Winship (1970) decisions removed most of the disparity concerning the rights accorded a juvenile vis-a-vis an adult suspect, full equality has yet to occur (see McKeiver v. Pennsylvania, 1971). Thus, both plea negotiation and juvenile court continue to require a quid pro quo from the defendant.

Despite their similar orientation and operation (or perhaps because of it[1]) plea bargaining and juvenile court do not seem to go together. One explanation is that even if plea bargaining has existed in juvenile court it should be no more than about sixteen years old.

A. The Improbability of Plea Negotiation in the Pre-Gault Era

That plea negotiation could have emerged only recently, if at all, in the juvenile justice system can be attributed, in large part, to the In re Gault decision handed down by the United States Supreme Court in 1967. It is believed that, prior to that date, plea bargaining would have been completely irrelevant to juvenile court practitioners (Miller et al., 1976: 592).

The pre-Gault adjudicatory hearing bore very little resemblance, substantively and procedurally, to the plea bargaining-riddled adult criminal trial. During this time the focus of the inquiry in the juvenile court centered around the youth's condition and character, rather than upon the commission of an offense per se (President's Crime Commission, 1967: 3; Finkelstein et al., 1973: 5; Ryerson, 1978: 37-38; Mack, 1904: 117-120). The proceedings were labelled non-adversary because the state's and the juvenile's interests were supposedly identical, and they were called non-punitive because the purpose of the state intervention was purportedly remedial and benevolent (IJA/ABA, 1977a: 1; Lou, 1927: 292; Streib, 1978: 8; Mack, 1904: 302; Handler, 1965). Consequently, in lieu of adversary techniques, the juvenile court adopted an informal, flexible procedure (Brown, 1964: 103; Mack, 1904: 302; Lou, 1927; Alexander, 1960). Prosecutors were basically nonexistent and defense attorneys appeared only rarely

(Coxe, 1967; Finkelstein et al., 1973; Skoler and Tenney, 1964: 81). Jury trials were generally not permitted (Lou, 1927: 137; In re Gomez, 1943; Commonwealth v. Bigwood, 1956), criminal laws of evidence were not observed (State v. Scholl, 1918; In re Holmes, 954; Application of Gault, 1965), and the self-incrimination privilege was not extended to the juvenile defendant (Lou, 1927: 138; Mack, 1904: 301; Hampton v. State, 1910; In re Holmes, 1954; Application of Gault, 1965; People v. Lewis, 1932). Routinely, judges simply asked the youth if he had committed the offense (Stapleton and Teitelbaum, 1972: 115-134).

Ordinarily, a judge would meet in chambers with the juvenile and a probation officer and would discuss with the latter the type of intervention the child needed. The probation officer would recommend a disposition in light of the disclosures of his investigation of the youth's circumstances. Thus, the primary thrust of the adjudicatory hearing was to reach accord on the rehabilitation plan that best suited the interests of the child (Advisory Council of Judges, 1963: 3-6, 49-56; Lenroot and Lundberg, 1925: 88-99, 126-129).

Before it was altered by the Gault Court, the traditional juvenile court concept did not contain the materials or circumstances that are typically ascribed to plea negotiation (Newman, 1966). There were not opposing interests (or counsel) that would have suggested that negotiation and compromise were appropriate or necessary. The juvenile had no commodities (i.e., constitutional rights) with which to strike a bargain with the state, which did not even need to prove a crime had been committed by a youth before it could help

(i.e., assume jurisdiction and control over) him. It would seem to have made little sense to try to reduce the level (or number) of the criminal charge(s) when the offense was, at best, of secondary importance (and was often totally disregarded). It would appear to have been counterproductive to attempt to minimize the level of state intervention when treatment, and not punishment, was the objective of the juvenile justice system. The juvenile court was originally designed to operate much like a medical clinic. Plea bargaining hardly seems rational in this context. That would be like a patient's going to the doctor and admitting he had a cold in exchange for which he expects to have to take only one aspirin.

One might reasonably infer from the traditional juvenile court concept that plea negotiation played little, if any, part in juvenile court adjudications prior to 1967.[2] Lending support to this inference are the countless commentaries and studies which scrutinized the juvenile court during its first seven decades and yet never mentioned plea bargaining. In fact, apparently only two (2) sources even touched upon the idea, and they said little more than that plea negotiation was a rare and discouraged event in juvenile court (Emerson, 1969: 20; Platt and Friedman, 1968: 1156).

One might just as reasonably infer that plea accommodations had also had an insignificant role in juvenile court proceedings during the pre-Gault era. This is so despite the fact that traditional juvenile court philosophy would have sanctioned judges' rewarding guilty pleas, in at least one context. Admission of guilt has long been viewed as the first positive step along the path of rehabilitation (Note, 1967: 330-331; Alexander, 1960: 1208-1209). Thus, a

youth who has displayed remorse and has acknowledged his offense has made progress, therapeutically speaking, and perhaps would require less severe intervention than would the recalcitrant juvenile offender. A juvenile who pleads guilty out of remorse or from a willingness to admit error has not engaged in plea accommodating, however. Plea accommodating demands that the defendant plead guilty, calculating to better his sentence because of a judicial tendency to treat guilty pleas more leniently than trial convictions. Of course, some juveniles could have feigned remorse and could have been strictly gambling when pleading guilty. Nevertheless, two factors militate against the likelihood of plea accommodations during this period. The first concerned the authority of the judge not only to force the truth from the defendant, but also to convict him on less than convincing evidence.[3] Second, the absence of defense counsel deprived the juvenile of a vital source of information about judicial sentencing practices, and the ability to argue that confession should legitimately be considered in mitigation of the sentence.[4]

The first sixty-eight years of juvenile court experience do not appear, in retrospect, to have fostered the climate in which either plea negotiation or plea accommodation is believed to prosper. Actually, the succeeding sixteen years seem to have brought about little change in that atmosphere.

B. The Contemporary Case Against Plea Negotiation in Juvenile Court

Arguably, the most pronounced effect of In re Gault was its scathing indictment of the juvenile court's experiment with youthful

offenders (1967: 18-29; Schultz and Cohen, 1976: 24). Due to the Supreme Court decision, however, the juvenile defendant was reunited with several constitutional rights,[5] which, among other things, guaranteed that the adjudicatory hearing was henceforth to operate more like a trial than like a medical examination.[6] At this point plea bargaining would seem to have become at least a relevant concern.

1. Plea Negotiation Is Unnecessary

Despite the crucial changes demanded by Gault, plea negotiation and plea accommodation are still believed to be unnecessary in and thus absent from juvenile court for a number of reasons. First, the juvenile court can function without the encumbrance of trial by jury (McKeiver v. Pennsylvania, 1971). The adjudicatory hearing, moreover, is fairly quick and, consequently, the juvenile justice system would not appear to be plagued with the overwhelming backlog that hampers the adult system. Caseload pressure, then, should not force juvenile court personnel to rely upon plea bargaining or plea accommodating (Besharov, 1974: 311; NAC, 1976: 412; cf., Heumann, 1975). Second, the prosecutor who has recently been introduced to juvenile court has been ushered into that forum with a special mandate. Although he has been instructed to represent the state, the prosecutor shares an obligation with defense counsel: to do the right thing for the juvenile defendant (IJA/ABA, 1977c, 1980b; Fox, 1970). The prosecuting attorney thus should not be expected to pursue the "half-loaf is better than nothing" approach. That is, the prosecutor is not supposed to be obsessed with nailing the accused on at least some crime. Thus, an incentive purportedly

vital to plea negotiation in criminal court (Lummus, 1937: 46; Moley, 1928: 123; Vetri, 1964; Alschuler, 1968) is, by design, absent from juvenile court. Third, inasmuch as plea bargaining is a device intended to mitigate punishment (Newman, 1966: 29; NDAA, 1972: 2), negotiated pleas have no bearing in juvenile court which is dedicated to the objective of rehabilitation. Finally, to the extent that one purpose served by plea negotiation is to individualize and to be flexible about the state's approach to the defendant, plea bargaining is redundant in juvenile court, which was constructed for that very same reason.

2. Plea Negotiation Is Impractical

Plea negotiation is considered to have no practical application in juvenile court particularly because charge bargaining seems worthless. Although there is a movement current in some states to make juvenile court dispositions proportionate to the severity of the crime (IJA/ABA, 1977d; Rubin, 1980), sentences in most jurisdictions are still not offense-related. Consequently, the youth would appear to gain little by seeking either a reduction in the level of the charge or a dismissal of one or more cases in a multiple charge prosecution (Folberg, 1968: 211; Emerson, 1969: 20; Stapleton and Teitelbaum, 1972: 137; Miller et al., 1976: 592; Lefstein, Stapleton and Teitelbaum, 1969: 540). As one source explained, in juvenile court practice

> the "sentence" imposed is governed by the needs of the juvenile rather than the number or seriousness of the charges brought against him or the frequency with which he has appeared before the court in the past. Because there are no separate classes of offenses, the juvenile cannot reduce his sentence exposure by pleading guilty to a lesser offense. Indeed, even in jurisdictions with separate provisions for status offenders, the prosecutorial procedures and kinds of sanctions that might be imposed on a (status offender) are quite similar to those applied to juvenile delinquents, and consequently, the juvenile has no incentive to plead guilty to the status offense in the hope of reducing his sentence risk on any more serious charges (Wizner and Keller, 1977: 1127, footnote omitted).[7]

Thus, at least one type of plea bargain, the charge bargain, looks to be ill-equipped for the standard operating procedure in juvenile court.

3. Plea Negotiation Is Dangerous

The second type of plea bargain, the sentence bargain, is plausible enough,[8] but is nevertheless frowned upon in juvenile court circles. First of all, sentence bargaining is unessential. Since each juvenile court disposition is supposedly influenced solely by the youth's needs, negotiation over the proper treatment plan is not required. The plan can be determined following adjudication when all concerned parties voice their opinions as to the disposition best-suited to the child's situation. Second, and even more important, sentence bargaining is inimical to the goal of rehabilitation. Here, the thought is that sentence bargaining would interfere with the state's duty (via the parens patriae doctrine) to help needy children (Senna and Siegel, 1978: 187; Siegel et al., 1976: 240, IJA/ABA, 1977a: 133, Besharov, 1974: 311). This position was expressed well by a commission of experts who proclaimed:

> Ultimately, the most frequent victim of the bargained disposition will be the juvenile. Society and its court system have an obligation to offer young offenders not only compassion, but also rehabilitative programs that are rationally related to their needs. Plea bargaining that results in leniency recommendations from the prosecutor encourages the parties in delinquency proceedings to lose sight of the essential function of the family court. The juvenile's potential receipt of services is jeopardized when counsel to the proceedings attempts, through negotiation, to limit the discretion of the family court judge to make an independent and objective evaluation of the juvenile's needs (NAC, 1976: 410-411).[9]

Consequently, sentence bargaining should not be allowed in juvenile court (Id.). This reasoning applies, in toto, to plea accommodations as well. The juvenile should get the correct disposition, and not a sentence discount, whenever he pleads guilty.

Plea bargaining opponents would derive much satisfaction from this picture of the juvenile court. Charge bargaining comes off as useless, while sentence bargaining and plea accommodations are to be proscribed because of their dangerousness. Apparently, a majority of the field concurs that this is an accurate assessment of plea negotiation in juvenile court, even though guilty plea rates reamin high today (Miller et al., 1976: 592; Siegel et al., 1976: 240; Dawson, 1969: 90).

> In the juvenile system, bargaining for guilty pleas is much less likely to occur...(Dawson, 1969: 90).
>
> Counsel for the juvenile, unlike his counterpart in the criminal court, does not have much, if any, opportunity to plea bargain...(Cohen, 1971: 521).
>
> (P)lea bargaining between prosecutor and defense counsel is unusual in juvenile court... (Miller et al., 1976: 592).
>
> (I)t is widely believed that there is little plea bargaining in the juvenile court...(Siegel et al., 1976: 240; Senna and Siegel, 1976: 187).

These armchair observations seemingly dominate the current thinking about plea negotiation in juvenile court. Most textbooks on juvenile justice completely ignore plea bargaining (Simonsen and Gordon, 1982; Thornton et al., 1981; Sanders, 1981); others give it short and tentative treatment (Streib, 1978: 34-35; Miller et al., 1976). The high numbers of guilty pleas are simply dismissed as open admissions rather than as negotiated guilty pleas (Senna and Siegel, 1976: 187).

4. The Low Visibility Factor

The ability to imagine that plea negotiation does not occur in juvenile court is strengthened, in part, by the double insularity of the topic. That is, neither plea bargaining (and particularly plea accommodating) nor the juvenile court is subject to exacting public scrutiny. Rather, these phenomena take place, literally, behind closed doors. Consequently, the intricacies of plea negotiation in juvenile court do not lend toward either ready acknowledgement or easy examination. As one group observed, most individuals

> would probably agree that plea bargaining, where it exists in the juvenile justice system, represents the "worst of both worlds," since it is invisible and unregulated...(IJA/ABA, 1977a: 29).

Disbelief and low visibility have combined to present a formidable, although not insurmountable barrier to the study of plea negotiation in juvenile court. The inability or unwillingness to concede that plea negotiation is feasible in juvenile court has heretofore blocked a valuable and necessary area of investigation.

FOOTNOTES

[1]As we have seen, one of the rationales of plea negotiation is its allowing cases to be individualized. The defendant's situation can be considered with some flexibility, unencumbered by mandatory provisions (Moley, 1928: 187-188; Newman, 1966, Chs. 8 and 13; Parker, 1972: 193-194; ABA, 1980: ch. 14, p. 40). Procedure in juvenile court is also flexible. The defendant's situation, in fact, is supposedly the only real concern of the juvenile court. Thus, plea bargaining in arguably redundant in such a context.

[2]It is possible that plea bargaining did occur on a significant level in juvenile court before Gault. For some time before this date an overwhelming proportion of juvenile court proceedings had involved uncontested cases (Alexander, 1960: 1208). Often, however, judges had merely instructed juvenile defendants that they were obliged to explain what had happened (Gonas, 1962: 327). Children were frequently told that an acknowledgement of guilt was a prerequisite to rehabilitation (Note, 1967: 331). These, of course, are not examples of plea negotiation. Several plea bargaining-like scenarios may have taken place, nevertheless. Judges may have promised youths either that things would go easier for them or that they would be allowed to go home if the truth were told. Juveniles may have been urged to admit wrongdoing because God or mommy and daddy would want them to do so. If these events took place, plea negotiation or something closely related to it may be said to have been established before the Supreme Court altered the juvenile court process. We may never know for certain the history of plea bargaining in juvenile court.

[3]Juvenile court judges were most likely not dependent upon a steady flow of unsolicited guilty pleas which would dry up unless rewards were given to cooperative defendants. Thus, rewards, if and when they were bestowed by judges were probably dictated by the circumstances of a particular case rather than by an urgency to maintain high rates of uncontested cases. Juveniles therefore would have apparently been able to place little, if any, confidence in attaining a better disposition by pleading guilty.

[4]It is possible that these related functions were performed by someone else, such as the probation officer. Nevertheless, it is particularly the province of defense counsel to parlay any plausibly promising aspect of the defendant's situation (e.g., a willingness to plead guilty) into the best possible outcome for the client. In this respect, the presence of defense counsel facilitates the possibility that plea accommodating will occur. But at this time defense attorneys appeared only rarely in juvenile court. Perhaps this explains why only

one pre-Gault source seems to have mentioned plea accommodations, and it described defense counsel who would stipulate the facts (i.e., plead guilty) before trying to persuade the judge that a particular dispositional alternative was appropriate (Note, 1967: 327).

[5]The juvenile was granted the following rights: notice of the charges, counsel, the self-incrimination privilege, and, confrontation and cross-examination of witnesses (In re Gault, 1967: 33-56).

[6]In re Winship (1970) granted the youth the protection of having all criminal charges against him being proved beyond a reasonable doubt.

[7]As another observer has noted:

> Under the present practice, there is no necessary relationship between the offense for which a juvenile pleads or is adjudicated a delinquent and the ultimate disposition. As a consequence, there is a relatively cavalier attitude on the part of prosecutors and defense attorneys in plea bargaining, since an admission of even one offense provides the court with all the legal authority it needs for maximum intervention (Feld, 1980: 230, n. 256).

[8]Although the charge may make no difference, it is certainly possible that a defense counsel who fears his client could be committed would attempt to negotiate with the judge in an effort to secure probation (Platt and Friedman, 1968: 1177). It is also reasonable to assume that a defense attorney would believe a judge might be more lenient with a guilty plea than with a trial conviction. This belief could easily be translated into counsel's advice that the accused plead guilty and throw himself on the mercy of the court.

[9]The NAC argued that all plea bargaining should be banned but particularly sentence bargaining. Charge bargaining at least left sentencing discretion in the hands of the judge. Sentence bargaining is evil, according to the NAC, because it places the disposition power in the relationship between the prosecutor and defense counsel (1976: 410-413).

[10]In its tentative juvenile justice standards, the Institute of Judicial Administration and the American Bar Association authorized charge bargains but advocated a ban on sentence bargains (IJA/ABA, 1977c: 62).

II. DIMENSIONS OF THE STUDY OF PLEA NEGOTIATION IN JUVENILE COURT

CHAPTER 3: CURRENT KNOWLEDGE ABOUT PLEA NEGOTIATION IN JUVENILE COURT

Although many of its aspects are frequently misunderstood, plea negotiation in the criminal justice system is a well-publicized phenomenon. Countless research projects have exposed various facets of the plea bargaining practice (Newman, 1956, 1966; Cressey, 1976, Alschuler, 1968, 1975, 1976; Heumann, 1978; Miller et al., 1978; Casper, 1972; Bond, 1982). Until recently, however, plea negotiation was a relatively unchartered event. Reports had appeared sporadically and had disclosed only that negotiated non-trial agreements accounted for a substantial number of convictions in criminal courts (Miller, 1927; Moley, 1928; Weintraub and Tough, 1942; Dash, 1951). Throughout the last three decades, an increase in academic concern, cries of abuse and intensive research have brought plea bargaining out of isolation to the fore of legal dispute. Ultimately, the United States Supreme Court sanctioned plea negotiation (Brady v. U.S., 1970; Santobello v. N.Y., 1971), and implemented procedures to regulate the bargaining practice (Federal rules of Evidence, 1978: Rule 11(e)). Plea negotiation critics maintain that bargaining is inherently flawed and cannot be cured by regulation alone (Note, 1970; NAC, 1973; Alschuler, 1968). Nevertheless, research has indisputably provided the means through which plea negotiation issues can be understood and confronted, as well as the ability to identify major problems, if not to resolve them.

A. The Little That Is Known About Plea Negotiation In Juvenile Court

Our knowledge of plea negotiation in juvenile court somewhat resembles the state of the art in the criminal justice system

several years ago. We have no more than mere sporadic documentation of its existence. We are necessarily ignorant of the characteristics of plea negotiation in juvenile court, including of course, any potential problems, abuses, or improprieties associated with the plea bargaining phenomenon.

1. Previous Research

The few empirically-based comments that have been made about plea negotiation in juvenile court are rather cursory mainly because the research projects that have mentioned it have been devoted to broader subjects such as the role of the defense attorney or the function of the juvenile court proceeding. Plea bargaining in juvenile court has yet to receive the undivided attention of a full-scale research effort.

In the year preceding the Gault decision, Emerson conducted an extensive study of a metropolitan juvenile court in an attempt to analyze "the nature of the court operation, the handling of delinquents and the court's functions in relation to the wider social and legal system" (1969: vii). After noting the absence of prosecutors in adjudicatory hearings, Emerson made the singular remark that "deals" in juvenile court "are very infrequent" (Id.: 20). Emerson never addressed the matter again.

In the same year, Platt and Friedman investigated the role of defense counsel in an urban juvenile court and discovered that some plea negotiation took place.

> Plea bargaining is discouraged in juvenile court, though we have witnessed several conferences between defense lawyer, state's attorney and judge where, in return for a plea of guilty, a client has been guaranteed probation or supervision instead of incarceration. Opportunities for bargaining are formally limited, and most lawyers feel that it is not worth their effort, since a juvenile is only rarely committed to a reformatory (1968: 1177-I178).

These two studies are noteworthy for their documenting the appearance of plea negotiation in juvenile court before Gault was decided. They provided very little description of plea bargaining in juvenile court, however.[1]

In the sixteen years since Gault, our understanding of plea negotiation in juvenile court has advanced only marginally. Shortly after the Supreme Court decision, Platt, Schechter and Tiffany evaluated its impact via a study of the public defender. Plea bargaining was found to be of limited importance

> because a defendant can only be found guilty of "delinquency" no matter what criminal charge is proved. Nothing is gained by reducing "aggravated battery" to "assault" if the outcome is the same in either case. The state's attorney cannot make deals about reduced "time" in exchange for a guilty plea because they do not have the power to fix sentences. The state youth commission operates under a policy of indeterminate sentencing and only the commission and its staff have the power ot (sic) release juveniles from reformatories (Platt et al., 1968: 632).

Although some plea negotiations were discovered to be "possible and necessary for efficient, cooperative work relations" (Id.) the topic received minimal treatment by the researchers.

Stapleton and Teitelbaum hypothesized that "the performance of defense counsel, and consequently his impact on the outcome of the case he handles, will be largely determined by the circumstances of the forum in which he appears" (1972: 97). They devised an experimental study to test this theory. Defense lawyers were trained in juvenile law and adversary tactics so as to measure the effect this had on the handling of a case (Id.: 49). Among other things, the researchers discovered that plea negotiation

existed in the two juvenile courts investigated (Id.: 135). Furthermore, the difference that was found in the rate of plea negotiation between the two courts was attributed, in large part, to the presence of a prosecutor. The jurisdiction in which a prosecutor regularly appeared experienced a greater number of negotiated pleas (Id.: 135-136).[2] Sentence bargaining was typical, and the defense attorney ordinarily initiated the negotiation (Id.: 136-137). Generalizability of findings is impossible, however, because the study was an experimental venture to determine the impact of adversary defense counsel in juvenile court. Moreover, since plea negotiation was merely a tangential concern of the researchers, the subject remained largely unexplained by the authors.

In a comprehensive examination of decision-making points in Denver's juvenile court, Hufnagel and Davidson ascertained that plea negotiation takes place in juvenile court proceedings (1974: 377). Defense counsel were found to have a number of reasons to plea bargain for their clients (Id.: 378). Plea negotiation was only a minor focus of the study, however. The goal of the research was to investigate the impact of Gault. Particular emphasis was placed on determining the child's ability to understand and to effectively utilize his rights in juvenile court (Id.: 337-338). Thus, Hufnagel and Davidson provided no description of the plea bargaining process or the roles of the participants in bargaining cases in juvenile court; they stated only that plea negotiation exists in juvenile court. Nevertheless, the objective of the research was accomplished. Hufnagel

and Davidson succeeded in their attempt "to identify problem areas and to suggest topics for further study" (Id.: 338).

Sosin and Sarri joined a large scale effort to determine the extent to which juvenile courts had complied with the letter and spirit of the Gault decision and its progeny. Their discussion on plea negotiation encompassed three sentences. The researchers observed simply:

> For the most part, attorneys tended to prefer to plea-bargain with the judge on small points rather than on the adjudication decision itself. For example, some lawyers would have their clients admit guilt on three of six counts if the other three would be dropped. Judges often agreed to this arrangement, and for good reason: once a child is adjudicated a delinquent, three rather than six counts makes no legal difference, as legally the judge need not fit the disposition to the number of charges (1976: 196).

Obviously, the topic was not considered significant.

Recently, Ewing purportedly examined plea negotiation in the Harris County (Texas) juvenile court. Charge and sentence bargaining are reported to have occurred (1978: 179-181). Any conclusions drawn from this study are tentative, however. First, Ewing assumed, without support, that each guilty plea (or stipulation) represented a plea bargain (Id.: 169, n. 15). Second, the researcher confused plea negotiation with diversion. Ewing presumed that cases turned out of the system at intake were instances of plea bargaining (Id.: 173). Finally, besides these very serious definitional problems, the author acknowledged that the findings stemmed from data informally collected during a ten-week internship in the court (Id.: 169, 177, n. 46).

Sagatun and Edwards measured the effect of a 1977 change in

California law which mandated prosecution by a district attorney in select cases. A majority of the county prosecutors' offices which responded to a questionnaire indicated that they engaged in charge bargaining but not in sentence bargaining (1979:20). Sagatun and Edwards conceded nevertheless that "the extent and the nature of the bargaining remains unclear" (Id.).

Thus far, research has contributed little to our state of knowledge. We know basically that plea negotiation occurs in some form and to some degree in juvenile court. The preceding studies are evidently among the best kept secrets in juvenile justice. Commentators who wish either to assert or to deny that plea bargaining exists in juvenile court rarely cite any of this body of research as support for their positions.

2. Appellate Court Cases

Several appellate level cases demonstrate that plea negotiation takes place in juvenile court. The evidence is neither conclusive not very instructive, however. Only a handful of cases from a few states were located, and almost half come from Illinois alone. In five cases from California, two dealt with the right of the youth who has plea bargained to have the same judge at both the adjudicatory and disposition hearings (Matter of Thomas S., 1981; In re Ray O., 1979); one merely stated that a charge bargain had transpired (In Matter of Aaron N., 1977); one demanded that a judge who cannot honor a negotiated agreement must allow the defendant to withdraw his guity plea (In re Gary O., 1978); and the fifth sanctioned a county prosecutor's decision never to plea bargain with juveniles in drunken driving cases (In re Steven R., 1982).

One New York case upheld the defendant's plea bargain because the guilty plea had been freely and intelligently made (In re Richard D., 1970). A case from Oregon authorized juvenile plea bargaining as long as the guilty plea is voluntary (State ex rel. Juvenile Dept. of Coos County v. Welch, 1973). A Louisiana court reversed a young girl's conviction which had been based upon a negotiated guilty plea because the accused had not been told the maximum consequences of her admission (State in Interest of Jarrell, 1981). The New Hampshire Supreme Court sanctioned a plea bargain in which a youth agreed not to contest a transfer hearing in exchange for a reduction in the charge (Roy v. Perrin, 1982). Finally, from Illinois, various court cases have disclosed nothing more than that dismissals of other charges (In re Haggins, 1977; Interest of Tingle, 1977; Interest of R.B., 1980; People v. Moore, 1975) and charge reductions have occurred (Interest of Stewart, 1976; Interest of Butler, 1976; Interest of F.D., 1980). In one case, a plea negotiation was overturned because the terms of the agreement were not put on the court record (Interest of Thomas, 1979).

Between the terse comments of numerous research projects and the litigation that is beginning to take place on the appellate level in various states, we can reasonably assume that some plea negotiation activity is on-going in juvenile courts across the country. We still do not know what to make of it because plea bargaining in juvenile court has yet to be thoroughly described.

B. Assumptions About Plea Negotiation In Juvenile Court

Despite the absence of descriptive and analytical evidence many

commentators have taken it upon themselves to express views concerning the wisdom of allowing plea negotiation in juvenile court. For example, within the last nine years two national commissions have examined the juvenile justice system in depth and have announced beliefs regarding plea bargaining. Although the conclusions drawn by the commissions differed considerably, their works had something in common. Neither could substantiate that it knew anything about plea negotiation in juvenile court. Thus, both operated in the dark and were forced to admit their handicap.

> Although documentation of (plea negotiation) practices in juvenile courts is lacking, the existence of plea bargaining in the delinquency process cannot be disputed...(NAC, 1976: 409).
>
> The extent of plea bargaining in juvenile cases is not certain, but it is known that plea bargaining does exist in at least some metropolitan juvenile justice systems...(IJA/ABA, 1977a: 28).

1. Plea Bargaining Must Be Abolished

In 1976, the National Advisory Committee on Criminal Justice Standards and Goals (NAC) maintained that plea negotiation should be eliminated from juvenile court (1976: 409). Essentially, the commission did little more than transfer to juvenile court the litany of problems that have plagued plea bargaining in criminal court. The NAC declared that plea negotiation is "inherently coercive" especially for the innocent juvenile defendant who is often compelled to sacrifice substantial constitutional rights in exchange for the state's guarantee of leniency. It was stressed that the naive or first offender would probably be less prepared to negotiate his case than would the veteran juvenile criminal (Id.: 410). On a similar note, other observers have theorized

that juveniles who press for trial are penalized for exercising that right (Hartman and Koval, 1979: 75), and that one negative result of plea bargaining is that more juveniles will be convicted instead of having their cases diverted from the system (Wizner and Keller, 1977: 128).

The NAC criticized plea bargaining for its inviting defense counsel and prosecutors to act "irresponsibly" inasmuch as they will negotiate even meritorious disputes in order to relieve caseload pressure. The availability of bargaining, moreover, encourages the prosecutor to overcharge so as to gain the most advantageous negotiation stance (1976: 410). The NAC proclaimed that plea bargaining jeopardizes the juvenile court's treatment goals in that it can serve to limit the judge's discretion in assigning the youth to the proper rehabilitative program (Id.: 410-411; Lightholder, 1978: 789-790).

Finally, the NAC disclosed perhaps its greatest discomfort with yet another result of plea bargaining in juvenile court: society's welfare is ignored, if not compromised.

> It is axiomatic, of course, that bargained dispositions of delinquency matters endanger the public's interest in being protected from juvenile crime. To the extent that dispositions are the result of bargains that reflect factors not rationally related to the circumstances of a given case, the public has not been adequately protected. The same is true when leniency is accorded a juvenile because he or she does not assert the right to trial proceedings, rather than because leniency is appropriate (1976: 410).

According to the NAC and others, then, plea negotiation has too many obstacles to overcome in order to be considered legitimate in juvenile court. Recently, the commission reaffirmed its stand (1980: 332).

2. Plea Bargaining Must Be Regulated

In 1977, the Institute of Judicial Administration and the American Bar Association (IJA/ABA) completed a tentative draft of their joint venture, entitled the Juvenile Justice Standards Project. The IJA/ABA felt that the time had come to

> move in one of two directions: either plea bargaining should be recognized and regulated or it should be eliminated...(1977a: 29).

Actually, the commission misstated the choice. Recognition is a step necessary to both regulation and elimination. Describing their decision as "close," the IJA/ABA wrote two sets of standards. The majority platform chose the regulation route. A vocal minority, however, constructed an alternate set of measures which called for abolition (Id.: 81-88).

Initially, even the majority position was somewhat equivocal. Although it sanctioned charge bargaining, the IJA/ABA proscribed sentence bargaining, claiming it provides the prosecutor too great an opportunity to abuse official powers (1977c: 62, 65).[3] In addition, the commission argued that sentence agreements would subvert the traditional authoritative function played by the juvenile court judge in disposition hearings and thus

> would not comport with the underlying goals of the family court...(Id.: 65).

Three years later, however, the IJA/ABA altered its stand so as to allow sentence bargaining to occur (1980b: 62, 64-65). Another interesting standard, which survived subsequent review by the commission, involved a ban on judicial participation in plea negotiation in juvenile court (1977a: 35; 1980a: 34, 39).[4]

C. The Need For Empirical Research

There is no doubt that plea negotiation in juvenile court needs to be exposed and analyzed. The issue is beginning to be considered in a number of states throughout the country; important decisions are about to be made. Undeniably, courts and legislatures will require more information about juvenile plea bargaining before they can deal with it intelligently. Exacerbating matters is the current get-tough attitude that seems to be dominating juvenile court legislation (Rubin, 1979). It is urgent for legislators and judges to pause and to consider what, if any, effect this movement will have on plea bargaining (and pleading guilty) in juvenile court.

Abolition may ultimately prove to be desirable as the NAC argues. The fears of plea bargaining abuse in juvenile court deserve serious attention. In fact, perhaps it was the NAC's message that inspired the Mississippi legislature, which stands alone as the only unit of state government that has categorically prohibited plea negotiation in juvenile court.

> Under no circumstances shall the party or the prosecutor engage in discussion for the purpose of agreeing to exchange concessions by the prosecutor for the party's admission to the petition (1979: 43-21-555).

Nevertheless, the NAC merely assumed that plea bargaining is inherently evil in juvenile court (1976: 409-411). Moreover, the NAC imagined that it could be easily eliminated from that forum (Id.: 412; 1980: 332). The abuses cited by the NAC (and others) are as yet undocumented and thus the validity of the demands for abolition remains an open question.

If it is not elminated, at the very least some form of regulation of plea bargaining in juvenile court would appear to be called for. But it is still premature to say what shape the regulation should take. In one of its reports the IJA/ABA had warned:

> It should not be assumed, however, that the criminal justice model for plea discussions and plea agreements would be appropriate in its entirety in the juvenile court (1977c: 64; 1980b: 64).

Despite this admonition the IJA/ABA assumed that plea negotiation is inevitable in juvenile court, and that, among other things, it relieves caseload pressure in that system (1980a: 35-36; Kleczek, 1972: 62; Senna and Siegel, 1976: 187). Furthermore, the commissioners set about their regulation task having only scanty information upon which to base their judgments. Perhaps this explains their vacillation in the matter of sentence bargaining.

The point is that it is unknown whether or not charge and/or sentence bargaining should be permitted in juvenile court. Perhaps it was unwise for the Iowa legislature to act as the only state governmental body that has explicitly endorsed both types of plea negotiation in juvenile court.

> The county attorney and the child's counsel may mutually consider a plea agreement which contemplates entry of a plea admitting the allegations of the petition in the expectation that other charges will be dismissed or not filed or that a specific disposition will be recommended by the county attorney and granted by the court...(1979: 232.43(2)).

Likewise, it is uncertain whether or not the judge should be automatically excluded from negotiated pleas in juvenile court.

Questions like these must of course be addressed before regulation can be responsibly implemented. They can be answered once we know more about plea negotiation in juvenile court.

FOOTNOTES

[1]Even their historical significance is flawed by the fact that both jurisdictions had provided all defendants defense counsel (Emerson, 1969: 19; Platt and Friedman, 1968: 1156). Thus, the two courts had already anticipated part of the Gault holding, and had already initiated the erosion of the traditional juvenile court concept.

[2]In the jurisdiction with a prosecutor, there were bargains in 37 of 195 cases (19%), while, in the other court, bargaining occurred in 5 of 162 cases (3.1%) (Stapleton and Teitelbaum, 1972: 135-136).

[3]The NAC agreed with this position and argued that if plea bargaining could not be abolished in toto, at least sentence bargaining should be prohibited (1976: 413).

[4]The NAC endorsed the proscription on judicial participation in juvenile plea bargaining (1976: 413).

CHAPTER 4: AN OVERVIEW OF THE PHILADELPHIA JUVENILE JUSTICE SYSTEM

The juvenile court in Philadelphia is officially known as the Court of Common Pleas of Philadelphia, Family Court Division, Juvenile Branch. It was selected as the research site for a number of reasons. The court operates in a metropolitan area and processes a large number of cases daily. Thus, the likelihood of discovering plea negotiation seemed greater than if a less-populated court was studied. In addition, defense counsel and prosecutors regularly appear in juvenile court. In other words, the bargaining parties were present. Furthermore, the researcher had had prior working experience in the Philadelphia juvenile court, which is located near his home. Finally, the ordinarily closed doors of juvenile court were willingly opened to the researcher.

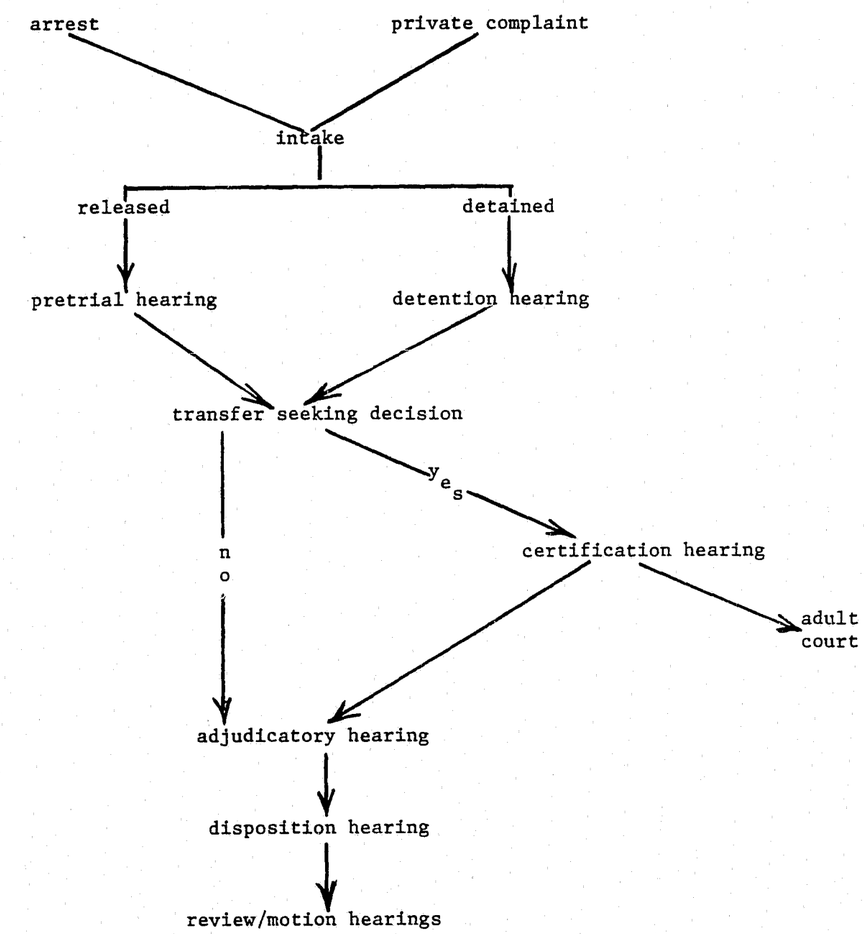
A. The Pre-Court Process

1. Jurisdiction

The juvenile court statute for the Commonwealth of Pennsylvania defines a delinquent child as one ten years of age or older whom the court has found to have perpetrated a crime (or delinquent act) before his eighteenth birthday, and is in need of treatment, supervision or rehabilitation. Both summary offenses and murder are excluded from the term, delinquent act. Also omitted from the delinquent category are juveniles who commit acts illegal only for children, or so-called status offenses (42 Pa. C.S.A.: § 6302). Figure #1, on the following page, outlines the various stages through which a youth's case can proceed in Philadelphia's juvenile court system.

FIGURE #1

CASE FLOW IN JUVENILE COURT



2. Referral Sources

Probably every officer in Philadelphia's twenty-two police districts has had some contact with a juvenile as a result of the latter's involvement in an alleged crime. Regular police officers frequently apprehend and hold suspected juvenile offenders. Of the 11,765 new delinquency cases referred to and disposed of by either intake or by the juvenile court in 1980, 10,621 (or 90.3%) were police referrals (Philadelphia 1981: 73).[1]

The police do not arrest the youth, however. Instead they escort the youth to the Juvenile Aid Division (JAD), a special division of the police force. The JAD officer decides whether arrest is warranted. If the answer is no, the child is released and the officer records a "non-arrest". In 1980, 10,177 non-arrest or remedial cases were so recorded (Id.: 17). If the decision is to arrest, the juvenile is transported to the Youth Study Center (YSC), a detention facility wherein the intake process occurs (Id.: 9).

The second significant referral source is the private criminal complaint. Any person can file an affidavit charging a juvenile with having committed a misdemeanor against him or his child. To file a private criminal complaint the individual must call the Youth Study Center and arrange a meeting with an intake interviewer who will determine whether charges should be lodged against the juvenile (Id.: 8-9). Affidavits accounted for 892 (or 7.6%) of the cases referred to juvenile court in 1980 (Id.: 73).[2]

3. Intake

After an arrest has brought the youth to the YSC, a probation officer must decide whether to detain him pending an intake interview, usually scheduled for the following day. Several statutory criteria guide this decision (42 Pa. C.S.A. §§ 6325, 6326). The purpose of intake is to screen all delinquency cases in order to determine whether or not the court has jurisdiction and, if so, how that jurisdiction should be exercised (Philadelphia, 1981: 9-10). At the intake conference the assigned JAD investigator reads the police report in the presence of a YSC official (the intake interviewer), the youth and his parent. In affidavit cases, the complainant appears as well. The juvenile and intake interviewer may discuss the situation, but nothing the former says may be used against him in court (42 Pa. C.S.A. § 6323(e)). The YSC official has the authority to "adjust" the case; that is, to "refer the child and his parents to any public or private social agency available for assisting in the matter" (Id.: § 6323(a)). In 1980 1,393 cases were adjusted at intake (Philadelphia, 1981: 21). If adjustment is not possible, the matter is referred to court. The juvenile's detention status may be reconsidered at this point. In 1980, 9,100 (or 78%) of the youths whose cases were processed by the court had been released to their parents (Id.: 47).

Within a day or two after the intake interviewer decides that the case must be referred to court he issues a petition, the formal charging document in delinquency proceedings (42 Pa. C.S.A. § 5334). The YSC official then prepares a written statement of the intake conference, including the police report and anything the juvenile

said at the interview, and forwards copies of this to the public defender and the district attorney.

B. The Philadelphia Juvenile Court

1. Volume And Structure

In 1980, 10,372 (or 90%) of the 11,529 new delinquency cases referred to juvenile court were resolved. They were disposed of in the following ways (Philadelphia, 1981: 21):

4,064 or 39.2 percent were dismissed, discharged, or adjusted;

4,700 or 45.3 percent were placed or continued on probation;

1,041 or 10.0 percent were committed to institutions or agencies;

156 or 1.5 percent were transferred to adult court;

86 or .8 percent were adjudged dependent;

61 or .6 percent were ordered to pay fines or restitution; and,

264 or 2.6 percent were disposed of in various other ways.

During that year, 3,274 rehearings were also conducted (Id.: 16).

Five courtrooms in the Philadelphia juvenile court handle delinquency matters in the following manner:[3]

COURTROOM	PRIMARY HEARING FUNCTION	SCHEDULE
A	Pretrial	5 Days/Week
B	Adjudicatory	2 Days/Week[4]
C,D,E	Adjudicatory	5 Days/Week

All five courtrooms entertain between four and six detention hearings daily; all five allow for disposition, review, and motion hearings if the judge sitting in the courtroom has had prior working experience in a case. Certification hearings are likely in all but Courtroom A. The typical pretrial list in

Courtroom A contains between forty-five and fifty cases. In the other courtrooms, between thirty and forty assorted matters are heard daily.

2. Personnel

There are six judges assigned to full-time duty in the delinquency branch of juvenile court. Each of five judges occupies one particular courtroom regularly, while the sixth operates as a swing judge. The latter acts as a replacement for his peers, allowing each judge to dedicate every fifth week to working in chambers. These judges are elected by the voters of Philadelphia, and although they rotate service among the various branches of the Court of Common Pleas, most are quasi-permanent fixtures in juvenile court.

Twelve assistant district attorneys (ADA) work in the juvenile division of the District Attorney's Office. The unit chief and an assistant chief have occupied their positions on a long-term basis. Nevertheless, they should not be considered as career juvenile prosecutors. The other ten assistants are sent to the juvenile division on temporary assignment (from six months to two years) via a rotation system. Except for the caseload of the representatiave from the main office's rape unit,[5] there is no specialization in the cases handled by the ADA.[6] Generally, each assistant averages at least four days a week in court, assigned in teams to one of the courtrooms.[7]

According to the juvenile court act the juvenile defendant is entitled to representation by legal counsel at all stages of the proceedings (42 Pa. C.S.A. § 6337). Defense work is divided

unevenly among three types of lawyers: the public defender (PD), assigned or appointed counsel, and the privately retained attorney. The brunt of the representation, perhaps as much as 70 percent of the caseload, is borne by the public defender. Like its adversary, the juvenile division of the PD's office is led by a chief and an assistant chief. The public defender, however, is usually either new to the office or a career public defender. The PD averages at least three days a week in court, spending the other two days at the YSC or in the office interviewing clients.

Assigned cousel are appointed by the legal liaison unit supervisor. They are required in multiple defendant cases and where the juvenile has an adult co-defendant represented by the public defender.[8] Assigned counsel represent 25 to 30 percent of the cases and many appear almost as frequently as the PDs. Finally there are a few juveniles who elect or are instructed by the court that they have the means through which to hire their own lawyer. This happens in 2 to 3 percent of the cases. Many privately retained attorneys are selected from among the specialists in juvenile court procedure who have gained their experience via repeated appointments to the court.

Besides staffing the intake unit the juvenile division of the probation department also serves the function of supervision of the youth in the community. In that capacity, approximately 110 probation officers (PO) are divided into five units. The pre-hearing intensive supervision (PHIS) group monitors the conduct of children who have been released pending their trial but who nevertheless require special attention during that period. Three units are devoted

to juveniles who have not yet indicated a need for institutionalization: regular probation (which includes consent decree cases) calls for one meeting a month with the youth;[9] intensive probation calls for weekly meetings; and correctional group counseling demands the juvenile's attendance at court two times a week for group therapy sessions. The community-related institutional probation (CRIP) division assists the child's reintegration into the community after the child has been released from an institution. It is also known as after-care and is the juvenile justice answer to parole. Finally, probation officers are responsible for developing plans for children who require commitment. The size of a PO's caseload ranges from 10 (intensive) to 60 (regular) youths.

Several members of the court support staff enhance the orderly flow of cases through the juvenile court. The court representative serves as liaison between the judges and the probation department, and brings the youth's J-file (a complete dossier on the juvenile) to each hearing. Court clerks record the orders and directives of the judge in each case. The stenographer records testimony and most verbal exchanges in all the proceedings. A court officer signs in all parties and escorts them to and from the courtroom. The court crier convenes and adjourns court (on the call of the judge), calls cases and swears in witnesses. Finally, one or two sheriffs are responsible for the physical control and safety of the courtroom and for transporting the prisoners.

3. Stages

a. Pretrial Hearing

Pretrial is a judicial "clearing house" for juvenile delinquency cases.

> This hearing is conducted by a judge, and consists of a relatively informal presentation and evaluation of all available information, to determine whether the juvenile should be discharged, or continued for an adjudicatory hearing...(Philadelphia 1981: 10).

All youths who are released after the intake conference are channeled to pretrial.

The purposes of pretrial are many:

1) To assign counsel (usually a PD) for unrepresented juveniles;
2) To formally notify the youth and his parents of the charges;
3) To establish that there is probable cause to support the charges against the juvenile;
4) To provide the child an opportunity to answer or to plead to the charges;
5) To see if the case can be informally resolved (i.e., a discharge, a consent decree, or an admission); and, if not,
6) To set a date, time and courtroom for the next court listing (usually the adjudicatory hearing) in the case.

At pretrial the ADA reads the police report (or gives a summary of the testimony of an individual filing a private complaint) in the presence of the judge, the juvenile and his parent(s), and the public defender (or, in rare cases, private counsel). The complainant does not appear except in affidavit cases so pretrial is not fully an equivalent of the preliminary hearing in adult court. Sometimes the case

is discharged or the petition is withdrawn by the district attorney or by the complainant. If the case is not thrown out, three options remain. First, the youth may be placed on a consent decree, which is a six-month informal probation (and can be extended another six months), although he neither admits nor denies guilt. If the results of the probation are satisfactory, the case is dismissed. If not, the petition can be reinstated against the juvenile (42 Pa. C.S.A. § 6340). Second, the youth can admit guilt and be adjudicated (i.e., convicted) a delinquent on that admission. Finally, the case may be continued for further processing, which usually means an adjudicatory hearing.

Pretrial usually occurs three to eight weeks after the intake conference. Of the 12,746 cases resolved by a hearing in 1980 (i.e., both new cases and rehearings), 4,705 (or 37%) were completed at the pretrial listing (Philadelphia, 1981: 45).

b. Detention Hearing

For each juvenile who is detained after the intake conference a detention hearing must be held within 72 hours (42 Pa. C.S.A. § 6322). Functionally, the detention hearing operates in the same manner and serves the same purposes as pretrial. One added decision is necessary, however. The court must decide whether the youth shall remain in custody until the next listing. Most juveniles are released at this point.[10]

c. Certification Hearing

On the way to the adjudicatory hearing the ADA may choose to invoke certification proceedings against any child who commits a felony and is at least 14 years of age at the time of the act (42 Pa. C.S.A. § 6355). Certification, which is also known as transfer or waiver,[11] involves sending the juvenile and the criminal charge of which he is accused to criminal court for processing. Today, every state in the country provides for transfer to adult court in some way, shape or form.[12]

In Philadelphia, the certification hearing is bifurcated.[13] The first part is the equivalent of an adult preliminary hearing. Here, the court must find:

> (i) that there is a prima facie case that the child committed the delinquent act alleged; (ii) that the delinquent act would be considered a felony if committed by an adult...(Pa. C.S.A. § 6355 (a) (4)).

The second part of the proceeding is known as the amenability hearing. Ordinarily, this aspect is the stumbling block to certifying juvenile offenders. The Commonwealth has the burden to prove that certification is appropriate; the test is by a preponderance of evidence (Commonwealth v. Greiner, 1978). To succeed in its transfer request, the prosecution must establish "that there are reasonable grounds to believe all of the following:

> (A) That the child is not amenable to treatment, supervision or rehabilitation as a juvenile through available facilities...
> (B) That the child is not committable to an institution for the mentally retarded or mentally ill.
> (C) That the interests of the community require that the child be placed under legal restraint or discipline or that the offense is one which would carry a sentence of more than three years if committed as an adult (42 Pa. C.S.A. § 6355 (a) (4) (iii))."

The legislature has enumerated a number of factors which are to be considered by the court in its decision on amenability (Id.).[14]

If the judge decides that certification is warranted, he must put his reasons on the record (Commonwealth v. Lux, 1982). The juvenile is then afforded an opportunity to make bail, given an arraignment date, and rearrested as an adult. When the judge believes the youth is amenable to juvenile court treatment the case is sent to an adjudicatory hearing.

d. Adjudicatory Hearing

Except for when a certification hearing occurs, the adjudicatory hearing will usually be held three to five weeks following pretrial. If the youth has been detained, however, trial must take place within ten days (41 Pa. C.S.A. § 6335 (a)).[15] Although there is no specific provision concerning the right to speedy trial, there is an unwritten rule that the defense and the Commonwealth will get only two continuances. The third listing will be marked "must be tried."

The general public is excluded from the adjudicatory hearing which is "conducted by the court without a jury, in an informal but orderly manner..." (Id.: § 6336 (a)). In effect, the adjudicatory hearing is equivalent to the adult bench trial. Rules of evidence used in criminal court are employed in juvenile court as well. Essentially, the Commonwealth presents its evidence; prosecution and defense witnesses (and sometimes the defendant) testify and are cross-examined. An admission or guilty plea by the accused obviates

the need for an adjudicatory hearing.

To declare the child a delinquent the court must determine beyond a reasonable doubt that the child committed the crime and "is in need of treatment, supervision or rehabilitation" (Id.: §§ 6302, 6341 (b)).[16] Ordinarily, the latter is inferred from the commission of the offense, particularly when felonies are involved.[17] Nevertheless, the court is authorized to dismiss the proceedings if it finds that the child does not need the state's regenerative care (Id.: § 6341 (b)).

e. Disposition Hearing

Once a juvenile is adjudicated delinquent his fate is the subject of another proceeding, the disposition hearing,[18] which can occur immediately upon conviction or after one or more continuances (Id.).[19] The disposition hearing is not bound by criminal rules of evidence. Generally, anything pertinent to the child's background can be heard or reviewed while the court is searching for the proper sentence (Id.: § 6341 (d)).

Besides treating the juvenile delinquent as a dependent, the judge about to sentence a young offender basically has three options:

1) Impose a fine or restitution order; and/or
2) Place the youth on one of many types of probation; or,
3) Employ one of many types of commitment for juveniles twelve years of age or older (as dependent, mental health or delinquent commitments) (Id.: §§ 6352(a), 6356).

Probation is not given a specific term. The juvenile simply remains on probation until discharged by a judge. This will usually occur within nine or ten months if the youth has not had any subsequent adjudications.

A juvenile is not allowed to be committed or transferred to a penal institution used primarily for adult offenders (Id.: § 6352(a)). Like probation, institutionalization is indeterminate. The Juvenile Act provides:

> No child shall initially be committed to an institution for a period longer than three years or a period longer than he could have been sentenced by the court if he had been convicted of the same offense as an adult, whichever is less... (Id.: § 6353(a)).

The initial commitment can be extended for a similar period if the court finds, after a hearing, that the extension will serve a rehabilitative purpose (Id.). The committing judge is responsible for deciding when to release the youth.

f. Review/Motion Hearings

The final set of hearings concerns, on the one hand, a review of the juvenile offender's status and, on the other hand, a request to alter that status. According to the Juvenile Act:

> The committing court shall review each commitment every six months and shall hold a disposition review hearing every nine months (Id.).

Review hearings thus monitor the youth's progress while on probation or while committed. The judge examines the report from the probation officer or from the institution, depending upon the circumstances, and often the judge is

able to determine that the juvenile should be discharged from his sentence.

Motion hearings deal with the probation officer's or the institution's recommendation to change the juvenile's situation. The change can represent the youth's going to a higher or lower level of restraint.[20] For example, the PO can claim that the youth has violated probation and requires commitment. Or, an institution can complain that the juvenile has been a severe disciplinary problem and demands different, usually more secure, placement. At the other extreme, the child's exemplary behavior on probation or in an institution could prompt a motion or request that the juvenile be discharged from all supervision.

C. The Institutional Network

There are three types of institutions that deal with the majority of juveniles whom the court determines must be committed. Most of these facilities house only boys;[21] some address special problems (e.g., drug or alcohol abuse) or are geared to special youth (e.g., ones with high I.Q.s).

1. Group Homes

The first type is the group home which accommodates youths who commit non-violent offenses and do not have substantial prior records. These four group homes are used frequently by the juvenile court:

Southern Home
Some Other Place
Lower Kensington Environmental Center
OIC Group Home

2. Private Residential Institutions

The second part of the institutional network is the private residential institution. These are non-secure facilities. In many respects they resemble college campuses. These institutions examine each youth referred to them and decide which candidates are to be accepted into their programs. The following are the three most frequently used by the juvenile court:

Glen Mills School
Sleighton Farms (coeducational)
Saint Gabriel's Hall

3. State-Run Residential Institutions

The final group of institutions is those run by the state. There are two branches of facilities in this category: forestry camps and youth development centers. There are three forestry camps (called Numbers 1, 2, 3) located in state parks throughout the Commonwealth. They are designed mainly for youths who have been adjudicated of an offense after being discharged from a private institution. Forestry camps operate like the private institutions; juveniles must be accepted into the program prior to commitment by the court.

Youth development centers (YDC) are the end of the commitment line in the juvenile justice system. They are for the most serious juvenile offenders; they cannot refuse to accept a youth committed there by the court. There are four YDCs that service the juvenile court.

Cornwells Heights
Loysville
New Castle
Waynesburg (girls)

Cornwells Heights and New Castle have secure as well as open settings.

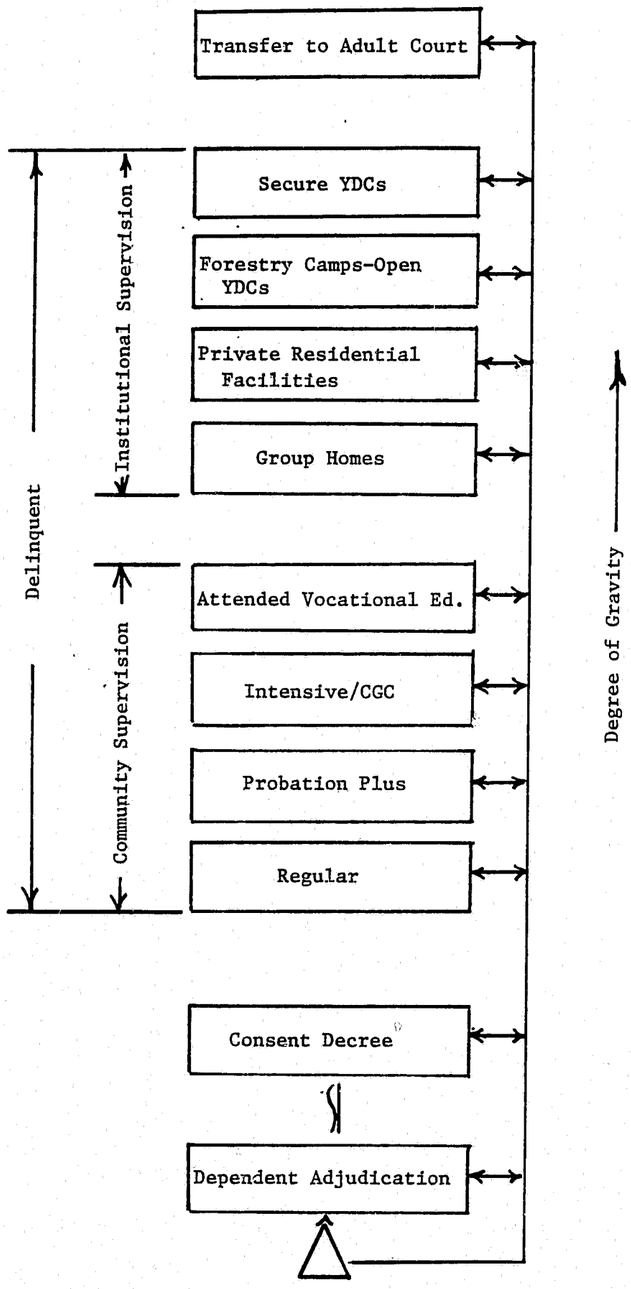
D. The Dispositional Structure In Operation

Like a majority of its counterparts in cities throughout the country, Philadelphia's juvenile court has not abandoned the traditional dispositional approach to rehabilitating juvenile delinquents. Thus, sentences are indeterminate and are not offense-related; punishment, if it may be said to occur in this forum, is not cumulative as it is in the adult court. Nevertheless, there exists in the Philadelphia juvenile justice system a hierarchical dispositional structure of increasing levels of seriousness in the state's response to juvenile offenders. The youth who reacts negatively to treatment efforts can progress through these various level of state control much like a student is promoted through grammar and secondary schools. Although there is a substantial degree of equity in sentencing (i.e., similarly situated juveniles are handled rather equally),[22] each youth is evaluated separately and passes through the system at an individualized pace (i.e., one could experience virtually every plateau whereas another might jump one or more levels). Figure #2 (on the following page) outlines the various rungs of the juvenile court's dispositional ladder.

The least serious response by the state, shy of dismissing the case altogether, is the consent decree. With a consent decree the youth remains classified as a non-delinquent (presuming he completes the probation satisfactorily). The same may be said for the juvenile who is adjudicated dependent. A dependent child is one who is without proper parental care or control, is truant, has committed a status offense, or has perpetrated a crime before he is ten years of age (42 Pa. C.S.A.: § 6302). Frequently, dependency adjudications result from cases in which the teenager was initially criminally charged.

FIGURE #2

DISPOSITIONAL STRUCTURE



In the delinquent category there are three dispositional plateaus that can be resorted to by the state. A youth who satisfies the statutory criteria can be transferred to criminal court prior to adjudication. If adjudicated, the juvenile can either be placed on probation or he can be incarcerated. Probation can be broken down into four types (or levels): regular, probation plus (e.g., neuropsychiatric probation), intensive (including CGC), and probation where the juvenile must attend vocational school (i.e., the last stop before commitment). There are also four levels of institutions to which a youth may be committed: group homes, the private residential facilities, the forestry camps and the open YDCs, and, the two secure YDCs.

The juvenile court's rehabilitative goal makes it difficult to assert that any one institution is meant to house "worse" juveniles than another. The intelligence of the child, his particular problem, and the program offered by the facility are among the variables that affect the incarceration choice. The ladder does represent, however, the climb that is frequently made by adult court-bound juveniles. Although other states may not have a complex institutional network, with various degrees of seriousness, every jurisdiction appears to provide for at least four distinct dispositional levels: consent decrees (or some informal adjustment), probation, institutionalization, and transfer to adult court. Each of these plateaus marks the youth's coming closer to failure in the juvenile court's effort to rehabilitate him; the juvenile also progresses further along the line of becoming labelled an adult criminal.

FOOTNOTES

[1]Throughout this chapter 1980 statistics are used because this was the most recent year for which figures were available and because 1980 was the only year during which the researcher spent all of his twelve months observing in juvenile court. Much of the material in this chapter has been adapted from a manual constructed by the District Attorney's Office for use by the ADAs.

[2]The other 253 cases (2.1%) were divided among the following sources: 182 from authorities outside Philadelphia; 61 from parents or relatives; 4 from school authorities; and, 5 from Family Court (Philadelphia, 1981: 73). Juveniles can be referred to juvenile court for an adjudicatory hearing in homicide cases decertified from criminal court, in situations in which the youth has mistakenly been arrested as an adult, and in transfers from other counties (42 pa. C.S.A.: §§ 6321, 6322). In these instances there will be no intake conference. The case will proceed directly to pretrial or to detention hearing.

[3]The three days during which juvenile cases are not heard in court B are devoted to matters in which adults are the defendants and juveniles are the victims.

[4]This description of the Philadelphia juvenile court relates to the condition in which the court basically operated during the research period (i.e., between September, 1979 and September, 1981).

[5]The individual from the rape unit is especially assigned and is known to concentrate his or her efforts in courtroom B, and to visit other courtrooms in aggravated rape cases.

[6]Although there is no specialization in case assignment, per se, the chief and assistant chief spent a majority of their time in pretrial hearings.

[7]If an ADA knows a defendant or has experience in a particular case, he or she might be assigned to more than one courtroom on any given day, depending upon the rooms in which the cases appear.

[8]In both of these situations a conflict of interest on the PD's part is possible. Appointment of assigned counsel helps limit this conflict.

[9]One variation of regular probation is neuropsychiatric (NP) probation which entails mandatory out-patient treatment by the medical branch of the juvenile court. NP probation is designed for juveniles who need psychiatric treatment but whose prior records do not indicate a need for in-patient and/or secured-setting treatment programs.

[10]Detention hearings are also conducted for juveniles arrested on a bench warrant. These juveniles can be located on any stage of juvenile court procedure. For example, some youths picked up on bench warrants are escapees from institutions.

[11]In some states certification is known as remand or decline hearings.

[12]Vermont was the last state to implement transfer in 1981.

[13]Three days notice of the district attorney's intention to seek certification must be given to the child and his parent (and, unofficially, to counsel) (42 Pa. C.S.A. § 6355(a)(3)).

[14]The juvenile has the option of requesting transfer himself, but this power is rarely used (42 Pa. C.S.A. § 6355(c)).

[15]The Juvenile Act forbids pretrial detention of a juvenile for more than twenty days (42 Pa. C.S.A. § 6335(a)).

[16]The juvenile's need for treatment is determined at a separate disposition hearing (42 Pa. C.S.A. § 6341(b)).

[17]The Juvenile Act provides: "In the absence of evidence to the contrary, evidence of the commission of acts which constitute a felony shall be sufficient to sustain a finding that the child is in need of treatment, supervision or rehabilitation..." (42 Pa. C.S.A. § 6341(b)).

[18]By implication, In re Gault (1967) demanded that the conviction and sentencing decisions be bifurcated into two separate hearings in juvenile court.

[19]Juveniles who are being detained are supposed to have their disposition hearings within twenty days (42 Pa. C.S.A. § 6341(b)).

[20]For an illustration of the levels of restraint in Philadelphia's juvenile justice system see section d, infra.

[21]There are only two facilities which accommodate the female juvenile delinquent from Philadelphia. Younger girls and those without serious records are sent to Sleighton Farms, if they are accepted there. Girls rejected by Sleighton and those with more serious delinquency problems are committed to the youth development center at Waynesburg.

[22]See Chapter 9, section a, infra., for examples of the equity in sentencing juvenile offenders.

CHAPTER 5: RESEARCH METHODOLOGY

A. Research Objective, Focus and Theoretical Framework

A substantial amount of research has examined the practice of plea negotiation in the criminal court. As we have seen, work of a comparable nature has not been performed in the juvenile court. We know virtually nothing, aside from its bare existence, about the phenemonon of plea bargaining in juvenile court proceedings. Before any reasoned opinions can be formulated, an understanding of the elements of the plea negotiation process in juvenile court must be attained. Consequently, an exploratory study, dedicated to identifying the practice of negotiating pleas in juvenile court, is necessary. This research project's objective, then, is to ascertain and to describe the many facets associated with the plea bargaining process in juvenile court.

The study's focus draws heavily from descriptive works that have investigated plea bargaining in criminal court. Newman and Alschuler have provided invaluable qualitative accounts of plea negotiation in the adult system. Newman has concentrated his efforts primarily on the process of and the motivation behind bargained pleas (1966). Alschuler has centered his research mainly on the roles of the participants in the plea negotiation practice (1968; 1975; 1976). Together, these authorities have shown that the following areas must be examined in order to understand plea negotiation:

a) the types of plea bargains;
b) the roles of the participants;
c) the incentives and obstacles to bargaining;
d) the negotiation process; and,
e) the guilty plea process.

The study's theoretical framework is an adaptation of what Newman has identified as the concerns underlying the conviction-by-guilty plea method. The three concerns are: accuracy, voluntariness, and fairness. Briefly, accuracy involves the determination that a factual basis exists for the guilty plea; voluntariness entails the willingness of the accused to plead guilty, free from improper threat or inducement; and, fairness refers to the defendant's knowledge of the consequences of the guilty plea (Newman, 1966: 7-52). These issues are ordinarily resolved when the judge accepts the plea of guilty. The present research employs the accuracy-voluntariness-fairness concerns as a perspective from which to examine the plea negotiation process in juvenile court.

B. Research Design

1. General Design

Observation was the primary method of data collection.[1] The study is exploratory and observation is particularly well suited to exploratory-oriented work (Gee, 1950: 232). Observation allows for a first hand account of the activities and events surrounding plea negotiation; it provides for full coverage of the practice in its natural setting (Black and Champion, 1976: 330-332; Becker and Geer, 1960: 268). Observation is especially appropriate for the present research since both plea bargaining and the juvenile court are on-going processes, with constant interaction among the participants, and since bargaining itself is rarely, if ever a recorded event (Bickman, 1976: 254-255). Actually, there is no other completely satisfactory manner in which to examine the phenomenon.[2]

Interviews were conducted to obtain information about the incentives and obstacles to plea bargaining. Prosecutors and defense counsel were questioned concerning their reasons in negotiating and in refusing to negotiate a guilty plea. When apparent non-negotiated guilty pleas were tendered defense counsel were interviewed to determine their motivation in having their clients admit to the charges.

Finally, the files of pretrial cases not resolved at that stage (and of cases at other stages in which the defendant refused to plea bargain) were checked to determine whether, on the surface, record information would suggest that a penalty was exacted for the defendant's exercising his right to demand a trial.

2. Preliminary Observation

In the fall of 1979, a preliminary observation was conducted with two objectives in mind. The first was to ascertain the feasibility of the study, including a determination of what problems might arise and what revision, if any, would be needed in the methodology. The second purpose was to demonstrate to the court personnel that the research would not interfere with their daily routine. Contact was made with and approval for the study was secured from the President Judge and the Court Administrator (Dean, 1967: 281). The two division chiefs of the district attorney's and the public defender's offices expressed their support of the research, and ultimately each assistant from the two offices did likewise. Each of the judges was consulted and the research proposal met no resistance. All the parties were informed of the nature of the work and that its objective was to

discover what types of plea bargains occur in juvenile court for what reasons. The mission was presented in as non-threatening a manner as possible (Johnson, 1975: ch. 4).[3]

During the preliminary observation the researcher spent one week in each of the five courtrooms in order to learn the juvenile court's standard operating procedure, including potential problems that might surface. Three vital lessons were learned from this experience. First, the judge (and not opposing counsel or individual cases) became the focus of the study for a number of reasons. The judge is the prime mover in juvenile court; he has a substantial amount of authority, perhaps more than his counterpart in adult court. Thus, it seemed that if anything like plea bargaining was going to occur in juvenile court, the judge would be the person who has the most to say about it. Focusing on the judge also made the research manageable. Unlike defense counsel and prosecutors, judges do not change courtrooms during a day's session. Moreover, there were only six judges sitting at one time and proceeding from one judge to another was more feasible than accompanying twice as many ADAs and even greater numbers of defense counsel to one or more courtrooms daily. Judges also tend to stay longer in juvenile court than do ADAs or PDs.[4] Finally, centering the data collection around the judge made sense because the study was stage-oriented rather than longitudinal (Bickman, 1976: 285). That is, the research concentrated on the various juvenile court stages rather than upon the processing of any one defendant's case.[5]

Second, the preliminary observation indicated that no more than one judge could be observed on any single day which required rotating from one judge to another on successive days. If the judge due to be observed was ill, in chambers, or on vacation, the next judge on the list was visited, unless a substitute judge replaced the absent one. On only two occasions did a replacement judge enter the study in this manner. Five weeks were spent with each judge in order to obtain sufficient data for the research project.

The final lesson derived from the preliminary observation concerned the problem of contamination. That is, plea bargaining could have been purposely hidden from the observer, or negotiations could have been conducted in a way that would not have transpired but for the researcher's presence. By the end of the two-month preliminary observation period, however, it was evident that the researcher did not interfere with standard practice in juvenile court. In fact, he had become, figuratively, "part of the furniture." Contamination, then, is not believed to have been a factor in this study.[6]

3. Typical Observation-Interview Procedure

Every day the researcher arrived at juvenile court approximately one hour before the court convened. The first order of business was compiling a court list of all the juveniles due for hearings that day. The court list indicated the youth's name, the case number, the charge, the type of hearing, and various demographic items. The list greatly facilitated the data collection as it standardized the taking of field notes (Mather,

1979: 10; Lofland, 1971: 101-109; Gee, 1950: 311-312).

The researcher shadowed the ADA to see if any plea discussions were occurring in the waiting room or in the courtroom. The prosecutor was accompanied because if defense attorneys wanted to negotiate before trial the latter had to approach the prosecuting attorney. When court convened the researcher ordinarily sat at the table assigned to the ADA so as to be able to better hear what was happening, and to appear as a natural part of the setting.[7] In addition, the defense table was usually fully occupied. To prevent being viewed as biased the researcher maintained frequent contact with all the PDs and many assigned counsel who were constantly reassured of the neutrality of the study.

The researcher remained in the one courtroom the entire day. During recesses he again would accompany the ADA. The researcher joined counsel when they travelled to sidebar or to chambers for private discussions with the judge. When a guilty plea was tendered the researcher would first observe the judge and the capacity in which he accepted the plea of guilty. Following the adjournment of the case, the researcher isolated assigned and retained counsel, introduced himself and explained the purpose of the study. Defense counsel were asked why they had chosen to plead guilty and whether negotiations had preceded the guilty pleas. The attorneys were always interviewed in private. Anonymity was always guaranteed and the answers, which were instantly recorded on the court list, were held in strictest confidence (Lofland, 971: 86-87; Becker, 1958: 655). These lawyers had to be questioned immediately because they

tended to leave the building as soon as their cases were finished. If time permitted, the PD and the ADA were asked the same questions.[8] Otherwise, the researcher postponed the interview until either lunchtime or the end of the day.

At the end of the court day the researcher followed the ADA to the district attorney's office (see Mather, 979: 8). There the former inquired as to successful and unsuccessful plea agreements that had occurred with defense counsel during court hours. The researcher also inspected defendants' files to see the ultimate outcome in cases proceeding beyond pretrial (which had been observed in that capacity), and in situations where the defendant had refused to plea bargain.

The study lasted a total of twenty-two months, from the fall of 1979 through the summer of 1981. During that time eight regularly sitting judges and two substitute judges were observed on a rotating basis. Table #1, below, outlines the judges who were visited, the duration of the observation, and the type of hearing over which the judge presided.

TABLE #1

Judicial Code Letter[9]	Number of Visits (Court Days)	Type of Hearing
H	25	A/H(19);P/T(6)
G	25	P/T(22);A/H(3)
A	25	A/H
D	10[12]	A/H
I	25	A/H
F	25	A/H
M[10]	25	A/H(14);P/T(11)
L[11]	10	A/H
N	1	A/H
J	1	A/H

A/H indicates that the judge sat in an adjudicatory hearing room; P/T means the judge presided over pretrials. The numbers in parentheses tell how many court days were spent with the judge in either an adjudicatory or pretrial capacity.

During the summers of 1980 and 1981 four judges who ordinarily serve in other branches of the Family Court were sent to the delinquency division as replacements for vacationing judges for varying lengths of time. In addition, Judge "J" who was listed as a substitute in Table #1 spent one week as a replacement judge during the summer of 1980 and was included in the study. Finally, Judge "I", although a regularly sitting judge (see Table #1), was moved from an adjudicatory to a pretrial listing. He was observed to see what, if any, contrast he would provide, procedurally speaking, vis-a-vis the other judges who worked in a pretrial setting. All of the judges in this grouping were observed on a continuous (i.e., every day they served) rather than on a rotating basis. Table #2 details the relevant information about these judges.

TABLE #2

Judicial Code Letter	Number of Visits (Court Days)	Type of Hearing
C	5	A/H
E	14	P/T(9);A/H(5)
B	24	P/T(19);A/H(5)
K	12	A/H
J	5	A/H
I	10	P/T

Altogether, a total of 242 court days were devoted to observing fourteen different judges and the nature of plea negotiation that occurred in their courtrooms.

C. Limitations

The study has a number of limitations that must be recognized. The first involves its inability to answer the world of plea negotiation in juvenile court. The research is qualitative and not

quantitative; it deals with description rather than causation. Controls were not exercised over the elements of a case or its assignment to a particular judge or attorney. Thus, complex statistical questions cannot be answered. For example, the study will not be able to disclose the association between the race, sex or age of the youth and the willingness to plea bargain. Nor will the research be able to detail actual differences in plea negotiation as practiced by the three types of defense attorneys because, among other things, the criminal charge and the defendant's record were not controlled. Other issues such as attitudes towards plea bargaining in juvenile court also cannot be resolved by the data.

Resources of the research were limited in that only one person conducted the study in only one site. Thus, generalizability of the findings becomes a concern. This is an intensive study of one jurisdiction, and Philadelphia may have laws, offense patterns, or a court structure and personnel that distinguishes it from the rest of the country. The data simply may be inapplicable to juvenile courts in other cities. Nevertheless, with so much currently unknown about the topic, an in-depth exploratory search into the juvenile court of the nation's fifth largest city does not seem to be a bad place to begin digging.

CONTINUED

1 OF 4

FOOTNOTES

[1]Two structural limits should be noted at this point. First, the study examined only the stages of the juvenile court process. Second, only delinquency petitions (and not dependency cases) were observed. These decisions were made because plea negotiation requires a plea of guilty to a criminal charge. On the one hand, a plea of guilty can take place only in the courtroom. On the other hand, a dependency petition does not involve a criminal charge.

[2]For example, record-checking, alone, would not indicate whether plea bargaining occurred at all, and would disclose nothing about the roles of the participants.

[3]Information about the theoretical framework was withheld so as not to influence the course of the guilty plea procedure.

[4]In other words, the researcher did not concentrate on defense or prosecution counsel because these individuals could have resigned or could have been transferred by the time of a second scheduled observation.

[5]Cases surviving more than one stage could not reasonably be followed from beginning to end because a very high attrition rate would have made this effort infeasible. Cases proceeding beyond pretrial are assigned to any one of the four courtrooms that hear adjudicatory matters. Thus, if one wished to track any one group of cases (i.e., from one court day) that had survived pretrial, one might have to be in four courtrooms simultaneously on the next listing.

[6]Plea negotiation is a well-recognized practice in criminal court; it has received the endorsement of the United States Supreme Court (Santobello v. New York, 1971). Many of the professionals in juvenile court have had working experience in adult court and have most likely been exposed to plea bargaining there. Moreover, even in juvenile court plea negotiation has received the sanction of the IJA/ABA (1977a; 1980a). Thus, plea bargaining today is legitimate and there is little reason to hide it (Heumann, 1978: 13-14).

[7]If no seat was available at the prosecutor's table, the researcher sat in the first row of seats assigned to spectators.

[8]Judges were not interviewed for a number of reasons. First, the judges that were actively involved in bringing about a guilty plea usually informed the PD and the ADA why they were suggesting a plea of guilty. Interviewing was impractical because the judges could not be questioned after each guilty plea (another case was called), and they tended to disappear after court had adjourned. Finally, the researcher believed that questioning the judges might influence their behavior in the guilty plea procedure and thus contaminate the findings.

[9]To assure anonymity each judge was assigned a letter code referant. Of the fourteen judges who were observed only one was a woman. Consequently, all references to the judges in this study will be in the masculine gender so as not to expose the identity of the female judge.

[10]Judge M replaced Judge H for an entire year.

[11]Judge L replaced Judge D for an entire year.

[12]Judge D and Judge L were observed only ten (as opposed to twenty-five) times because they sat in courtroom B which hears delinquency matters only two times a week.

III. THE ESSENCE OF PLEA NEGOTIATION IN JUVENILE COURT

CHAPTER 6: A TYPOLOGY OF PLEA NEGOTIATION AND RELATED MATTERS

A. The Concept Of Mitigated Justice In Juvenile Court

Plea bargaining in juvenile court is the primary focus of this study. Accordingly, it will receive most of the attention in the following chapters. Nevertheless, three groups of interrelated activities were discovered operating in juvenile court and because they share common traits they will be discussed here. Table #1 outlines the three groups.

TABLE #1
ELEMENTS OF MITIGATED JUSTICE

A. Negotiated Justice
   1. Plea Negotiation
   2. Dismissal Bargaining
   3. Litigation Negotiation
   4. Post-Conviction Negotiation

B. Non-Negotiated Guilty Pleas

C. Unilateral Dismissals

The first group, negotiated justice, includes plea negotiation, which involves the defendant's pleading guilty in exchange for a charge or sentence consideration from the state, dismissal bargaining where either the charge against the accused is dropped in return for some service (e.g., testimony against a co-defendant) or the youth is granted a consent decree, litigation negotiation in which bargaining takes place despite the fact that trial has occurred, and post-conviction negotiation where bargaining takes place after the defendant has been convicted via trial. The second group consists of a number

of non-negotiated pleas of guilty. As in plea bargaining the defense attorney hopes through non-negotiated guilty pleas to gain more lenient charge and/or sentence results for his client by not forcing the case to trial. Counsel does not negotiate the matter with the prosecutor or the judge, however. The third group concerns the district attorney's discretionary power to nol pros cases and the judge's authority to dismiss or to acquit against the evidence. These are unilateral dismissals which do not involve bargaining with defense counsel. They occur primarily because of the defendant's prospect for rehabilitation rather than through an evidentiary flaw in the case. Unilateral dismissals are somewhat similar to but are nevertheless distinguishable from the diversion that takes place at intake.[1] Although they are not negotiated per se, treatment-oriented unilateral dismissals have a bargaining-like quality. They are geared to keep the youth as far down the dispositional ladder as possible, and, perhaps, off of it altogether.[2]

In his groundbreaking work on plea bargaining in criminal court, Newman found a relationship between plea bargaining and non-negotiated guilty pleas. He linked the two by calling the latter "implicit" plea bargaining (1966: 60-61). Although the two are related, they deserve separate identities (see Chapter 1). Newman also compared acquittals of the guilty and the negotiated plea and cited the adult system's mission to individualize justice as the thread which connected the two (1966: 139-140). Similarly, McDonald saw a parallel between plea bargains and diverted cases, and he wanted both grouped under one heading. He suggested that the title should be negotiated justice or disposition negotiation (1979: 389). Both names are

too limited, however. Some guilty pleas and some dismissals are simply not negotiated.

There is a term which unites all three activites: mitigated justice. In mitigated justice the state is purportedly[3] more lenient than technically necessary either because there has been a negotiation through which the defendant has offered a guilty plea and/or a service or an expedited trial,[4] or because treatment considerations seem to warrant less than full application of the law, or finally, because defense counsel hopes that his non-bargained guilty plea will evoke the same notions of leniency for his client. Thus, mitigated justice may or may not involve a guilty plea; it may or may not involve negotiation; it may or may not involve a trial. The one constant is that the accused is always the pursuer and/or the recipient of a "break" from the system.

B. Extent Of The Study In Juvenile Court

Altogether 9,479 cases against juvenile defendants were observed at the detention, pretrial, certification, adjudicatory and dispositional levels.[5] Table #2 depicts what happened to these cases.

TABLE #2

ALL CASES OBSERVED IN JUVENILE COURT

Disposition	# of Cases	%
Continued	3,347[6]	35
Dismissed	478	5
Disposition/Motion Review Hearing	1,107	12
Resolved	4,547	48
TOTAL	9,479	100

For one reason or another 3,347 cases were continued and were not

resolved in the researcher's presence. Dismissals due to an absence of evidence or a lack of timely prosecution numbered 478 cases. In all disposition and motion hearings and ordinarily in review hearings the charge has already been adjudicated so there is little, if any prospect of either bargaining or litigating a case. 1,107 cases fell into this category. Thus, 52% of the sample (or 4,932 cases) was effectively eliminated from the study since the researcher did not observe their resulting in trial, a guilty plea, or a discretionary dismissal.

More than half (51%) of the cases that were resolved were either sent to or culminated in a trial as detailed in Table #3.

TABLE #3

RESOLVED CASES

Disposition	# of Cases	%
Trial	2,317	51
Guilty Plea	1,022	22
Dismissal	1,208	27
TOTAL	4,547	100

From pretrial and detention hearings there were 1,793 cases where the decision was to pursue trial, while 524 hearing or trials occurred at the certification and adjudicatory levels.[7] Guilty pleas served as the disposition in 1,022 cases (22%),[8] and 1,208 cases ended in dismissals, of which 726 were consent decrees and 482 were nol prossed.

A substantial majority of the guilty pleas (918 cases or 90%) were negotiated pleas. The bargaining rate varied considerably in the dismissal category. Whereas only 147 (or 30.5%) of the nol pros decisions resulted from negotiation, all 726 consent decrees were

achieved through bargaining. Tables #4 and #5 summarize these findings.

TABLE #4

GUILTY PLEAS

How Achieved	# of Cases	%
Negotiated	918	90.0
Non-Negotiated	104	10.0
TOTAL	1,022	100.0

TABLE #5

DISMISSALS

I. CONSENT DECREES

How Achieved	# of Cases	%
Negotiated	726	100.0

II. NOL PROS

How Achieved	# of Cases	%
Negotiated	147	30.5
Non-Negotiated	335	69.5
TOTAL	482	100.0

C. The Types Of Plea Negotiation In Juvenile Court

As in adult court the two types of plea negotiation in juvenile court are charge and sentence bargains. In the latter tribunal generally the more important negotiation is the sentence bargain.[9] The Commonwealth of Pennsylvania, like most states, has retained the traditional open-ended juvenile court sentencing where the seriousness of the charge and the severity of the disposition are not necessarily correlated. Thus, convictions of even minor charges could theoretically result in severe sentences. Consequently, sentencing concerns dominate the plea bargaining interaction in

Philadelphia's juvenile court. This fact can be readily discerned from Table #6 which indicates that 97% of the negotiated guilty pleas involved some sentencing arrangement while only 3% dealt solely with a charge bargain.

TABLE #6

TYPES OF NEGOTIATED GUILTY PLEAS

Type	# of Cases	%
Sentence Bargains	893	97
Charge Bargains	25	3
TOTAL	918	100

Many of the sentence bargains contained charging arrangements as well. Nevertheless, these deals were counted as sentence bargains because both charge and sentence were addressed and because the disposition is the most important aspect of the juvenile court process.[10]

Sentence bargains in juvenile court are either complete or incomplete. Table #7 shows that complete sentence bargains far outnumbered incomplete ones.

TABLE #7

TYPES OF SENTENCE BARGAINS

Type	# of Cases	%
Complete	853	96
Incomplete	40	4
TOTAL	893	100

The complete sentence bargain was popular because it was a known product; counsel did not have to plead in the dark (cf., Besharov, 1974: 310). Here, the defense attorney concurred with the prosecutor and/or the judge that a specific, agreed-upon outcome would attend the accused's plea of guilty.

Illustration No. 1: A juvenile was in court for the first time. The charge was robbery. The prosecutor and defense attorney discussed the case and agreed that a guilty plea would bring about probation, the typical sentence in this situation.

Illustration No. 2: The burglary charge was the youth's sixth arrest, three of which had resulted in adjudications. The child had already been placed on regular and intensive probation, both of which had failed to change the youth's behavior. Opposing counsel talked matters over with the judge and all agreed the juvenile should be sent to St. Gabriel's Hall. The defendant was amenable to the idea and he thereupon pled guilty at the bar of the court.

If the judge had not participated in the negotiation, he was presented the agreement as a package to ratify (whereupon the defendant pled) or to reject (whereupon trial or a negotiated plea before another judge usually occurred).

Illustration No. 3: This theft charge was the youth's fourth arrest. Defense and prosecution compared notes and felt the accused did not require institutionalization at this time. Instead, intensive probation was considered sufficient. The district attorney approached the bar of the court as the case was called and announced that a negotiated plea had been arranged. The prosecutor disclosed the nature of the plea and the judge, accepting the admission, adjudicated the juvenile delinquent.

Illustration No. 4: A juvenile with three prior adjudications was arrested for a serious assult. For a number of reasons the district attorney accepted the defense's offer of a guilty plea in exchange for intensive probation. When the prosecutor informed the court of the contents of the bargain, however, the judge balked and refused the negotiated plea. He said commitment was called for and he would not accept a probationary sentence. He ordered the case be sent before another judge for trial.

Only rarely were negotiated settlements rejected by the judges (see Chapter 8).

Ordinarily, the sentence was fully formulated between opposing counsel (and perhaps the judge). In once instance, however, the

complete sentence agreement was less than finalized.

Illustration No. 5: A defendant with one prior delinquent adjudication appeared in a certification hearing before Judge I. The current charge involved a serious robbery of an elderly woman. Judge I announced in court that not only was this case not worthy of transfer to adult court, incarceration was not called for as well. The judge had thus committed himself to freeing the accused upon conviction. The defense attorney thereupon entered an "open" guilty plea. The defendant was placed on intensive probation.[11]

Complete sentence bargains proceeded up the dispositional ladder (see Chapter 4). Table #8 summarizes the distribution of complete sentence bargains.

TABLE #8

COMPLETE SENTENCE BARGAINS

Type	# of Cases	%
Probation	654	76.7
Commitment	120	14.1
Remain Committed	74	8.7
Suspended Sentence	4	.4
No Disposition	1	.1
TOTAL	853	100.0

The ladder's first rung is probation, which accounted for the vast majority (nearly 77%) of all complete sentence bargains. Probation is divided into several categories: regular for most first offenders (the child might be referred to the Youth Advocacy Program if he could benefit from the assistance of a Big Brother); neuropsychiatric for those with severe psychological problems; correctional group counseling for juveniles who need structure while remaining in the community; to attend vocational school where the child requires supervision in finishing school; intensive for youths who are on the verge of being committed; and, after-care for juveniles who are placed on

parole after release from an institution.

If probation proved untenable, next came commitment to one of the many institutions from among the three basic levels: group homes; private institutions; and, state-run facilities. Commitment was the bargained disposition in 120 cases.[12] If the defendant was already incarcerated, counsel might have tried to trade a guilty plea for an agreement that the juvenile would remain in the same institution as was done in 74 cases. Finally, if the accused was too old to be helped by the juvenile system (i.e., 18), but did not warrant transfer to adult court, his plea of guilty might have been exchanged for a suspended sentence or for no disposition at all. This occurred five times.

Incomplete sentence bargains are deals where some agreement has been reached, but there is no accord on the ultimate disposition. They are a gamble since defense counsel has no guarantee about the result of the negotiated guilty plea. It was possible, then, that the defendant could receive a harsher sentence than contemplated.

> Illustration No. 6: The defendant had a substantial delinquent history, including an unsuccessful commitment to a group home. Fearing the worst, defense counsel arranged with the prosecutor to plead guilty to the most recent armed robbery in exchange for a referral to Glen Mills. The defense strategy backfired, however. The youth was not accepted at Glen Mills, and, eventually, he was sent to Cornwells Heights (the most restrictive institution).

Understandably, defense counsel were reluctant to surrender control over sentencing. Not surprisingly, only forty cases were bargained in this matter as indicated in Table #9.

TABLE #9

TYPES OF INCOMPLETE SENTENCE BARGAINS

Type	# of Cases	%
Another Judge Sentences	9	22.5
DA Keeps Silent	9	22.5
Institutional Referral	17	42.5
Limbo	2	5.0
Sentence Transferred	3	7.5
TOTAL	40	100.0

Although the defense lawyer yielded his prerogative to dictate the outcome, there were valuable items for barter in incomplete sentence bargains. If the defendant had a charge currently before a "tough" judge while he was waiting to be sentenced by a more lenient judge, counsel could plead guilty with the proviso that all cases be consolidated for disposition by the more favorably inclined judge. This transaction occurred in nine cases. The same number of cases was resolved by the defense attorney's getting the prosecutor to remain silent while either the defense lawyer or the probation officer made a sentence recommendation.

If the youth had not already been referred to any one institution by the time of the adjudicatory hearing, defense counsel might have pled guilty in exchange for a particular referral. This was the most prevalent of the incomplete sentence bargains, occurring in seventeen cases.[13] In two cases the defendants pled guilty and the cases were put in limbo. That is, the juvenile was required to be "clean" for six months in which event the case against him would be dropped.[14] Finally, three cases were resolved by sending the disposition to the county wherein the child resided after the latter had pled guilty in Philadelphia's

juvenile court.

Whereas the complete sentence bargain provides certainty as to the disposition awaiting the defendant, the incomplete one offers no such guarantees. In this respect incomplete sentence bargaining is similar to charge bargaining. Charge bargains involve trading over the number or the level of crimes brought against the accused; it assumed three different forms. The first is charge reduction where ordinarily a felony was reduced to a misdemeanor in exchange for the defendant's guilty plea. For example, an auto theft was frequently lowered to unauthorized use of auto, robbery was often reduced to theft, and burglary many times ended in a criminal trespass conviction. Sometimes the reduction remained on the felony level as when armed robbery was lowered only to robbery. Charge dropping, the second example of charge bargaining, involves eliminating a charge altogether; it can be internal or external. Internal charge dropping means that a defendant with two or more charges in one petition (usually but not always felonies) would ask the prosecutor to withdraw one charge rather than merely to reduce it.

> Illustration No. 7: During the course of a robbery the defendant shot and severely injured the victim. The district attorney adamantly refused to drop the aggravated assult charge in exchange for a plea of guilty to robbery.

In external charge dropping another separate case is dropped against the defendant.

> Illustration No. 8: In one month's time the accused had committed three crimes. In week one he was charged with a burglary. Two weeks later he was picked up for an assault. Finally in the fourth week he was brought in for a theft offense. Defense counsel succeeded in convincing the prosecutor to withdraw the burglary and the theft charges in exchange for an admission to the assault case.

The final example of charge bargaining deals with certification, which, of course, is unique to juvenile justice. Frequently, the attorney representing a youth facing transfer would concede guilt (for the certifiable charge and possibly for non-certifiable offenses as well), and would acknowledge that the juvenile warranted commitment to an institution. In exchange for the defense's not fighting the guilty or incarceration issues the prosecutor would have to agree to charge the defendant as juvenile rather than as an adult. In other words, the district attorney would have to withdraw certification.

> Illustration No. 9: The Commonwealth instituted certification proceedings against a youth with a substantial criminal and institutional record. Currently, he was charged with two burglaries, a robbery and a theft. Defense counsel felt transfer was a distinct possibility. She offered an admission to one of the burglaries and the theft (a non-certifiable offense since it was a misdemeanor), and no contest to the youth's commitment at the secure unit at Cornwells Heights (the last stop in juvenile court). The district attorney accepted this offer, dropped the outstanding robbery and burglary charges, and withdrew the certification request.

Since no certification was withdrawn without some type of sentence agreement these deals were all classified as sentence bargains. The charging element contained in the agreement cannot be ignored, however.

As in incomplete sentence bargains, charge bargains contain no

assurances as to the ultimate sentence. To the extent that defense lawyers want to maintain a say in sentencing, charge bargaining would prove an unsatisfactory method of case resolution in juvenile court. This no doubt explains, in part, why only twenty-five cases of pure charge bargaining were found.[15] Charge bargaining in isolation can be a real gamble and can wind up hurting the defendant.

> Illustration No. 10: A juvenile with only a consent decree in his record was arrested for two counts of attempted murder and robbery and one count of theft. The case was particularly bad: an in-house robbery where the defendant fired shots at the two occupants. Although the accused had no delinquent record and had never been institutionalized, the public defender felt incarceration was inevitable due to the severity of the crime. Counsel discussed the case with the prosecutor and offered an admission to one count of attempted murder and robbery only. In addition, counsel agreed that some commitment was necessary. The district attorney accepted the charge bargain (he withdrew the theft case and one count of attempted murder and robbery) but declared he wanted the youth confined at Cornwells Heights. This would mean the juvenile would skip several rungs of the dispositional ladder, a relatively rare occurrence. The public defender felt that such an extreme move on the judge's part would be unlikely. Defense counsel went along with the deal, reaching no agreement on sentence. The prosecutor conducted a full colloquy to protect the record. The public defender, himself, qualified the accused. The district attorney then read the facts of the case and the judge accepted the admission. The public defender requested that disposition be deferred so that a treatment plan could be devised. The prosecutor pointed out why the Heights was appropriate. The judge then committed the juvenile to Cornwells Heights. The defense attorney complained and threatened to appeal but as the district attorney explained, the colloquy would most likely bar any chance of successful appeal.

Interesting is the fact that charge bargaining in juvenile court is a two-edged sword. The juvenile could "luck out" as well.

> Illustration No. 11: The public defender and district attorney agreed that the defendant, who had already been institutionalized, would need to be committed for a new burglary. The probation officer was told to make a plan accordingly. The one benefit defense counsel derived from the guilty plea was a reduction of the charge from burglary to receiving

> stolen property. Counsel believed the charge concession was the only advantage to be gained. The probation officer could not get the youth accepted at the institution the latter had previously attended, however, and he did not feel that a more restrictive placement was appropriate. The defendant was placed on after-care probation, a sentence not likely to have been agreed upon in plea negotiation.

Due to its volatile nature pure charge bargaining usually occurred only when the defendant was almost certainly destined for commitment.

> Illustration No. 12: The defendant had been scheduled for both adjudicatory and disposition hearings. In the child's file was the probation officer's recommendation that the youth be sent to Cornwells Heights. Realizing the inevitable, counsel concentrated on the charge phase and got one robbery reduced to receiving stolen property and had two other robberies withdrawn.

> Illustration No. 13: This defendant faced the exact same situation as the youth in Illustration No. 12. The public defender talked the judge into accepting admissions to the two cases ready for trial (auto theft and theft) while determining (i.e., nol prossing) three cases that would have had to have been continued (auto theft, theft and attempted theft).

D. Non-Negotiated Guilty Pleas In Juvenile Court

Negotiation is not the only way in which a defendant can seek to benefit from a guilty plea. Counsel can hope also to parlay a non-negotiated guilty plea into an advantage for the client. These non-negotiated guilty pleas, which are calculated to improve the juvenile's lot, can be divided into four categories: tailored; timed; charge gambling; and, factual/nominal. Table #10 discloses their frequencies.

TABLE #10
NON-NEGOTIATED GUILTY PLEAS

Type	# of Cases	%
Tailored	29	29.6
Timed	20	20.4
Charge Gambling	5	5.1
Factual/Nominal[16]	44	44.9
(Straight)	(6)	
TOTAL	98	100.0
(Including Straight)	(104)	

Although the four non-negotiated gulity pleas stem from one common strategy, they differ conceptually and structurally. The tailored guilty plea, another name for plea accommodating, is the former implicit plea bargain where the defense attorney pleads guilty because he believes the judge either rewards guilty pleas or penalizes trial convictions in which the accused was "obviously" guilty (see Miller et al., 1978: 264).

> Illustration No. 14: The defendant was a borderline incarceration type. He had three prior adjudications and was before the court for yet another burglary. The youth's probationary freedom was definitely in jeopardy. Counsel, realizing the judge's fondness for "honest" boys, convinced the juvenile to plead guilty without any promises. The defense attorney felt the gamble was reasonable since he had very little to lose (the case against the accused was solid). The judge accepted the admission, remarked that he appreciated a boy who is honest and tells the truth (i.e., pleads guilty), and placed the defendant on intensive probation.

> Illustration No. 15: The defendant was in court for a review of commitment. He was not doing well and the probation officer had recommended the youth be sent to Cornwells Heights, open setting. The accused had an open burglary charge and the Commonwealth was ready to proceed. Judge A asked counsel if this was a denial. The latter said it was. The judge then asked the prosecutor and the complainant how much property was lost. The answer was $150. The judge asked again if this was a denial. This time the response was negative. The youth admitted and was sent to the open setting. Defense counsel later explained that he feared the judge would send the juvenile to the secure setting (a more onerous placement than the open) if trial had occurred. Counsel maintained he had run into this predicament with Judge A before. Counsel was also aware that the prosecutor was going to ask for the secure setting.

Plea accommodating would seem to fit quite well into juvenile court philosophy. The defendant seemingly shows contrition by pleading guilty with no strings attached (i.e., no negotiated arrangement). And contrition is viewed by many as the first step in a defendant's rehabilitation, the sine qua non of juvenile court (see Besharov, 1974: 314; NAC, 1976: 409; IJA/ABA, 1977a: 37; Packel,

1975: 49). Nevertheless, plea accommodating offers defense counsel no command over the sentencing decision and as such it resembles incomplete sentence bargains and charge bargains. This absence of control over the defendant's fate would seem to explain why, despite its "appropriateness," only 29 cases were tailored guilty pleas. Like charge bargaining, plea accommodating is a two-edged sword that cut both ways; the youth can benefit but he can be hurt as well.

> Illustration No. 16: The defendant was currently on after-care probation. At the time of this burglary charge he was AWOL from Glen Mills. In fact, the youth had escaped twice from the institution. The district attorney was prepared to push for the Heights. The public defender knew no deal was possible with the prosecutor. He knew also that the defendant had been "caught dead." Counsel felt that Judge F gets irritated when he is forced to try dead losers. The accused pled guilty. The probation officer wanted the youth to remain on after-care, and the public defender believed the admission would help the defendant to get this sentence. The prosecutor objected vehemently. The judge nevertheless allowed the juvenile to remain on after-care probation. Counsel was certain that the guilty plea helped him secure this disposition.

> Illustration No. 17: A juvenile was charged with armed robbery. Counsel asked to go to judge's chambers to discuss the case. The youth had one prior adjudication and the public defender felt the child should be allowed to stay on probation if adjudicated. The district attorney was angered at the lawyer's attempt to circumvent him and to negotiate directly with the judge. The judge informed counsel that the best offer he could make would be to defer the disposition while the probation officer constructed a treatment plan for the youth. Even without any deal or assurances, the public defender pled the child guilty. He felt that the plea was better than trial and that it would be a positive influence at disposition. The juvenile was committed to Glen Mills.

Plea accommodating is, for the most part, sentence-oriented. It is associated directly with the judge's sentencing practices. The tailored guilty plea can be charged-related, too.

Illustration No. 18: A youth was charged with burglary, armed robbery and aggravated assault stemming from an in-house, gun-point robbery. The public defender pled guilty to burglary, robbery and aggravated assault, simply omitting the armed element of the robbery. The judge accepted the plea and asked the public defender if she expected anything for the admission. Counsel said she had no expectations but hoped the judge would follow the probation officer's recommendations (Glen Mills). The prosecutor was aiming for commitment to Cornwells Heights. He read the facts of the crime to underscore its severity. The probation officer entered his recommendation and the judge followed it. Counsel felt the guilty plea (which reduced one charge by the way) was the crucial factor in this judge's sentencing so leniently.

Timed guilty pleas are also charge- and sentence-related. But whereas plea accommodating is unidimensional (there is only one type of tailored guilty plea), there are three divisions to the timed guilty plea. The first division is the "slow" guilty plea, which is actually not a guilty plea. It is charge-oriented because defense counsel encourages the defendant to implicate himself of a lesser crime at trial.

Illustration No. 19: The public defender asked the district attorney for a guilty plea to receiving stolen property. The prosecutor refused because he felt he could establish auto theft. Counsel decided to go to trial. The defendant testified to receiving stolen property, the charge for which he was convicted by the judge. The public defender commented that he followed this practice often when the prosecutor refused to bargain. He called it a "slow" guilty plea.

Although this transaction is not a guilty plea since the defendant elected trial, for all intents and purposes it is a guilty plea. It is calculated specifically to reduce the severity of the conviction via the accused's admission of guilt. Five cases were observed to have been resolved in this way, all successful from the defense's viewpoint. Due to its technically belonging to the trial category and because it is difficult to document,[17] the "slow" guilty plea was not included, numerically, among the non-negotiated guilty pleas. It is important to note, nevertheless, that the "slow" guilty plea

is a defense maneuver dramatically similar in effect to other negotiated and non-negotiated guilty pleas.[18]

Division number two involves, appropriately enough, the "quick" guilty plea. In the "quick" guilty plea the defense attorney is after either no more evidence or no victim testimony. In the first instance counsel looks to lessen the severity of the charge or to acquire a dismissal by stipulating or conceding to the evidence the prosecutor has at that precise moment.

Illustration No. 20: A juvenile faced three charges: theft, auto theft and resisting arrest. The complaining witness and the arresting officer both failed to appear. The public defender believed that the youth would be convicted of all three charges if the two absent parties were to appear. He told the prosecutor he was willing to stipulate to the "49" or police report. The district attorney agreed. The judge discharged the theft due to a lack of evidence. The auto theft ended in an adjudication of unauthorized use of auto (a lesser charge), and the resisting arrest was adjudicated as is. By stipulating, the defense attorney wound up beating one case altogether and reducing the one felony to a misdemeanor.

Here, the quickness of the guilty plea served the defendant's interests quite well. Altogether eight cases were handled in this way.

Quickness may also be desirable, from the defendant's standpoint, when it silences a victim (cf., Miller et al., 1978: 264). In six cases counsel entered a quick guilty plea due to the victim's failure to appear at the adjudicatory hearing. The thought was that the complainant's testimony would serve only to inflame matters and the juvenile could be treated more harshly. In this respect the no testimony-"quick" guilty plea is sentence-oriented.[19]

Illustration No. 21: The juvenile was charged with a knock down robbery of an 82 year old man who did not appear at this trial date. The evidence against the accused was good. In fact, two co-defendants had already been convicted by another judge. Counsel pled the youth guilty, hoping to preserve the latter's chance for probation. The lawyer did

not want the judge to hear the facts of the case from the victim. The defendant was adjudicated on his admission and was given probation.

Both quick guilty pleas might require the prosecutor's cooperation. In either situation the district attorney could fight for a continuance to bring in the necessary parties. Of course, the prosecutor could fight and lose. Even if the prosecutor does not fight, any cooperation he shows in this respect is procedural not substantive; the framework for resolving the case is agreed to (i.e., the juvenile will plead guilty) but the merits of the charge or sentence are not bargained. The guilty plea has not been negotiated.

The third timed guilty plea is the "delay" guilty plea which was the method of case resolution six times. This plea is sentence-related since the defense attorney hopes that by prolonging the time between conviction and disposition and by returning the juvenile to the street for that period that a commitment will seem inappropriate to the judge. In other words, a youth who can function lawfully on the street (at least from the time of the guilty plea) does not require institutionalization.

> Illustration No. 22: The juvenile had two prior adjudications and had been on probation. Currently, he was in the Youth Studies Center pending trial. Defense counsel believed the instant burglary charge would be sufficient to get the youth incarcerated. He pled the child guilty and was able both to defer the disposition and secure the defendant's release from custody. Six weeks later the juvenile was placed on intensive probation.

Delay can help the defendant in another way. The longer it has been between the offense and sentencing sometimes means the complainant is less impassioned and the judge less inflamed about the crime.

Like the "quick" guilty plea the "delay" guilty plea might also

require the prosecutor's cooperation. But again the agreement, if any, centers around procedural and not substantive matters. To accentuate the fact that neither the "quick" nor the "delay" guilty plea is plea bargaining the district attorney (and sometimes even defense counsel) will nearly always announce that the plea is an "open" one, devoid of any negotiation.

Charge gambling (or trading) occurred in five cases. Defense counsel's objective here is to capitalize on the non-punitive nature of juvenile court. That is, since the juvenile court's goal is to treat young offenders, the number of charges against the defendant does not really matter. Specifically, the accused facing two or more felonies might plead guilty to one and speculate that the other(s) will fade away before or after sentencing. The defendant gambles that the system will be willing to forget about the other cases, or, in effect, trades one plea with the hope of beating the other cases.

> Illustration No. 23: The defendant was charged with two burglaries. The public defender tried to charge bargain with the prosecutor but the latter refused to withdraw one burglary for an admission to the other. Counsel decided it was still worth pleading guity to one of the cases (the defendant was caught dead) because the other case should be "blown out" once a disposition is formulated. The judge asked the public defender if she expected anything for the guilty plea. Counsel said no. The judge explained that commitment was probable, which the public defender acknowledged. The judge suggested that the second burglary might as well be a plea too since it would not affect the disposition. The public defender declined. One month later the youth was sent to an institution, and, on that day, the presiding judge refused to let the open burglary be tried.

Arguably, the defense attorney could achieve the same result by demanding trial for the initial burglary and even retain a chance for acquittal. But in the five cases in which charge gambling occurred

counsel cited a belief that the decision down-the-line (i.e., to "blow out" the case) was more favorably influenced by a guilty plea than it would be by a trial adjudication.

The fourth version of the non-negotiated group is the factual or nominal guilty plea. This plea offers no more than an admission of facts (i.e., the accused did the act); it is a guilty plea in name only. The factual guilty plea comes about because of the way juvenile court statutes are written. Many states require that a juvenile commit an act (i.e., a crime) and be in need of supervision and treatment before he/she can be adjudicated delinquent. The conjunctive nature of this requirement leaves an opening that defense attorneys frequently pursue. In 44 cases counsel argued that although the youth had performed the act, the juvenile was not a delinquent child. In lieu of a delinquency finding defense attorneys usually asked that the juvenile be adjudged dependent (35 cases). If this were the case the court could still supervise and even institutionalize the child but the latter would have no delinquent record. Besides the dependent route counsel might request that the juvenile be channeled into the mental health system (6 cases) or be given a consent decree (3 cases).

> Illustration No. 24: The defendant was before the court for the first time. The charge was residential burglary. The public defender admitted the youth's complicity and then told the judge that the burglary was a spur-of-the-moment thing. He asked for a consent decree since the defendant had been accepted in job corps. The judge reminded the defense attorney of the severity of the crime. The public defender stressed the youth did not mean to do it. A social worker declared that job corps will not accept youths who are adjudicated. The prosecutor refused the judge's request to withdraw the charge or to go with a consent decree. The judge entered a consent decree over the district attorney's objection.

The factual guilty plea is a gamble on the defense attorney's part. An unconvincing argument that the juvenile is not a delinquent type removes all obstacles to convicting the defendant. In six cases this defense tactic did indeed fail and the youths were declared delinquent.

Although it is not a subset of mitigated justice, the straight guilty plea deserves brief mention since it is non-negotiated. One authority explained:

> Some defendants plead guilty out of remorse, self-hate, or sheer hopelessness; or to get things over with without spending money; or to avoid the shame and humiliation of the process ...(Friedland, 1979: 255).

In only 6 cases did defense counsel want to surrender in order to get things over with. The defendant had been caught and there was little use in contesting matters. The low number of cases in this category speaks to the fact that defense attorneys expect some beneficial result to follow a guilty plea in juvenile court.

E. Negotiated Dismissals In Juvenile Court

Essentially there are two ways for a youth to secure a negotiated dismissal of charges in juvenile court. There is on the one hand a consent decree which is a conditional dismissal (i.e., charges are suspended and permanently dropped depending upon good behavior). On the other hand a case may be nol prossed where charges are thrown out or, in juvenile court parlance, determined. A juvenile may also escape a delinquency finding by being adjudged dependent. To be declared dependent, however, either the youth must be given a consent decree or the delinquent aspect of the charges must be neutralized

or nol prossed. Altogether 873 cases were dismissed as a result of negotiation. Table #11 discloses the distribution.

TABLE #11

DISMISSAL BARGAINING

Type	# of Cases	%
Nol Pros	147	16.8
Consent Decree	726	83.2
TOTAL	873	100.0

Thirty percent of the cases that were nol prossed came about through negotiation (see Table 5). Nol pros bargaining, which might also be called charge dropping negotiation, occurred for several reasons. Table #2 itemizes the various services performed by defendants in exchange for the prosecutor's withdrawing charges against them.

TABLE #12

NOL PROS NEGOTIATION

Services	# of Cases	%
Guilty Plea	87	59.2
Motion/Review/Disposition	17	11.5
Restitution	17	11.5
Dependency	15	10.2
Counseling	4	2.7
Certification	3	2.1
Testimony	2	1.4
Leave Jurisdiction	2	1.4
TOTAL	147	100.0

Most of the nol pros bargaining dealt with a youth's trading a guilty plea in one (or more) case for a nol pros in a second (or more) case.

> Illustration No. 25: The juvenile was making his first appearance in court. He was charged with two residential burglaries. Defense counsel knew probation would be the sentence no matter how many of the burglaries ended in conviction. Nevertheless, the defense lawyer did not want two convictions if this was avoidable. He approached the prosecutor and suggested that the youth plead guilty to one burglary in exchange for a withdrawal of the second burglary. This district attorney accepted the deal.

Whereas the former case was plea bargained the latter was not. Instead, it was nol pros bargained. There was no plea of guilty offered for the second case; there was no conviction. Conceptually, both cases fall under the gamut of plea negotiation. The plea bargaining process consumes both cases; one case is negotiated as a commodity in exchange for a plea of guilty to the other case. Statistically, however, the two cases warrant separate treatment. There can be only <u>one</u> plea bargain when there has been a conviction on only <u>one</u> charge.[20]

Dismissals were also used by the prosecutor to purchase the defense attorney's silence at a motion, review or disposition hearing. Frequently at these hearings a probation officer or an institutional report made recommendations about the juvenile's future. Defense attorneys invariably objected when these reports suggested increasing the current amount of control over the youth's life. In 17 cases the district attorney exercised his discretion to nol pros cases as incentive for defense counsel to refrain from challenging an adverse report.[21]

> Illustration No. 26: A defendant was charged with tampering with a witness, a felony. The youth's probation officer had filed a motion before the court: to commit the juvenile to St. Gabriel's Hall due to unsatisfactory probation. The district attorney made an arrangement with counsel to accept the motion in exchange for which the felony charge would be withdrawn.

One interesting negotiation involved a prosecutor's attempt to ensure that the juvenile would be institutionalized for a longer amount

of time than typical.

> Illustration No. 27: The district attorney felt that the theft charge against the juvenile would be lost. He asked to see the parties in chambers. The defendant had just been committed to Sleighton Farms on another review cases that day. The prosecutor offered to withdraw the theft charge if defense counsel would agree that the youth's commitment would be examined after nine months rather than at the customary six month review period.

Restitution was more important to the district attorney than prosecution in 17 cases. Particularly in minor theft or non-serious property damage cases the prosecutor was often willing to nol pros if the juvenile would compensate the victim. Of course, restitution is a possible sanction if the youth is adjudicated at trial. Nevertheless, many district attorneys felt they had more leverage in securing restitution by making it part of the negotiation. Otherwise, the judge's discretion decides if victim compensation will occur.[22]

Sometimes a defendant who committed a crime appeared more as a dependent than as a delinquent child to both the defense attorney and the prosecutor. In 15 cases opposing counsel negotiated dropping the delinquent charges in exchange for a finding of dependency.

> Illustration No. 28: The juvenile had committed a commercial burglary. He was from a one-parent home and was not receiving adequate supervision. Both counsel agreed that the youth should be removed from home, but not as a delinquent child. The decision was to nol pros the burglary and channel the child into the dependency network.

The bargaining made this move less risky for defense counsel that the nominal or factual guilty plea. Whereas the latter could very well end in a conviction the district attorney's agreement not to prosecute guaranteed no delinquent record would result in nol pros bargaining.[23]

In 4 cases the prosecutor nol prossed the charges because the juvenile agreed to pursue help or counseling in the community. In each instance the district attorney followed this course due to a belief that the child would fare better, treatment-wise, outside of the juvenile justice system. Alcohol and drug addiction were the two problems considered amenable to community-based therapy.

The 3 nol pros cases dealing with certification involved only one defendant. This juvenile came to court with four attempted murder charges against him. The district attorney instituted transfer proceedings. Defense counsel believed all four cases would end in certification to adult court. He negotiated with the prosecutor to dismiss three of the charges in return for no challenge to transfer on the one remaining attempted murder charge.[24]

Bargaining for testimony accounted for the resolution of 2 cases. Here, the prosecutor offered immunity from prosecution if the juvenile would testify against a co-defendant. "Information bargaining", as this transaction is called, can actually involve a guilty plea, a nol pros or a consent decree.[25] Only the last two named instances entail dismissal bargaining, however.

Finally, in 2 cases the district attorney decided that allowing the youth to leave the jurisdiction was preferable to prosecution. In both situations the prosecutor felt that sending the child to family in another part of the country would do more for the youth and society than adjudication, probation and return to the old neighborhood.

Consent decree bargaining, although also a subdivision of dismis-

sal negotiation, is something quite different from nol pros bargaining. The crucial distinction lies in the fact that whereas nol pros indicates the case totally dies and has no legal significance in the child's record, consent decree means that the juvenile has taken the important first step up the dispositional ladder. That is, with a consent decree, although the youth has no delinquent label or record, adjudication and probation should result next time a convictable charge brings him to court.[26] If the juvenile's first offense is nol prossed, however, the next non-serious offense can still qualify for a consent decree.

Also unlike nol pros cases, consent decrees issued prior to trial have to be negotiated. Whereas a nol pros can come about by the solitary actions of either the prosecutor or the judge, a consent decree requires both the cooperation of the judge (and possibly the prosecutor) and the juvenile's acceptance of its terms (i.e., to accept informal probation and to forego trial). A consent decree, then, is a two-way street or a bilateral agreement and, as such, is an inherent negotiation. A consent decree is a "bargain" in another way as well. Each party gets half the pie. The defendant avoids conviction but does not get the chance to earn an acquittal. Similarly, the prosecutor does not run the risk of losing the case altogether but sacrifices an opportunity to have the accused adjudicated delinquent.

Finally, consent decree bargaining differs from nol pros negotiation in that the former's bargaining technique is multi-dimensional while the latter's is unidimensional. Nol pros negotiation involves only a prosecutor's or a judge's bargaining with the defense regarding

a service to be performed by the accused. Consent decree bargaining is more complex. There are three varieties of bargaining approaches in the consent decree category. Table #13 details the number of cases associated with each category.

TABLE #13

CONSENT DECREE BARGAINING

Approach	# of Cases	%
Entitled/Passive Bargain	553	76.2
Actively Bargained	101	13.9
Virtually Unilateral	72	9.9
TOTAL	726	100.0

Juveniles making their first appearance in juvenile court (and also one whose previous cases were dismissed) are practically entitled to a consent decree if the crime is relatively non-serious as was the situation in 553 cases. Table #14 lists the offenses for which consent decrees were given in this context.

TABLE #14

FIRST OFFENSE CONSENT DECREES
(# of Cases)

Commercial Burlgary	(133)	Criminal Mischief	(8)
Theft	(128)	Criminal Trespass	(7)
Auto Theft	(49)	Receiving Stolen Property	(7)
Aggravated Assault	(48)	Propulsion Missiles	(3)
Controlled Substances	(37)	Resisting Arrest	(3)
Possession Instrument		Reckless Endangerment	(3)
Crime/Offensive Weapon	(22)	Attempted Auto Theft	(2)
Simple Assault	(19)	Defiant Trespass	(2)
Attempted Theft	(14)	Use of Solvents	(2)
Terroristic Threats	(13)	Forgery	(2)
Credit Card Offense	(10)	Driving While Intoxicated	(1)
Unauthorized Use Auto	(10)	False Alarm	(1)
Attempted Burglary	(9)	False Report	(1)
		Weapon at School	(1)

Each defendant who was observed in juvenile court for the first time and charged with commercial burglary was eligible for and either requested or was offered a consent decree. Some youths denied the

charge and elected to go to trial. But standard procedure granted consent decrees in this situation.[27]

To make matters official the youths had to accept the conditions attending a consent decree and had to agree to surrender the right to trial. Thus, all first arrest/non-serious offense consent decrees were negotiated. Nevertheless, the preordained disposition structure made the bargaining more passive than active; consent decrees in these situations were just about automatic and there was little need for ardent discussions. Arguably, a juvenile whose first charge was commercial burglary could have essentially demanded a consent decree. Barring some unusual development,[28] this youth would actually have had an excellent equal protection argument if denied a consent decree.

There was also little bargaining apparent in the virtually unilateral category in which there were 72 cases. This group involved defendants who were not automatically entitled to consent decrees which included first offenders whose crimes were relatively serious or second offenders who had prior consent decrees. In these cases there were no discussions or understanding between opposing counsel or between the judge and defense counsel concerning the awarding of a consent decree. Instead, either the judge or the prosecutor decided on his own that a consent decree was appropriate. Ordinarily, defense counsel accepted the consent decree since his client was receiving a real "break." Again, since the youth agreed to the terms instead of demanding trial there was a negotiation, albeit an extremely passive one. Table #15 outlines the types of cases that belong in the virtually unilateral category.

TABLE #15

VIRTUALLY UNILATERAL CONSENT DECREES

Type	# of Cases	%
Dependent	36	50.0
Very Young Accused	21	29.2
Accused Doing Well	6	8.3
Mental Health	4	5.5
NPs Say So	3	4.2
Family Problem	1	1.4
Sacrifice	1	1.4
TOTAL	72	100.0

The youth's dependency was the factor that prompted the judge or the district attorney to decide in 36 cases that a consent decree was a better outcome than a trial and delinquency adjudication. This was so despite the fact that the charge was serious (such as robbery or residental burglary) and/or that the youth had had a prior consent decree. In another 21 cases the result was the same because the youth was rather young, usually between ten and twelve years of age. Actually, in 15 of the preceding 57 cases the prosecutor and defense attorney had arranged an admission of guilty in exchange for probation only to have the judge set aside the agreement and insititute a consent decree.

> Illustration No. 29: A youth with one consent decree in his record appeared in court charged with a residential burglary. The prosecutor refused defense counsel's request for a second consent decree. The two lawyers arranged an exchange of probation for a guilty plea to criminal trespass. After the district attorney announced to the jduge that a negotiated plea had been reached, the latter reviewed the child's file. The judge declared that the case was to be given a consent decree because the juvenile was a ward of DPW and would forfeit his dependency status if adjudicated delinquent.

Six cases ended in consent decrees because the youth was doing well at home, at school, or in a community treatment program. Another

seven cases were handled this way because either the juvenile was being channeled into the mental health system (4 cases) or the neuropsychiatric examination recommended a consent decree (3 cases). A judge decided in one case that a consent decree was appropriate because the offense, although serious, represented a problem more effectively dealt with by the family than by the juvenile court. Finally, one prosecutor explained he was willing to offer a consent decree (although the offense was serious and he was not asked to do so by either counsel or judge) as a sacrifice to demonstrate to the judge that he was reasonable. He was hoping the judge would grant a much more intrusive sentencing recommendation in another, more important case.

The non-typical consent decree situation (serious first offense or a prior consent decree) was also the subject of very active bargaining among all parties. Table #16 summarizes the reasons for which consent decrees were affirmatively negotiated.

TABLE #16

ACTIVELY BARGAINED CONSENT DECREES

Reason	# of Cases	%
Evidence	43	42.6
Restitution	22	21.8
Deserved	14	13.9
Testimony	10	9.9
Dependency	9	8.9
Counseling	3	2.9
TOTAL	101	100.0

Much of the active consent decree bargaining (43 cases) took place because the prosecutor felt there were enough evidence problems so as to make adjudication difficult, if not impossible.

Illustration No. 30: The juvenile's first arrest was robbery, ordinarily not a consent decree case. The complainant lived in Boston, Massachusetts, however. The district attorney felt that the victim, who had been in Philadelphia on vacation, would not be available for the adjudicatory hearing. He approached the public defender and suggested a consent decree. The latter agreed, not willing to risk the complainant's possibly appearing at trial.

Restitution was negotiated in conjunction with a consent decree in 22 cases. Here, the prosecutor could have gone to trial hoping that both a conviction would result and the judge would order restitution. The negotiation eliminated the need to rely upon the judge's cooperation and gave the prosecutor half of the pie, conviction-wise. In 14 cases defense counsel was able to convince the judge or the district attorney that the defendant was too young or simply not the delinquent type and thus deserved a consent decree despite the severity of the offense. Often, the prosecutor mentioned that maintaining a good relationship with defense counsel was the reason he went along with a consent decree in this situation. Although the district attorney was not willing to nol pros, he did agree to give consent decrees to 10 defendants for testimony against other co-defendants. Another 9 cases were bargained as consent decrees because in addition to being placed on a consent decree, the juvenile agreed to undergo treatment in the community.

Dismissal bargaining is an important aspect of case resolution in juvenile court; it accounted for 19.2% of all observed cases that were resolved. At times it is linked with plea bargaining in that the two can occur simultaneously (except when consent decrees are involved[29]). It is important, nevertheless, that dismissal bargaining be recognized as conceptually and statistically distinct.[30]

F. Non-Negotiated Dismissals In Juvenile Court

Despite dismissal bargaining's importance, a substantial number (335 cases) of dismissals (all nol pros) were given unilaterally by either the judge or the district attorney. That is, no negotiation preceded the dismissal. Instead, for one reason or another the juvenile was given a "break" without explicitly asking for one. Actually, most (69.5%) nol pros cases were non-negotiated (see Table #5). Table #17 discloses the reasons underlying the unilateral dismissals.

TABLE #17

UNILATERAL NOL PROS

Reason	# of Cases	%
Defendant-Oriented	136	40.6
Non-Cumulative Punishment	117	34.9
Status	55	16.4
System Can Do Nothing	27	8.1
TOTAL	335	100.0

The highest number of unilateral nol pros cases came about because of the defendant. In other words, some attribute of the accused prompted the judge or the prosecutor to extend leniency. Table #18 catalogues these attributes.

TABLE #18

DEFENDANT-ORIENTED NOL PROS

Type	# of Cases	%
First/Minor Offense	36	26.5
Dependent	34	25.0
Entering Army	13	9.5
Good School Record	11	8.1
Mental Health System	11	8.1
Entering Job Corps	8	5.9
Doing Well On Probation	8	5.9
Not Delinquent type	4	2.9
Family Problem	3	2.2
Doing Well In Institution	3	2.2
Getting Counseling	2	1.5
Too Young	2	1.5
Retarded	1	.7
TOTAL	136	100.0

Ordinarily, only non-serious offenses were unilaterally dismissed by the judge or the prosecutor. If it happened that the minor offense was also the youth's first there was a chance that one of the parties empowered to dismiss the case would do so. This occurred in 36 cases. Dependency was another major reason cases were withdrawn against juveniles. Charges were dismissed in 34 cases because the youth was already subject to or about to be placed in a dependent setting. Typically, the judge was the force behind these nol pros cases. Similarly, the availability of alternative supervision proved important in securing dismissals in many other situations: the defendant was entering the army (13 cases) or job corps (8 cases); the youth was already doing well on probation (8 cases) or in an institution (3 cases); the child was going to be channeled into the mental health system (11 cases); or, the juvenile was receiving counseling in the community (2 cases). A good school record was the cause behind the dismissal of 11 cases. In effect, the juvenile was rewarded for his past academic performance. Dismissals in 4 cases came about because the child was simply not a delinquent type even though he possibly committed the crime. In 3 cases the judge decided the youths' families should resolve the situation because the problem was more their's than the court's. Finally, 2 cases were nol prossed because the child was seen as too young to be labelled delinquent while 1 charge was thrown out due to the juvenile's being retarded.

The non-cumulative punishment aspect of juvenile court sentencing is the second major reason cases against juveniles were unilaterally dismissed. It is closely related to the first reason in that it, too, is sympathetic to the juvenile defendant's situation. By design,

juvenile court dispositions are related to the treatment plan suitable to the youth's condition, and are not sensitive to the severity or number of charges for which the child can be or has been adjudicated. In other words, treatment (or punishment) is not cumulative in juvenile court as it is in criminal court. Table #19 outlines the circumstances under which cases were nol prossed due to this unique feature of juvenile court sentencing.

TABLE #19

NON-CUMULATIVE PUNISHMENT NOL PROS

Type	# of Cases	%
Escaped Prisoner	74	63.3
Just Committed	37	31.6
Just Got Consent Decree	2	1.7
Just Adjudicated	2	1.7
Has Other Major Cases	2	1.7
TOTAL	117	100.0

Although it is an offense for a juvenile to escape from an institution to which he has been committed by the court, and although these youths were routinely charged with this crime when apprehended, escaped prisoner charges were almost automatically nol prossed. Occasionally, the escaped prisoner case resulted in an adjudication and, more important, in removing the juvenile to another, more restrictive facility. Nevertheless, most often the institution which had housed the youth was willing to take him back to complete the as-of-yet unfinished treatment program. Since this particular treatment program was the one originally determined as appropriate for the youth the prosecutor did not ordinarily insist that the charge go to trial, and either he or the judge threw the case out. This happened in 74 cases. In effect, the juvenile was not punished for committing the crime of escape.[31]

In a similar vein the prosecutor or the judge often nol prossed a case because the juvenile had been committed that same day to an institution (37 cases) or had just been given a consent decree (2 cases) or probation due to an adjudication of delinquency (2 cases). In these situations the proper treatment had just been allocated and it would have served little purpose to pile on extra charges against the youth. Also, 2 cases were withdrawn because the juvenile had other major cases awaiting trial and this disposition would not be affected by 1 minor charge.

Giving a case a status listing is equivalent to putting it in limbo. Usually, the judge decided on his own that a case should be resolved in this manner. Status has the same dimensions as a consent decree; it is a case looking to be dismissed. That is, within a given time period the charges are dropped. In fact, only 4 of the 55 cases that were given a status listing resulted in a delinquent adjudication. From the defense's viewpoint a status listing (like a nol pros) is preferable to a consent decree, provided that the case does not come back to court. Unlike a consent decree, a case put on status does not place the juvenile on the dispositional ladder.[32] The status case also differs from one regularly nol prossed in that the latter is considered removed from court totally, not just conditionally.[33] Table #20 identifies the situations which prompted the judge to give a case a status listing.

TABLE #20

STATUS LISTING

Reason	# of Cases	%
Dependent	19	34.5
See If Youth Straightens Out	14	25.5
Mental Health	6	10.9
Not Delinquent Type	6	10.9
First/Minor	4	7.3
Getting Outside Help	2	3.6
Good School	2	3.6
Family Problem	1	1.8
More Serious Cases	1	1.8
TOTAL	55	99.9

The juvenile's dependency proved important in 19 cases where the judge hoped that the Department of Public Welfare would take the child back despite the delinquent charge. Only 1 of these cases was rejected by DPW and an adjudication resulted. In 14 cases the judge gambled that the charge itself was enough to scare the youth and the case was put on status to see if the latter straightened out. Again, only 1 case did not end as planned. Similarly, 1 of the 6 cases channeled into the mental health system returned to juvenile court. Another 7 cases were added to status because the youth did not appear to be a delinquent type. There were 2 juveniles who received the benefit of a status listing because they were already undergoing counseling in the community. Another 2 youths with good school records had their cases put in limbo, but one reappeared before juvenile court. The final 2 status cases involved a family problem and a child facing more serious charges.

The last nol pros category involves 27 cases that were thrown out because the juvenile justice system could do nothing with the defendant. The ways in which the system was powerless are summarized in Table #21.

TABLE #21

SYSTEM CAN DO NOTHING

Reason	# of Cases	%
Defendant Too Old	12	44.4
Already Certified	7	25.9
Adult Arrest/Imprisonment	4	14.8
Defendant Has Moved	4	14.8
TOTAL	27	99.9

When a child commits a relatively non-serious crime close to his eighteenth birthday he stands a chance of falling between the cracks

of the juvenile and adult systems. On the one hand he is too old either to be committed to a juvenile institution or to be dealt with effectively on probation. On the other hand the charge is not serious enough to warrant certification to adult court. There were 12 cases like this in the study. Another 7 cases were nol prossed because the juvenile had already been transferred to adult court and the charges in juvenile court were not felonies (or at least not serious felonies) and thus were not certifiable (or not worth certifying). Here, instead of the juvenile, the crimes fell between the cracks of the two systems. Similarly, 4 cases were thrown out because the accused had already been arrested or imprisoned as an adult, and it would have served little, if any, purpose to pursue these charges in juvenile court. Finally, 4 cases were lost because the defendant had moved out of the jurisdiction. Unlike the criminal justice system, the juvenile justice system does not appear qualified to track suspects across any jurisdictional boundaries. Self-imposed exile, then, is seemingly an effective barrier to prosecution in juvenile court.

Arguably, cases dismissed due to the juvenile justice system's structural peculiarities and weaknesses do not deserve to be included within the concept of mitigated justice. After all, the system was virtually forced to nol pros the cases. Nevertheless, the issue could have been forced; the cases could have been ultimately prosecuted (assuming the accused could be physically brought to trial). For the most part, a reasonable interpretation in this situation is that the very makeup of the juvenile justice system, albeit perhaps inadvertently, operates to give "breaks" to defendants in many circumstances.

Besides the nol pros cases there were several examples of non-negotiated dismissals, belonging to the mitigated justice category, that took place after a trial had occurred.[34] The number of cases involved here was not terribly significant.[35] Actually, in the first instance, acquittals against the evidence, the precise number of relevant cases cannot be accurately determined. Acquittals against the evidence (cf., Newman, 1966: 131-172) are cases that were dismissed by the judge despite sufficient proof of guilt. The situation usually entailed a non-serious offense and/or a youth who did not require a delinquent label and supervision (cf., Note, 1967: 290). The data does not disclose exactly how many of the 142 not guilty findings belong to this group,[36] but a number of examples are readily available.

> Illustration No. 31: A defendant with no prior record punched another youth and took $2 from him. The accused was charged with robbery. Judge L heard the testimony, told the defendant to apologize, and discharged the case.
>
> Illustration No. 32: A juvenile's first arrest was an attempted robbery. He was involved in the incident but only marginally. Judge F looked at the youth's file and discharged the case.
>
> Illustration No. 33: An attempted rape charge was the youth's first arrest. The complainant had passed a polygraph and gave credible testimony at trial. Judge H found not guilty and told the district attorney he did not want to give the child a delinquent record.

There were 2 acquittals in spite of sufficient evidence due to the defendant's dependency status (cf., Note, 1967: 298, 300-301).

> Illustration No. 34: A youth with a prior consent decree was charged with burglary. The prosecutor offered probation for an admission. The public defender accepted and then refused the offer, believing he could win the case. His motion to suppress failed. Nevertheless, Judge H heard the case's circumstances, checked the child's background and adjudged the juvenile dependent.

Finally, 23 cases were conditionally acquitted although conviction was warranted, when the judge "sentenced" the juvenile to a consent decree. Consent decrees were given in this context either instead of an official pronouncement of guilty or even after the youth had been formally convicted.

> Illustration No. 35: Both the complainant and the defendant testified. After a sidebar conference in which he declared he leaned towards a guilty verdict, the judge stopped the trial and asked if the youth was a ward of DPW. When the answer was affirmative he announced the finding as a consent decree.
>
> Illustration No. 36: The defendant, a twelve year old facing his first arrest, was charged with robbery. The victim testified clearly that the accused was the perpetrator. Judge I found the defendant delinquent. After learning some positive aspects in the youth's background, the judge reversed his position, vacated the adjudication and entered a consent decree.

These consent decrees were not negotiated inasmuch as the juvenile had already exercised his right to trial and had little choice but to accept the judge's largesse.

Closely related to acquittals against the evidence are convictions of crimes lower than those originally charged. This occurred in 53 cases, but again it is impossible to determine how many of these stemmed from a mitigated justice concern than from simply a lack of sufficient evidence to convict as charged.[37] One might expect little charge maneuvering of this sort in juvenile court since sentencing is not offense-related. Nevertheless, occasionally the desire to individualize and to mitigate justice was unmistakeably present.

> Illustration No. 37: A defendant was before the court for the first time charged with robbery. The complainant testified and clearly made out the offense. Then he said he wanted to drop the charges because he did not want the youth to have a record. Judge L compromised and adjudicated the juvenile of theft, a misdemeanor rather than felony robbery.

Finally, 17 cases that went to the brink of conviction were sent instead into limbo. There were 10 cases handled as deferred adjudications (or what is called Held under Advisement), where ordinarily if the juvenile straightens out within a given period of time the case will end as dismissed (possible a consent decree) or as not guilty. Only 1 of the deferred adjudications returned to court for conviction.[38] The remaining 7 limbo-bound cases were put on status which is the functional equivalent of the deferred adjudication. Often, the objective here was to see if the youth's problem had a solution other than delinquent adjudication. The answer in all 7 cases was affirmative, as 6 went the dependency route and 1 was given a consent decree.

G. Litigation Negotiation In Juvenile Court

Litigation negotiation entails the numerous ways in which the trial itself can be an object of bargaining through which the defendant hopes to minimize his punishment. For example, deals can be made concerning the judge who will preside over trial (see Eisenstein and Jacob, 1977: 32). An even better illustration is the criminal justice system's penalizing the exercise of jury versus bench trials, providing substantially harsher sentences for jury-oriented convictions (see White, 1971).

Litigation negotiation in juvenile court appeared to be of minimal quantitative importance. In 2 instances Judge A informed defense counsel there was no need to seek a continuance in the middle of trial (to bring in witnesses) because the youth was not going to be put away. In both cases the defense rested and the youths were put

on probation. Each attorney explained that the judge had seemingly drawn a conclusion on guilt and each had a fear of a more restrictive sentence had they demanded a continuance. A pressured bargain-of-sorts transpired. Similarly, although the complainant failed to appear at trial, Judge A convinced defense counsel to stipulate to the victim's ownership of the car and to her not giving permission to the defendant to use the automobile. The defense attorney admitted that he had surrendered his one chance for acquittal but he had acted upon the judge's assurance that the juvenile would remain as committed (i.e., he would not be hurt by the conviction.)

The best example of negotiation via the trial structure occurred only once.

> Illustration No. 38: After losing a motion to suppress, defense counsel asked to see the other parties in chambers. He declared he was willing to admit his client to some of the charges if the others were dropped and if the juvenile would get probation. The district attorney said probation would be fine if the child's record was not excessively bad. Then Judge K suggested that defense counsel should go to trial immediately, rest, and the judge would find the juvenile guilty of only a few of the charges. In addition, probation would be the sentence. Counsel returned to the bar of the court and followed the judge's recommendations.

There were only a handful of cases where litigation negotiation surfaced; there were no system-wide arrangements which reflected this type of dealing. Nevertheless, litigation negotiation can be very important to the fate of a single case in juvenile court. The concept needs much more research before any firm opinion can be reached.

H. Post-Conviction Negotiation In Juvenile Court

Obviously, bargaining after conviction has occurred cannot be called plea negotiation since guilt has already been determined. Nevertheless, bargaining which strongly resembles plea negotiation can take place at this time. Only a couple of such situations were observed.

> Illustration No. 39: Two co-defendants were convicted of burglary by Judge A. Judge A promised leniency in sentencing if they would cooperate with the police in breaking up the burglary ring of which they had been a part. The defendants cooperated. Judge A gave them consent decrees.
>
> Illustration No. 40: The juvenile's first arrest involved a robbery and simple assault. The youth demanded a trial. He was adjudicated delinquent on the simple assault charge. Judge I said he would allow the defendant to earn a consent decree by paying restitution to the victim and by attending counseling. The child cooperated and earned a consent decree.

Although not quantitatively significant, post-conviction negotiation is in much the same situation as litigation negotiation. In any particular case it can be exceptionally important; it requires much more investigation and examination.

FOOTNOTES

[1]Unilateral dismissals are similar to the diversion at intake in that the case against the juvenile is thrown out. This dissimilarity stems from the fact that it is not the district attorney or the judge but rather the probation officer who diverts at intake, and the latter is not authorized to adjudge a defendant dependent at the pretrial stage.

[2]Unilateral dismissals operate like a structural bargain with the juvenile. The juvenile justice system has a vested interest in keeping most youths toward the bottom part of the ladder so the system does not get swamped. Youths are offered consent decrees, for example, in order to gain some control over these children without having to formally supervise more than could be reasonably accommodated.

[3]Purportedly is the firmest adverb that can be used here because one can never be certain if the results would not have been the same had the defendant demanded the full adversary process.

[4]Mitigated justice does not include every possible item of negotiation. For instance, opposing counsel will negotiate continuances, dates of hearings, and the complaining witness' testimony (see Eisenstein and Jacob, 1977: 32; Lefstein, 1981: 493). These examples do not have an associatopm with leniency or receiving a break that is strong enough to warrant their inclusion in mitigated justice.

[5]A case was determined by a single transaction directed against one victim. If a defendant robbed two people there were two cases against the accused. Whenever a defendant committed two or more felonies against one victim (e.g., a robbery and an aggravated assault) this was counted as one case.

[6]Of the 3,347 continuances, 66 involved transfer or certification hearings where a prima facie case was established, after a preliminary hearing, but the case was continued to determine if the youth was amenable to juvenile court treatment. Since these cases were not resolved in the researcher's presence they were listed as continued. This was necessary because although one "trial" occurred the second part of the transfer hearing remained and the case could yet be plea bargained before the hearing was finalized. Actually, the preliminary hearing is relatively insignificant. The amenability aspect is the crucial part of the transfer proceeding and it is at this hearing where most plea bargaining occurs (see Chapter 9).

[7]The trial at certification and adjudicatory means that the case actually ended in a trial. At pretrial and detention, however, the defendant declares merely an intention to pursue trial. The charge may later be nol prossed, plea bargained or given a consent decree. See Chapter 9 for further clarification.

[8]This 22% figure cannot be translated into an overall plea bargaining rate in juvenile court. Not all 1,022 cases were plea bargained. Moreover, many of the 1,793 cases from pretrial and detention that were continued for trial could ultimately have ended in a plea bargain, what would escalate the plea bargaining rate. See Chapter 9 for more discussion on this topic.

[9]This may not be the situation in a jurisdiction like the state of Washington which has turned to proportionate sentencing. There, the charge would seem to be of greater importance.

[10]The only time the charge becomes more important that the sentence is when a certification hearing is involved. Here, a juvenile defendant faces the potential of adult conviction and sentencing where the severity of the charge is definitely of consequence. Otherwise, all charges can theoretically be treated equally in juvenile court.

[11]As Alschuler points out, a judge who indicates what the sentence will be has effectively negotiated with the defendant (1976). Here, the judge informed the parties that probation would result from a conviction. This illustration is unique, however. Usually, opposing counsel had a firm agreement between them and presented this for ratification by the judge.

[12]This figure includes youth who were subject to incarceration at the time of the offense and had to be confined in a different institution because of the new crime.

[13]Three of the referrals were to group homes which hold both delinquent and dependent youth. The arrangement, here, involved the defendant's pleading guilty in exchange for which a referral was made, albeit that the referral could end as a delinquent or dependent commitment. Two of the three cases went the dependent route.

[14]This is similar to a consent decree which might suggest it is improper to call it plea bargaining. The important difference, however, is that an admission is tendered before the case is put in limbo and, thus, if the youth does "act up" the adjudication is final by virtue of the guilty plea. There is no need for a trial.

[15]There are no mandatory minimum or maximum sentences in traditional juvenile court sentencing (cf., Newman, 1966: 177-184). Nor is there any bar to granting probation in any case, including homicide, in juvenile court. These factors could also explain why charge bargaining, by itself, is not prevalent in juvenile court.

[16]The straight guilty plea is offered from remorse or a desire to get matters over with. It is a non-negotiated guilty plea. The straight guilty plea, however, does not belong to this group of guilty pleas because it is not calculated to enhance the defendant's charge or sentencing situation per se. In other words, the straight guilty plea is not a part of mitigated justice.

[17]To verify that a "slow" guilty plea has taken place each defendant (or his attorney) who testified during trial to some complicity in the crime would have to be interviewed.

[18]It is also interesting to point out that the existence of trial can mask the presence of pleading guilty in juvenile court. Trial may have a camouflaging effect in the criminal court as well.

[19]Admittedly, the "quick" guilty plea is similar to the tailored guilty plea but nevertheless differs in its focus on silencing the victim and its not relying upon any judicial practice of penalizing trial convictions/rewarding guilty pleas.

[20]Usually, the prosecutor negotiated to guarantee that one conviction while the defense attorney bargained to assure that no more than one adjudication occurred.

[21]Whereas the defense avoided another adjudication the prosecution gained a sure commitment.

[22]Ordinarily, defense attorneys readily had their clients, who were likely to be convicted, pay restitution to avoid adjudication.

[23]Besides its possible appropriateness the prosecutor often accepted the dependency adjudication offer because the youth would be institutionalized (albeit a dependent placement) rather than be given probation via a delinquency conviction. In other words, as a dependent the juvenile would not be roaming the streets.

[24]This was the only time counsel was observed surrendering on the certification issue. All the other bargaining that concerned transfer involved defendant's pleading guilty to charges in order not to be certified to adult court.

[25]A defendant may plead guilty to a lesser charge or to fewer charges (or via a sentence arrangement) and testify against a co-defendant. Here, plea bargaining is involved. If a consent decree or nol pros is given to the accused, dismissal bargaining has occurred.

[26]A second or third consent decree is not impossible, however. It is important to note, here, that some jurisdictions, like New Mexico, require an admission from the juvenile if he is to receive a consent decree. If the youth fouls up, conviction occurs without a trial on the original charges (Lauer, 1980: 351-52; Harris, 1976: 354-55). This transaction should probably be called conditional plea bargaining. In Philadelphia the defendant does not plead guilty before acquiring a consent decree. If the youth fails the probationary term, an adjudicatory hearing on the initial crime takes place.

[27]This arrangement could be characterized as a structural dismissal bargain. The scenario, here (as in diversion), is that the juvenile court gains some control over many youths (instead of substantial control over fewer youths) while avoiding both severe court backlog and losing many cases to acquittals. In the end, ideally, even the minimal supervision of a consent decree will convince many of these children not to recidivate.

[28]The judge or prosecutor could have argued that a particular youth's background (number of arrests, school record) was so deficient that only formal court intervention would have answered the latter's needs.

[29]A consent decree cannot co-exist with a plea bargain since the two work at cross purposes. That is, a consent decree specifically seeks to avoid a delinquent record which must occur whenever a plea bargain takes place.

[30]If plea bargaining and dismissal bargaining are not kept separate, statistically, the former will be exaggerated at the expense of the latter. Plea bargaining will be thought to be much more pervasive than it actually is.

[31]It is possible that the institution would hold the juvenile for a longer period of time than it would have held him but for the escape. In that sense, it can be argued that the juvenile was punished.

[32]The juvenile does not take a step up the ladder unless, of course, the youth has already been put on the dispositional ladder due to another case.

[33]Although the status listing differs from the mainline nol pros case, it still belongs within this categorization since the case is usually dismissed or nol prossed.

[34]Except for the "slow" guilty plea the foregoing discussion in mitigated justice has dealt exclusively with non-trial dispositions.

[35]At the outside only 212 cases belong here. The numbers cited in this context were included among the trial statistics because the cases went to trial for resolution.

[36]There were at least 30 cases in this group. Sometimes a judge would express his feelings as to why a case should result in a not guilty finding although proof of guilt existed. Most often, however, the judge voiced simply the finding itself. To determine whether the not guilty verdict was actually an acquittal against the evidence the researcher would have been forced to interview the judge after each such finding. The researcher feared contamination would result and that the judges would not act naturally if investigated after every acquittal.

[37]Again, interviewing would have been necessary after each conviction on a charge lower than that originally brought against the defendant and contamination was a distinct possibility.

[38]The other 9 cases were decided as follows: 4 consent decrees, 2 dependency adjudications, and, 3 not guilty.

CHAPTER 7: THE ROLES OF THE PARTICIPANTS IN PLEA NEGOTIATION IN JUVENILE COURT

If there is a universal principle in plea bargaining, it seems to be that the system officials (i.e., the judge, the prosecutor and the defense counsel) entrusted with a case are instrumental in determining whether or not plea negotiation takes place (see Alschuler, 1968; 1975; 1976). The roles played by these individuals and other interested parties in juvenile court proceedings greatly influence the nature and extent of plea negotiation in juvenile court.[1]

A. The Judge

Historically, by far the most dominant figure in the juvenile court process has been the judge. Before the United States Supreme Court decision, In re Gault, in 1967, the judge's position in juvenile court was virtually unassailable; there were no lawyers to challenge his authority. The judge's role was unambiguous as well: he was to act as the child's surrogate parent and determine the treatment required by the youth (Mack, 1904; Lou, 1927; Gonas, 1962: 327). A social work mentality controlled the operation of the juvenile court.

Since Gault the judge's authority in juvenile court has been much less supreme.[2] Today, defense attorneys and prosecutors operate in juvenile court and serve as checks on the heretofore unbridled power of the judge. More important, perhaps, the judge's role in juvenile court has been much less certain. It is not clear whether the judge is currently directed to act like a father or like his counterpart in adult court. Gault and its progeny[3] have brought about dramatic structural changes in juvenile court procedure, but

the decisions did not indicate, conclusively, the philosophy that is supposed to guide juvenile court proceedings (see Schultz and Cohen, 1976). In other words, it is uncertain to what extent the social work mentality has survived the Supreme Court's constitutional domestication of juvenile court (see Paulsen, 1967). Thus, although the Supreme Court has suggested that a legal orientation has a legitimate place in juvenile court, the decisions are not consistent and varying interpretations as to the judge's proper role are possible.[4] The juvenile court judge appears to be caught in the struggle between the social work and legal frameworks; he appears to be a person in search of an identity.

In Philadelphia's juvenile court the struggle manifested itself in the judges' assuming one of three distinguishable positions on a legalism-based continuum. Although every judge evidenced concern for the welfare of the child, some appeared more committed than others to adhering to formality and legal technicalities in juvenile court procedure. Thus, the courtroom behavior (and plea bargaining behavior) of the various judges differed greatly. In all, three types of judge were observed: the conciliator, the administrator and the legalist. Figure #1 demonstrates the positions occupied by these judges on the legalism continuum.

FIGURE #1

LEGALISM CONTINUUM

Weak Legal Commitment	Ambiguous Legal Commitment	Strong Legal Commitment
X	X	X
The Conciliator	The Administrator	The Legalist

The conciliator is a throwback to the pre-Gault days; he is a juvenile court traditionalist. The conciliator holds that the primary function of juvenile court is to find and to remedy the youth's problems. His primary concern is to achieve the proper treatment plan promptly, which usually means without the encumbrance of trial. The conciliator tends to regard the defense attorney as a nuisance while the prosecutor is seen as little more than a dispenser of information. Gault, too, is an interference because the conciliator wants to place the defendant's needs before legal technicalities and, arguably, before the juvenile's constitutional rights. There were only two judges in this group (Judges A and G).

The administrator is somewhat caught in the middle of the social work-legalism battle. He has not committed completely to one or the other; he may appear confused by the hybrid nature of juvenile court. The administrator is not certain what the primary function of juvenile court is: to resolve legal questions or treatment problems. His primary concern is to have his decisions supported, whenever possible, by opposing counsel. Accordingly, the administrator views defense attorney and prosecutor as valuable participants (or as assistants) in reaching decisions. Although not an interference, per se, Gault is a problem because legal technicalities and treatment needs do not always mesh. There were three judges in this category (Judges F, H and M).

The legalist is a modern-day juvenile court activist; he has shunned the traditional juvenile court procedure. The mandates of Gault, even if not desirable, are held at the very least to be obligatory. The legalist envisions the primary function of juvenile

court as the resolution of the youth's legal guilt. His primary concern is that the defendant's constitutional rights are fully vindicated. The defense attorney's presence in juvenile court is felt to be essential while the prosecutor is probably a necessity to maintain adversarial balance. Gault has definitely complicated matters because often the youth's treatment needs will be forced to take second place (and may have to be ignored altogether) to the juvenile's constitutional rights (e.g., needy youths cannot be required to receive help if they are acquitted). There were nine legalist type judges (Judges B, C, D, E, I, J, K, L and N).

Obviously, there was considerable diversity in the orientations and attitudes displayed by the juvenile court judge.[5] Not surprisingly, there was also substantial variety in the judges' plea bargaining performance. The primary and most controversial question[6] in the judicial role in plea bargaining is whether the judge should participate in or merely supervise the plea negotiation process (see Alschuler, 1976).[7] The participant is one who actively bargains with opposing counsel and possibly with the defendant as well. The supervisor is one who does no more than ratify or reject agreements made by the competing parties. Both types were represented in the study.

There were only two active judicial participants and they were the two conciliators. Judges A and G often became involved directly in the plea negotiations. Judge A, who was observed predominantly in adjudicatory hearings, frequently gathered counsel together in chambers and urged them to reach accord.[8] Often, the judge would suggest sentence and charge deals.

> Illustration No. 1: Judge A asked why this "obvious" probation case was going to trial. The defense attorney responded that she could not reach agreement with the district attorney. The judge called both lawyers into chambers. He then discovered that there was discord over whether the charge should be burglary or criminal trespass. The prosecutor was forced to admit that no one could place the defendant inside the house and finally agreed with Judge A that an admission to criminal trespass would be appropriate.

Occasionally, Judge A bypassed the district attorney and negotiated solely with defense counsel.

> Illustration No. 2: Opposing counsel could not come to terms. The prosecutor wanted some type of commitment while the public defender felt probation was called for. The latter asked to see the judge in chambers. There the defense attorney explained the situation and made a case for probation and against commitment. The district attorney objected to this defense maneuver and she did not camouflage her displeasure. Unaffected by the prosecutor's objections Judge A concurred with defense counsel and accepted the guilty plea offer in exchange for a promise of intensive probation.

In a couple of instances Judge A actually pressured the defense attorney to negotiate the case (see Newman, 1966: 89-90; Alschuler, 1976: 1089-1091; and Heumann, 1978: 67-69).

> Illustration No. 3: The defendant who had a history of drug problems was in court for violation of a controlled substance. The defense lawyer announced that he wanted to pursue a motion to suppress. The judge asked all parties into chambers. He told counsel to forget the motion and to plead guilty so that the defendant could be put on probation with correctional group counseling and drug therapy. Otherwise, the judge explained, the accused would be held at the Youth Studies Center while the probation officer found an institution which would help the youth. The juvenile pled guilty.

> Illustration No. 4: The youth was charged with auto theft. The Commonwealth was under a must-be-tried order. The arresting officer appeared and testified to finding the child operating the car early in the morning. The complainant failed to come to court, however. Counsel, realizing the potential for acquittal, refused to stipulate to the victim's ownership of the vehicle and to his not permitting the juvenile to use the car. Judge A said this was ridiculous

in a probation case. Nevertheless, the public defender remained adamant in his refusal to stipulate. The judge then ordered the youth to be held in the Youth Studies Center overnight so that the district attorney could bring the complainant into court at which time the case would be tried immediately. The public defender conferred with the prosecutor and arranged a plea to possession of an instrument of crime, a misdemeanor.

Even when Judge A was not personally involved in the bargaining, and, instead, served only as a supervisor his presence on the bench encouraged negotiation. Counsel who worked regularly in Judge A's courtroom knew that he was not a proponent of trial and that he preferred to informally settle the case as best suited the juvenile's treatment needs. In all, 54 of the 192 cases (28.1%) Judge A resolved at the adjudicatory level were plea bargains as Table #1 discloses.[9]

TABLE #1

JUDGE A'S PERFORMANCE AT ADJUDICATORY LEVEL

Disposition	# of Cases	%
Trials	35	18.2
Plea Bargains	54	28.1
Other Guilty Pleas	30	15.6
Nol Pros	55	28.6
Consent Decrees	18	9.4
TOTAL	192	99.9

In addition to the many plea bargains there were 30 cases that involved non-negotiated guilty pleas. Defense counsel knew that even if plea bargaining were impossible, Judge A would likely respond more positively to a guilty plea than to a trial conviction. That knowledge helps to explain why there were 18 factual/nominal guilty pleas (40.9% of all factual/nominal guilty pleas) and 7 tailored guilty pleas (24.1% of all plea accommodating) among the cases heard by Judge A.[10] In short, defense attorneys believed they had a better chance of securing leniency for their clients by not forcing cases to trial before Judge A.

Besides the high number of guilty pleas (43.7% of all Judge A's) resolved cases) there were 30 cases involving active dismissal bargaining among Judge A's caseload (24 nol pros and 6 consent decrees). Half of the nol pros bargaining was associated with guilty pleas in other cases. Another 43 cases were unilaterally dismissed. Obviously, Judge A's court was oriented towards settling cases informally. It was not surprising, then, that only 35 cases went to trial. This 18.2 trial ratio was the lowest figure among all judges who presided over adjudicatory hearings.

The other conciliator, Judge G, was also heavily involved in plea bargaining but at the pretrial level.[11] Unlike his fellow conciliator, however, Judge G most often negotiated directly with the defendant at the bar of the court.

Illustration No. 5: The youth was in court for the first time on a robbery charge. The crime was too serious to qualify for a consent decree. Judge G addressed the accused personally. He explained the purpose of pretrial and stated the charges. The district attorney had just finished reading aloud the police report of the incident. Judge G informed the defendant that he could admit to the robbery in which event he would be put on probation immediately. Otherwise, the juvenile could return to court for trial. The child accepted the judge's offer of probation after he had conferred with counsel.

The vast majority of plea bargains in Judge G's room was handled this way. Infrequently, opposing counsel had already arranged a deal before the case was processed. Paralleling Judge A's approach, Judge G occasionally ignored the prosecutor's objections and bargained only with the defense. Also like Judge A, Judge G would on occasion pressure the defense attorney to negotiate a case.

Illustration No. 6: A child was making his seventh appearance in court. He had 3 delinquent adjudications. The charge

this time was retail theft. Despite the juvenile's record the judge offered probation if the former would admit guilt. The public defender interjected that he wanted to file a motion to suppress. Judge G rejoined that counsel was not helping the defendant to which the defense attorney said he was just doing his job. Ultimately, counsel accepted the judge's offer.

The conciliators were the only judges to overtly pressure counsel to plea bargain. Table #2 outlines Judge G's activities at pretrial.

TABLE #2

JUDGE G'S PERFORMANCE AT PRETRIAL

Disposition	# of Cases	%
Continue for Trial	292	36.4
Plea Bargains	238	29.6
Other Guilty Pleas	6	.7
Nol Pros	60	7.5
Consent Decrees	207	25.8
TOTAL	803	100.0

Judge G was the most prolific plea bargainer of all the judges observed at pretrial. Consistent with the conciliator's anti-legalise attitude only 292 cases (36.4%) were sent by Judge G to the adjudicatory hearing stage, the lowest percentage for any judge at pretrial. Judge G also dominated the plea negotiation that took place at detention hearings, negotiating 33 of the 105 cases (31.4%) he heard in that capacity. These 33 cases accounted for nearly 69% of all cases plea bargained at the detention level.[12] Altogether, 278 of the 932 cases (29.8%) Judge G resolved were plea bargains. The 278 and 29.8% figures make Judge G the top plea bargainer (in absolute and relative terms) in Philadelphia's juvenile court. In fact, his 278 plea bargains were 30.3% of all negotiated guilty pleas observed in the study.

Together, the two conciliators accounted for a substantial part of the juvenile court plea bargaining activity as revealed in Table #3.

TABLE #3

PLEA BARGAINING PERFORMANCE BY TYPE OF JUDGE

	Conciliator	Adminstrator	Legalist	Total
# of Plea Bargains	341	270	307	918
# of Cases Resolved	1,250	1,239	2,058	4,547
% of Cases Resolved By Plea Bargains	27.3	21.8	14.9	20.2
% of Total Workload	27.5	27.2	45.3	100.0
% of All Plea Bargains	37.1	29.4	33.5	100.0

The conciliators were the most plea negotiation-prone of the judges in juvenile court. Over one-fourth (27.3%) of the cases they handled culminated in plea bargains. Although they resolved only 27.5% of the total workload, Judges A and G amassed 37.1% of all the plea negotiations.[14]

In contrast, despite their being responsible for a sizeable proportion of the workload, the conciliators continued matters for adjudicatory hearings or performed actual trials in only 478 cases, a mere 20.6% of the total number of trial-related situations. Table #4 covers the trial performance of the three types of judges.

TABLE #4

TRIAL PERFORMANCE BY TYPE OF JUDGE

	Conciliator	Administrator	Legalist	Total
# of Trials	478	600	1,239	2,317
# of Cases Resolved	1,250	1,239	2,058	4,547
% of Cases Resolved by Trial	38.2	48.4	60.2	50.9
% of Total Workload	27.5	27.2	45.3	100.0
% of All Trials	20.6	25.9	53.5	100.0

True to the pattern of disfavoring trial the conciliator was the type of judge most likely to have a discretion-oriented dismissal in his courtroom. Judges A and G had 31.4% of their cases resolved this way. Table #5 summarizes the judges' dismissal performance.

TABLE #5

DISMISSAL PERFORMANCE BY TYPE OF JUDGE

	Conciliator	Administrator	Legalist	Total
# of Dismissals	392	324	492	1,208
# of Cases Resolved	1,250	1,239	2,058	4,547
% of Cases Resolved by Dismissal	31.4	26.2	23.9	26.6
% of Total Workload	27.5	27.2	45.3	100.0
% of All Dismissals	32.5	26.8	40.7	100.0

The conciliator was the leading figure in the anti-legalism, pro-mitigated justice sentiment in juvenile court. As Table #6 displays, well over half (61.7%) of the cases Judges A and G resolved involved mitigated justice.[15]

TABLE #6

MITIGATED JUSTICE PERFORMANCE BY TYPE OF JUDGE

	Conciliator	Administrator	Legalist	Total
# of Mitigated Justice Cases	771	636	817	2,224
# of Cases Resolved	1,250	1,239	2,058	4,547
% of Cases Resolved by Mitigated Justice	61.7	51.3	39.7	48.9
% of Total Workload	27.5	27.2	45.3	100.0
% of All Mitigated Justice	34.7	28.6	36.7	100.0

The conciliators were dedicated to the proposition that the trial is not the process through which to discover juvenile treatment problems and solutions. Rather, the conciliator favored the idea that the answer to the juvenile court puzzle (i.e., allocating treatment remedies in a legal forum) is better ascertained through informal channels.

The administrator favored informal channels, also, but,unlike the conciliator, he usually was not actively involved in bringing about a negotiated guilty plea. The administrator fell, numerically in all categories of performance, pretty much where he would be expected to

fall: between the conciliator and the legalist. The administrator was dedicated neither to working out the juvenile's problem through a negotiation prompted by his own initiative nor to handling the situation through the formal trial process. Instead, the administrator seemed to appreciate counsels' devising plea negotiations and other arrangements because the judge was thereby spared the difficult guilt/innocence and proper treatment questions.

Since the administrator had no commitment to having cases decided by trial it makes sense that plea bargaining and other elements of mitigated justice would form a substantial proportion of the administrator's workload. In particular, the courtroom of Judges F and H witnessed a considerable amount of plea negotiation and related activity as disclosed in Tables #7 and #8.

TABLE #7

JUDGE F'S PERFORMANCE AT ADJUDICATORY

Disposition	# of Cases	%
Trials	61	31.4
Plea Bargains	59	30.4
Other Guilty Pleas	15	7.7
Nol Pros	41	21.1
Consent Decrees	18	9.3
TOTAL	194	99.9

TABLE #8

JUDGE H'S PERFORMANCE AT ADJUDICATORY

Disposition	# of Cases	%
Trials	45	30.2
Plea Bargains	50	33.6
Other Guilty Pleas	15	10.1
Nol Pros	30	20.1
Consent Decrees	9	6.0
TOTAL	149	100.0

Without specific judicial endorsement defense attorneys and prosecutors sensed that Judges F and H preferred to have decisions made by opposing counsel without the necessity of trial. The pressure to bargain was much more subtle with the administrators than with the conciliators. The two administrators supervised 109 plea bargains (31.8% of their workload) at adjudicatory hearings, 36.9% of all such deals made at that level. In other words, they accomplished passively what the two conciliators did actively. Besides the administrators' reluctance to get personally involved there was little, if any, difference between the plea bargaining activity in their courtrooms and that of the conciliators.

One note of distinction did arise at pretrial. For juveniles who faced a possibility of commitment, Judge G, the conciliator, would pursue creative arrangements such as intensive probation and other modifications of probation. Judge H, as an administrator, however, left the plea bargaining decision-making in the hands of the attorneys and did not interject to recommend deals. Rather than suggest a solution Judge H would simply ask if the case was a denial. Opposing counsel seemed less inclined to construct the imaginative deals Judge G regularly proposed so, instead of being plea bargained, borderline cases before Judge H went to trial. Table #9 demonstrates Judge H's work at pretrial.

TABLE #9

JUDGE H'S PERFORMANCE AT PRETRIAL

Disposition	# of Cases	%
Continue for Trial	83	41.9
Plea Bargains	54	27.3
Other Guilty Pleas	7	3.5
Nol Pros	4	2.0
Consent Decrees	50	25.3
TOTAL	198	100.0

Although these two administrators did not overtly pressure the attorneys to negotiate cases, defense counsel familiar with these judges knew the latter did not want to be burdened with trial, particularly in obvious guilty cases. Not surprising, there were 12 factual guilty pleas (27.3% of all factual guilty pleas) and 11 tailored guilty pleas (37.9% of all plea accommodating) in the caseload of the two judges. Another 14 cases before Judges F and H ended in non-negotiated guilty pleas, of which 3 were straight guity pleas.[18] Together, these two administrators accounted for 34 non-negotiated guilty pleas (34.7% of this type of guilty plea) which were mitigated justice-oriented.

Judge M, the third administrator, did not relish answering the guilt and treatment questions, per se, but, nevertheless, he frequently displayed an anti-plea bargaining attitude, particularly when he sat at pretrial.

> Illustration No. 7: The accused was charged with aggravated assault upon a police officer. This was his second arrest, the first's having resulted in a delinquent adjudication. The public defender and the prosecutor agreed that a guilty plea would warrant probation with correctional group counseling. After defense counsel proposed the negotiated guilty plea, however, Judge M announced there would be a trial in this matter. He considered probation an insufficient disposition and plea bargaining an inappropriate method of case resolution. Three months later Judge I continued the youth's probationary status after adjudicating him delinquent.

Although Judge M would not initiate a plea agreement and opposed numerous deals, he was not reluctant to become personally involved in dismissal bargaining, a trait he shared with several legalists.

Illustration No. 8: The public defender asked Judge M to grant a consent decree for a youth whose first arrest was a residential burglary. The prosecutor had refused to go along with a conditional dismissal. Judge M said a consent decree would be possible but the juvenile would also have to be subjected to the Youth Advocacy Program. The defense attorney had no objection.

Illustration No. 9: Robbery was the reason for this youth's first arrest. He was only marginally involved, however. Judge M announced the case would be discharged. As he said this, Judge M was reading the defendant's file and he saw the child had a bad school record. Judge M asked the public defender to accept a consent decree with correctional group counseling. The latter agreed to the judge's proposal.

His anti-plea negotiation stance no doubt contributed to Judge M's relatively high trial-low plea bargaining ratio at pretrial. Table #10 reveals Judge M's case resolution profile at pretrial.

TABLE #10

JUDGE M'S PERFORMANCE AT PRETRIAL

Disposition	# of Cases	%
Continue for Trial	187	53.1
Plea Bargains	56	15.9
Other Guilty Pleas	1	.3
Nol Pros	33	9.4
Consent Decrees	75	21.3
TOTAL	352	100.0

Interestingly, Judge M was not as opposed to plea bargaining at the adjudicatory level as Table #11 evidences.[20]

TABLE #11

JUDGE M'S PERFORMANCE AT ADJUDICATORY

Disposition	# of Cases	%
Trials	42	41.2
Plea Bargains	26	25.5
Other Guilty Pleas	7	6.9
Nol Pros	18	17.6
Consent Decrees	9	8.8
TOTAL	102	100.0

Judge M ratified 26 cases of plea bargaining (25.5% of his workload) while presiding over adjudicatory hearings. He also accepted 7 non-negotiated guilty pleas, of which 3 were factual and 4 were tailored guilty pleas.

Like the administrators, the legalists were not directly involved in plea negotiation.[21] Instead, they were ratifiers at best. Again, like the administrators, the legalists revealed a range of attitudes towards the propriety of plea bargaining in juvenile court. Judge D, for example, did not like plea bargaining. This was a well known fact among the attorneys and, consequently, only 3 cases were negotiated before him at the adjudicatory level.[22] In fact, some attorneys pointed out that they chose trial rather than a guilty plea before Judge D because the colloquy following a plea of guilty would take more time than a trial. Defense attorneys also said Judge D had the best beyond a reasonable doubt standard and, therefore, the former preferred trial to plea bargaining in his court. Table #12 outlines Judge D's activities at the adjudicatory stage.

TABLE #12

JUDGE D'S PERFORMANCE AT ADJUDICATORY

Disposition	# of Cases	%
Trials	36	75.0
Plea Bargains	3	6.3
Other Guilty Pleas	1	2.1
Nol Pros	4	8.3
Consent Decrees	4	8.3
TOTAL	48	100.0

Judge D was the archetypical legalist. He resolved 75% of his adjudicatory workload via trial, while only 6.3% of his cases involved plea bargaining, the highest and lower figures, respectively, among

all judges at adjudicatory hearings.

Judge B, a replacement judge, was also an extremist with respect to being anti-plea negotiation as Table #13 discloses.

TABLE #13

JUDGE B'S PERFORMANCE AT ADJUDICATORY

Disposition	# of Cases	%
Trials	33	66
Plea Bargains	7	14
Other Guilty Pleas	1	2
Nol Pros	6	12
Consent Decrees	3	6
TOTAL	50	100

Even more telling is Judge B's record at pretrial where he sent more cases to trial, in percentage terms, than any other judge at that level. Table #14 covers Judge B's pretrial workload.

TABLE #14

JUDGE B'S PERFORMANCE AT PRETRIAL

Disposition	# of Cases	%
Trials	285	59.9
Plea Bargains	77	16.2
Other Guilty Pleas	1	.2
Nol Pros	6	1.2
Consent Decrees	107	22.5
TOTAL	476	100.0

Despite Judge B's reluctance to sanction plea negotiation, he was willing, like Judge M, to directly bargain cases in which dismissals were involved.

Illustration No. 10: Two defendants were charged with recklessly endangering another person in what was a fairly serious case. The district attorney had no competent evidence, however, even though the defendants had admitted guilt to the police. Judge B was aware the prosecutor could not use the statements so he called a meeting in his chambers. He did not want the youths to be discharged. Instead, Judge B asked all parties to accept a consent decree which they did.

Illustration No. 11: A juvenile with one prior consent decree (which had expired) was before the court for a theft. The district attorney was about to withdraw the charge because it was very minor. Judge B did not like the school report, however, and said it would be better to make the case a second consent decree. There were no objections.

Both Judge D and Judge B expressed their preference for trial as the method of case resolution in juvenile court. They made it difficult to tender a negotiated plea by forcing long colloquies and by making negative comments about bargained guilty pleas. Essentially, all legalists shared a favorable attitude towards trial. But some, like Judge I, were more amenable to counsels' working out an agreement that did not necessitate trial, particularly if it seemed to suit the juvenile's needs. Table #15 reveals Judge I's acceptance of plea bargaining at the adjudicatory level.[24]

TABLE #15

JUDGE I'S PERFORMANCE AT ADJUDICATORY

Disposition	# of Cases	%
Trials	90	52.3
Plea Bargains	42	24.4
Other Guilty Pleas	4	2.3
Nol Pros	21	12.2
Consent Decrees	15	8.7
TOTAL	172	99.9

Legalists like Judge I, who were willing to ratify plea bargains, were more treatment-oriented than the extreme legalists (e.g., Judges B and D). Although as legalists the willing ratifiers endorsed Gault and its mandates, the Supreme Court decisions have caused considerable conflict for these judges. That is, some juveniles who truly need to be helped will have to be turned aside due to legal requirements (e.g., a successful suppression hearing). Whereas the conciliator avoids this conflict by ignoring the legalise, and whereas the administrator

basically sidesteps the conflict (not being committed to either side), and whereas the extreme legalist de-emphasizes the treatment concern (i.e., the system can "help" only legally convicted juveniles), the rehabilitation-oriented legalist feels the brunt of the conflict. Since the willing ratifiers neither opposed plea bargains philosophically nor made it exceptionally difficult for counsel to negotiate pleas, much more plea bargaining and mitigated justice activity occurred, collectively, in their courtrooms than in the extreme legalists' rooms as displayed in Table #16.

TABLE #16

LEGALISTS' PERFORMANCE AT ADJUDICATORY

I. Extreme Legalists[25]

Disposition	# of Cases	%
Trials	102	68.0
Plea Bargains	19	12.7
Other Guilty Pleas	2	1.3
Nol Pros	14	9.3
Consent Decrees	13	8.7
TOTAL	150	100.0

II. Willing Ratifiers[26]

Disposition	# of Cases	%
Trials	179	48.9
Plea Bargains	80	21.9
Other Guilty Pleas	15	4.1
Nol Pros	66	18.0
Consent Decrees	26	7.1
TOTAL	366	100.0

In light of the foregoing it is not surprising that the judge that was sitting was important in determining whether a case would be plea bargained or would go to trial. Defense strategy was often dictated by the presiding judge.

Illustration No. 12: The public defender stated that ordinarily she would look to plea bargain a case like this where there was little hope for acquittal. The charge was before Judge D, however, and not only was he a light hitter, sentence-wise, he also had a high standard of beyond a reasonable doubt. Instead of negotiating, counsel went to trial. The child was convicted but the sentence was no worse than the best deal she would have gotten from the prosecutor.

Illustration No. 13: A juvenile charged with burglary appeared before Judge A. Assigned counsel had determined he had a decent motion to suppress. The youth's statement implicated him in the burglary. Otherwise, receiving stolen property was the most severe charge for which the defendant would likely be convicted. Assigned counsel said even though the case would be a good one to try before someone like Judge D, he did not want to drag matters out by asking for a continuance. Counsel approached the prosecutor and explained the situation. He suggested that since Judge A was sitting and since the judge did not favor motions or trials opposing counsel should split the difference and negotiate a guilty plea to receiving stolen property. The district attorney agreed.

The defense's relationship with the judge was also influenced by the type of judge in the courtroom (see Stapleton and Teitelbaum, 1972: 134). For the most part, the legalist expected and wanted defense counsel to try cases. On the other hand, the conciliator demanded cooperation from the defense attorney (frequently in the form of plea negotiation), while the administrator hoped opposing counsel would cooperate with each other.

Because of the differences in the judges' approaches there were some examples of judge shopping juvenile court. Positive judge shopping was observed only when defense lawyers plea bargained with the prosecution.

Illustration No. 14: Judge A, considered by many to be a lenient sentencer, had 3 of this youth's cases before him for disposition. Meanwhile, an outstanding burglary charge was before Judge K, an unpredictable entity. Defense counsel arranged with the district attorney to plead guilty in exchange for sending the whole matter to Judge A.[27]

Negative judge shopping was also observed. It was trial-oriented (see Miller et al., 1978: 240; Levin, 1977: 81; Alschuler, 1975: 1235-1237). Here, defense counsel would perform one of a number of moves calculated to get the case continued before another judge, one who was a light hitter, perhaps, or one who would accept plea bargaining without question.

> Illustration No. 15: A youth charged with burglary was guilty according to his lawyer but, like many other children, he was unwilling to publicly admit his involvement in the crime. The public defender had already reached a tentative agreement with the prosecutor concerning an appropriate plea bargain. Nevertheless, the defense attorney was forced to request a continuance because had the juvenile pled guilty he would have been required to acknowledge his responsibility in the colloquy following the guilty plea. Counsel felt the youth would not cooperate in this regard so he continued the case. The youth pled guilty at the next listing before a judge who does not conduct a colloquy.
>
> Illustration No. 16: Assigned counsel did not want Judge B to try the case because he feared the potential sentence. He had already failed in his attempt to negotiate a guilty plea. Since all parties were present he had no grounds to request a continuance. Therefore, counsel put on what he called a frivolous motion to suppress in order to get the matter continued before another judge. With another listing a plea bargain was also possible.
>
> Illustration No. 17: The public defender felt he had an excellent opportunity to win a suppression hearing. The case was scheduled before Judge A, however. Realizing Judge A's proclivity for non-trial solutions, defense counsel informed the judge that the case was a protracted one. The defense attorney believed that that information, alone, would prompt Judge A to continue the case. The former was correct as Judge A did indeed continue the matter. Defense counsel also was accurate in his assessment of the motion's chance of success.[28]

Despite the very real differences in the manner in which judges resolved cases a "compensation factor" operated which pretty much equated the ultimate outcome for most similarly situated defendants in juvenile court. That is, regardless of both the method of conviction and the presiding judge juveniles appeared to be sentenced according to

the position they occupied on the dispositional ladder. In other words, the trial penalty that plagues plea bargaining in adult court did not seem to exist in juvenile court; young defendants did not appear to be punished for exercising their right to trial.[29]

The judges in Philadelphia's juvenile court represented a broad spectrum of attitudes towards plea bargaining in general and towards the judge's role in negotiating guilty pleas in particular. There were active participants, passive performers and those who wanted no plea bargaining at all, if possible. Despite this divergence in perspectives and roles each judge was observed formulating and/or approving at least one plea bargain. Nonetheless, although every judge played some role in plea bargaining the difference in the type of presiding judge meant a dramatic difference in the character and in the amount of plea negotiation in a specific courtroom. The judge, then, was the person who seemed to dominate all transactions, including plea bargaining, in juvenile court. In other words, the juvenile court judge had not abdicated his role to the prosecutor.[30] This is unlike the adult court situation where the district attorney is said to be the controlling figure in plea negotiation (Alschuler, 1976: 1065-1066; Casper, 1972: 135-137).

B. The Defense Attorney

Defense attorneys rarely appeared in juvenile court prior to the In re Gault decision. The probation officer and the judge represented the defendant in the period before Gault. Although they are now a fixture in juvenile court proceedings, defense counsel have never been notified as to the role they should play in that forum. Gault simply

did not indicate how the juvenile defense lawyer should perform (see Stapleton and Teitelbaum, 1972: 63-64; Kay and Segal, 1973: 1406, 1409). Three possible defense roles have been identified in the literature: the guardian; the amicus curiae or interpreter; and, the advocate.

The guardian is the lawyer's equivalent to the conciliator. He is a throwback to pre-Gault days who seeks to find out what is wrong with the defendant rather than to defend the accused against the state's allegations. The guardian does not want the adversary system; winning a case is secondary unless the juvenile is clearly innocent. Actually, this lawyer feels constrained to help convict a youth whenever the latter truly needs treatment and stands to lose the treatment opportunity through acquittal. Although responsible for furthering the child's interests, the guardian does not rely upon the youth's interpretations of those interests. Rather, defense counsel confers with the judge (and perhaps with the prosecutor) as to the course (including conviction) which best suits the defendant's needs (see Costello, 1980: 258-259; Alexander, 1960: 1209; Greenspun, 1969: 601-602; and, Platt and Friedman, 1968: 1179).

The amicus curiae acts like an interpreter; he is somewhat like the administrator. The amicus curiae is charged with both informing the court of the juvenile's situation and telling the juvenile what the court is about to do to him. Defense counsel serves as an intermediary and does not get directly involved in securing either a conviction or an acquittal. In many respects this lawyer is virtually indistinguishable from a court clerk who has the youth's background file and who instructs the judge and the attorneys as to the history of the case (see Costello, 1980: 258; Kay and Segal, 1973: 1412-1415; Walker, 1971: 647).

Finally, the advocate is similar to the legalist in that maximization of the juvenile's rights is his primary concern. This lawyer pushes excessively (e.g., through motions to suppress) to force the state to prove the defendant guilty. Counsel uses every weapon the court has given him to secure acquittal for his client. Barring that event, the advocate searches for the least damaging conviction, and then pursues the least restrictive sentence (see IJA/ABA 1977b: 3-7; NAC, 1980: 278; Besharov, 1974: 50-53).

Interestingly, unlike the judges, the defense attorneys in Philadelphia's juvenile court did not divide into three potential groupings. Instead, all the defense lawyers occupied only one category: the advocate.[31] Invariably, the defense's role was to keep the youth as far down the dispositional ladder as possible. Obviously, keeping the child off the ladder altogether was the best result from the defense's perspective.

Defense representation in juvenile court stemmed from three sources: the public defender, assigned counsel, and, the privately retained attorney. Table #18 reveals the majority of work was performed by the public defender.

TABLE #18

CASES RESOLVED BY THE PUBLIC DEFENDER

Court Stage	# of Cases	% of Caseload/ Court Stage
Detention	827	98.3
Pretrial	2,253	92.7
Adjudicatory	828	70.4
Certification	59	59.0
TOTAL	3,967	87.2

Public defenders counseled virtually every juvenile subject to detention hearings (98.3%) and they advised a vast majority (92.7%) of the

pretrial cases. By the time of the transfer hearing and trial, however, assigned and retained attorneys appeared more frequently as Table #19 demonstrates. The latter two types of lawyers have been grouped together because there were very few defense attorneys retained by juvenile defendants.

TABLE #19

CASES RESOLVED BY PRIVATE ATTORNEYS

Court Stage	# of Cases	% of Caseload/ Court Stage
Detention	14	1.7
Pretrial	177	7.3
Adjudicatory	348	29.6
Certification	41	41.0
TOTAL	580	12.8

While the public defenders were in court daily, most private counsel worked almost as regularly in juvenile court. The latter appeared to know the intricacies of the system as well as the public defenders and both groups seemed to act similarly with respect to resolving cases (see Alschuler, 1975: 1229-1230). That is, private and public counsel bargained and litigated in basically the same ways and in nearly the same proportions. Table #20 shows how the two camps fared in handling juvenile matters.[32]

TABLE #20

METHOD OF CASE RESOLUTION

I. The Public Defender

Method	# of Cases	%
Trials	2,033	51.2
Plea Bargains	792	20.0
Other Guilty Pleas	82	2.1
Nol Pros	414	10.4
Consent Decrees	646	16.3
TOTAL	3,967	100.0

II. Private Counsel

Method	# of Cases	%
Trials	284	49.0
Plea Bargains	126	21.7
Other Guilty Pleas	22	3.8
Nol Pros	68	11.7
Consent Decrees	80	13.8
TOTAL	580	100.0

The only lawyers who, as a group, seemed to behave differently were the novice public defender and the inexperienced private counsel. The rookie public defender appeared to be somewhat less negotiation-oriented than the veteran defender. The younger attorney seemed more anxious to litigate cases in order to attain valuable trial experience. The beginning public defender also appeared to fight more in the area of charge reduction (see Illustration No. 18 on the following page) while the career defender concentrated primarily on sentence arrangements. Many of the newer public defenders and the private attorneys not familiar with juvenile court practice suffered the same handicap: they were not always certain what a case was worth (see Alschuler, 1975: 1268-1270). That is, inexperienced counsel were sometimes unaware of the standard sentence that was appropriate in a case, considering the severity of the charge(s), the youth's record and his

position on the dispositional ladder.

Illustration No. 18: A youth at pretrial was charged with felony aggravated assault. It was his first arrest. The victim had not been seriously injured. Cases similar to this one had typically been given a consent decree. The public defender, who was in his second week on the job, did not request a consent decree, however. Instead, he argued that the charge should be reduced to misdemeanor assault. The prosecutor had no objection to altering the charge. The two lawyers then negotiated a guilty plea for probation. The juvenile was adjudicated delinquent. The district attorney regularly worked pretrial and admitted to the researcher that this was a consent decree case but that he, the prosecutor, was not interested in initiating such a finding.

Illustration No. 19: The youth was arrested for violation of a controlled substance. It was his first arrest. On his initial appearance at pretrial Judge G and opposing counsel agreed that the case would be given a status listing so that the defendant could join the job corps. All parties agreed that the charge would be withdrawn if the accused went with job corps. The second pretrial was listed before Judge M, who was not as active as Judge G in personally resolving cases. That left matters to the public defender who was brand new at the job. She was not yet certain what charges qualified for either nol prossing or a consent decree. The prosecutor declared that the youth should admit the offense, and be put on probation to attend the job corps. Not knowing any better, the public defender concurred. The prosecutor later conceded that a veteran defense attorney would have fought to have the case dismissed altogether, or at least to be granted a consent decree.

In these situations the defense lawyers' inexperience influenced the development of a plea bargain. The veteran would most likely have known not to admit guilt in either case. Rather, the veteran would most likely have sought a dismissal via a consent decree or a nol pros. Inexperience tended to work in the opposite way as well.

Illustration No. 20: Privately retained counsel appeared with his client at pretrial. The youth was in for his first arrest, and the charge was burglary. The prosecutor read the police report. The defense attorney, who was in juvenile court for the first time, talked to the defendant

and said, "I guess we will have a trial, your Honor." The judge then explained that the sentence usually associated with a first-time residential burglary is probation, and that an admission at this point would immediately produce that disposition. After a brief conference with the youth and his parents, defense counsel announced there would be a guilty plea in this case. The juvenile was adjudicated delinquent and put on probation.

Here, the defense attorney's unfamiliarity with standard juvenile court operating procedures nearly necessitated a trial in a case that typically could be resolved via a negotiated guilty plea.

Besides occasionally affecting the existence or lack of plea bargaining, inexperience also contributed in one instance to the juvenile's not receiving the fullest possible benefit of mitigated justice.

Illustration No. 21: The juvenile's first arrest was an aggravated assault, which also involved a weapons charge. Private counsel had been in juvenile court only a few times before this case. He approached the district attorney and suggested a deal. The defendant would plead guilty to aggravated assault if the gun charge was dropped and if probation was the sentence. The prosecutor agreed, provided that the disposition was intensive probation. Defense counsel concurred. Someone more familiar with juvenile conviction and sentencing trends would have known that juvenile court judges (particularly a legalist like Judge K) rarely convict on aggravated assault in a case like this where the gun was used to threaten and not to injure, and that regular probation is the disposition for a routine first offense. The juvenile ended with a more severe conviction and a more severe disposition than standard practice would dictate.

On two occasions private counsel's inexperience deprived the youths of an opportunity to capitalize on offers of leniency from a judge.

Illustration NO. 22: A girl was before the court on a charge of aggravated assault on a police officer. It was the girl's first arrest. Judge H, who was sitting in pretrial, heard the facts of the case (a neighborhood quarrel that had erupted), and decided to rule on the matter as a

municipal court judge. Judge H found the defendant guilty of summary disorderly conduct (not amounting to a delinquent adjudication), fined her $10 and then remitted the fine. Incredibly, private counsel turned this down and insisted upon an adjudicatory hearing. As the district attorney commented, no public defender would have been so foolish as to reject Judge H's more than lenient offer. The prosecutor noted on the file, "Give Him a Hearing!" The case was next heard by Judge F at the adjudicatory level. The accused was adjudicated delinquent on simple assault and was placed on probation.

Illustration No. 23: Private counsel had asked the prosecutor for a consent decree but the latter was forced to refuse the request because the charge was robbery of a decoy cop. Counsel then asked to see all parties in chambers to see if the judge would grant a consent decree. The judge said it was up to the district attorney. Again, the latter would not comply. Privately, the prosecutor noted that he hoped the judge would give the consent decree, even though officially he would have to object on the record, because the defendant was only marginally involved in the offense. This case was only the second in the defense counsel's career. The judge told counsel she could ask for a consent decree after trial even if the defendant was convicted. The juvenile was adjudicated delinquent of theft and criminal conspiracy. For unknown reasons, the defense attorney asked for probation to which the district attorney had no objection.

In each of these cases the defense lawyer's unfamiliarity with juvenile court procedure resulted in a juvenile's being convicted despite the judge's willingness to extend mercy.

Except for these noteworthy situations defense counsel tended to perform well and rather uniformly in juvenile court. Their objective was consistently pursued: to fight the prosecution with all means available in order to secure for the client the least severe conviction and sentence. Where appropriate, the defense attorney sought this goal via plea negotation or through some other subset of mitigated justice. No defense lawyers revealed any substantial aversion to plea bargaining. To be sure, some were more litigation-oriented than others, but all public defenders and most private counsel were

observed participating in at least one plea bargain. For the most part, it would seem that each defense attorney would agree that he/she would have almost an obligation to negotiate a guilty plea whenever a juvenile would appear to fare better by doing so (see Notes and Comments, 1979: 149).[33]

By the time a plea bargain transpired half of the defense attorney's duties had already been performed. The first job was to examine the case, including the strengths and weaknesses of the evidence the state had against the defendant and the latter's record. In other words, the accused's convictability and sentence eligibility were determined (see Newman, 1966: 198; ABA, 1980: Ch. 4, p. 70). Just how thoroughly this work was accomplished depended largely upon two factors. The first was the lawyer's previous juvenile court experience which has already been discussed (see Clark, 1978: 4; Newman, 1966: 201). The second factor was the stage in which the case was located.

At detention hearings the case against the youth was very new (usually within 48 hours). There usually had not been a chance yet for the lawyer to discuss matters with the accused. In fact, ordinarily the attorney saw the child for the first time as the latter was brought into the courtroom. Besides a very brief discussion with the juvenile at the bar of the court, the only information the defense learned at this point came from the police report which was read aloud by the district attorney. Thus, it was often difficult for the defense attorney to assess the client's outlook for conviction and sentence at this time. This ignorance helps to explain why so few cases were negotiated at the detention stage (see Chapter 9).[34]

The situation improved somewhat at pretrial. Defense counsel

usually had talked with the juvenile by this time and had a decent, albeit one-sided, understanding as to the dimensions of the case. Nonetheless, pretrial was the first opportunity for counsel to hear the police report, the victim's and arresting officer's sides of the case against the defendant. Like detention, at pretrial the lawyer had very little time in which to decide the merits of pursuing trial or accepting an informal non-trial disposition.

Transfer and adjudicatory hearings were decidedly the best opportunities defense lawyers had to examine the cases against their clients. These hearings often occurred several weeks after the arrest and perhaps a month or more after pretrial. By this time counsel had interviewed the defendant and had received a copy of the petition or complaint.

The second major defense task was to advise the accused of the implications and consequences of various options (Newman, 1966: 209; Bond, 1975: 200; ABA, 1980: Ch. 4, p. 73). In other words, the youth had to decide whether to seek dismissal, plead guilty or go to trial. Again, the court stage influenced the completeness with which the defense attorney could inform the juvenile of his alternative courses of action. Both the detention and pretrial hearings provided the defense lawyer with only a couple of minutes in which to learn the facts and to suggest a plea, all of which took place at the bar of the court. The transfer and adjudicatory hearings allowed much more time for counsel to fulfill this duty, which occurred while the juvenile was being interviewed by the defense attorney in the latter's office.

The defense attorney's third mission was to decide whether a plea negotiation or related arrangement was beneficial to the client, and,

they had done nothing wrong. Although no coercion by the defense lawyer was exerted on the accused to plead guilty, and many cases thereby went to trial despite the potential for a deal, counsel's usual response in this situation was to emphasize the strength of the prosecution's case.

> Illustration No. 24: A juvenile with a fairly extensive record was before Judge A for robbery. The judge reviewed the file and called the district attorney and the public defender together in chambers. Judge A said he would reduce the charge to simple assault and place the child in Glen Mills for four weeks. The public defender explained this to the defendant who wanted to plead not guilty because he did not commit the crime. Counsel told the youth that a police officer had seen the accused do the act and that that testimony would be sufficient to convict him of a more serious charge for which he would be sent away anyway. The public defender said the defendant might as well plead guilty to the lower charge. The juvenile complied.

The final duty that fulfilled the defense attorney's role in plea bargaining was to ensure that the defendant understood the guilty plea and its consequences, and was aware of the rights he was surrendering thereby (ABA, 1980: Ch. 4, p. 45; Newman, 1966: 206). When complete sentence bargains were involved the accused always had knowledge as to the specific disposition in his case. Before tendering the guilty plea the defense attorney invariably discussed with the defendant the sentence contained in the judge's or the prosecutor's offer. Incomplete sentence bargains and charge bargains were another matter, however. The most defense counsel could tell the youth was the range of sentences that were possible following conviction. Counsel always appeared to inform the defendant that the plea bargain was a gamble. The same can be noted for the non-negotiated guilty plea.

With respect to informing the juvenile of his rights, the presiding judge was more important than the stage at which the plea bargain took place. The conciliator and the administrator relied heavily upon the defense attorney to instruct the accused. When either of these judges was involved there was, at best, only a cursory explanation given by defense counsel as to the defendant's rights and the effect of his waiving them (see Chapter 10). When the legalist supervised a plea bargain, however, he made sure the accused was aware of these items by having the defense attorney qualify the former and tell him what the guilty plea meant or by the judge's conducting the colloquy himself (see Chapter 10).

Plea bargaining did not seem to compromise the defense lawyer's obligations to the client in juvenile court as it is claimed to do in criminal court (Alschuler, 1975). For example, counsel was not observed playing games with the accused, pretending to get the latter a great deal when that simply was not so. Interestingly, it appeared that the juveniles had a good sense of what their cases were worth in sentence terms (perhaps from previous contact with the system or with other youths' having prior court experience). Several youths were heard commenting on their warranting consent decrees or probation because they were before the court for first offenses. These defendants seemed to sense that juvenile court was not supposed to "hurt" them and their experiences confirmed that impression. If anything, the judge rather than the defense counsel was probably viewed by many juveniles as their benefactor.

Defense lawyers (and specifically the public defender) did not

appear to "trade out" one client for the benefit of another in juvenile court (see Nardulli, 1978: 67-77; Alschuler, 1975: 1181-1203). First of all, the vast majority of defendants was treated with leniency. Moreover, although some aspects of the juvenile court process (like pretrial) resembled mass-produced justice, individualized treatment was still the reason d'etre of the juvenile justice system. A youth was consistently measured by his position on the dispositional ladder; for the most part, he did not seem to be rewarded or penalized substantially for cooperating in or resisting adjudication. Counsel would appear, thusly, to have little cause to "trade out". The district attorneys upheld this view, objecting, in fact, to defense counsels' fighting in virtually every case.

On a similar note, private counsel were not observed "selling out" clients in order to enhance their income. Table #20 supports this conclusion, indicating that private and public counsel went to trial and negotiated in roughly equal proportions. Finally, stakes were not as high in juvenile court as they are in the adult system; there were no death penalties or life sentences in the former. Basically, the most severe sanction was transfer to adult court which meant a trial would occur in that forum. Consequently, defense lawyers in juvenile court were not forced to gamble with the defendants' lives (see Feeley, 1979b; Alschuler, 1975: 1205). In fact, with no trial penalty per se, defense counsel rarely found himself in an unenviable Catch 22 situation in juvenile court.

C. The Prosecutor

For the most part there were no prosecutors in juvenile court during the pre-Gault era. Probation officers usually summarized the evidence against the accused at the all-purpose juvenile court hearing. Otherwise, the complainant and/or the police officer might have appeared to testify against the defendant. Even after Gault, many jurisdictions have resisted the movement to include the prosecutor as a viable part in juvenile court proceedings (Finkelstein, 1976). Before long, however, the prosecutor should be viewed as a necessary, if not a desirable, participant by virtually all juvenile courts. Many juvenile justice authorities believe the prosecutor is needed for adversarial balance. That is, the presence of the prosecutor gives defense counsel an adversary or combatant to oppose other than the judge (see Streib, 1978: 72-74; Stapleton and Teitelbaum, 1972: 147; Skoler, 1968b: 576-577; and, Besharov, 1974: 39-41).[35]

Where the prosecutor has been added to the juvenile court staff he has often been given what is potentially a conflicting command. The prosecutor is primarily responsible for protecting the public; he is society's (and the victim's) representative in juvenile court. At the same time, however, the prosecutor is charged to do everything to promote (or at least not to lose sight of) the essential mission of juvenile court: to ascertain the treatment which will most benefit the juvenile (McCarthy, 1977: 1112-1113; IJA/ABA, 1977c: 2-3; Besharov, 1974: 44-45; and Fox, 1970). These two responsibilities do not always coincide.

Previous research has recognized four types of prosecutors. The "administrator" wants to dispose of each case in the fastest, most efficient manner in order to get the work done. The "advocate" seeks to maximize the number of convictions and the severity of sentences. The last two types are more defendant-oriented. Whereas the "judge" wants simply to do the right thing for the accused, the "legislator" grants concessions because the law is too harsh (Alschuler, 1968: 52-53).

Unlike both the judges(who divided into three groupings) and the defense attorneys (who are all one type), each prosecutor in juvenile court appeared to vary, from time to time, from one type to another, except that no one ever performed like a legislator. In other words, any one district attorney could have behaved during the course of the study like an administrator, and advocate, and, a judge.

Illustration No. 25: (The administrator). District attorney #2 worked pretrial regularly. In many cases he had a solid case where conviction was almost a certainty. Nevertheless, often he negotiated cases like these because sending them to trial would only cause backlog and possible interference with cases that truly needed trial. He viewed pretrial as a screening process that helped juvenile court operate in a fast, efficient manner.

Illustration No. 26: (The advocate). In several certification hearings district attorney #2 became virtually obsessed with transferring a "bad" juvenile to adult court. He refused to talk with defense attorneys about possible plea bargains. He pressed at both the preliminary hearing and the amenability hearing to convince the judge the juvenile justice system should rid itself of this defendant. No quarter was given.[36]

Illustration No. 27: (The judge). A juvenile was before Judge G at pretrial. He was one month away from his eighteenth birthday. This commercial burglary was his first arrest. Judge G explained the situation to the youth and offered him a consent decree. District attorney #2 intervened and said it was

a shame to ruin this child's record after he had been good for so long. Rather than soil the juvenile'e record, the district attorney dropped the charges against the defendant.

Contrary to appearances this district attorney did not suffer from a multiple personality disorder. Rather, the circumstances of each case simply determined how the prosecutor responded. Whereas consistency might be expected from the other actors (e.g., defense counsel zealously represented all clients, guilty and innocent alike), the prosecutor enjoys considerable discretion to act according to the dictates of the case; he is much more situation-oriented than the other juvenile court parties.

There were individual differences among the district attorneys such that some preferred trial more than others. Nevertheless, all three types of prosecutors were candidates for plea bargaining (see Chapter 8). Although no statistics were kept, it appeared the advocate was the most prone to go to trial. Any district attorney who appeared in the very serious cases that arose periodically acted pretty much like an advocate, tending to favor trial over mitigated justice. Otherwise, only the young, inexperienced district attorneys were more advocate-oriented than their peers and were more likely to press for trial. Like the new public defenders, the novice prosecutors needed trial exposure and juvenile court was the safest place to receive that training.[37]

Essentially all the district attorneys objected to what they termed the excessive leniency that characterized the handling of youth in juvenile court (which is why no prosecutor acted like a legislator). The young district attorney seemed to object the most vehemently. Eventually, however, all the prosecutors seemed to

become somewhat "juvenile court-ized." That is, the district attorneys soon learned that they could not buck the disposition structure. Both the treatment rationale (e.g., trying probation for all first offenses) and the system's volume demands (i.e., the system could get swamped) suggested a need to be lenient with juveniles. The prosecutor quickly learned to evaluate where the defendant was and where he belonged on the dispositional ladder and what a particular case was worth (conviction- and sentence-wise). Perhaps even more important, the district attorney soon realized the vagaries of trial by his witnessing "sure" convictions end in dismissals and acquittals. This knowlege gained over time seemed to make the more experienced district attorney less enamored of trial and more amenable to plea bargaining (see Heumann, 1978: 100-102). Every prosecutor was observed participating in at least one plea bargain.

On some occasions the prosecutor had little or no role in the mitigated justice activity that took place in juvenile court. The conciliator typically negotiated a guilty plea directly with the defendant or defense counsel and largely ignored the district attorney, even when the latter opposed a deal. Defense counsel often by-passed the prosecutor and tried to plea bargain with the judge. Non-negotiated guilty pleas required only the passive agreement on the district attorney's part not to press for trial. Finally, negotiated and non-negotiated dismissals were often carried out without the prosecutor's involvement.

When the district attorney did participate in plea bargaining

he had, according to the American Bar Association, several duties to observe. First, he was responsible for having a known plea bargaining policy which was available to similarly-situated defendants (1980: Ch. 3, p. 64). The district attorney's official policy towards plea bargaining in juvenile court was favorable, except that in the middle of the study, bargaining was discouraged (and valid only with the unit chief's permission) in all transfer cases. The only youth who could claim to have been discriminated against (i.e., having less opportunity to plea bargain) was the juvenile who was introduced to the court via a detention hearng. Although the detained defendant was often in same circumstance (in charge and record terms)[38] as the child who appeared in pretrial, the latter appeared much more likely to have his case plea bargained or nol prossed. Plea bargaining and discretionary dismissals were relatively rare at the detention level (see Chapter 9); detention cases were almost automatically sent to an adjudicatory hearing. Of course, the cases sent from detention could always have been plea bargained or dismissed (and many were) at the adjudicatory stage. At the very least all the detention cases were treated similarly.

Since this was a qualitative study it is impossible to positively state whether one type of defendant was singled out as excluded from the chance to plea bargain or to have his case disposed by mitigated justice. It seems highly unlikely that this would have occurred, however. The dispositional structure virtually guaranteed equity in the sentences similarly-situated juveniles received, regardless of whether the case was resolved by trial or by plea bargaining. It would appear, therefore, to have made little, if any, sense for the prose-

cutor to have varied the means for some defendant (i.e., refuse to bargain) when the ends (i.e., sentences) were practically certain to be the same for all juveniles with a similar background.

The prosecutor's second job was to negotiate with defense counsel and not with the accused (ABA, 1980: Ch. 3, p. 64). This duty was faithfully discharged by the district attorney who was observed discussing matters with the defense attorney and the judge (in the presence of defense counsel), but was never seen bargaining directly with the defendant. The prosecutor's third task was much more difficult. He was to make no false statements or misrepresentations to the defense (ABA, 1980: Ch. 3, p. 64). Although no falsities or misrepresentations were overheard, omissions were quite prevalent. Often the district attorney would not tell defense counsel that the complainant no longer wished to prosecute and/or had not appeared in court. Other weaknesses in the prosecutor's cases were also not disclosed to the defense.[39]

Related to this "dishonesty" aspect of the district attorney's performance are the controversial issues of overcharging and the use of threats. Some authorities insist the prosecutor charges excessively high in order to get leverage with which to bargain with defense counsel (see Alschuler, 1968: 85-105). Other experts suggest that the district attorney does no more than charge the highest offense which technically fits the circumstances of the case (see Utz, 1978: 105-106). In the traditional juvenile court like Philadelphia's, the prosecutor does not get much of a chance to charge at all. Charging is done by the probation staff at intake. Adjustments were made by the district attorney, particularly at pretrial. Charges were raised

only rarely, however, and then only with the judge's approval. Thus, although many defense attorneys complained that charging was excessive in juvenile court, the prosecutor was not the guilty party. The district attorneys did not feel that they had any advantage in negotiation due to their or intake's overcharging defendant.

Despite the fact that prosecutors were not in a position to overcharge they were inclined to use threats in order to get the arrangement they wanted. A number of times the district attorney was observed threatening the defense lawyer with a severe sanction if the latter did not agree to his demands.

> Illustration No. 28: A defendant with a prior record was before the court on a robbery charge. The prosecutor offered to lower the charge to theft but he wanted the youth committed to Glen Mills. He told private counsel he would push for Cornwells Heights if the accused did not cooperate. The defense lawyer related the threat to the defendant. The latter complied with the district attorney's request. The prosecutor noted that he could not threaten the defense too often or he would lose his credibility.
>
> Illustration No. 29: The prosecutor was not ready on any of the three cases the defendant had in court. The youth had already been accepted at Sleighton Farms. The district attorney suggested the withdrawal of two cases if the juvenile would plead guilty to a reduced charge in the third case and accept the commitment to Sleighton Farms. Otherwise, the prosecutor promised to demand the defendant be held during the continuance. The defense attorney did not want to gamble on the youth's being detained so he accepted the district attorney's offer.
>
> Illustration No. 30: A juvenile was charged with a robbery and a burglary which were committed before his incarceration at Forrestry Camp. The juvenile did not want to admit to the offenses. The judge ordered him detained at the Youth Studies Center pending trial. The defendant then said he wanted to plead guilty so he could go back to Forestry Camp and not to the Y.S.C. The judge did not want to force the youth to admit, but the latter insisted. After a colloquy, the judge asked the mother if she objected to what was happening. She explained

> her son committed the robbery but not the burglary (he had merely received stolen property). The judge hastily called a sidebar. He asked the district attorney to withdraw the burglary since there was an admission to the robbery. The prosecutor refused and stated that actually he had been considering transfer. The public defender told the district attorney why his client would not plead to the burglary. The prosecutor offered to let the case go to certification. The defense attorney consulted the juvenile and his mother. The defendant pled guilty to both the robbery and the burglary and was allowed to remain at Forrestry Camp.

As the illustrations indicate threats usually centered around the prosecutor's demanding the youth be held in detention, confined in a certain institution, or transferred to adult court. Threats had to be realistic. Defense lawyers familiar with the juvenile court format understood it was extremely unlikely for a district attorney to be able to bring about a result that was not contemplated by the dispositional structure. For example, it would have been implausible for a prosecutor to have insisted that a defendant plead guilty to his first injury-free robbery charge or face the prospect of transfer (or even commitment, for that matter). Neither transfer nor incarceration had even a remote chance of being the sentence for the typical first offense robbery.

The district attorney's final task was to fulfill the bargains he had made (ABA, 1980: Ch. 3, p. 66). In virtually every case this duty was performed by necessity. The standard operating procedure following a deal in which the prosecutor was involved was to have him announce to the court that a negotiated plea had been arranged. The district attorney would then disclose for the judge's edification (and ratification) the charge and sentence agreements that had been reached between counsel. Once revealed, the deal was made part of the court record. The prosecutor would have had a difficult time, indeed, reneging on his promise. Only one case was observed to be an exception to this rule:

Illustration No. 31: Opposing counsel had agreed that the defendant would plead guilty on robbery in exchange for being placed on intensive probation. The district attorney informed the court that a plea bargain had transpired and that the youth would plead guilty. Judge A interrupted the prosecutor who did not get a chance at that point to make a sentence recommendation. The defendant was held at the Youth Studies Center pending the completion of a plan. Commitment looked probable. Counsel swore the next time he would state the agreement before tendering a guilty plea. Ironically, the juvenile was placed on regular probation, a better sentence that his lawyer had tried to arrange for him.

Like the judge and the defense attorney, the juvenile court prosecutor did not appear to undergo a distortion in his role because of the availability of plea negotiation. Opponents of adult court plea bargaining criticize the district attorney's assumption of too much power and control over the adjudicative process. Specifically, critics cite that plea negotiation in criminal court merges the prosecutor's charging, the jury's convicting and the judge's sentencing functions into one role played by the district attorney (Pugh, 1976; Arenella, 1980: 525; Langbein, 1978: 18; Morris, 1974: 53). Despite the presence of plea bargaining, assertive judges, the treatment mentality and the dispositional ladder combined to prevent the prosecutor's dominating other actors and their duties in juvenile court.[40]

D. The Probation Officer

Although the probation officer had a crucial role to play in juvenile court, that role, for the most part, did not entail plea bargaining. That is, the probation officer was not influential in determining whether a case was plea bargained or went to trial. Instead, the probation officer was instrumental in formulating treatment plans for convicted and about-to-be adjudicated juveniles. It seemed that the probation officer was also responsible for initiating and maintaining

the dispositional ladder.

Unlike the adult court where pre-sentence investigations are conducted following conviction, in juvenile court the probation officer is frequently charged with developing an appropriate disposition package for the juvenile defendant prior to trial. By the time of the adjudicatory hearing, then, opposing counsel often knew the sentence that would be proposed by the probation officer (and most likely accepted by the judge) were the accused to be convicted. At times counsels' having this information facilitated plea bargaining's occurring inasmuch as both sides knew the probable disposition and had only the charge(s) over which to differ and to bargain (see Chapter 8). Passively, then, the probation officer contributed significantly to plea negotiation in juvenile court.

Actually, on a handful of occasions the probation officer actively participated in the plea bargaining process. Although the probation officer intervened only sparingly, when he became involved he proved to be rather powerful. The probation officer's mere word quickly resolved a number of cases via plea negotiation.

Illustration No. 32: A juvenile arrested for the third time was in pretrial for an auto theft. The youth had one prior adjudication. The case was about to be sent to an adjudicatory hearing. The probation officer appeared suddenly and asked the judge if he would allow the defendant to plead guilty and to continue on probation. The probation officer explained that the accused was doing well on probation and realized if he commits one more crime he will be incarcerated. The judge was amenable to the proposal, and the juvenile, after conferring with counsel, pled guilty.[41]

Illustration No. 33: Judge G, who was ordinarily prone to negotiate cases, announced that this robbery and aggravated assault on an officer charge was going to be sent to an adjudicatory hearing. The youth had one prior adjudication and was on probation. The probation officer showed and convinced

Judge G that the defendant would perform well on intensive probation. All parties agreed and the juvenile pled guilty.

Illustration No. 34: A defendant with two prior adjudications was in pretrial for a burglary. As the juvenile appeared destined for commitment, neither the judge nor opposing counsel attempted to negotiate the case. While the matter was still pending the probation officer was summoned. He requested the judge give the youth one more chance on probation because the latter was starting to make real progress. The defendant pled guilty and his probation was extended.

The probation officer's presence was felt in commitment cases as well.

Illustration No. 35: A juvenile with a bad record had a detention hearing before Judge H. The charge was robbery. The prosecutor asked for a trial. The probation officer appeared and said that he had arranged for the defendant's acceptance at Sleighton Farms. This disposition was agreeable to the accused and defense counsel. The youth admitted and was immediately committed.

Illustration No. 36: The defendant had five prior adjudications and was on intensive probation. The charge was only retail theft, however. The probation officer came to pretrial and informed all parties that the juvenile had been accepted at Glen Mills. The probation officer argued that the child would do better at the institution than at home. The defendant agreed and pled guilty.

Interestingly, at merely the probation officer's request the above five cases ended in a negotiated settlement. Except for these cases, however, the probation officer did not get involved in affecting the method of conviction in juvenile court, despite his considerable potential to influence the way cases were resolved. A few times the probation officer appeared at detention or pretrial to argue that a defendant with a particularly bad record would need to have his case go to trial. This interference was largely inconsequential since the cases in which the probation officer made this observation were virtually destined for trial anyway.

It is interesting to note that the probation officer's activity in

promoting guilty pleas or trials was limited to the preliminary stages of the court process. Once the case reached the adjudicatory level the probation officer seemed to have nothing to say about how conviction should be obtained. He was not heard from again until after conviction.[42]

E. The Parent

In the adult system the defendant's family members are not generally considered as having a significant role in plea negotiation, although one authority has reported that relatives at times induce guilty pleas (Alschuler, 1968: 192-194). Although the same general statement may be made about juvenile court, there were a number of very important exceptions. Occasionally, the parent contributed to the development of a plea bargain.

Illustration No. 37: The juvenile and his father had been sent from a neighboring county to Philadelphia to resolve an auto theft charge because, although the crime occurred elsewhere, the child lived in the city. The judge explained, however, that a mistake had been made inasmuch as the trial should have taken place before the defendant was referred to Philadelphia. The judge informed the youth that he could plead guilty immediately and just as quickly be put on probation, or he could return to the neighboring county for trial, and then reappear in Philadelphia for sentencing. The juvenile did not appear willing to concede guilt. Nevertheless, the father announced that they were not going to travel around Pennsylvania for the rest of their lives and that probation was just fine. The accused pled guilty.

Illustration No. 38: A youth appeared at pretrial before Judge M charged with robbery. It was the child's first arrest. The public defender wanted trial. The defendant was only 11 years old and the defense attorney hoped that another judge would grant a consent decree later on. The parents did not want to return to court, however. The accused pled guilty and was placed on probation.

More often the parent proved to be an obstacle to plea negotiation.

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Illustration No. 39: Two co-defendants were in court for their first robbery. The public defender and the district attorney had agreed to a guilty plea in exchange for probation. The parents protested their childrens' innocence and demanded trial. Eventually both juveniles were convicted and placed on probation.

Illustration No. 40: Four co-defendants were charged with their first burglary. The prosecutor offered probation and $300 restitution, each, in return for the youths' pleading guilty. The public defender said fine. The parents balked at the idea of paying restitution, however. The four cases were sent to trial. Fortunately for the juveniles the ultimate disposition for each was a consent decree and a $300 restitution order.

In the last two illustrations the parents' interventions brought about dispositions that either were no worse than or (in the second case) were actually better than those reached by the defense attorney. Since the results were benign the defense attorney did not object to the parental interference. A real problem arose when the parents' voicing their opinions "hurt" the juvenile by upsetting a beneficial arrangement defense counsel had already achieved.

Illustration No. 41: A defendant with two prior adjudications was implicated in a serious burglary. The public defender felt very fortunate in securing from the prosecutor an agreement that a guilty plea would allow the youth to stay on probation. The juvenile's parents objected to this deal. They wanted the defendant put away. The case went to an adjudicatory hearing. The youth was convicted and committed to Glen Mills.

Illustration No. 42: The child was in court for the first time, charged with theft. The complainant was the defendant's mother. A consent decree had been agreed upon by all parties except the mother who spoke up and declared the youth was bad at home and could not be controlled. The case went to trial and, after adjudication, the youth was institutionalized in a facility catering to drug dependent children.

These illustrations point to the difficulty inherent in the situation where the parent and the child arguably have opposing interests. The

parent's "right" to interject can compromise both the defense attorney's objective to keep the juvenile as far down the dispositional ladder as possible and the defendant's right to be effectively represented by counsel. Despite the very real potential for abuse authorities continue to recommend that parents be allowed to make their feelings known to the court (IJA/ABA, 1977a: 62-63).

The foregoing demonstrates that any one of a number of individuals could be and were instrumental either in furthering or in frustrating the cause of mitigated justice in juvenile court. The chemistry had to be right for a plea bargain or related matter to occur. At times the defense attorney knew a particular district attorney was amenable to dealing and negotiated with him accordingly. Thus, familiarity among counsel sometimes contributed to the occurrence of plea bargaining (see Eisenstein and Jacob, 1977: 35). On the other hand, some prosecutors were less approachable while some defense attorneys were litigation-oriented. The court regulars understood not to attempt to negotiate with these individuals in most situations. Thus, familiarity among counsel sometimes blocked plea negotiation. In fact, past sins could mark a lawyer for tough treatment, such that opposing counsel would refuse to negotiate with him.

Illustration No. 43: At a transfer hearing the public defender asked the district attorney to withdraw certification and agree to the youth's commitment to Cornwells Heights. The prosecutor refused. He explained later that the public defender had angered him all week by the way cases were handled. Specifically, in this case, the defense attorney had waited until the last minute to propose the deal. The witnesses were thus forced to wait unnecessarily for the matter to be called. The prosecutor went forward with a preliminary hearing and established a prima facie case. The matter was continued for the amenability decision. Two listings later the aforementioned plea bargain was carried out by two different attorneys.

Of course, the relationship between counsel was only complicated by the presence of the judge, who, depending upon his orientation, either promoted or prevented plea bargaining on his own.[43]

At the very least in plea bargaining the judge and the defense attorney had to concur on the outcome in the case. And the bottom line requires the defendant to agree, willingly or not, to plead guilty and to accept the terms offered by the state representative (i.e., the judge or the prosecutor).

FOOTNOTES

[1]The roles for all parties in juvenile court were identified according to how the person acted in juvenile court (see Levinson, 1959: 172-173).

[2]Arguably, decreasing judicial power was one of the major objectives of the Supreme Court opinion (In re Gault, 1967: 18-19).

[3]See In re Winship, 1970 and Breed v. Jones, 1975.

[4]McKeiver v. Pa.(1971) has left open the possibility that the social work orientation is the appropriate one in juvenile court.

[5]As other plea bargaining studies have found, it is important to focus upon the individuals in the jurisdiction rather than upon the jurisdiction as a whole (see Miller et al., 1978: 229).

[6]The second most important question is how the judge should handle the guilty plea. This topic is treated in Chapter 10.

[7]Those opposed to judicial participation in plea bargaining cite in support of this position the coerciveness, the unseemliness, the judge's inability to remain impartial and to conduct trial if the plea breaks down, and similarly, his inability to monitor the entire process if he is actively pursuing plea agreements (Alschuler, 1976: 1103-1120; Heberling, 1972: 195-197; Gallagher, 1974: 38-45; and, White, 1971: 452-453). Those favoring active judicial participation in plea bargaining argue that it is less coercive than the prosecutorial brand, that there would be more control over the district attorney's actions, that plea bargaining would be more open and easier to monitor, and, that the defendant could place greater reliance upon offers made by a judge than those made by a prosecutor (Alschuler, 1976: 1124-1165; Lambros, 1971: 515-517; Pugh and Radamaker, 1981: 90; Uviller, 1977: 117-118; and Pugh, 1976). The National Advisory Committee on Criminal Justice Standards and Goals (NAC, 1976) and the Institute of Judicial Administration/ American Bar Association (IJA/ABA, 1977a) recommend that the judge not participate in plea bargaining in juvenile court.

[8]All 25 visits in Judge A's courtroom were on an adjudicatory list. Thus, he did not preside over pretrials in the study. Judge A did resolve some certification and detention hearings, however, which normally appear in the adjudicatory list room (see Chapter 4).

[9]Judge A resolved 24 cases at certification, of which 7 (or 29.2%) were plea bargained. Only 2 of the 102 cases which appeared before Judge A at detention were plea negotiated. Altogether, 63 of the 318 cases (19.8%) resolved by Judge A were plea bargains. The 63 negotiated pleas amounted to 6.9% of all the plea bargains in the study.

[10]There were also 2 timed guilty pleas and 3 cases involving charge gambling among the non-negotiated guilty pleas in Judge A's courtroom.

[11]Judge G sat in pretrial during 22 of 25 visits in the study. He sat in an adjudicatory room for the remaining 3 visits. Judge G was regularly assigned to pretrial. Essentially, all other judges who appeared in that room were temporary replacements for Judge G.

[12]When Judge G presided at the adjudicatory stage 7 of the 23 cases (30.4%) he resolved were plea bargained. Judge G's one certification matter was not a negotiated guilty plea.

[13]There can be no casual relationship inferred here because there were no controls placed on the severity of the charge, or the extent of the juvenile's record, or the type of defense representation. These factors and others (e.g., was the child detained, the length of the court list) could dramatically influence the amount of plea bargaining done in any one courtroom before any particular judge. The same caution applies to analyzing Tables #4, #5 and #6 in this chapter.

[14]They also accounted for 39 of the 104 (37.5%) non-negotiated guilty pleas.

[15]Mitigated justice includes, here, plea bargains, negotiated and non-negotiated dismissals, and non-negotiated guilty pleas, except the straight guilty plea.

[16]Judge F saw considerable plea bargaining at the certification level as well. Whereas only 2 cases (10.5%) went to a hearing, 11 cases (57.9%) were plea bargained and 6 cases (31.6%) were nol prossed, all in exchange for guilty pleas in other cases. There was no plea bargaining before Judge F at detention hearings. Instead 68 cases (84%) went to trial, 9 escaped prisoner charges (11.1%) were nol prossed, and 4 cases (4.9%) ended as consent decrees. Judge F resolved 23.8% of his workload (70 of 294 cases) by plea bargaining. The 70 deals accounted for 7.6% of all plea bargains observed in juvenile court.

[17]At the detention level, 49 of Judge H's cases (85.9%) went to the adjudicatory stage, 2 were plea bargained (3.5%), 5 escaped prisoner cases were determined (8.8%), and 1 case (1.8%) was given a consent decree. There was more plea bargaining before Judge H at transfer hearings. In all, 13 cases (52%) were resolved by hearings, 9 cases (36%) involved negotiated guilty pleas, while 3 cases (12%) were withdrawn in exchange for an admission of guilt to another charge. The 115 plea bargains in his caseload marked 26.8% of the total number of cases he resolved and 12.5% of all plea bargains in the study.

[18]The other 11 non-negotiated guilty pleas were 9 timed and 2 charge gambling quilty pleas.

[19]In certification matters Judge M presided over 5 trials (83.3%) while 1 case (16.7%) was plea bargained. In the detention category, Judge M's results were: 45 contined for trial (80.4%); 2 plea bargains (3.6%); 5 nol pros (8.9%); and, 4 consent decrees (7.1%). Plea bargaining resolved 85 of the 516 cases (16.5%) handled by Judge M. The 85 plea bargains amounted to 9.3% of all plea bargains in the study.

[20]A possible explanation for this discrepancy is that at pretrial Judge M was not forced to make adjudicative decisions. He could simply pass the case on to an adjudicatory hearing where difficult legal questions would be resolved by someone else. However, when Judge M sat at the adjudicatory level he was directly confronted with having to resolve the difficult question, which possibly made him more amenable to negotiated settlements.

[21]Whereas both conciliators and all 3 administrators were full-time appointments to juvenile court, only 3 (Judges D, I and L) of the 9 legalists occupied that status. The other 6 legalists (Judges B, C, E, J, K, and N) were replacement judges, working in the juvenile court's delinquency branch less than two months a year.

[22]Judge D did not ratify any plea bargains at either the detention level where 30 cases (90.9%) were sent to trial and 3 cases (9.1%) were nol prossed or the certification level where both cases he resolved were done so by hearings. Altogether, Judge D supervised 3 plea bargains, which was 3.6% of his resolved cases, and .33% of all plea bargains in the study.

[23]Counsel did negotiate before Judge B at the transfer stage. Two of the 5 (40%) certification cases resolved by Judge B were plea bargains. The other 3 cases (60%) involved hearings. With respect to detention hearings, 101 cases (87.8%) were forwarded for adjudicatory hearings, 4 cases (3.5%) were negotiated guilty pleas, 8 cases (7%) were nol prossed, and 2 cases (1.7%) were consent decrees. Judge B's 90 plea bargains among 646 resolved cases equaled 13.9% of his workload, and 9.8% of all plea bargains observed in juvenile court.

[24]Judge I did not ratify as many plea bargains, percentage-wise, at pretrial, however. Only 36 cases (11.7%) were negotiated pleas. A much higher percentage (46.6%) of the cases (143 cases) went to trial. Consent decrees were given to 100 cases (32.6%) and 28 cases (9.1%) were nol prossed. Plea bargaining was also sparse at the detention level: 103 cases (81.1%) were sent to the adjudicatory stage; 3 cases (2.4%) were plea bargained; 16 cases (12.6) were nol prossed; and, 5 cases (3.9%) were given consent decrees. At the certification proceeding, 2 of Judge I's cases were hearings (40%), 1 was a negotiated plea (20%), and 2 were nol prossed (40%). Altogether, 82 of the 611 cases (13.4%) Judge I resolved were plea bargains. The 82 deals were 8.9% of all plea bargains in the study.

[25]The one other extreme legalist was Judge L whose performance was as follows:

Adjudicatory: 33 trials (63.5%); 9 plea bargains (17.3%); 4 nol pros (7.7%); and, 6 consent decrees (11.5%).

Certification: 2 trials (100%).

Detention: 31 trials (93.9%); and, 2 nol pros (6.1%).

In all, Judge L supervised 9 plea bargains, which was 10.3% of his workload and .98% or all plea bargains in the study.

[26]Joining Judge I as willing ratifiers were 5 replacement judges (C, E, J, K, N). The results of case resolution for each of the replacement judges are as follows:

Judge C: Adjudicatory: 13 trials (26%); 9 plea bargains (18%); 4 non-negotiated guilty pleas (8%); 19 nol pros (38%); and, 5 consent decrees (10%).

Detention: 26 trials (83.9%); 3 nol pros (9.7%); and, 2 consent decrees (6.4%).

Judge C resolved 9 of his 81 cases (11.1%) wth plea bargaining. The 9 negotiated pleas were .98% of all plea bargains observed in juvenile court.

Judge E: Adjudicatory: 13 trials (44.8%); 6 plea bargains (20.7%); 2 non-negotiated guilty pleas (6.9%); 7 nol pros (24.1%); and, 1 consent decree (3.4%).

Pretrial: 146 trials (49.7%); 82 plea bargains(27.9%); 1 non-negotiated guilty plea (.3%); 11 nol pros (3.7%); and, 54 consent decrees (18.4%).

Certification: 1 trial (100%).

Detention: 35 trials (85.4%); 1 plea bargain (2.4%); 4 nol pros (9.8%); and, 1 consent decree (2.4%).

Judge E resolved 89 of his 365 cases (24.4%) with plea bargaining. The 89 negotiated pleas were 9.7% of all plea bargains in the study.

Judge J: Adjudicatory: 11 trials (42.3%); 3 plea bargains (11.5%); 1 non-negotiated guilty plea (3.8%); 9 nol pros (34.6%); and, 2 consent decrees (7.7%).

Detention: 7 trials (70%); and, 3 nol pros (30%).

Judge J resolved 3 of his 36 cases (8.3%) with plea bargaining. The 3 plea bargains were .33% of all negotiated guilty pleas in the study.

Judge K: Adjudicatory: 50 trials (62.5%); 16 plea bargains (20%); 4 non-negotiated guilty pleas (5%); 9 nol pros (11.25%); and 1 consent decree (1.25%).

Detention: 28 trials (73.7%); 1 non-negotiated guilty plea (2.6%); 8 nol pros (21.1%); and, 1 consent decree (2.6%).

Certification: 5 trials (100%).

Judge K resolved 16 of his 123 cases (13.0%) with plea bargaining. The 16 negotiated pleas were 1.7% of all plea bargains in the study.

Judge N: Adjudicatory: 2 trials (22.2%); 4 plea bargains 44.4%); 1 nol pros (11.1%); and, 2 consent decrees (22.2%).

Certification: 4 trials (80%); and, 1 plea bargain (20%).

Detention: 4 trials (33.3%); 1 plea bargain (8.3%); 2 nol pros (16.7%); and, 5 consent decrees (41.7%).

Judge N resolved 6 of his 26 cases (23.1%) with plea bargaining. The 6 plea bargains were .65% of all negotiated guilty pleas in the study.

[27]This positive judge shopping was sentence-related. Defense counsel was hoping to maneuver the case before a judge who gave lenient dispositions. There was no trial-oriented judge shopping observed. Ideally, all cases were randomly assigned to judges by a court clerk. Thus, bargaining to schedule a case before a particular judge was not theoretically possible.

[28]One defense attorney noted that his favorite method in getting away from a particular judge was to have him review the juvenile's file, thereby disqualifying him from trying the case.

[29]In Chapter 9, section C, infra., there is a follow-up study that was conducted on the 1,136 cases that were sent from pretrial to the adjudicatory level. Many of these cases involved the youth's refusal to accept a plea bargain offered by the judge or by the prosecutor. Many of these cases ended in an adjudicatory hearing. As the data from the follow-up indicated juveniles were not punished for insisting upon trial. In fact, many were "rewarded" for not cooperating with the system.

[30]The juvenile court judge had tradition on his side since historically he has operated in sole control of the entire juvenile court process. Another feature that aids in the judge's retaining control of plea bargaining in juvenile court is that there are no jury trials to complicate the situation. That is, in the criminal court, a judge who will not allow plea negotiation upsets the whole system and risks system collapse by possibly forcing too many jury trials. Thus, the district attorney is supposed to monitor the system and dictate what cases must be negotiated. In juvenile court, however, theoretically, all cases could be tried so the judge can feel free to prohibit and to control plea bargaining where appropriate.

[31]This is not to say that the defense bar was uninterested in securing treatment for the needy child. Rather, the defense attorneys felt that treatment was legal and permissible only if the juvenile were lawfully

convicted. Defense counsel did not allow the cart to get ahead of the horse in this context.

[32]The data here are necessarily impressionistic since important factors, such as severity of the crime and the juvenile's record, were not statistically controlled in the study.

[33]Mitigated justice had several outlets. Although plea bargaining will be mentioned quite often, the other elements of mitigated justice will not be repeated, as here, in every possible context. It can be inferred, however, that most discussions on plea negotiation, like this one, relate to the other parts of mitigated justice as well.

[34]Deals that were consumed here do not mean that the youth was deprived effective assistance of counsel due to the latter's inability to evaluate completely the client's chances of acquittal. The examples of mitigated justice do indicate, nevertheless, that defense counsel had to make a very quick assessment of his client's fate.

[35]When there is no professional presentation of the state's case one of two things is likely to occur. Either the judge merely accepts the situation or he assumes the prosecutor's job. Neither event is satisfactory from an objective viewpoint. In the first instance it is likely that the defendant will be perhaps wrongfully acquitted, solely from incompetent state representation. Qualified defense counsel can destroy an opponent not versed in criminal procedure. In the second case the judge becomes defense counsel's adversary, jeopardizing both the former's neutrality and the latter's effectiveness.

[36]Although there was one district attorney who had a reputation of being a full-time advocate, out for blood in every case, juvenile court prosecutors only rarely acted this way (in very serious cases). The district attorneys were often true advocates in a somewhat milder context, however. They frequently sought the most severe conviction and sentence they felt was called for under the circumstances (see Chapter 8).

[37]Juvenile court was considered the safest place to learn to try a case (both from the defense and prosecution viewpoints) because the stakes were not considerably high, there were no juries to worry about, and the atmosphere of the court itself was relatively relaxed.

[38]Some juveniles were detained because of the severity of the crime and/or because of a bad record. Many youth were held, however, because no parent showed at intake to take the child home. Most of these juveniles were ultimately released at the detention hearing.

[39]For example, the prosecutor would not tell the defense that the victim could not identify the defendant.

[40]For example, much of the plea bargaining not only did not involve the prosecutor, it took place over his objections. Judges also felt quite free to reject proposed deals which they did on many occasions.

[41]Here, as in the following four illustrations, although the probation officer was an important and involved activist for plea bargaining, the defense attorney was still effectively bargaining with the judge since both of these individuals had to approve the probation officer's proposal.

[42]A few probation officers commented that they did not want to interfere with the defense counsel's and the prosecutor's handling of a case. Moreover, the disposition they felt was appropriate could always be made at sentencing. In other words, they had nothing to lose by not intervening before conviction.

[43]Had Judge G consistently worked with District Attorney #9 and Public Defender #4 virtually every case could have been negotiated. Had District Attorney #7 and public defender #3 appeared constantly before Judge D virtually every case could have gone to trial.

CHAPTER 8: THE INCENTIVES AND OBSTACLES TO PLEA NEGOTIATION IN JUVENILE COURT

A. The Incentives

1. The Defense

Although there were a few isolated instances in which the defense attorney was pressured to plea bargain by the judge, ordinarily the former negotiated the guilty pleas on his own accord quite willingly. Generally, the defense lawyer's overriding concern in juvenile court was to secure the least restrictive intervention for the client (see Streib, 1978: 33). That meant the defense's objectives were to keep the defendant down or off the dispositional ladder (in sentence terms) and to keep the youth's record as innocuous as possible (in charge terms) (see Besharov, 1974: 66, 314).

An outright dismissal was obviously the most valued prize and the defense's best option whenever available (Ewing, 1979: 172; Besharov, 1974: 314; NAC, 1976: 409). Defense counsel were not opposed to achieve this outcome through bargaining. The defense attorney offered numerous services on the juvenile's part in order to bring about a dismissal (see Chapter 6).

Even when guilt had to be conceded the defense lawyer was dedicated to dragging out the youth's climb up the dispositional ladder. Frequently, plea bargaining appeared helpful in slowing down the juvenile's promotion from one rung to another. Besides the sentencing concern the defense's mission was to avoid building what is called a certifiable record. The decision to transfer a juvenile to adult court was influenced, in part, by the number and severity of charges for which the child had been adjudicated.[1] Thus, the

defense attorney plea bargained to minimize the overall number of convictions and to reduce felonies to misdemeanors in order that the youth would not have amassed a record which appeared serious enough to warrant the attention of adult court.

In addition to the number and severity of the charges, the label of the charge also caused concern for the defense counsel at times. Occasionally, the defense lawyer negotiated in order to change the name of a crime with a particularly bad label attached to it.

> Illustration No. 1: Although this was the boy's first arrest, the charge was rape. The public defender never doubted that probation would be the sentence. Nevertheless, he did not want a rape conviction on the juvenile's record. That type of adjudication could have implications for the remainder of the youth's life. The defense lawyer approached the prosecutor with an offer to plead guilty to aggravated assault and to accept neuropsychiatric probation. Not wishing to push an uncertain case, the district attorney accepted the defense term.

> Illustration No. 2: The youth was charged with burglary and arson. According to the public defender, the defendant needed to be committed. The latter had been accepted at an institution far down the dispositional ladder, and the defense attorney was anxious not to disturb the arrangement. She informed the district attorney that the accused would plead on the nose to burglary and would admit to criminal mischief in the arson case in exchange for the commitment. The prosecutor concurred. The arson charge had to be altered because no institution would accept anyone who had been convicted of that crime.

Whenever the defense attorney plea bargained he expressed the belief that he was accomplishing a better result through negotiation than if he allowed the case to go to an adjudicatory hearing. He wanted to avoid a worse outcome (with respect to the charge and sentence) that was always possible if the case was submitted for litigation. Trial meant that the defense for the most part would have to surrender control over the fate of the case. Plea bar-

gaining, on the other hand, gave the defense some measure of power to determine the parameters of the charge and sentence, and most defense attorneys were convinced that a bird in the hand was the more important half of the well known adage. Although the defense lawyers did not mention any fear of a trial penalty per se (where the youth would be punished for exercising the right to trial), they realized that the treament needs of the juvenile made disposition following a trial adjudication potentially hazardous for the defense. For example, a youth's first offense was typically sanctioned with probation. Defense counsel could usually negotiate this result for first offenders without any difficulty whatsoever. If the first offender went to trial, the juvenile would almost definitely be given probation as well (no trial penalty). Going to trial, however, allowed the possibility that someone (perhaps a probation officer or a parent) would criticize the defendant's being returned to his home and would argue instead that he needed to be institutionalized. If a juvenile was institutionalized at such an early point in his delinquent career, many defense counsel felt the likelihood of the child's ultimately being transferred to adult court was increased substantially. Defense lawyers always worked to prevent the youth from jumping more rungs of the dispositional ladder than absolutely necessary, and, ideally, only one rung at a time.

Besides helping the defendant's cause plea negotiation served the defense lawyer's interests, too. Negotiating guilty pleas alleviated caseload pressure by saving a lot of court time; everyone was able to leave the courtroom earlier as well (see Nardulli, 1978; Eisenstein and Jacob, 1977). There is no constitutional

right to trial by jury in juvenile court (McKeiver v. Pennsylvania, 1971). Pennsylvania affords juvenile defendants only quick, quasi-formal bench trials. The absence of jury trials no doubt reduced the amount of backlog that Philadelphia's juvenile court might have faced if it operated like its adult court system. Although backlog was surely not the sine qua non for plea bargaining in juvenile court, then, the juvenile court had an abundance of cases to process and defense attorneys frequently mentioned moving the caseload as a reason to plea bargain.

For example, at pretrial, probation was given to scores of cases in which there were admissions (see Chapter 9). Defense counsel could have rejected most of the probation offers and still have secured that sentence if the youths were convicted at trial (some undoubtedly would have been acquitted, in fact). The defense attorneys did not want to upset the balance and stability that existed, however. Sending dealable cases en masse to the adjudicatory level would have caused some backlog and longer days in court. Moreover, defense counsel expected that too many trials would have worn out and irritated the judges (some of whom would have been infuriated at trying high numbers of obviously guilty cases). Countless trials would not only cause resentment, counsel also feared a negative shift in the lenient sentencing that marked juvenile court dispositions. Defense lawyers also argued that cases really needing attention would have been compromised by such a wholesale increase in the number of cases requiring adjudicatory hearings. Thus, caseload pressure was considered by defense attorneys to be a legitimate and pertinent reason to

settle cases expeditiously through plea negotiation (cf. Heumann, 1975).

A second way plea bargaining benefitted defense counsel was its enabling him to maintain a good relationship with the district attorney. Although it was cited only sparingly, a number of defense lawyers viewed plea negotiation in general as a message to the prosecutor that the defense could be reasonable. After all, the defendant did plead guilty and even accepted sentences involving commitment. These defense attorneys noted that their being "reasonable" with some district attorneys in the past contributed to their receiving better-than-usual concessions from these prosecutors.

> Illustration No. 3: The juvenile's case reached the adjudicatory level. It was his fifth arrest, three previous charges having culminated in adjudications. Although the probation officer had not been summoned to devise a treatment plan for the youth, commitment was a distinct possibility. The public defender approached the district attorney, with whom he was frequently scheduled in court, and asked a favor. He wanted the prosecutor to give the defendant just one more chance to keep his freedom. The defense attorney explained he had the word of the juvenile's mother that her charge was beginning to straighten out. The child had just enrolled in a new school and had taken up extracurricular activities there. The district attorney agreed to the defendant's remaining on intensive probation. The public defender was convinced that his appearing as reasonable to the prosecutor in previous dealings was certainly a factor in his getting this juvenile one more "break".

There were many specific, case-related reasons why defense counsel plea bargained; often, a number of them would co-exist in one transaction. Some of these reasons were the same as those cited by defense attorneys when they entered non-negotiated guilty pleas (see Chapter 6).[2] For example, like the non-bargained plea, the

negotiated guilty plea operated in the defense's advantage when it prevented a judge's hearing the facts of the case and becoming inflamed thereby (by silencing the victim), and when it avoided irritating a judge by making it unnecessary to try an obviously guilty case.[3]

Most of the plea bargains in the study represented the defense's desire to help the youth avoid institutionalization. The guarantee of probation or intensive probation (suspended sentence or no disposition) was frequently sufficient incentive for defense counsel to negotiate a guilty plea. A number of times the defense attorney bargained to get the defendant out of detention at the Youth Studies Center (see Besharov, 1974: 313; NAC, 1976: 541). This was usually done for one of two reasons. First, if the youth spent an offense-free month or so on the street between adjudication and disposition, the probation officer and/or the judge might be convinced the child did not require incarceration and instead could function well on probation. Second, even where commitment was inevitable, counsel wanted the youth out of detention so that the latter could begin his sentence.

> Illustration No. 4: A juvenile charged with two armed robberies appeared before Judge F. The public defender decided to plea bargain with the district attorney. He offered the prosecutor an admission to one of the armed robberies and no objection to commitment at the open setting at Cornwells Heights, which was the probation officer's recommendation. In return the district attorney would have to withdraw one of the armed robberies. The deal was consummated and sanctioned by the judge. Besides the attraction of the dismissal bargain, the public defender explained that had he not plea bargained, the cases would have been continued. The defendant was already in custody and he would not have been released. Therefore, the accused would have spent another ten days in detention before trial and an unknown

> amount of time between conviction and sentencing. These days would have been dead time. Counsel argued it would be much more beneficial for the defendant to start his treatment program immediately and be released that much sooner.

Defense counsel often plea bargained in standard commitment cases primarily because he was seeking the least restrictive placement for the youth. That is, the defense attorney thought it was better to concede on the incarceration issue in general (perhaps landing a charge concession along the way) and just ensure that the institution would be as far down the dispositional ladder as possible. For example, even though the youth had been referred and accepted at an institution, the district attorney was empowered to recommend (and the judge was authorized to approve) commitment in a more severe setting. Often, defense counsel noted that the less restrictive programs were the best for the typical juvenile. Interestingly, on occasion the defense attorney plea bargained a commitment case and by doing so actually helped push the defendant up the dispositional ladder. These cases were very rare and came about only when the juvenile and/or the family requested the youth's being put away because the child really wanted/needed it.

> Illustration No. 5: The defendant had been given a consent decree on an aggravated assault charge because she was dependent. The case came back to court for a review before Judge M. The youth and her parents wanted her committed to Lordesmount but this would require an adjudication of delinquency. The public defender admitted the accused to terroristic threats (a lower charge) and secured the commitment.

> Illustration No. 6: The youth was on a consent decree for aggravated assault but she was not doing well at home. The case had come back to court and the youth pled guilty in order to be committed to Sleighton Farms where she had already been accepted. Judge I called private

counsel to sidebar. The latter told the judge that the girl really wanted to go to Sleighton Farms. The judge was concerned because it not only made the youth a delinquent but also it accelerated her movement through the system. The judge was afraid that if the defendant failed at Sleighton she could end up in adult court before long. The defense lawyer pointed out that the child's caseworkers had said the juvenile needed a structured setting that could not be obtained without a delinquent adjudication and placement. The judge accepted the guilty plea.

If the juvenile had perpetrated a crime either before or during his commitment to an institution (e.g., while on furlough or AWOL), the defense attorney fought to maintain the status quo: to keep the youth at the current facility and to prevent movement to another setting farther up the dispositional ladder.

Perhaps the strongest defense motivation to plea bargain involved certification (see Besharov, 1974: 314; NAC, 1976: 409). When the prosecution had a viable transfer motion there was considerable self-inflicted pressure upon the defense to acknowledge guilt and to accept incarceration in order to keep the defendant out of adult court. This was true even when the juvenile was expected to get probation in the adult system, and, moreover, even when earning an acquittal in criminal court was a possibility.

Illustration No. 7: A youth charged with two robberires was before the court for a transfer hearing. Assigned counsel said he wanted to avoid certification so he admitted to the robbery (the other robbery was dropped), and agreed the defendant would be committed to Cornwells Heights. The defense attorney explained that commitment in the juvenile system was preferable to the probation the child probably would have received if transferred because the latter involved an adult record which would follow him throughout his life. The lawyer declared he felt better delaying as long as possible any youth's entrance into the adult world of crime and punishment.

Besides the deleterious effect of an adult record counsel invariably mentioned the superiority of the juvenile system's treatment programs as a reason to defeat the prosecution's attempts to transfer youth.

In incomplete sentence bargains the defense attorney pursued a number of things. One objective was to ensure that the juvenile would be referred to a particular institution, usually the one the defense lawyer felt was the most reasonably attainable (i.e., the least restrictive) under the circumstances. Defense counsel made this move when the probation officer had not yet recommended an institution which was suitable for the juvenile. By dealing for a particular referral, counsel hoped to put a ceiling on how severe the commitment would ultimately be. Obviously, the defense attorney plea bargained in this context only when the youth appeared certain to be committed somewhere if convicted. Another defense mission was to keep the district attorney silent while the defense or the probation officer made a sentence recommendation. The logic, here, was that the judge would not be pressured to go with a disposition more strict than that offered by the defense if the prosecutor were not available to request that the judge pay more attention to the court's purported obligation to society. Third, the defense attorney negotiated incomplete sentence deals when he wanted to consolidate all open matters the juvenile had before one judge, ordinarily one who was a "light hitter." Defense lawyers also plea bargained to send the case to the county wherein the defendant resided, hoping that the disposition the youth would receive there would be more conducive to the juvenile's needs than the one that would be issued in Phiadelphia.

Finally, the promise of putting the case in limbo, which meant it could evaporate in six months if the juvenile remained clean, was an incentive for defense counsel to engage in negotiation.

Sometimes the defense lawyer's choice to plea bargain reflected merely an acceptance of the inevitable. When the prosecution had an airtight case and the probation officer's recommendation was reasonable and likely to be granted by the judge the defense attorney often acknowledged the unavoidable and tried to make the best of things.

> Illustration No. 8: The defendant had three prior adjudications and was currently charged with two crimes. In one case, a burglary, the accused was caught inside a warehouse. The public defender saw no holes in the prosecution's case. All necessary parties were present in court. The second case, a robbery, was too close to call. The probation officer, meanwhile, had obtained an acceptance for the juvenile at St. Gabriel's. The defense realized he had no argument to block that commitment. Not only did the child stand to benefit from the institution's program, he wanted to go there. The public defender decided to plead to the burglary charge and accept the commitment in exchange for the district attorney's dropping the robbery. The defense lawyer felt he had achieved the only positive result possible under the circumstances.

A number of times the defense lawyer was after a quick decision. When the juvenile had a few open charges defense counsel often negotiated one or two of the cases, hoping that the other cases would either disappear or at least not adversely affect the arrangement already constructed by counsel (like the situation in charge gambling).

> Illustration No. 9: In January the juvenile committed a robbery. The following month he was put on probation after he had pled guilty. He was arrested for a burglary

> in March and again in April for another robbery. The burglary appeared for pretrial in May. Quickly the public defender set up a plea bargain, adding correctional group counseling to the juvenile's probation. The defense attorney felt this was a gift since the second robbery would be coming to court next month. In June the open robbery charge brought the youth back to pretrial. Another public defender convinced another district attorney that an admission should warrant a continuation of correctional group counseling since that disposition occurred after this robbery. The prosecutor regretted the situation but admitted that what the public defender had said made sense. Interestingly, Judge M (an anti-plea bargainer at pretrial) refused the deal, declaring that the defendant should be committed. Judge F compensated, however, by allowing opposing counsel to complete the negotiation for correctional group counseling at the next listing of the case.

The same chain of events was possible in dismissal bargaining cases too.

> Illustration No. 10: The defendant was before Judge I who was sitting in pretrial. The charge was robbery. The crime took place, however, prior to the defendant's getting a consent decree on another theft case. The accused was young and the robbery was not too serious. The judge said that since this robbery occurred before the other crime and since the youth was on a consent decree, a second consent decree would be entered.

2. The Prosecutor

When the district attorney cooperated in bringing about a result associated with mitigated justice he usually acted like an advocate. For example, in dismissal bargaining the defendant often provided the prosecutor a service the latter wanted in exchange for dropping a charge. A nol pros was frequently conditioned upon the juvenile's paying restitution, testifying against an accomplice, pleading guilty in another case, agreeing to attend counseling in the community, submitting to institutionalization as either a delinquent or a dependent, leaving the jurisdiction, and, in one case, accepting transfer to adult court. Similarly, the prosecutor most often negotiated

a consent decree (i.e., where the youth was not "entitled" to one) where he felt he would lose a case altogether and the consent decree, of "half-the-pie", was better than nothing. Otherwise, the district attorney bargained consent decrees in order to secure restitution, the defendant's testimony or his commitment as a dependent, and to prompt the juvenile to get help outside of the system. Even non-negotiated guilty pleas were attractive to the prosecutor because they eliminated both the need to go to trial and the always possible acquittal. In all these circumstances the district attorney performed like an advocate, trying to gain the most advantageous position for the Commonwealth. The prosecutor's overall motivation was simply to make the best of things from a prosecutorial viewpoint.

This advocate-based thinking guided the district attorney through most of his plea bargaining efforts as well. Although he did not appear to be as record-oriented as the adult court prosecutor who purportedly thrives upon convictions (see Heumann, 1978: 74), the district attorney in juvenile court typically wanted some justification or something in return for his granting a charge and/or sentence concession. At times the prosecutor plea bargained to obtain a service like restitution or testimony (see Besharov, 1974: 204-207). Most often, however, the defendant offered no more than a guilty plea to one or more charges and an agreement to accept some type of sentence.

On occasion the district attorney negotiated with defense counsel because the former believed he had a "weak" case. A case was weak ordinarily due to the unavailability of one of the prosecutor's witnesses. Usually this meant that a complainant would not prosecute

(often from a fear of retaliation or from not wanting anything serious to happen to the defendant),[4] that the prosecutor did not want the victim to testify (because of young age or unsavory character), that a necessary eye witness would not honor a subpoena, or that the arresting officer was not present. Exacerbating matters was the circumstance where the prosecution was under a must-be-tried order and a necessary party did not come to court. Early on the prosecutor learned that any case had the potential of weakness due to an uncooperative witness.

> Illustration No. 11: An armed robbery case was on the verge of going to trial. The complainant changed his story at the last minute during an interview with the district attorney. The elderly victim stated he was afraid and could not identify the defendant. The case was under a must-be-tried order which meant a Commonwealth continuance was out of the question. The best case the prosecutor had now was receiving stolen property but even that was unlikely because the property had not been brought to court. Stuck with an exceptionally "weak" case, the district attorney agreed with the public defender's offer of a guilty plea to receiving stolen property and a commitment to Sleighton Farms.

> Illustration No. 12: Three defendants were charged with rape. Their defense attorneys each arranged with the prosecutor for an admission to a lower charge (attempted rape) in exchange for the district attorney's not opposing the probation officer's recommendations. The three juveniles were put on various degrees of probation. The prosecutor later explained that she agreed to the plea bargain because the complainant was a terrible witness. The defense had several witnesses to her bad character. Finally, the victim had been smoking grass with the three defendants prior to the assault.

> Illustration No. 13: The defendant was in court on a rape charge. He had no prior record. The district attorney agreed to an admission to indecent assault in exchange for probation. The prosecutor did not want the victim to be forced to testify. She was only seven years old and had been somewhat traumatized by the incident.

Illustration No. 14: A young couple was charged with aggravated assault upon their infant child. The injuries were rather serious. Obviously, the baby could not testify and establishing guilt in the case would be problematic. The district attorney accepted the defense's offer of an admission in return for the prosecutor's silence at sentencing. The two parents were put on probation and referred for counseling.

Only rarely did the district attorney plea bargain because the evidence itself was intrinsically "weak" and, even then, plea bargaining occurred in usually two contexts. The first was when the evidence was arguably suppressible as a result of an investigatory constitutional violation. In this situation legal guilt was questionable while factual guilt was not. The second circumstance involved the prosecutor's reaction to a couple of the legalist judges, particularly judges who required a very high threshhold of guilt (i.e., even higher than their peers) before they would convict a juvenile defendant. The district attorney felt more uncertain about trial before these judges and was willing to negotiate a guilty plea. Cases in which factual guilt was debatable in the prosecutor's eyes were usually either nol prosed or submitted for trial. Since all hearings in juvenile court were bench trials and were so speedy, relatively speaking, the district attorney could afford the luxury of having an abundance of cases, including borderline ones (in evidence terms), resolved by trial.

Uncertainty about the outcome also prompted the prosecutor to plea bargain in certification cases. The prima facie case was not the problem for the district attorney; all that had to be shown was probable cause to believe the defendant did the act(s) charged. The real difficulty arose during the amenability hearing where the prose-

cutor had to establish that the juvenile justice system could not rehabilitate the youth. If the accused had few prior felony convictions and/or an insignificant institutional record, transfer was unlikely, unless a particularly heinous offense was involved. The presence of a judge who was a non-certifying type would only complicate the situation for the district attorney.

Illustration No. 15: The armed robbery which was sufficient to bring this youth to a transfer hearing was not exceptionally serious. The juvenile had four previous adjudications and had been committed to Glen Mills. He had performed well while incarcerated, however, and none of his prior crimes was violent or involved bodily injury. Moreover, Judge F was presiding and he was notorious for his anti-transfer outlook. The prosecutor felt fortunate that the defense attorney offered a guilty plea and no challenge to commitment at Cornwells Heights (open setting) in exchange for withdrawal of certification.

Interestingly, in one case the district attorney noted that he had accepted a negotiated guilty plea because, although the defendant had stood a decent chance of being certified, the latter would have received probation if transferred to adult court whereas the admission in juvenile court guaranteed institutionalization.

The vast majority of cases in which the district attorney elected to plea bargain were "good" cases. That is, the typical plea bargain came about even though the prosecutor believed he had a case that was free of any glaring evidentiary flaws and that would end in adjudication. The district attorney chose to negotiate even the winable case because he felt the deal he had secured was the best arrangement he could have made, or, in other words, that trial would not have produced any better or different results. In effect, most of the plea negotiation from the prosecutor's standpoint re-

presented what the case was worth or what was inevitable with or without trial (see Utz, 1978: 111). At the very least, plea bargaining assured the prosecution that a conviction would occur.[5] Although it was never mentioned as a specific reason for plea negotiation, the district attorney was always aware that in any case, even in a good one, there was a possibility that the judge would acquit against the evidence.

There were numerous examples in which the prosecutor was justified in thinking that plea bargaining accomplished as much as trial would have. The defendant who either had been on a consent decree or who was in court for the first time for a somewhat serious offense (but one not involving serious injury) was virtually destined for probation, irrespective of the method of conviction. The multiple offender making his appearance in court was practically guaranteed probation as well. The district attorney understood these sentencing patterns and accordingly dealt away many cases of these sorts.[6] There was nothing to gain by demanding trial; there was nothing to lose by negotiating a guilty plea.

If the juvenile had been committed <u>after</u> the open charges had occurred, there was little chance the disposition would be changed. This policy made sense treatment-wise. Since the institution had already been designated as the proper setting in which to rehabilitate the child, it would be illogical to alter that determination based upon what the youth had allegedly done <u>before</u> the commitment took place. These pre-commitment crimes represented a "free ride" for the defendant; they were prime targets for plea negotiation.

> Illustration No. 16: The accused was in pretrial for two theft charges. He had been placed in St. Gabriel's Hall after these crimes occurred. Judge G suggested and the district attorney concurred that the youth should admit guilt and remain as committed. Whereas the prosecutor wanted two more adjudications, the public defender agreed to this arrangement because forcing a trial would allow another judge to come along and possibly upgrade the sentence.

Although for the most part this practice applied to probation cases as well, it was much easier to threaten to promote a juvenile through the various levels of probation than to send the youth to a more restrictive institution.

> Illustration No. 17: The juvenile who had two adjudications was put on probation after his outstanding burglary arrest. The judge pointed out the relevant facts and asked the prosecutor what he wanted. The district attorney said intensive probation. The public defender objected and argued regular probation should be the disposition. The prosecutor insisted, then, that the case go to trial. The defense attorney discussed matters with the defendant and his mother who both wanted the intensive probation.

A child who was doing well in an insititution or while on probation and thereafter perpetrated an offense was a candidate to maintain the same disposition. Although prospective, this "free ride" also was logical, in treatment terms, because the youth was making progress in a program. This "free ride" was also a good reason for the district attorney to plea bargain since trial would not likely have brought about any different result.

Even when the prosecutor was seeming to do no more than to accept the inevitable he could at least try to give the appearance of being cooperative. Ultimately, he could hope to parlay his past cooperation into an argument as to why the defense attorney should deal with him in the future.

Illustration No. 19: The defendant had an open robbery charge and a disposition hearing scheduled for the same day. The probation officer had recommended commitment to Sleighton Farms. The public defender asked the district attorney to accept an admission to theft. Although he had a strong case the prosecutor agreed to the charge reduction because he wanted another plea bargain later that day.

Any juvenile who was near or above 18 years of age and either had committed a non-certifiable offense or had not accumulated a record serious enough to consider transfer, was almost assured of being released if convicted. It would have been a waste of time to incarcerate anyone fitting this description in the juvenile justice system, and it would have been impossible to transfer him to adult court. These cases did not arise frequently. When they did, however, the prosecutor was prone to plea bargain. Usually, the district attorney would offer a suspended sentence or no disposition in exchange for a guilty plea. Besides the guaranteed conviction the prosecutor was attempting to build a record against the defendant that would be considered in sentencing if he were subsequently convicted as an adult.

Regardless of the disposition, if the probation officer had already drafted a recommendation before the charge was litigated, the district attorney knew there was only a minimal chance of convincing the judge to render a different sentence. Going to trial, then made little sense since the outcome was, for all practical purposes, already determined.

Illustration No. 18: A youth with a substantial record had an open theft case listed for an adjudicatory hearing. He also had a disposition hearing scheduled the same day. The prosecutor felt the defendant should be committed but the probation officer had written in his

report that continued probation should be the sentence. The district attorney agreed with the judge and the public defender that the case should be admission for continued probation.

Again, irrespective of the sentence, when multiple charges were involved the prosecutor was often tempted to plea bargain. Multiple charges meant that one or more cases could be dismissed in exchange for guilty pleas to one or more charges. The district attorney usually sought to maximize the number of adjudications in order to build a bona fide certification record; the more convictions (particularly felonies), the more likely a transfer to adult court for a subsequent offense. Every adjudication was potentially another nail in the offender's certification coffin. So, even if the juvenile was allowed to remain as committed (a "free ride," in effect), the prosecutor had something to gain if he could persuade the defendant to plead guilty to two or three open felony charges. Contrary to appearances, the juvenile prosecutor was not a blood thirsty type, trying to vault all juveniles up the dispositional ladder at lightening speed. Instead, generally the district attorney was interested in having a sufficient foundation built so that in the event the youth committed a heinous offense in the future there would be less likelihood of any obstacle's standing in the way of certification.[7]

Apart from building a certification record, it was beneficial to the prosecutor to deal in multiple charge situations because frequently one or more cases would have to be continued and ultimately would probably end up falling through the cracks.

Illustration No. 20: There were five cases listed against the defendant. Only one case was ready, however. The district attorney approached the defense lawyer and proposed dropping two of the charges in exchange for guilty pleas to the remaining three cases. The prosecutor liked the deal because otherwise he would have been able to get only one conviction on this date while the other cases would have to be continued and would probably have been dropped at the next listing.

Illustration No. 21: A youth facing five charges pled guilty to three and had the other two withdrawn. The prosecutor was amenable to this arrangement because, although he was ready on four cases, he could have achieved one conviction at most because Judge K, a legalist, was presiding. Judge K would have recused himself after the first case was completed and the remaining charges would have been continued to another date.

In other similar situations the district attorney was willing to negotiate because although the cases he had were "good", none was ready for trial. If the defendant had been detained prior to the adjudicatory hearing, the prosecutor might want at least some of the cases resolved to prevent the juvenile's possibly being released until the prosecution was ready to proceed on all charges.

Perhaps the bottom line was that the district attorney was always vigilant in trying to avoid allowing the youth to climb back down the dispositional ladder. Many juveniles were the benefactors of Newton's Law. That is, many who were promoted to the level of commitment did a reversal on the dispositional ladder and were placed on probation for crimes they had perpetrated after their release from incarceration.

Illustration No. 22: The juvenile stood committed to Glen Mills. He was AWOL from that institution for 15 months; in fact, the youth had never attended his commitment order. He was convicted of a theft after a trial. The public defender argued that the defendant

had not gotten into trouble for the 15 months, despite his AWOL status, and that, therefore, the child should be placed on probation. The prosecutor objected vehemently and could not believe this inverted logic. The judge nevertheless agreed with defense counsel and discharged the youth from Glen Mills. The juvenile was placed on after-care probation.

Illustration No. 23: A youth with six adjudications (and 28 arrests) was under commitment to Cornwells Heights (open setting). He was charged with perpetrating a commercial burglary. The district attorney instituted certification proceedings. During the prima facie part of the transfer hearing the prosecutor demonstrated only receiving stolen property, which is a misdemeanor and a non-certificable offense. Accordingly, transfer was denied, but the defendant was convicted of receiving stolen property. The probation officer and the district attorney recommended commitment to the secure part of Cornwells Heights. Despite the fact that the juvenile had been on regular, intensive and after-care probation, and had been committed to two group homes, Sleighton Farms, and twice to Cornwells Heights, open setting, the judge sentenced the youth to regular probation. The prosecutor was stunned and observed he should have attempted a plea bargain.

Not surprising, the district attorney noted several times that not only was the plea negotiation he had arranged the best deal he could have hoped for under the circumstances, but also the negotiated guilty pleas very possibly prevented the accused's being the beneficiary of some remarkable granting of leniency by the judge. Like the defense attorney, the prosecutor usually believed it was wise to proceed with "a bird in hand."

The district attorney was not always strictly an advocate in his plea bargaining efforts. In overall terms, the prosecutor was an administrator as well. The administrator appreciated that aspect of plea bargaining and the other elements of mitigated justice that permitted cases to move quickly through the system, which thereby helped to avert backlog (see Besharov, 1974: 312; Siegel, Senna, and Libby, 1976: 214). Although the prosecutor thought that consent

decrees and probation were perhaps too liberally given, particularly at pretrial, in the back of the district attorney's mind was the relief in not having to prepare and to try the scores of cases that were informally resolved at that level. The prosecutor was also efficiency-oriented when he emphasized that plea negotiation, in general, helped to maintain a good working relationship with defense counsel and with the judge.

On a number of occasions the district attorney operated like a judge. The prosecutor, for instance, was the prime motivator behind many unilateral dismissals. A defendant who was only marginally involved in the offense, who had a good school record, who had caused no great harm, or who was not likely to recidivate was definitely a potential recipient of a nol pros or consent decree offer from the district attorney. The prosecutor also accepted the sentencing framework which allowed non-serious first offenders to receive consent decrees. Moreover, the district attorney negotiated consent decrees for many defendants who, although not automatically entitled to them, really "deserved" consent decrees. Even a few plea bargaining situations were prompted by the prosecutor's concern for doing the right thing for the juvenile.

> Illustration No. 24: The youth was charged with two counts of involuntary deviate sexual intercourse. The case was relatively serious. Nevertheless, the district attorney approached the defense attorney with a proposal that the latter could not believe. The suggestion was to place the defendant on neuropsychiatric probation. The public defender agreed readily. The prosecutor explained that she felt commitment was not necessary in this case but that if the matter went to trial, the youth might be put away. The defense lawyer concurred with this analysis.

At other times the district attorney offered to drop and/or to reduce charges against the accused because of his tender age.

The prosecutor, unlike his typically unidimensional defense counterpart, had an abundance of reasons in and acted in a variety of ways when plea bargaining in juvenile court. What is truly ironic or remarkable is that despite the very different motivations the two sides had in negotiating guilty pleas, and despite the markedly different opinions the two sides offered as to the probable outcome in many cases, at times both the prosecution and the defense appeared to emerge as winners in plea negotiation.

> Illustration No. 25: A youth was charged with three serious robberies. He pled guilty to two reduced counts of simple assault and was placed on probation. All other charges were dropped. He also agreed to testify against his fellow accomplices. The public defender was elated. He felt he had three dead losers on his hands. He did not want the judge to hear the facts of the cases for fear the juvenile would be committed. The deal was truly a success in the defense's eyes. Meanwhile, the district attorney announced he would have lost all three cases so at least he obtained two adjudications. Since the defendant had no record probation was the probable sentence anayway. In addition, he will receive the youth's help in convicting the latter's co-defendants. He gained significantly through plea bargaining.

> Illustration No. 26: A variety of charges were entered against the defendant: receiving stolen property, burglary and an attempted murder of a police officer. The assigned counsel arranged for guilty pleas to the receiving stolen property and burglary and a commitment to Glen Mills. In return the prosecution withdrew the attempted murder charge. Counsel particularly wanted the assault charge dropped because that conviction would look bad on the defendant's record. He explained that in juvenile court the cop is always believed so the youth would probably have been convicted and then sent to Cornwells Heights. The juvenile needed some commitment (by the child's and his mother's admissions), but the Heights would have been too severe a setting. The district attorney willingly accepted the

defense attorney's offer. He felt he would have lost all three cases had they gone to trial.

Illustration No. 27: The juvenile pled guilty to the three open robberies that were currently before the court. He was being sent to Glen Mills. The public defender could not believe the prosecutor would accept Glen Mills since the defendant could have (and arguably should have) been sent to Cornwells Heights. Moreover, the youth had two open robberies which did not matter any longer. The public defender was convinced no judge would change this placement since the crimes occurred before the commitment was ordered. The district attorney was grateful to have obtained three convictions and a commitment. Two of the three cases would have been continued and perhaps lost in the future. The probation officer had recommended Glen Mills so the prosecutor felt placement in the Heights was unlikely. More important, the district attorney noted that since the youth has now been institutionalized with three felony adjudications the next felony will be up for certification. As for the two open robberies, the prosecutor observed that when the cases come to court the defendant will very likely admit to remain as committed, which would mean that the defense would have effectively offered 5 felony convictions to the prosecution. The juvenile would truly be certifiable at that point.

Both the prosecution and the defense had good reasons to plea bargain in juvenile court.

3. The Judge

Much like the defense attorney, it seemed that virtually every judge (except Judge K) had a vested interest in keeping juveniles as far down the dispositional ladder as possible. All three types of judges seemed constantly to search for alternatives to prosecution. They often unilaterally, and sometimes through bargaining, dismissed cases against juvenile defendants. If the youth was young or dependent, or if the offense was his first, or if his school record was good, the judge was frequently inclined to informally dispose of the case.

Illustration No. 28: Two co-defendants were charged with their first crime, an auto theft. The public defender wanted the case thrown out because the auto theft could not be proved. The district attorney argued for a consent decree, stating that receiving stolen property would definitely be established. The judge said no to the consent decree, he dismissed the charge because both defendants had good school records and he wanted to keep them out of the system.

Interestingly, a shaky background could prevent a complete dismissal and, instead, could prompt the judge to pursue a consent decree.

Illustration No. 29: The youth was only marginally involved in the auto theft which counted as his first arrest. The judge at first ordered a discharge but then found out the juvenile had a bad school record. The judge asked the public defender to go along with a consent decree with correctional group counseling. The defense attorney agreed.

The child's background was also on a number of occasions the impetus behind the conciliator's proposing a plea bargain. A couple of times the juvenile's attitude or his parents' behavior influenced the judge's decision to negotiate a guilty plea with the defendant or with defense counsel.

Illustration No. 30: Three defendants were charged with robbery. It was the first offense for all three. Two of the accused were placed on consent decrees because they were only 12 years old. The third youth was also 12 but had a very bad school record. Judge G insisted that the juvenile plead guilty and accept probation. To placate the public defender the judge lowered the charge to theft.

Illustration No. 31: Two co-defendants were before the court on charges of terroristic threats. For both this was a first arrest. Usually a consent decree would be given in such a situation. However, both juveniles were very arrogant. The judge commented upon this and demanded that probation be the sentence for the two youths after they pled guilty.

Illustration No. 32: The juvenile was charged with violation of a controlled substance. It was his first arrest. Ordinarily, this would have been a consent decree case and, in fact, the judge announced the finding as such. The boy's father spoke up, however, and informed the court that he could not control the defendant. The judge changed the consent decreed to admission for probation.

Essentially, the conciliator plea bargained for three reasons. The first concerned doing the right thing for the juvenile. The conciliator often pressed for deals because he thought the defendant should not be transferred, or should be put away in a particular institution, or should remain as committed, or should get one or more chances on probation. The conciliator appeared unwilling to let the case go its own way for fear that someone else later on would render a wrong disposition. The conciliator also wanted to ensure that the juvenile's record would not be unduly blemished.

Illustration No. 33: While Judge A presided at detention a young girl appeared, charged with violation of a controlled substance and a credit card offense. The accused had confessed to both crimes. The judge did not want to convict the girl of the drug charge since it might look too serious on her record. He told the youth he wanted her to do well. If she admitted to the credit card charge, the judge informed the girl that he would give her probation and withdraw the drug case. The juvenile complied.

Without being asked, Judge G frequently reduced felonies to misdemeanors while plea bargaining at pretrial.

The second reason the conciliators negotiated cases was to expedite matters. Judge G often announced that his primary objective at pretrial was to move eligible cases out of the system and to avoid backlog for the trial courts. Plea negotiation and dismissal bargaining helped measurably in accomplishing this goal. Similarly,

Judge A worked hurriedly and preferred to get out of the courtroom as early as possible. Plea bargaining facilitated this mission since negotiated cases were not dragged out like many trials were. Besides moving cases along speedily, plea negotiation also assisted the judge in resolving issues that otherwise would be left hanging. That is, the conciliator often plea bargained to dispose of open cases to arrive at a single coherent disposition.

Illustration No. 34: The juvenile had seven cases listed before Judge A. Three were ready for trial. The youth had already been accepted at St. Gabriel's Hall. Judge A proposed to the defense attorney that his client plead guilty to the three ready cases in exchange for dismissal of the four cases not ready to be tried. The public defender willingly accepted the offer.

The third motivation, which probably guided most of their plea bargaining activity, involved the conciliator's desire to achieve substantive justice (see Miller et al., 1978: 233), to ensure that trial did not get in the way of treatment. In other words, the conciliators wanted the accused to receive the treatment he required since he so desperately needed to be helped. More important, perhaps, acquittal (unless the defendant was truly innocent) would simply teach the juvenile that he could get away with committing crime, which would make matters only worse. Escaping much needed treatment would only propel the youth to become a more hardened offender. When the defense resisted his plea bargaining the conciliator offered to reduce the charge or to drop other offenses. When the prosecution balked the conciliator reminded him that he was obtaining a conviction.

Although only the conciliator actively sought plea negotiation, the administrator did not overtly object to getting out of court at an earlier time which was possible if trial was avoided. The legalist did not seem, for the most part, to be eager to leave the courtroom. Plea bargaining also allowed the administrator to avoid making tough decisions (cf. Alschuler, 1976: 1102-1103). Particularly at transfer hearings the administrator sent out signals that he would like opposing counsel to resolve the case between themselves. Most of the deals the legalist accepted seemed to be ones that were beneficial to the juvenile's cause. If, in other words, it appeared the youth would do no better via trial the legalist ratified the plea bargain.

All three types of judges actively engaged in negotiated and unilateral dismissals. One motivation seemed to dominate this activity: the desire to do the right thing for the defendant. Universally, the juvenile court judges were concerned about youths' passing through the system too quickly. Consequently, many efforts were made by the judges to dismiss cases against defendants at least where society's protection was not seemingly jeopardized thereby. In addition, dismissals often meant that all parties could leave the courtroom quickly which was important to the conciliator and the administrator.

B. The Obstacles

There were actually so many obstacles to plea negotiation in juvenile court that it is somewhat amazing that any negotiated guilty pleas occurred there. The obstacles can be broken down into three major categories: structural deterrents; case-specific impediments at pretrial;

and, individuals' vetoing deals.

1. Structural Deterrents

The juvenile court's sentencing structure had a number of aspects about it that contributed to decreasing the amount of plea bargaining. First, all non-serious offenses that were the juveniles' first arrests were virtually guaranteed consent decrees (if not outright dismissals). Many cases fell into this group, thus depriving the plea negotiation pool of many potential deals. Had the special dismissal category of consent decree not existed many of the first offense auto thefts and commercial burglaries (among other crimes) would have been ripe for plea bargaining. Second, even relatively serious crimes, like robbery and burglary, were destined to end in probation for all first offenders. This sentence was attainable through either negotiation or trial. On many occasions public defenders rejected proposed negotiations and pushed instead for trial (see Chapter 9). The proposals were not inappropriate. The defense lawyers simply elected for a hearing, realizing that they had nothing to lose by contesting the case. Without a trial penalty, there was often no pressure to plea bargain. Third, the treatment mentality also defeated plea negotiation in the "free ride" context. A number of "free rides" went to an adjudicatory hearing because the defense knew it was unlikely that the youth would be hurt by a trial adjudication (as opposed to a guilty plea conviction).

> Illustration No. 35: The juvenile had been placed on intensive probation after he had allegedly committed the burglary that had brought him to court. The public

> defender and the district attorney had agreed that the youth would remain on intensive probation but they disagreed as to the proper charge. Whereas the defense attorney wanted receiving stolen property the prosecutor insisted upon burglary. Unable to reach accord, the public defender demanded trial. He confided that he had nothing to lose by rejecting the deal; the defendant would not receive a more severe sanction if convicted by trial. The defense lawyer said in this situation he wanted some benefit from the negotiation (like a charge reduction) instead of just giving the district attorney an easy conviction. The case was eventually dismissed for lack of prosecution.

Finally, juveniles were not allowed to maintain dependent status if they were adjudicated delinquent. Conviction meant the youth's ties to the Department of Public Welfare would be severed. The desire to avoid removing the child from DPW's care frequently prevented plea bargaining's taking place since a plea negotiation would necessitate a delinquent adjudication.

The court structure itself had a couple of features that most likely assisted the juvenile court in not being dependent upon plea bargaining. Perhaps the most salient factor was the lack of jury trials. There is no doubt that the juvenile court operated without the backlog and the delay that is typically associated with trial by jury in the criminal justice system. Trials in juvenile court were short, lasting an average of 25-40 minutes each. Therefore, nearly every case making its way to the adjudicatory level in juvenile court could have been resolved by trial.[8] There was little, if any, pressure to plea bargain in juvenile court due to caseload pressure.

The detention hearing operated with practically a bias against plea bargaining. Although the court was concerned that a prima facie case be estabished, the primary focus of the detention

hearing was to examine the need for prolonging the youth's custody pending trial. The latter occupied so much of the court's attention that scores of otherwise dealable cases were forwarded to the adjudicatory stage (see Chapter 9). Had case flow in the juvenile court been different (if detention hearing cases were sent to pretrial instead of to adjudicatory) much more plea negotiation would probably have occurred.

2. Case-Specific Impediments At Pretrial

Certain characteristics of cases that arose at pretrial (and sometimes at the trial level, too) made them unlikely to be resolved by plea bargaining. Serious incidents involving substantial injury to the victim were likely to be continued for an adjudicatory hearing at pretrial even if the offense was the defendant's first arrest. Despite the fact that the serious injury cases nearly invariably ended in probation for first offenders who were convicted via trial (suggesting they were actually dealable cases), the juvenile court functioned on something like an unwritten policy which held that violent offenses deserved an adjudicatory hearing. Racially-oriented crimes and those receiving considerable publicity were treated similarly.[9] Although the disposition could very well be probation, the court (and particularly the district attorney) seemed to cast these crimes as inappropriate for plea negotiation at pretrial (see Jacob, 1973: 107; Heumann, 1978: 213-214).

Illustration No. 36: Three white defendants were charged with assaulting two black victims. The public defender, who was black, approached the district attorney, who was white, and asked for probation since this was the juveniles' first offense. The prosecution said that he had no problem with probation but that a guilty plea was unacceptable. The matter required a trial, according to the district attorney. The youths were adjudicated after a trial and were placed on probation.

Illustration No. 37: Two sets of parents had become quite upset at their children's victimization by four neighborhood teenagers. The victims had been verbally harassed and assaulted on one occasion. The parents attended a weekly conference the district attorney's office sponsored and demanded satisfaction. The four neighbors were brought into court. This was their first arrest. The public defender did not want the case to go any farther so he offered admissions for each of the accused in hopes of getting probation. The prosecutor was forced to turn down the proposal. The front office wanted a trial. Ironically, the case never went as far as an adjudicatory hearing. Judge F gave each defendant a consent decree and closed the matter at the next court listing.

Sometimes a defendant at pretrial had other cases floating around at different stages of the court process. For example, one case could be ready for trial and another not even scheduled yet for pretrial. Although on occasion all the juvenile's open matters were consolidated and plea bargained as a group, often the dispersion of cases prevented opposing counsels' getting together and agreeing upon an informal solution to the youth's predicament.

Finally, juveniles with bad records usually did not plea bargain at the pretrial stage, irrespective of the severity of the crime. A youth in this situation would likely require a plan to be made for him by the probation officer. Since devising this plan would take some time and would likely involve commitment, the matter was routinely continued for trial, although at the adjudicatory level many of these cases were ultimately negotiated.

A juvenile with little or no criminal history would often not have an opportunity to plea bargain at pretrial when his co-defendant had a bad record. Frequently, the latter spoiled the "good" youth's chance to negotiate a guilty plea because the entire case was forwarded for trial.

3. Individuals' Vetoing Deals

Even if the system's structure or a feature unique to the case did not frustrate plea negotiation, there was still a good chance that one of the participants would block the effort to achieve a negotiated settlement. Each of the parties in juvenile court rejected a proposed plea agreement at some time or another.

The conciliator, the administrator and the legalist were all prone to set aside a plea bargain and dismiss the case where the judge felt that the juvenile should not have a delinquent record. The judge usually made this move if the arrest was the youth's first, and if the child was dependent, too young, or had a good school report.

Illustration No. 38: The prosecutor and the defense attorney agreed the accused should plead guilty to a residential burglary. The youth was to remain at a group home but his status was to change from dependent to delinquent. Judge E conducted a colloquy and observed that he was concerned about the child's losing his dependent classification. The district attorney argued that the juvenile could keep his current address even though he would be a delinquent from now on. The judge countered that after release from the group home, the youth would be on his own without DPW support. The judge withdrew the admission and entered a consent decree.

Illustration No. 39: Two defendants were before Judge E at pretrial. The robbery charge was the first arrest

for each. The public defender and the district attorney agreed that an admission would warrant probation. The judge intervened, however, and instituted two consent decrees. One juvenile was 10 years old and the other was 11. Judge E noted the youths were too young to be adjudicated delinquent.

Illustration No. 40: A youth with one consent decree appeared at pretrial before Judge I. The charge was theft. Opposing counsel negotiated probation for a guilty plea. The judge rejected the deal and placed the defendant on a second consent decree. The youth had a good school background.

Illustration No. 41: The prosecutor and defense counsel decided that a youth with one prior consent decree should be put on probation for a new theft arrest. Judge K, sitting at the adjudicatory level, terminated the plea bargain and granted the child a second consent decree. The judge noted the youth's fine performance at school.

At times the judge did not wait to reject a completed negotiation but instead preempted the development of a plea bargain by simply announcing that a probation-type case was being given a consent decree.

Illustration No. 42: A twelve year old was accused of perpetrating a robbery, his first offense. Before the district attorney and the public defender could discuss the case, Judge E, who had already reviewed the defendant's file, declared that he was giving a consent decree because the juvenile was too young to be a delinquent.

Judges also exercised their nol pros power in cases dealing with juveniles who already had delinquent records. A number of times the judge threw out the plea bargain and dismissed the charge if the arrangement counsel had devised appeared detrimental to the youth.

Illustration No. 43: A defendant with a couple of prior adjudications had a theft case before Judge A. The two

lawyers had worked out an admission for continued probation and restitution. The arrangement was disclosed at the bar of the court. Judge A then called all parties into chambers. He explained that he did not want the child to have another conviction. The judge withdrew the petition and ordered restitution.

At other times the judge negated the negotiation and sent the case to another listing if the juvenile seemed to be getting the worse of the deal.

Illustration No. 44: Opposing counsel had negotiated a charge reduction where the youth would get probation if he testified against an adult co-defendant. The judge would not accept the deal. He called counsel to sidebar and informed them he would never allow one accused to "dime" on another because then the former's life would not be worth a dime. Judge I told the public defender that the district attorney was not giving her anything. The judge explained the most the prosecutor could establish was receiving stolen property and probation was a guarantee anyway. The defense lawyer had wanted to avoid a felony conviction. The judge gave the case another listing. Eventually, another plea bargain occurred where the juvenile pled guilty to receiving stolen property and was put on probation.

The judge's reasoning in terminating a negotiated guity plea was not always solicitous of the juvenile's cause. Although serious assault cases were generally sent to trial, deals were infrequently made by opposing counsel. Often the judge rejected these arrangements, saying serious crimes require trial. Sometimes the judge reacted to what he believed was a mistake by the district attorney in that the latter had seemingly given away too much. The youth had, in other words, received too lenient a sentence.

Illustration No. 45: A youth who had been committed to Southern Homes was charged with robbery. The public defender worked out a deal with the district attorney such that the defendant would plead to receiving stolen pro-

perty and be allowed to remain as committed. The prosecutor went along with the arrangement because the complaining witness could not identify the perpetrator and the best the Commonwealth could prove was receiving stolen property. The district attorney did not expect a more restrictive commitment than the group home. Judge M became angry when the proposal was revealed in court. He refused to accept the negotiation, arguing that the juvenile should get a more serious commitment. The judge continued the case. The prosecutor told the public defender not to worry because the case would be negotiated at the next listing. The complaining witness failed to appear at the next listing, however, and the case was continued again. Meanwhile, the youth had been accepted at Glen Mills. The victim did not show at the third listing either and the case was withdrawn for lack of prosecution.

Illustration No. 46: While AWOL from Cornwells Heights (open) the juvenile was involved with a theft. The defense attorney and the prosecutor arranged an admission in exchange for placing the defendant back in the Heights. Judge C objected to the youth's returning to the open setting. The probation officer had recommended the secure facility but the district attorney thought no judge would follow the report since only a theft had occurred. Judge C continued the case for trial before another judge. The juvenile was ultimately adjudicated delinquent and sent to the secure setting.

Passively, some of the legalists inhibited the development of negotiated guilty pleas because their negative attitude toward informal settlements was well known. A major way in which all the legalists actively acted as an obstacle to plea negotiation was their conducting a colloquy. One purpose of the colloquy was to ferret out inappropriate agreements (see Chapter 10). The inappropriate deals were identified by the legalists in two capacities. First, numerous juveniles broke down during the colloquy and expressed an ignorance about or an unwillingness to plead guilty.

Illustration No. 47: A juvenile with one prior adjudication was pleading guity to a burglary. Besides having

to pay restitution the youth's probation was being continued but attending correctional group counseling was an added requirement. The youth admitted committing the act. During the colloquy, however, he stated he did not know he was pleading guilty. The judge asked the defendant if he wanted to admit or to go to trial. The juvenile responded trial. He was eventually convicted after an adjudicatory hearing. Interestingly, the probation officer recommended commitment to Glen Mills. Fortunately for the youth, Judge I refused to institutionalize him unless there was another adjudication. The disposition was intensive probation.

Illustration No. 48: The public defender and the district attorney agreed the defendant needed neuropsychiatric probation and that he should plead guilty to an involuntary deviate sexual intercourse charge. Everything proceeded smoothly until the judge did the colloquy. The youth refused to admit guilt. The case was continued. The proposed deal went through at the next listing. The juvenile did not have to admit because Judge M, who never conducted a colloquy, presided at the hearing.

The second "problem" presented by a colloquy was the discovery that no crime (or at least an offense different from the one charged) had occurred.

Illustration No. 49: An aggravated assault charge brought the juvenile to court. He had one prior adjudication. The two lawyers bargained an admission for intensive probation. The judge suggested correctional group counseling instead and all parties agreed. The public defender conducted the colloquy which proceeded without any difficulty. The judge then asked the defendant if what the district attorney had read (the facts of the case as written in the police report) was accurate. The youth answered in the negative. He then told a story that indicated self-defense was a possible defense. The judge entered a denial and sent the case to trial. The case was dismissed for lack of prosecution.

Illustration No. 50: Judge I supervised the colloquy of the accused who had pled guilty for probation. The charges were terroristic threats and harassment. After talking with the defendant and the complainant, the judge determined that no crime had taken place. He put the case in limbo to see if everything would calm down. Two months later the case was discharged.

Illustration No. 51: The youth was charged with attempted auto theft and he pled guilty to that offense. During a colloquy before Judge D, however, the juvenile admitted trying to steal a tool box from inside the car rather than the car itself. The case went to trial where the defendant was adjudicated of the original charge.

The foregoing has demonstrated that judges regularly set aside, preemptively cancelled and passively dissuaded the plea bargains that the defense and the prosecution had arranged or would have arranged. If anything, the defense attorney and prosecutor each had even more reasons to object to a negotiated guilty plea.

In the absence of a trial penalty, and without other problems like jury trial delays and caseload pressure, the defense lawyer had much maneuverablity in juvenile court. He frequently took advantage of this freedom and forced trials in situations in which neither the defendant's convictability nor the ultimate sentence was much in doubt. The defense attorney often had nothing to lose by going to trial, particularly in obvious probation cases, in "free rides," and in obvious commitment cases. If the prosecutor was not amenable to a charge bargain in any of these situations, the case often ended in an adjudicatory hearing. The rookie public defender who wanted trial experience was able to capitalize upon the fact that he would not be penalized for fighting for his client, and consequently he turned down numerous offers from the judge and the district attorney. The private attorney who did not not have working knowledge of the juvenile court usually either did not know he could bargain or did not know what constituted a good deal, and was thus prevented from working out arrangements with the prosecutor. Passively, defense lawyers blocked deals by failing

to appear in court.

Even if the defense attorney had no vested interest in gaining trial experience, and even if he knew the vagaries of plea negotiation in juvenile court, he still refrained from bargaining a guilty plea in a number of circumstances. In any case where the defense lawyer believed he had a good motion to suppress and/or a winable case, he usually pressed for trial.

Illustration No. 52: The defendant was arrested for carrying a firearm. It was his first arrest and possibly could have merited a consent decree. At the worst, the youth would be put on probation if convicted at trial. The public defender decided to gamble losing the consent decree because he felt he could win a motion to suppress. The motion was granted and a directed verdict resulted. The public defender's gamble paid off. The juvenile would still be eligible for a consent decree for his next non-serious offense.

Illustration No. 53: A burglary charge was the child's first arrest. The district attorney offered probation but the public defender refused. He thought he had a good motion to suppress. The motion was denied at trial, however, and the youth was convicted. Nevertheless, he received probation. The defense had lost nothing by going to an adjudicatory hearing.

Illustration No. 54: The prosecutor offered to withdraw certification and agree to Glen Mills for a plea of guilty. Counsel was suspicious at so generous a concession from the district attorney. The public defender then discovered that the complainant had failed to appear for a second time. Thinking he had a winable case, the defense lawyer turned down the prosecutor's offer. At the next listing the case was withdrawn for lack of prosecution.

Juveniles who were dependent presented a problem for defense lawyers. They could not agree to plead guilty because the youth would lose his dependent status. The result was the same in cases in which the defendant refused to cooperate or denied complicity in

the crime. Plea bargaining was impossible when the defense attorney had not had an opportunity to interview the accused and/or had no file on the defendant. Similarly, defense counsel was unwilling to negotiate when the probation officer's plan was not complete because no one was certain what the ultimate sentence would be.

> Illustration No. 55: An auto theft case would have been an admission to criminal mischief but the probation officer was not available and his treatment plan was not in the defendant's file. The public defender did not want to plead guilty under these circumstances. Two listings later the plea bargain was consummated.

Not wanting to plead in the dark was also the reason behind the defense lawyer's reluctance to enagage in plea accommodation when a new or unfamiliar judge was presiding (see Heumann, 1978: 197; Eisenstein and Jacob, 1977: 35).

Probably the most typical reason the defense chose not to plea bargain was that the district attorney demanded too much (see Mather, 1979: 142). When the prosecutor was being "unreasonable" either by requiring a certain type of commitment or by expecting admission to a specific number of or level of charges, the defense attorney simply elected trial. Many potential deals were lost due to opposing counsels' inability to achieve a common ground.

> Illustration No. 56: The district attorney approached the public defender and suggested that the defendant plead guilty to a reduced charge (theft instead of robbery) and allow a referral to be made to Glen Mills. The defense lawyer refused the proposal. He felt the juvenile deserved one more chance on probation. The case went to trial and the youth was acquitted.

> Illustration No. 57: Both attorneys agreed that the child deserved probation. The prosecutor was adamant that the accused plead guilty to burglary since that is what the evidence supported. The public defender acknowledged the juvenile's guilt but insisted that the latter merely received stolen property. No accord was reached. The case was eventually dismissed for lack of prosecution.

A handful of cases could not be plea bargained because of the defense lawyer's reaction to the type of crime involved (cf. Heumann, 1978: 121).

> Illustration No. 58: The charge against the defendant was robbery. Ordinarily, the public defender would have no difficulty agreeing to a plea bargain. The victim in this case, however, was a decoy cop. The public defender admitted that he never negotiated a robbery of a granny squad cop even though he lost most of the cases. The youth in this incident was adjudicated delinquent at trial.

A couple of cases had to advance to an adjudicatory hearing because of the public defender's conflict of interest at pretrial.

> Illustration No. 59: Two juveniles were charged with attempted robbery, the first arrest for both. The public defender said he would plead both defendants for probation but the two had conflicting stories so he could not give two admissions. The co-defendants went to trial and both were convicted.

Finally, several times in a legalist's courtroom the defense lawyer explained he would have pled guilty if the juvenile would have survived the colloquy.

> Illustration No. 60: A youth with a substantial record was charged with burglary. The district attorney told the public defender he would go along with an admission to criminal trespass and a commitment to Glen Mills. The public defender was amenable to this deal but he knew the defendant would not get through the colloquy Judge I conducts after every guilty plea. The case had to go to trial. The juvenile was convicted of burglary and he was committed to Glen Mills.

Here, the colloquy cost the juvenile in that he ended up adjudicated for a more serious offense than that for which he could have plea bargained.

The defendant was the source of blocking deals in several instances. Numerous times the juvenile's failure to appear or his leaving court before his case was called unravelled a plea negotiation his attorney had reached with the prosecutor. Fate sometimes penalized and sometimes rewarded the youth for his non-compliance in answering the court order to appear for trial.

Illustration No. 61: The district attorney and private counsel worked out an admission for continued probation for the current burglary charge but the accused never showed. One month later the defendant made an open admission (the prosecutor in that courtroom was known for not plea bargaining). He was committed to Sleighton Farms.

Illustration No. 62: The prosecutor and private counsel agreed that certification would be withdrawn if the youth pled guilty to burglary and did not challenge commitment to Cornwells Heights-secure setting. The defendant left court, however, and the negotiation fell through. The burglary charge was withdrawn at the next listing because the juvenile was incarcerated on another case.

Most often the defendant vetoed the plea bargain in person. The juvenile simply refused to plead guilty.

Illustration No. 63: The public defender had been able to reduce the burglary charge to criminal trespass. Since it was the youth's first arrest probation was a given. Although the defendant was caught inside the house and the defense lawyer felt fortunate to get the charge reduction, the accused would not admit guilt. The child was eventually adjudicated delinquent of burglary and was put on probation. Although the juvenile did not lose sentence-wise, the conviction was worse than it would have been via plea bargaining.

Illustration No. 64: The youth was charged with two counts of robbery. The judge summoned the lawyers to chambers and told defense counsel if the accused pled guilty he would go to Sleighton Farms. The public defender wanted this deal because the commitment could have been worse and there was an open robbery charge which would hopefully fade into oblivion. The juvenile refused to admit. He lucked out, however, as all three robberies were later withdrawn for lack of prosecution.

Again, fate varied and allowed the defendant to fare better or worse for his recalcitrance in denying guilt. In one interesting case the youth's mistaken interpretation of guilt proved fortunate in allowing him to escape criminal liability.

Illustration No. 65: The public defender offered the defense attorney an admission to burglary provided that the juvenile was allowed to remain at Forestry Camp. The defense lawyer was certain the district attorney had a sure win case and the former wanted to ensure that the commitment was not changed. The defendant did not want to plead guilty, however. He said he was outside the building and took stuff handed out the window so, therefore, he felt not guilty. The public defender told the youth his analysis was incorrect. The case went to trial and ended in the judge's sustaining the defense's demurrer. The prosecution could not even establish receiving stolen property.

Sometimes the acused did not deny guilt per se but still refused to plead guilty because he did not like the state's offer.

Illustration No. 66: The district attorney proposed that the defendant plead guilty and accept placement at the open facility at Cornwells Heights. Counsel accepted because conviction seemed a certainty, and, although the probation officer had recommended the open part of the Heights, the defense lawyer felt the secure unit was possible if the case went to trial. The juvenile did not want to go to the Heights, open or secure, and consequently, he turned down the prosecutor's proposal. An adjudicatory hearing before Judge resulted. The youth was sent to the open section at the Heights. Counsel was relieved that the judge was not irritated by the trial (in an obviously guilty case) and had followed the probation officer's recommendation.

Similarly, some deals fell through because the defendant was unwilling to pay restitution or to testify against a co-defendant.

An insistence of innocence or an unwillingness to abide by the provisions of the plea bargain were usually the reasons that parents demanded that their children be given an adjudicatory hearing. As in the previous examples the parental veto sometimes hurt and sometimes helped the accused.

> Illustration No. 67: The complainant lived in New York. The prosecutor felt she would not return for trial. Consequently, he offered the accused a consent decree even though the youth's first arrest was a robbery. The juvenile's mother protested this arrangement and declared her boy had done nothing wrong. She insisted the child be given a trial. The victim did appear at the second listing of the case and her testimony helped convict the defendant.

> Illustration No. 68: The juvenile was on probation for a previous adjudication. He was implicated in a neighborhood fight, involving a serious injury. The defense attorney accepted the prosecutor's offer for intensive probation. The defendant's mother rejected the deal, however. She announced the victim was actually the instigator. The defendant was saved an adjudication as the case was later withdrawn for lack of prosecution.

The prosecutor in juvenile court did not have to work under the constant fear that each defendant might demand trial by jury. He did not have to labor with trials that lasted days or weeks. Consequently, the district attorney, like the defense attorney, had considerable freedom in picking which cases would be negotiated and which would be litigated. Of course, sometimes he was ignored altogether while the defense lawyer and the judge decided the outcome of a case.

Most of the plea bargains that the prosecutor rejected involved a defense attorney who would not cooperate sufficiently. Usually,

the district attorney wanted the defendant committed while the defense lawyer wanted the youth to remain on probation.

> Illustration No. 69: The public defender offered the district attorney an admission on-the-nose to aggravated assault for continued probation. The defense attorney feared the possibility of institutionalization. The prosecutor wanted commitment and would accept only an open admission. The case went to trial and the defendant was found not guilty.

> Illustration No. 70: The lawyers from Illustration No. 69 interacted in a robbery case three hours later. The public defender made the same offer. The district attorney again refused but this time he was more reluctant to refuse because he "got burned" in the morning. The case ended in a guilty verdict, however, and the youth was committed to Glen Mills.

In serious cases the problem was not necessarily an inability for the two sides to reach agreement but rather the prosecutor wanted the judge to hear the facts.

> Illustration No. 71: The robbery and aggravated assault incident was the youth's first arrest. Although it was a very serious offense, probation was not in doubt. The defense attorney offered the prosecutor an admission for probation. The district attorney rejected the deal because he wanted the judge to hear the case. Twenty youths had beaten four victims, three of whom ended up in the hospital. The defendant was adjudicated delinquent and was put on intensive probation, a rare skip over regular probation.

Similarly, the prosecutor was reluctant to negotiate cases which had attained notoriety: racial incidents or highly publicized offenses. Teacher assaults and elderly victims crimes were, for the most part, also earmarked for adjudicatory hearings rather than for guilty pleas. The district attorneys who staffed the special rape unit seemed somewhat prone to litigate. Although they were observed negotiating pleas, these attorneys appeared to act as though they were sent to juvenile court to try cases,

not to reach compromises with defense lawyers. If a prosecutor knew a defendant from past experience or dealt particularly effectively with a specific type of crime or procedure (like certification), he might be specially assigned to a case. In this situation the specially assigned case dominated the district attorney's case-load, although he continued to work on other cases. It seemed as though the prosecutor usually put so much time and effort into one case that he was not willing to plea bargain it away. Also not anxious to negotiate guilty pleas were the newly appointed district attorneys who wanted to gain invaluable trial experience.

A number of times the district attorney had tentatively made a plea negotiation only to find out that the defendant's record was worse than he had throught, making the plea bargain unacceptable.

> Illustration No. 72: A juvenile who had been incarcerated at Sleighton Farms was involved in a burglary. The public defender nearly executed a remarkable deal where the youth would plead guilty and be allowed to remain as committed. Before announcing the plea bargain at the bar of the court the prosecutor discovered the defendant had two other open cases. All matters were consolidated for trial. The juvenile was convicted and was sent to Cornwells Heights.

Regardless of the severity of the crime or the nature of the youth's record, the district attorney was unwilling to plea bargain when the complainant opposed such a course.

> Illustration No. 73: Two defendants were charged with their first offense, a burglary. This would have been a probation case at pretrial but the complainant had called the district attorney's office and declared she wanted a trial. Judge J presided at the adjudicatory level. He deferred adjudication to see if the juveniles would perform community involvement action. Both were good students. Eventually, the deferred adjudications turned into consent decrees.

> Illustration No. 74: The defendant had made a deal to admit to auto theft and to go to the secure unit of the Heights in return for the prosecutor's withdrawal of certification. The complainant informed the public defender that she did not want the youth put away. The defense attorney asked for and received a withdrawal of the admission. The youth pled guilty to receiving stolen property at the next listing and was allowed to remain on after-care probation. The victim would not prosecute.

> Illustration No. 75: The public defender tried to convince the district attorney to accept an admission of guilt and an offer of restitution because she feared the prosecutor might push for certification. The defendant had already been to Cornwells Heights-secure. The probation officer supported the defense lawyer's request. The prosecutor talked to the complainants. They refused restitution and demanded that the youth be put away. Then the district attorney decided to go for certification. One month later certification was denied by Judge A who worked out an admission for commitment to a state-run facility in the western part of Pennsylvania.

Finally, the prosecutor blocked a plea bargain when it hurt him strategically. That is, the district attorney would sometimes refuse to negotiate because he did not want to divide two co-defendants.

> Illustration No. 76: A burglary charge brought two defendants into court. For one youth this was his first arrest. The other juvenile was experiencing his sixth arrest. Four previous offenses had been nol prosed and the fifth was given a consent decree because the accused was dependent. He was currently subject to a dependent commitment to St. Francis. The prosecutor explained that he would have offered probation to the first defendant but splitting the two juveniles would have made conviction of the second defendant difficult. The district attorney wanted a delinquent commitment for the veteran criminal. Both cases proceeded to an adjudicatory hearing before Judge A. He withdrew the case against the first-time offender and he gave a second consent decree to the other youth, who was allowed to remain at St. Francis under a dependent commitment.

Another obstacle to plea negotiation came from the probation officer who did not directly veto deals but instead provided in-

formation or a sentence recommendation that occasionally served as a catalyst in others' dismantling a plea bargain.

> Illustration No. 77: A youth who was on probation for one previous adjudication was charged with burglary. The case was at pretrial and opposing counsel had agreed to an admission to a reduced charge (theft) in exchange for continued probation. Before the court accepted the negotiation, the defendant's probation officer entered the courtroom and announced her intentions to file a motion for violation of probation. The district attorney immediately declared a need for trial in this burglary case. The defendant was adjudicated delinquent at trial and was committed to St. Gabriel's Hall.
>
> Illustration No. 78: An auto theft brought the accused to court. The prosecutor and the public defender arranged an admission for probation with correctional group counseling. The probation officer walked into court before the deal was formalized and informed everyone of a new arrest. The judge said the auto theft would have to go to trial. Ultimately, the defendant pled guilty to unauthorized use of auto and was incarcerated at Sleighton Farms.

The probation officer's presence was definitely felt the few times he chose to intervene into the court process.

The final plea bargaining obstacle in the veto category stems from the institutions. The admission personnel for the juvenile facilities occasionally frustrated plea negotiation by refusing to accept a potential candidate or by locking its doors to a former client who committed an offense while AWOL or on furlough.

Only a very few non-negotiated guilty pleas encountered any barriers and when they were stopped it was the judge who did the blocking.[10] The judge usually rejected a non-negotiated guilty plea because of the severity of the case or because commitment was involved.

> Illustration No. 79: The public defender tried to enter an admission to the aggravated assault charge before Judge F, fearing the latter would commit the defendant to Cornwells Heights if he heard the facts of the case. The judge refused the guilty plea because of the severity of the crime. He disqualified himself and said the youth should be certified. Three months later the juvenile walked due to lack of prosecution.
>
> Illustration No. 80: The public defender announced to Judge G that he had not talked to the district attorney but he wished to plead guilty to the robbery charge against the defendant. At once the prosecutor noted her objection to probation. Then the judge said he would have to withdraw the admission because he will not take one where commitment is possible. Eventually, the accused pled guilty and was institutionalized at Glen Mills.
>
> Illustration No. 81: A youth with two prior adjudications had an open burglary case. Neither the district attorney nor the judge would accept an admission for continued probation. The defendant's mother wanted the juvenile placed because he was getting into too much trouble. Judge E did not want to accept an admission since commitment was necessary. He said he felt constitutionally restricted from accepting a guilty plea that leads to incarceration. Two weeks later the accused pled guilty before Judge M and was sent to St. Gabriel's Hall.

Although the judges seemed to object to the appearance of "slamming" a juvenile who had made an open guilty plea (by putting the child in an institution), the objection tended to disappear once the defense attorney and the prosecutor plea bargained and agreed that incarceration was the proper solution for the juvenile who pled guilty.[11]

In one case a non-negotiated guilty plea was set aside because of an inherent deficiency in the defendant.

> Illustration No. 82: The two counts of burglary represented the juvenile's third arrest. The prior two arrests were adjusted at intake. The public defender asked Judge E for a sidebar conference. The former explained that the defendant had a learning disability which stemmed from

his father's hitting him on the head with a board several years ago. The public defender's office had asked DPW to plan. The district attorney said the youth could admit while the judge deferred adjudication to get the probation officer to plan. The defense attorney was amenable to this but the judge did not want to take a guilty plea from a thirteen year old with mental problems. Later, the youth was adjudged dependent over the prosecutor's objections.

No other juvenile was found to be incompetent to plead guilty.

The detention hearing was one of the most formidable obstacles to dismissal bargaining. Cases that would be ripe for dismissal at other levels were contined for trial at the detention stage because resolving the case was of limited importance at this proceeding. Usually, the defense lawyer grabbed at the opportunity of a dismissal. The only time there was hesitation was when a consent decree was involved. A consent decree was not a total dismissal since it constituted the first step on the dispositional ladder and ordinarily forced even the next non-serious offense to be a probation case. Defense counsel learned, sometimes the hard way, that a consent decree was usually a worthy gamble, however.

Illustration No. 83: The juvenile had been offered a consent decree at pretrial in an aggravated assault case. The public defender turned it down because the defendant's mother announced that she was going to settle the matter through restitution with the complainant. The public defender believed the case would be dropped altogether, and would result in no more than a consent decree even if the case went to trial. The restitution arrangement fell through and the matter was resolved by trial before Judge K. The youth was adjudicated delinquent and put on probation. Judge K was a replacement judge and was not a consistent compensator like his peers.

When the defense lawyer had what he thought was a winable case

(via either a motion to suppress or lack of evidence/prosecution) he was often tempted to push for trial even though he had been offered a consent decree (see Chapter 9). Dismissal bargaining broke down also when either party thought the other was asking for too much.

Illustration No. 84: A youth was at the adjudicatory level charged with five offenses. The public defender offered prosecutor a commitment deal in which the defendant would plead guilty to two crimes while the reminaing three would be withdrawn. The district attorney countered with a proposal in which the juvenile would admit to three charges in exchange for dismissal of two petitions. The two sides could not come to terms. The entire matter was continued to another listing. Ultimately, the child was convicted of one of the offenses (one was not guilty and three were lack of prosecution) and was institutionalized.

The defendant acted as a barrier to dismissal negotiation when he failed to appear in court and when he refused to provide a service the district attorney wanted. Most often it was restitution and testimony to which the juvenile objected. The victim prevented a few cases from ending in dismissal bargaining by demanding that the matter be resolved by trial or by opposing the extension of leniency to the perpetrator. DPW stymied dismissals in a number of cases by refusing to take the defendant back in its care. Finally, the prosecutor and the judge resisted giving a consent decree or a nol pros either when the offense appeared too serious for a dismissal or when the defendant did not seem to deserve a break.

In all there were a variety of people and circumstances which served as obstacles to mitigated justice in juvenile court. There were so many impediments, in fact, it is a wonder that any negotiation occurred in that forum.

FOOTNOTES

[1]The other factor which influenced the transfer decision was the youth's institutional record.

[2]It should be pointed out that some of the reasons behind non-negotiated guilty pleas cannot be transferred to plea bargaining. For example, defense attorneys would not consummate a complete sentence deal with the prosecutor in the hope of securing leniency from the judge as in plea accommodating because the charge and/or sentence concessions would have already been granted by the district attorney. To the same effect, defense counsel would not plea bargain in order to achieve a more effective voice at disposition (as in factual and tailored guilty pleas) because the negotiated character of the guilty plea eliminates the opportunity for counsel to highlight the defendant's contrition as the only reason the defendant pled guilty.

[3]Similarly, many defense attorneys argued they plea bargained some cases in order to maintain credibility with the judge by contesting only real disputes.

[4]Very often the complainant grew dissatisfied with juvenile court after making three or four visits to court only to have the case continued. By the time a fifth visit was necessary the victim frequently decided prosecution was not worth the effort.

[5]Sometimes plea bargaining spared the victim the necessity of recalling the details of the crime.

[6]Even if the youth was in court for the third or fourth time, as long as the crime was not violent, the child was not likely to be committed. Rather, some brand of probation (e.g., intensive or correctional group counseling) was the probable sentence. Knowing this, the prosecutor plea bargained many of these cases, claiming that he would not do any better at trial.

[7]Although racking up felony convictions did not serve to establish the youth's having a bad institutional record, which was an important criterion for transfer, at least the juvenile could be shown to be a dedicated criminal if numerous crimes were attributed to his record.

[8]Without pretrial's weeding out cases it would have been difficult to give every juvenile court case a trial.

[9]Although race-related offenses were usually destined for trial, one racial incident actually promoted plea bargaining. The case involved a simple assault. Ordinarily, a crime of this sort warranted a consent decree. The prosecutor emphasized the seriousness of the racism rather than of the crime itself and convinced the defense attorney that the case merited probation. The defense lawyer agreed and his client pled guilty.

[10]The prosecutor never turned down a guilty plea that was not negotiated. The district attorney did not have to surrender anything (charge- or sentence-wise) when he had not negotiated the guilty plea. It would not make sense for the defendant or the defense counsel to stop a non-negotiated guilty plea since, by definition, the defense would have had to take the initiative in offering this type of guilty plea.

[11]Many admission for commitment deals were accepted by the judges. In all, there were 74 such plea bargains.

CHAPTER 9: THE PLEA NEGOTIATION PROCESS IN JUVENILE COURT

A. Networks and Exchanges

There were many networks through which plea negotiation was channeled in juvenile court. The judge worked sometimes with just the juvenile, sometimes only with defense counsel, and sometimes with both the prosecutor and the defense attorney. Besides these three possibilities, defense counsel and the district attorney frequently worked together without the judge's interference. Unless the judge was a conciliator, the defense lawyer was usually the initiator of the negotiation. Of course, the trademark of the conciliator was to launch informal settlements by his own initiative (see Chapter 7). Rarely did the prosecutor make the first move in offering a deal (see Mather, 1979: 56). When the defense attorney struck out with the district attorney he often approached the judge, particularly if the latter was a conciliator, with a proposal.

There was also a variety in the exchanges that took place among the three main actors while negotiating a case. The first type of exchange was the "benevolent." Here, both the defense attorney and the prosecutor (and maybe the judge) felt that the defendant needed what was being done for him. In other words, the disposition package the parties negotiated was particularly well-suited to the juvenile's situation; the treatment imperative controlled this interaction. Similar to the benevolent was the "cooperative" exchange, where counsel agreed to negotiate because they concurred in what the case was worth (see Utz, 1978: 7). The lawyers in this circumstance were not necessarily swayed by the child's "needs" per se. Rather, they were influenced

by the dispositional structure which very often predetermined the sentence a youth would receive as a result of his offense. Again, similarity was noted in the "inevitable" exchange in which negotiation was achieved because both sides believed the results would be the same with or without trial, which rendered the latter pointless. The concern, here, was not to waste time or effort; there was no necessary agreement that the defendant deserved the sentence he was allocated or that the case was worth the proposed disposition.

The two remaining exchanges were quite different from the previous three. The "adversary" was based on the prosecutor's and the defense attorney's each attempting to accomplish the best results for his own cause. This represented the typical concession situation where the prosecutor avoided acquittal while the defense lawyer avoided conviction on the maximum charge and/or the maximum sentence. Multiple charge cases where each side surrendered on two or three cases to earn victory in another two or three cases were perhaps the most obvious examples of the adversary classification. Finally, the "mandatory" exchange occurred when the judge basically forced a deal down the throats of the defense attorney and/or the district attorney. In effect, the judge took over the course of the case and singlehandedly decided its fate.

B. Overview Of Case Resolution By Court Stage

More cases were resolved at the pretrial level in this study than at the other three stages combined. Table #1 reveals the numerical superiority the pretrial level experienced.

TABLE #1

RESOLVED CASES BY COURT STAGE

Stage	# of Cases	%
Pretrial	2,430	53.4
Detention	841	18.5
Certification	100	2.2
Adjudicatory	1,176	25.9
TOTAL	4,547	100.0

It is not surprising, then, that pretrial dominated much of the mitigated justice activity transpiring in juvenile court.

The majority of negotiated guilty pleas was tendered at the pretrial stage. Table #2 demonstrates this and shows that, although the adjudicatory hearing was a distant second in that category it actually dominated as the level in which non-negotiated guilty pleas occurred.

TABLE #2

GUILTY PLEAS BY COURT STAGE

	Negotiated		Non-Negotiated		Total	
Stage	# of Cases	%	# of Cases	%	# of Cases	%
Pretrial	543	59.2	16	15.4	559	54.7
Detention	48	5.2	2	1.9	50	4.9
Certification	32	32.1	0	---	32	3.1
Adjudicatory	295	3.5	86	82.7	381	37.3
TOTAL	918	100.0	104	100.0	1,022	100.0

Despite the fact that most of the guilty pleas in the study were offered at pretrial, that stage of the court process ranked only third with respect to the percentage of cases that were resolved by guilty pleas. Table #3 discloses this material.

TABLE #3

PERCENTAGE OF CASES RESOLVED BY GUILTY PLEAS

	Negotiated	Non-Negotiated	Total
Stage	# of Cases	% of Cases	% of Cases
Pretrial	22.4	.7	23.1
Detention	5.7	.2	5.9
Certification	32.0	---	32.0
Adjudicatory	25.1	7.3	32.4

Similarly, consent decrees, which were by definition negotiated dismissals, were most likely to be granted at pretrial. The actively and passively bargained and virtually unilateral consent decrees took place with greater frequency at pretrial than at any other stage. Table #4 reveals where consent decrees were given.

TABLE #4

CONSENT DECREES BY COURT STAGE

	Actively Bargained		Passively Bargained		Virtually Unilateral		Total	
Stage	# of Cases	%	# of Cases	%	# of Cases	%	# of Cases	%
Pretrial	54	53.5	500	90.4	39	54.2	593	81.7
Detention	1	1.0	25	4.5	12	16.7	38	5.2
Certification	---	---	---	---	--	---	---	---
Adjudicatory	46	45.5	28	5.1	21	29.1	95	13.1
TOTALS	101	100.0	553	100.0	72	100.0	726	100.0

Consent decrees accounted for the highest percentage of resolved cases at pretrial. At no other level did consent decrees amount to as much as 10% of the caseload, as is indicated in Table #5.

TABLE #5

PERCENTAGE OF CASES RESOLVED BY CONSENT DECREES

Stage	Actively Bargained % of Cases	Passively Bargained % of Cases	Virtually Unilateral % of Cases	Total % of Cases
Pretrial	2.2	20.6	1.6	24.4
Detention	.1	3.0	1.4	4.5
Certification	---	----	---	----
Adjudicatory	3.9	2.4	1.8	8.1

The nol pros, whether negotiated or non-negotiated, occurred most often at the adjudicatory hearing. Table #6 shows where this type of mitigated justice activity was likely to occur.

TABLE #6

NOL PROS BY COURT STAGE

	Negotiated		Non-Negotiated		Total	
Stage	# of Cases	%	# of Cases	%	# of Cases	%
Pretrial	22	15.0	120	35.8	142	29.5
Detention	17	11.6	79	23.6	96	19.9
Certification	8	5.4	8	2.4	16	3.3
Adjudicatory	100	68.0	128	38.2	228	47.3
TOTALS	147	100.0	335	100.0	482	100.0

The adjudicatory stage had the highest percentage of cases settled by the nol pros as disclosed in Table #7.

TABLE #7

PERCENTAGE OF CASES RESOLVED BY NOL PROS

Stage	Negotiated % of Cases	Non-Negotiated % of Cases	Total % of Cases
Pretrial	.8	5.0	5.8
Detention	1.8	9.6	11.4
Certification	8.0	8.0	16.0
Adjudicatory	8.3	11.1	19.4

Finally, pretrial produced the most cases that were declared to need trial. Table #8 substantiates that most decisions to pursue trial emanated from this stage.

TABLE #8

TRIALS BY COURT STAGE

Stage	# of Cases	%
Pretrial	1,136	49.0
Detention	657	28.4
Certification	52	2.2
Adjudicatory	472	20.4
TOTAL	2,317	100.0

Nevertheless, the detention hearing was the stage that witnessed the highest percentage of cases that were resolved by seeking or using trial. Table #9 demonstrates the percentage of cases in which trial was thought necessary at the various court levels.

TABLE #9

PERCENTAGE OF CASES RESOLVED BY TRIAL

Stage	% of Cases
Pretrial	46.8
Detention	78.1
Certification	52.1
Adjudicatory	40.1

Mitigated justice entails negotiated and non-negotiated guilty pleas (except straight guilty pleas), and bargained and unilateral dismissals. Table #10 identifies pretrial as the court stage from which a majority of the mitigated justice-related cases emanated.

TABLE #10

MITIGATED JUSTICE CASES BY COURT STAGE

Stage	% of Cases	%
Pretrial	1,292	58.1
Detention	183	8.2
Certification	48	2.2
Adjudicatory	701	31.5
TOTAL	2,224	100.0

Although pretrial dominated the mitigated justice business numbers-wise, the adjudicatory hearing witnessed the highest percentage of its cases settled under the auspices of mitigaged justice. Table #11 confirms this statement.

TABLE #11

PERCENTAGE OF CASES RESOLVED BY MITIGATED JUSTICE

Stage	% of Cases
Pretrial	53.2
Detention	21.8
Certification	48.0
Adjudicatory	59.6

So, despite the fact that pretrial was designated as the clearinghouse for cases deemed eligible for informal removal from the juvenile justice system, the adjudicatory hearing actually resolved more of its cases via the discretionary network of mitigated justice.

C. The Pretrial Hearing

Pretrial combines the adult court preliminary hearing and arraignment. A judge presides over the operation and verifies both the presence of probable cause to believe the defendant committed the offense, and the accused's plea. The pretrial hearing in Philadelphia's juvenile court is distinctive, however, in that it was specially implemented to remove cases that did not require trial from further processing in the court system. Pretrial was designed, then, to determine whether a case could be resolved without having to resort to an adjudicatory hearing. One factor that likely assisted the informal settlement of cases at pretrial was the customary absence of the complainant. Unless the case involved a private complaint or affidavit the victim did not appear at pretrial. Thus, there was no pressure

from the complainant to resolve the issue in a formal manner. Table #12 reveals what happened to 3,478 cases that were handled by 6 judges in pretrial during 77 days of observation.

TABLE #12

PRETRIAL DISPOSITIONS

Disposition	# of Cases	%
Continued	750	21.5
Disposition/Motion/Review	184	5.3
Dismissed	114	3.3
Resolved	2,430	69.9
TOTAL	3,478	100.0

Cases were usually continued at pretrial because the accused did not receive proper notice and failed to appear in court. In all, 750 cases had to be given another pretrial date. Another 184 cases involved sentencing or a motion or review hearing. Thus, the issue was not "alive" in these situations; the matter had already been resolved and did not belong in the core of the study. Also excluded from the body of the research were 114 cases that were dismissed due to either a lack of evidence or a lack of speedy prosecution. These cases were excluded because the prosecutor could not go to trial even if he had wanted to. The cases legally died prior to trial; they were screened out of the juvenile justice system. Finally, 2,430 cases were resolved at pretrial in the manner indicated in Table #13.

TABLE #13

CASES RESOLVED AT PRETRIAL

Disposition	# of Cases	%
Going to Trial	1,136	46.8
Negotiated Guilty Pleas	543	22.3
Non-Negotiated Guilty Pleas	16	.7
Consent Decrees	593	24.4
Nol Pros	142	5.8
TOTAL	2,430	100.0

The court's objective to informally settle cases was successful according to this distribution. Over half(53.2%) of the cases resolved at pretrial were able to be completed without pushing the matter towards a trial.[1]

When a guilty plea was tendered by a juvenile at pretrial it was most likely the product of negotiation. Only 16 (or 3%) of the guilty pleas at this stage were offered without any bargaining. Table #14 depicts the non-negotiated pleas of guilty recorded at pretrial.

TABLE #14

NON-NEGOTIATED GUILTY PLEAS AT PRETRIAL

Type	# of Cases	%
Factual	8	50.0
Timed	6	37.5
Straight	2	12.5
TOTAL	16	100.0

Bargaining for guilty pleas took place between the judge and the juvenile when the conciliator (Judge G) presided. Otherwise, the defense attorney and the prosecutor negotiated whenever the administrator or the legalist sat in pretrial. The negotiation ordinarily occurred at the bar of the court after the facts of the case had been read by the district attorney. The entire process typically lasted between one and three minutes, which included both any discussion between counsel (or between the judge and the juvenile) and the advice defense counsel gave the accused before pleading. The plea bargaining at pretrial usually entailed probation and only rarely ended in the juvenile's being incarcerated, as indicated in Table #15.[2]

TABLE #15

PLEA BARGAINS AT PRETRIAL

Type	# of Cases	%
Probation	496	91.3
Commitment	10	1.8
Remain As Committed	32	5.9
Disposition To Another Judge	5	.9
TOTAL	543	99.9

Unlike guilty pleas, consent decrees at pretrial were usually not actively negotiated. Table #16 shows how consent decrees were granted at pretrial.

TABLE #16

CONSENT DECREES AT PRETRIAL

Type	# of Cases	%
Actively Bargained	54	9.1
Entitled/Passively Bargained	500	84.3
Virtually Unilateral	39	6.6
TOTAL	593	100.0

Only 54 of the 593 consent decrees (9.1%) at pretrial were actively bargained. The negotiation process for consent decrees resembled that used in pleading guilty, except that the judge was not often involved in consent decree bargaining. Most often the negotiation concerned evidentiary problems, restitution or the juvenile's deserving a "break." Table #17 discloses the distribution of actively bargained consent decrees at pretrial.

TABLE #17

ACTIVELY BARGAINED CONSENT DECREES AT PRETRIAL

Reason	# of Cases	%
Evidence	18	33.3
Restitution	15	27.8
Deserved	12	22.2
Testimony	3	5.6
Dependent	5	9.3
Counseling	1	1.8
TOTAL	54	100.0

Most of the consent decrees at pretrial were from the entitled/passive bargain category. The 500 dismissals of this sort amounted to 84.3% of all consent decrees given at pretrial, and 90.4% of all entitled consent decrees observed in the study. The remaining 39 virtually unilateral consent decrees were granted mainly because the youth was dependent or very young as Table #18 demonstrates.

TABLE #18

VIRTUALLY UNILATERAL CONSENT DECREES AT PRETRIAL

Reason	# of Cases	%
Dependent	15	38.5
Very Young Accused	16	41.0
Accused Doing Well	3	7.7
Mental Health	3	7.7
N Ps Recommended	2	5.1
TOTAL	39	100.0

The nol pros dismissals at pretrial were also infrequently bargained. Only 22 of the 142 nol pros cases (15.5%) at pretrial were negotiated. Like consent decree bargaining, nol pros negotiation resembled plea negotiation except that the judge was not usually a participant in nol pros bargaining. Table #19 reveals that usually a dismissal was exchanged either for a guilty plea to another charge or for cooperation in a motion/review/disposition deal.

TABLE #19

NEGOTIATED NOL PROS AT PRETRIAL

Reason	# of Cases	%
Guilty Plea	10	45.5
Motion/Review/Disposition	5	22.7
Restitution	3	13.6
Dependent	2	9.1
Counseling	2	9.1
TOTAL	22	100.0

The typical nol pros case at pretrial was defendant-oriented. More than 50% (74 of 142 cases, or 52.1%) of the nol pros dismissals at this stage stemmed from sympathy for the accused. The 74 dismissals of this type at pretrial amounted to 54.4% of all defendant-oriented dismissals granted in the study. Table #20 depicts the reasons non-negotiated dismissals occurred at pretrial.

TABLE #20

NON-NEGOTIATED NOL PROS AT PRETRIAL

Reason	# of Cases	%
Defendant-Oriented	74	61.7
Non-Cumulative Punishment	20	16.7
Status	22	18.3
System Can Do Nothing	4	3.3
TOTAL	120	100.0

A follow-up study via a file check was conducted to examine the fate of the 1,136 cases that were sent from pretrial to an adjudicatory hearing. Table #21 details the types of cases that were deemed to require a trial.

TABLE #21

CASES SENT TO TRIAL FROM PRETRIAL

Type	# of Cases	%
Record Warrants Trial	495	43.6
Probation Seemed Appropriate	420	37.0
Consent Decree Seemed Appropriate	115	10.1
First Arrest But Serious	44	3.9
Otherwise Dealable Cases	62	5.4
TOTAL	1,136	100.0

When a juvenile had at least one adjudication, and thus was on probation, a new arrest potentially meant a more severe sanction would be carried out against the youth. In 495 cases trial appeared necessary because the accused already had a record and thus institutional-

ization was a distinct possibility. Actually, in the vast majority of these cases the juvenile had two or more adjudications which meant incarceration was arguably appropriate. As Table #22 discloses, however, many of these cases resulted in guilty pleas at the adjudicatory stage, indicating that an even larger number of deals could have taken place at pretrial.

TABLE #22

CASES IN WHICH RECORD WARRANTED TRIAL

Disposition	# of Cases	%
Open	3	.6
Bench Warrant	17	3.4
Nol Pros/Dismissed	175	35.4
Not Guilty	39	7.9
Guilty Pleas	116	23.4
Adjudicated	130	26.3
Certification	15	3.0
TOTAL	495	100.0

The outcome of 20 cases is unknown because the matter had not been resolved by the time of the final file check (December, 1982), or because the youth had not appeared in court at some time or other, whereupon the judge issued a bench warrant for his arrest. The main reason so many cases were ultimately nol prossed or dismissed were a lack of prosecution (107), a plea bargain (20), and a lack of evidence (18). Only 169 (34.1%) of the cases actually culminated in a trial, while another 15 (3%) were sent to a certification hearing. Of the 130 convicted youth, 59 were newly-incarcerated which suggests that trial was indeed necessary for these individuals.[3] Nevertheless, 55 juveniles were placed on probation and another 12 were allowed to remain as committed, indicating possibly that more intensive screening at pretrial might have obviated the need for an adjudicatory hearing. The same message is apparent from the 116 guilty pleas which were eventually tendered

by this group of youth who seemed to need trial. Although 53 of the pleas of guilty involved commitment, which is arguably too serious a sentence to negotiate at pretrial, 34 cases dealt specifically for probation and another 14 guilty pleas were exchanged for the youth's remaining as committed.

In 420 cases that were fowarded to the adjudicatory level probation seemed to be the suitable and the likely disposition, which would mean that the cases were, on the surface at least, eligible for plea bargaining at pretrial. Table #23 displays the reasons negotiation did not work in these cases.

TABLE #23

PROBATION CASES THAT WENT TO TRIAL FROM PRETRIAL

Reason	# of Cases	%
Probation Offer Rejected	197	46.9
Defense Denies	138	32.9
Youth Has Open Cases	33	7.9
Judge Wants Trial	17	4.0
D.A. Refused Probation	11	2.6
D.A. Policy	10	2.4
Co-Defendant Had Record	4	1.0
Victim Wants Trial	2	.5
Counsel Fails To Appear	2	.5
D.A. Opposes Severance	2	.5
Accused Showed Late	1	.2
Colloquy Broke Down	1	.2
Judge Says Youth Is Dependent	1	.2
D.P.W. Wants A Hearing	1	.2
TOTAL	420	100.0

The prosecutor (or judge) actually offered probation in 197 cases only to have the proposed plea negotiation fail. Table #24 explains why the plea bargain was rejected.

TABLE #24

REASONS PROBATION OFFER WAS REJECTED

Reasons	# of Cases	%
Accused Denies/Defense Wants Trial	177	89.8
Judge Refuses Probation	8	4.1
Parents Refuse Restitution	4	2.0
Counsel Wants Consent Decree	3	1.5
Parents Want Trial	2	1.0
Parents Want Commitment	2	1.0
Accused Refuses Restitution	1	.5
TOTAL	197	99.9

Usually, the probation offer was not accepted because the defendant denied committing the crime and/or the defense attorney wanted the matter to go to trial. Of the 177 cases that fell into this category, 7 remained unresolved (6 bench warrants, 1 open) and 58 with withdrawn (41 lack of prosecution, 7 lack of evidence, 4 by the judge, 4 by the complainant, 2 as a plea agreement). Three juveniles were determined to be dependent while 26 received consent decrees, supporting the proposition that youths were not penalized for turning down plea bargains and demanding trials. A total of 65 cases went to trial in which 28 were found not guilty and 37 were adjudicated. Most (29) of the latter group received probation. Although three were incarcerated, all had experienced a subsequent arrest. Three of the convicted juveniles were given consent decrees (more support for the no trial penalty position), and one was ultimately acquitted. Finally, one youth was given a suspended sentence. The last 18 cases were guilty pleas, 17 of which involved probation, while 1 ended in incarceration for a juvenile who had managed another arrest.

The judge refused to grant probation in 8 cases due to the severity of the charge. Four of these cases were eventually arranged as admissions for probation, two ended as consent decrees, one went to a

mental health commitment, and one was withdrawn for lack of prosecution. Judges at the adjudicatory level compensated for the pretrial judges' reactions (perhaps overreactions) to first arrests which were of a serious nature. Parents blocked plea bargains in 4 cases by refusing to pay restitution. The parents ultimately paid restitution in these cases but, ironically, their children were placed on consent decrees (no trial penalty, again). In two cases the parents wanted trial, insisting on their childrens' innocence. One ended as an adjudication with probation as the disposition and the second case was a bench warrant. The two sets of parents who wanted their children committed were granted their wish after the juveniles were convicted via trial. On three occasions defense counsel wanted a consent decree so he turned down probation. Although one of these cases was plea bargained for probation, one was not guilty and one was a consent decree. Finally, one youth prevented a plea bargain by refusing to pay restitution. The juvenile ultimately won this battle but was nevertheless adjudicated delinquent.

Often the defense attorney did not wait for the prosecutor to offer probation and instead denied the offense and demanded trial. The defense lawyer did this in 138 cases in which probation seemed the likely sentence. Four of these cases were not resolved (2 bench warrants, 2 open). Another 44 cases were lost altogether (31 lack of prosecution, 12 lack of evidence, 1 lack of jurisdiction). Withdrawals occurred in 15 cases (7 by the judge, 5 via a plea bargain, 3 by the complainant). One youth was committed to a mental health facility. Two juveniles were declared dependent and 13 were allowed consent decrees. Forty-nine cases resulted in trial. Most (33)

were convicted and all but one of these children received probation. The one exception was institutionalized but he had experienced another arrest. Ten plea bargains occurred, 9 of which involved probation (one of which was altered to a consent decree) and one entailed a voluntary commitment to Southern Homes.

When the juvenile had an open case-not before the pretrial court the entire matter (i.e., both cases) was frequently sent to the adjudicatory stage. In 33 cases a plea bargain was impossible because the youth had another case awaiting trial. Besides the one case that required a bench warrant, 5 cases fell apart due to a lack of either timely prosecution (4) or evidence (1), and 14 were nol prossed (13 as a plea bargain, 1 where the juvenile was committed on another offense). Three youths were found to be dependent and two were given consent decrees. Only 2 cases ended in trial. One was acquitted and the second was put on probation after conviction. Finally, 6 juveniles managed to plea bargain an admission for probation.

In 17 cases involving somwhat serious offenses the judge did not wait to hear if a plea bargain was being contemplated. Rather, the cases upset the judge such that he wanted a trial to take place and he simply announced an adjudicatory hearing would occur. Despite the judge's emotional reactions, these cases were typically the ones granted probation. That is exactly what transpired, eventully. Judges at later listings compensated for the outbursts of the pretrial judges and sentenced according to the dispositional ladder. Five cases never reached trial (2 lack of prosecution, 2 withdrawn by the complainant, and 1 bench warrant). Three juveniles were actually granted consent decrees and another was found to be dependent. Only 1 was

acquitted via trial, and the one youth who was adjudicated delinquent was placed on probation. The remaining 6 cases were admissions. Five were able to secure probation and the sixth was given no disposition because he was 18 years old.

Similarly, the district attorney balked on probation in 11 cases which nevertheless seemed to "deserve" probation according to the dispositional ladder. Again compensation occurred at the later stages of the court process. Two cases legally died (1 lack of prosecution, 1 lack of evidence), while one was withdrawn pursuant to a plea bargain. One child was declared dependent, while another was allowed to have a consent decree. Altogether, 6 admissions were entered in exchange for probation.

Cases which were considered sensitive by the district attorney's office (e.g., race assaults or high profile crimes) were frequently sent to trial (despite their eligibility for probation) due to the belief that an informal arrangement was not appropriate in these matters. Nevertheless, of the 10 cases in which this situation was cited by the prosecutor at pretrial, two ended as plea bargains (admission for probation) and 8 as consent decrees. Only one of the four cases that went to the adjudicatory stage because the youth's co-defendants had a bad record was resolved by trial and the verdict was not guilty. One case was a bench warrant and two were dismissed for lack of prosecution. Consent decrees resulted in the two cases in which the complainant wanted trial. The two occasions in which defense counsel failed to appear produced a consent decree (after the youth had been adjudicated delinquent) and a lack of prosecution. Twice the prosecutor opposed severing cases. The judge finally with-

drew one case and the other was given a consent decree. The defendant who showed late negotiated probation for an admission at the listing. The juvenile who could not complete the colloquy was adjudicated delinquent and was institutionalized; he had a subsequent arrest. A plea bargain (admission for probation) was the ultimate transaction in the one case the judge pushed for a trial because he wanted to the accused to remain a dependent. Finally, D.P.W.'s request for a hearing culminated in the youth's being found dependent.

One somewhat surprising feature of pretrial was the 115 cases in which consent decrees appeared appropriate were advanced to the trial level. Table #25 discloses why consent decree-type cases were not resolved at pretrial.

TABLE #25

REASONS CONSENT DECREE CASES WENT TO TRIAL

Reason	# of Cases	%
D.A. Offer Rejected	54	47.0
Victim Wants Trial	20	17.4
Judge Wants Trial	13	11.3
Accused Has Open Case	7	6.1
Drug Case	5	4.3
Counsel Wants Dismissal	4	3.5
Counsel Wants Trial	3	2.6
D.A. Policy	3	2.6
Parent Wants Trial	2	1.7
D.A. Wants Probation	2	1.7
Counsel Fails To Appear	1	.9
Parent Wants Commitment	1	.9
TOTAL	115	100.0

On 54 occasions the defense attorney turned down the prosecutor's offer for a consent decree, usually because the defendant denied committing the offense. This represented a real gamble on the part of the accused since he could not be certain he would receive the same

offer at the adjudicatory level. Most times the gamble paid off. Twenty cases were thrown out (4 lack of prosecution, 2 lack of evidence, and 14 withdrawn by the judge), while two youths were declared dependent and another 13 were granted consent decrees. One juvenile entered an admission and was committed to a drug rehabilitation program. Of the 18 cases that went to trial 7 were acquittals and two ended in consent decrees, althouth originally both had been held to be delinquent. One youth was institutionalized after conviction but he was involved in other offenses. Eight times the defense's risk proved unsuccessful. These juveniles were adjudicated delinquent and were placed on probation. Although judges generally compensated for each other and positioned juveniles where the latter "belonged" on the dispositional ladder, consent decree cases were often problematic. When a consent decree case went to trial it was always possible that, once adjudicated, it would be treated like any other delinquent case, which would indicate that probation was called for.[4] That very fate awaited 5 youths whose cases were sent to the adjudicatory stage because the complainant demanded a trial. These juveniles were convicted and were sentenced to probation. Even though the victim had insisted upon an adjudicatory hearing, 5 cases were ultimately withdrawn by the complainant. Another 5 cases were lost for lack of prosecution and one was discharged by the judge. Finally, 2 youths who encountered uncooperative complainants were found not guilty and another 2 were given consent decrees.

Although 13 consent decree cases were continued because the judge wanted a trial, only 3 went that route, with 2 ending as not guilty and one delinquent verdict resulting in a consent decree. Four cases

fell apart (1 bench warrant, 1 lack of evidence and 2 lack of prosecution). One youth entered a plea bargain (admission for probation and four were allowed consent decrees (the compensation factor in operation). When the juvenile had an open case, as occurred seven times, the judge and the prosecutor were reluctant to agree to a consent decree. Despite this reluctance, five of the seven cases were ultimately granted consent decrees, one was not guilty and one benefitted from a lack of prosecution. When the accused was involved in a drug case, in which the nature of the drug had not been ascertained prior to pretrial, the case was continued to the adjudicatory hearing stage, with the provision that if the substance were marijuana the defendant would receive a consent decree. Three of the five cases of this sort were settled by consent decrees, while one was discharged following a successful motion to suppress and one was withdrawn by the judge.

In 4 cases defense counsel wanted something better than a consent decree. He wanted a dismissal. Three cases met this objective since they were withdrawn by the judge. The fourth case wound up as probation, however, after the youth was adjudicated delinquent at trial. Three times the defense attorney announced he wanted a hearing before the district attorney or the judge could make any offer. These 3 cases were victories for the defense inasmuch as they turned out as a lack of evidence, a lack of prosecution and a not guilty. In 3 cases the prosecutor resisted a consent decree because of the nature of the offense (i.e., a racial or highly publicized crime). One of these cases resulted in an admission for probation, one was found dependent and one was granted a consent decree. The two times a mother intervened and insisted upon trial produced a lack of prosecution and a not

guilty. Both instances in which the district attorney resisted a consent decree because he felt probation was appropriate ended as consent decrees. The same result occurred in the one case in which the defense attorney failed to appear. Finally, the one mother who rejected a consent decree because she wanted her son committed succeeded in her efforts when at the adjudicatory level the juvenile admitted committing the offense and was institutionalized.

When the juvenile's first arrest involved a serious assault and physical injury the case was almost routinely sent to an adjudicatory hearing. The serious assault case was generally considered to demand the court's full attention and to be too important to informally resolve at pretrial. Sixty-two cases met this description. One of these cases remains open. In 22 cases prosecution was abandoned 16 times by necessity (14 lack of prosecution, 2 lack of evidence) and on 6 occasions by discretion (6 nol pros). Six cases were actually given consent decrees. Of the 26 cases that went to trial, 8 were not guilty. Ten of the 18 guilty findings ended in probation, while 3 were committed (providing exceptions to the rule that first convictions are not incarcerated), and 5 were allowed to have consent decrees. The seven remaining non-trial cases were admissions. Six exchanged probation for the admissions and one youth was committed but this was brought about via a request from his family.

For 44 youths a deal (or potential deal) existed at pretrial but some problem arose which defeated completion of the bargain. In 32 cases the controversy centered around what the defense attorney wanted vis-a-vis what others believed was appropriate. Twelve times defense counsel wanted probation to again be the sentence for the defendant

already on probation. The judge objected to this offer 9 times. Two of these 9 objections ended in not guity findings, two were withdrawn due to lack of prosecution, while another 2 were withdrawn by another judge. Three juveniles fared worse for the judge's intervention. One youth admitted guilt for intensive probation, one was adjudicated and placed on intensive probation, and the third was committed following a trial conviction. In two cases the defense's desire for probation was defeated by the probation officer's recommendation for placement. Both cases were dismissed for lack of prosecution. The same fate came about in the one case in which the district attorney's insistence upon commitment blocked the defense attorney's attempt to obtain probation. On 9 occasions the public defender proposed an admission in return for intensive probation. The judge objected to this five times. Three ended as lack of prosecution and the other two were granted probation following trial convictoin. The district attorney wanted commitment in the other 4 cases. One was found not guilty, two were withdrawn by the judge, and the fourth was a commitment after the youth was adjudicated delinquent. The defense attorney hoped an admission would serve to allow the juvenile to remain as committed in 9 cases. The district attorney prevented 4 deals by arguing for stricter confinement. Only once was the prosecutor successful in sending the youth to a "worse" setting. Two defendants remained as committed although they were subsequently convicted at trial. The fourth child was actually placed on after-care probation despite a new trial conviction. Three times the institution refused to take the juvenile back. Two of these youths later pled

guilty and were incarcerated in a different facility. The third case was withdrawn due to lack of evidence. In one case the defendant objected to the defense's offer of a guilty plea provided that the youth could stay where he was. Eventually, however, the juvenile pled guilty and his confinement was not altered. The judge balked in the ninth case by announcing his preference for trial and a change of scenery for the juvenile inmate. The youth was convicted but he did not change his address. One defense proposal that failed involved a plea of guilty in exchange for continuing the juvenile's supervision on after-care probation. Both the judge and the district attorney refused as the latter declared an intention to pursue certification. The defense ultimately secured the original plan, nevertheless, after pleading guilty. Finally, in one case the public defender admitted guilt but argued that the defendant's dependent status should remain in force. The judge demanded a trial. The dependency status was never changed as a result of this case, however.

The district attorney offered intensive probation in 8 cases only to have defense counsel insist upon trial in 4 of them. Three of these juveniles were convicted following trial. One was placed on regular probation, another was given intensive probation, and the third was committed. The fourth youth admitted guilt in exchange for probation. Two times the prosecutor's offer of intensive probation met with failure because the colloquy broke down. One juvenile was adjudicated for this offense and a subsequent burglary and was incarcerated. The second youth escaped with a lack of prosecution. The seventh case involved the opposing counsels' disagreement as to the proper charge. This case was dropped also for lack of prosecution.

Finally, the probation officer's announcement of a new arrest blocked one deal for intensive probation. The youth later pled guilty and was committed to Sleighton Farms.

In 4 instances the defendant had already been accepted at an institution but a deal could not be arranged. Twice the public defender wanted trial because he had not interviewed the defendant. One youth was acquitted and the other was institutionalized following a trial conviction. Twice the judge prevented a plea bargain due to the dislike of committing a child who pleads guilty. One youth is still a fugitive and the other case fell apart due to lack of prosecutioin.

D. The Detention Hearing

The detention hearing was at the same time very similar to and very dissimilar from pretrial. Like pretrial, the detention hearing acted as a combination of preliminary hearing and arraignment. The district attorney read the facts from the police report, the juvenile was advised of the charges, provided that the judge found probable cause, and the accused entered a plea. Table #26 addresses the fate of cases processed at the detention level.

TABLE #26

DETENTION HEARING DISPOSITIONS

Disposition	# of Cases	%
Continued	27	3.0
Disposition/Motion/Review	36	3.9
Dismissed	10	1.1
Resolved	841	92.0
TOTAL	914	100.0

The 92% success rate in resolving cases at the detention stage marks the highest among all court levels.

Unlike pretrial, it was relatively rare for a case to be informally settled at detention. The reasons most commonly cited for this were that the hearing occurred so quickly after the arrest that there was no time for the defense to prepare to bargain, and because the purpose of detention was geared more to determine the custody needs of the child than to resolve the case, one way or another. The ways in which the 841 detention cases were resolved are covered in Table #27.

TABLE #27

CASES RESOLVED AT DETENTION

Disposition	# of Cases	%
Going to Trial	657	78.1
Negotiated Guilty Pleas	48	5.7
Non-Negotiated Guilty Pleas	2	.2
Consent Decrees	38	4.5
Nol Pros	96	11.4
TOTAL	841	99.9

Considering detention's primary focus, it is not surprising that 78% of the cases were determined to require trial. That figure makes detention the stage that most often resorted to formal methods in handling a juvenile's case.

Only 50 guilty pleas (4.9% of all guilty pleas) took place at detention. The ones that did occur were usually bargained. Only 2 of the guilty pleas (or 4%) were non-negotiated. One of the non-negotiated guilty pleas was a plea accommodation and the other was a straight guilty plea. There were 48 plea bargains (5.2% of all plea negotiations) arranged at detention. Plea bargaining at detention developed at the same time and place as at pretrial (after the prosecutor read the facts, at the bar of the court). One notable difference,

however, is that, with the exception of Judge G, no one seemed anxious to negotiate a deal at detention. Judge G singlehandedly brought about 33 (or 69%) of the plea bargains at detention. Most of these plea bargains involved probation, as Table #28 evidences.

TABLE #28

PLEA BARGAINS AT DETENTION

Type	# of Cases	%
Probation	33	68.7
Commitment	8	16.7
Remain As Committed	2	4.2
Suspended Sentence	1	2.1
Another Judge Sentences	1	2.1
Sentence Transferred	3	6.2
TOTAL	48	100.0

Dismissals were infrequently bargained or unilaterally granted at detention. The negotiation that did take place usually resulted from discussions between the defense attorney and the prosecutor at the bar of the court. Table #29 shows how consent decrees were granted at detention.

TABLE #29

CONSENT DECREES AT DETENTION

Type	# of Cases	%
Actively Bargained	1	2.6
Entitled/Passively Bargained	25	65.8
Virtually Unilateral	12	31.6
TOTAL	38	100.0

Only one of the consent decrees was negotiated and that was due to the district attorney's belief that the case had evidentiary problems. Most of the consent decrees were the entitled/passive bar-

gain type. Another 12 were unilaterally given because the youth was dependent (8 cases), very young (3 cases) or doing well in school (1 case).

Bargaining occurred more frequently in the nol pros category. Some 17 cases were dismissed in this way, as Table #30 demonstrates. Most nol pros deals involved the juvenile's dependent status.

TABLE #30

NEGOTIATED NOL PROS AT DETENTION

Reason	# of Cases	%
Guilty Plea	1	5.9
Motion/Review/Disposition	1	5.9
Restitution	2	11.8
Dependent	12	70.5
Counseling	1	5.9
TOTAL	17	100.0

There were 79 non-negotiated nol pros cases at detention. Table #31 reveals why they came about. Most of the unilateral dismissals involved escaped prisoner charges (62 cases) which were routinely dropped at this hearing. Altogether, 83.8% of all escaped prisoner charges were resolved at detention.

TABLE #31

NON-NEGOTIATED NOL PROS AT DETENTION

Type	# of Cases	%
Defendant-Oriented	11	13.9
Non-Cumulative Punishment	63	79.7
Status	5	6.3
TOTAL	79	99.9

E. The Certification Hearing

The certification or transfer hearing is used to decide whether the juvenile's case should be litigated in the adult court. The stakes are very high; transfer is considered the ultimate sanction the juvenile court can level against the child. The certification hearing is divided into two decision-making parts: the probable cause judgment and the amenability to juvenile justice treatment determination. This division complicates record keeping inasmuch as often a case is informally resolved sometime between the two decisions, after the probable cause hearing has already taken place.[5] Arguably, then, in this situation both a trial and an informal solution has occurred in the same case. Nevertheless, since the probable cause hearing is only a preliminary consideration and is not the final say in certification, the matter was not recorded as a trial merely because this hearing had transpired. The certification issue was considered to have been settled formally when both a preliminary hearing and an amenability hearing occurred.[6] Table #32 explains what developed in the cases handled at the certification level.

TABLE #32

CERTIFICATION HEARING DISPOSITIONS

Disposition	# of Cases	%
Continued	255	56.9
Dismissed	27	6.0
Preliminary Hearing Only	66	14.7
Resolved	100	22.3
TOTAL	448	99.9

More than one-half (56.9%) of the cases were continued because either the defense or the prosecution was not prepared to proceed at one of the two hearing stages. Another 27 cases were dismissed due to lack of prosecution (21 cases) or lack of evidence (6 cases).[7] There were 66 cases which fell into the limbo category such that a prima facie case was established and the matter was continued for an amenability hearing. Table #33 discloses what ultimately happened to these cases.[8]

TABLE #33

CONTINUED PRELIMINARY HEARING CASES

Disposition	# of Cases	%
Certification Granted	22	33.3
Certification Denied	26	39.4
Negotiated Guilty Pleas	13	19.7
Nol Pros	5	7.6
TOTAL	66	100.0

As the figures show, more than one-fourth (27.3%) of the cases were informally resolved after a preliminary hearing had determined probable cause.

Exactly 100 certification cases were resolved in the researcher's presence. Table #34 reveals the disposition in these cases.

TABLE #34

CASES RESOLVED AT CERTIFICATION

Disposition	# of Cases	%
Certification Granted	41	41.0
Certification Denied	11	11.0
Negotiated Guilty Pleas	32	32.0
Nol Pros	16	16.0
TOTAL	100	100.0

Perhaps the most telling feature of Table #34 is the conspicuous absence of two items: consent decrees and non-negotiated guilty pleas. Consent decrees were implausible at certification. Basically, any juvenile considered by the prosecutor to be eligible for transfer would not be a likely candidate to receive a consent decree, even if the offense had been the youth's first. The juvenile would most likely have committed too serious an offense and/or would have amassed too significant a record to warrant a consent decree. Consequently, no consent decrees were awarded at certification.

The nature of certification also works against the presence of non-negotiated guilty pleas. Actually, a non-negotiated guilty plea is rather incongruous at certification. Guilt or innocence is not strictly at issue. Whether the case should remain in juvenile court is the major question, which is not answered by an unsolicited guilty plea per se. More important, a guilty plea, if accepted by the judge, would block transfer to adult court since the juvenile cannot be adjudicated delinquent and then be certified (Breed vs. Jones, 1975). Thus, the chances of a judge's accepting a guilty plea without considerable discussion (and perhaps negotiation) by all parties were seemingly slim. Realizing this, defense attorneys offered guilty pleas only when they could arrange with the judge or the prosecutor to have the certification petition withdrawn. A total of 32 negotiated pleas (3.1% of all plea bargains) were entered at the transfer level.

Plea bargaining at the certification stage usually took place between the defense lawyer and the prosecutor, although at times the judge became involved with opposing counsel. The juvenile never

participated in the negotiation. The bargaining occurred both before court convened and during recesses, and transpired in the waiting room, at the bar of the court, and in the judge's chambers.[9]

The plea negotiations at certification were all combined charge and complete sentence deals. The charging element involved the district attorney's agreement to charge the defendant as a juvenile. Since the prosecutor was yielding on the transfer matter he usually expected a substantial concession from the defense. That substantial concession was ordinarily commitment. Table #35 discloses that most of the bargains at certification entailed incarceration at a juvenile facility.

TABLE #35

PLEA BARGAINS AT CERTIFICATION

Type	# of Cases	%
Probation	6	18.8
Commitment	24	75.0
Suspended Sentence	1	3.1
No Disposition	1	3.1
TOTAL	32	100.0

There were 16 nol pros cases at certification, eight of which were negotiated. Five of the nol pros bargains dealt with guilty pleas that had been offered in other cases, and three nol pros bargains involved one defendant for whom charges were withdrawn in return for his agreement to be transfered to adult court. In the 8 non-negotiated nol pros cases, 2 were dismissed out of sympathy to the defendant, and 6 were withdrawn because the system could do nothing to the accused.

CONTINUED

3 OF 4

F. The Adjudicatory Hearing

In juvenile court the adjudicatory hearing is equivalent to the adult bench trial. Witnesses regularly appeared and testified. Standard rules of evidence were observed. Nevertheless, trials in juvenile court were relatively quick and informal. Despite their expedient nature trials were still troublesome since a number of people, including the defendant, had to be assembled in court at the same time. Continuances plagued the juvenile court and impeded the smooth processing of cases. Nearly 50% of the cases at the adjudicatory level had to be continued, as Table #36 evidences.[10]

TABLE #36

ADJUDICATORY HEARING DISPOSITIONS

Disposition	# of Cases	%
Continued	2,249	48.5
Disposition/Motion/Review	887	19.1
Dismissed	327	7.0
Resolved	1,176	25.4
TOTAL	4,639	100.0

Perhaps it was the trial's quickness that contributed to their occurring more than any other method of case resolution at the adjudicatory level. Table #37 demonstates how trials dominated resolved cases at the adjudicatory hearing.

TABLE #37

CASES RESOLVED AT ADJUDICATORY

Disposition	# of Cases	%
Trials	472	40.1
Negotiated Guilty Pleas	295	25.1
Non-Negotiated Guilty Pleas	86	7.3
Consent Decrees	95	8.1
Nol Pros	228	19.4
TOTAL	1,176	100.0

Most of the juveniles who went to trial were ultimately convicted. Table #38 shows the results of pursuing trial at the adjudicatory stage.

TABLE #38

TRIAL RESULTS AS ADJUDICATORY

Result	# of Cases	%
Guilty	284	60.2
Not Guilty	145	30.7
Completed Elsewhere	25	5.3
Limbo	17	3.6
Mistrial	1	.2
TOTAL	472	100.0

Over 60% of the juveniles were convicted outright. Although adjudicated delinquent, two youths were never sentenced because they were fugitives and two others were given no disposition.[11] There were 110 juveniles newly committed or sent to a more severe institution. Interestingly, the remainder were given either probation (149 cases) or remain as committed (21 cases), suggesting that another 170 cases that were eligible for plea bargaining were nevertheless litigated.

Among the not guilty finding were 117 acquittals and many cases that were maneuvered by the judge in favor of the juvenile. For example, 23 cases were given consent decrees, 11 of which had actually been first adjudcated delinquent. Similarly, two youths had their cases dismissed after they had been declared guilty. Another two juveniles were declared dependent. Finally, one judge refused to disturb an existing consent decree and forced the trial to conclude without a determination as to guilt or innocence.

Judges also maneuvered 17 cases into limbo. Ten cases were "Held Under Advisement" to see if the youth would straighten out

(or if the child's problems would desist). Four of these cases ended as consent decrees, three were not guilty, two were found dependent, and one was convicted. Another 7 cases were given status listing, of which 6 were discharged and 1 was a consent decree.

A number of cases were not completed in one session and needed to be continued to another listing. Of the 25 cases that were continued in this context, 13 were eventually adjudicated delinquent, while 12 were acquitted. Finally, one case was a mistrial.

Altogther, 298 trial-bound cases were ultimately and finally declared delinquent. This represented 63.1% of the 472 cases that went to trial. Conversely, 174 cases, or 36.9% of the trial group, were eventually adjudged not guilty.

Despite the dominance of trials the adjudicatory hearing was the second most likely place in juvenile court for a guilty plea or related informal settlement to take place. Adjudicatory actually had the highest percentage (32.4%) of cases resolved by a plea of guilty. In all, 381 guilty pleas were tendered, amounting to 37.3% of all pleas of guilty observed in the study. Not surprising, most of the guilty pleas, 295 or 77.4% , were negotiated. Plea bargaining at the adjudicatory level usually involved the defense attorney's and the prosecutor's discussing matters in the waiting room before court convened or during a recess. Rarely was negotiation conducted at the bar of the court, and the juvenile did not participate. At times the defense attorney sought to

talk to various judges in chambers when the district attorney was being uncooperative. When Judge A presided the nature of plea bargaining changed somewhat. The judge was an initiator and direct participant, and discussions usually took place in his chambers.

Plea negotiation achieved its most diverse form at the adjudicatory stage. Table #39 demonstrates the many types of plea bargains that occurred there.

TABLE #39

PLEA BARGAINS AT ADJUDICATORY

Type	# of Cases	%
Probation	119	40.3
Commitment	78	26.4
Remain as Committed	40	13.5
Suspended Sentence	2	.7
Another Judge Sentences	3	1.0
D.A. Keeps Silent	9	3.1
Institution Referral	17	5.8
Limbo	2	.7
Charge Bargains	25	8.5
TOTAL	295	100.0

Perhaps the most interesting feature of the types of plea bargains at the adjudicatory hearing is the significant number of commitment deals that were arranged. Judges at pretrial were hesitant to accept such plea negotiation because, at one and the same time, the consequences were severe and the defendants were deprived of their day in court. For the most part, judges at adjudicatory hearings were not as unwilling to accept these pleas.[12]

The adjudicatory hearing was the most likely stage to experience a non-negotiated guilty plea. There were 86 non-negotiated pleas of guilty registered at adjudicatory, 82.7% of all such pleas in the study. Table #40 reveals the type of guilty pleas stemming from that category.

TABLE #40

NON-NEGOTIATED GUILTY PLEAS AT ADJUDICATORY

Type	# of Cases	%
Tailored	28	32.5
Timed	14	16.3
Charge Gambling	5	5.8
Factual/Nominal	36	41.9
Straight	3	3.5
TOTAL	86	100.0

Adding the 381 guilty pleas to the 298 guilty verdicts at trial equals 679 convictions observed at the adjudicatory level. According to some authorities (see Chapter 1) the plea bargaining rate would be computed by dividing the number of guilty pleas by the total number of convictions (i.e., 381/679). If this formula is adopted, the plea negotiation rate in this study would be 56.1%. Chapter 1 points out the many problems associated with such a computation. First of all, only negotiated guilty pleas belong in the numerator. Thus, 295 should be the number used, and not 381. More important, perhaps, the denominator should be expanded, considerably, so as to include both acquittals and discretionary dismissals (i.e., consent decrees and nol pros cases) since these items comprise an integral part of the juvenile court's workload and accomplishments. The denominator would then swell from 679 to 1176. The revised plea bargaining rate would then read 296/1176, which amounts to 25.1%, well less than one-half of the original figure. Arguably, cases dismissed due to lack of prosecution also belong in the denominator since they survived screening and since the prosecutor carried these cases for some time (until he had to let go).[13] These cases took up valuable resources, and, often, the prosecutor was more interested in these cases than in the ones that successfully went to trial. The

district attorney simply could not put the case on. If this category is added to the denominator the revised equation becomes 295/1414, which equals 20.9%.

A total of 95 consent decrees was granted at adjudicatory. Nearly half of the consent decrees (46 or 48.4%) was actively bargained, as Table #41 reveals.

TABLE #41

CONSENT DECREES AT ADJUDICATORY

Type	# of Cases	%
Actively Bargained	46	48.4
Entitled/Passively Bargained	28	29.5
Virtually Unilateral	21	22.1
TOTAL	95	100.0

Adjudicatory had the highest percentage of cases resolved by actively bargained consent decrees. This is much different from the picture at pretrial where only 9.1% of the consent decrees were actively bargained. Essentially, pretrial weeded out most of the youths who were automatically entitled to consent decrees. By the time adjudicatory rolled around there was a greater chance that the more serious crimes would be bargained to a consent decree. Table #42 displays the reasons consent decrees were negotiated at the adjudicatory stage. Most often the prosecutor approached the defense and suggested a consent decree deal.

TABLE #42

ACTIVELY BARGAINED CONSENT DECREES AT ADJUDICATORY

Reason	# of Cases	%
Evidence	24	52.2
Restitution	7	15.2
Testimony	7	15.2
Dependent	4	8.7
Deserved	2	4.3
Counseling	2	4.3
TOTAL	46	99.9

Accompanying the negotiated consent decrees were 28 entitled/passively bargained consent decrees which had surprisingly escaped pretrial (or, perhaps, detention). Finally, 21 consent decrees were from the virtually unilateral group and were distributed as indicated in Table #43.

TABLE #43

VIRTUALLY UNILATERAL CONSENT DECREES AT ADJUDICATORY

Reason	# of Cases	%
Dependent	13	61.9
Very Young Accused	2	9.5
Accused Doing Well	2	9.5
Mental Health	1	4.8
N Ps Recommend	1	4.8
Family Problems	1	4.8
D.A. Sacrifice	1	4.8
TOTAL	21	100.1

Nol pros cases were abundant at the adjudicatory hearing. There were 228, altogether, making adjudicatory the stage with the highest percentage of cases resolved by a nol pros. Many of them (100 or 43.9%) were negotiated, most of which, in turn, involved the district attorney's dropping a case in exchange for a guilty plea in another case. Table #44 shows why dismissals were bargained at the adjudicatory level. The district attorney and defense counsel usually arranged these negotiated dismissals.

TABLE #44

NEGOTIATED NOL PROS AT ADJUDICATORY

Reason	# of Cases	%
Guilty Plea	71	71.0
Restitution	12	12.0
Motion/Review/Disposition	11	11.0
Testimony	2	2.0
Leave Jurisdiction	2	2.0
Dependent	1	1.0
Counseling	1	1.0
TOTAL	100	100.0

Even more cases were unilaterally nol prosed by the judge or by the district attorney. As Table #45 demonstrates, most of the nol pros cases unilaterally granted at adjudicatory were given in consideration of the defendant's situaton.

TABLE #45

NON-NEGOTIATED NOL PROS AT ADJUDICATORY

Reason	# of Cases	%
Defendant-Oriented	49	38.3
Non-Cumulative Punishment	34	26.5
Status	28	21.9
System Can Do Nothing	17	13.3
TOTAL	128	100.0

G. The Motion/Review/Disposition Hearings

The nature of the motion, review, and disposition hearings meant that cases were "dead" at these points so, apart from a couple of very notable exceptions, no plea bargaining per se was able to occur at these levels. The notable exceptions involved two unrelated but identical cases that resurrected from the dead into live cases which were plea bargained. In both cases (both girls) the defendant was before the court on a review basis. Each girl had a consent decree but neither was doing well at

home. Both mothers and defense counsel approached the judge (Judge I on both occasions) and expressed a wish to have the girls committed. To do this, however, the girls had to plead guilty since the institutions could not accept juveniles unless they were adjudicated delinquent. The youths pled guilty and were institutionalized.

Although plea bargaining itself was not prevalent among the 1,107 cases that were observed in the motion/review/disposition capacities, a number of other mitigated justice activities did take place. Judges frequently altered delinquency findings to consent decrees, dependent adjudications or not guilty verdicts, thus unilaterally dismissing cases against convicted juveniles.

> Illustration No. 1: The defendant had been adjudicated delinquent of aggravated assault. The complainant did not attend the dispositional hearing. Judge A called everyone into chambers and said he did not want the child to have a delinquent record. He entered a consent decree. The district attorney objected to no avail. He said it was common for this judge to "blow out" cases at sentencing since the victim usually did not appear.

There were also a couple of instances of post-conviction bargaining (see Chapter 6).

The major effect the motion/review/disposition hearings had was their ability to influence other, live cases. For example, prosecutors and judges regularly threw out live cases against juveniles because they had just been committed via a disposition hearing, or had just been released from an institution by way of a favorable review.

> Illustration No. 2: The youth had an unlitigated robbery and a review hearing before Judge A. The report from Glen Mills explained that the child was doing well and had been recommended for a discharge from the facility.

> The judge looked at the district attorney and asked, "How about it?" The prosecutor withdrew the robbery charge.

The prosecutor frequently secured the defense attorney's cooperation in a motion or sentence that brought about the youth's incarceration by offering to withdraw or to plea bargain live cases for which the child remained answerable.

> Illustration No. 3: The accused had a disposition hearing and an adjudicatory hearing for a burglary charge on the same list. The sentence was a commitment to Sleighton Farms. Judge A asked the public defender to dispose of the open case since it would not affect the disposition. Judge A said he would reduce the burglary to possession of an instrument of crime. The defense attorney agreed to plead guilty.

Unlike the plea bargaining that occurred at other stages of the court process, the dismissal bargaining at the motion/review/disposition hearings was often initiated by the prosecutor.

Although it varied both in type and in amount, plea bargaining and various elements of mitigated justice occurred at all stages of the juvenile court process.

FOOTNOTES

[1]Of course, many cases continued for trial at the pretrial stage were ultimately plea bargained or discretionarily dismissed later at either the certification or adjudicatory levels.

[2]Even when the youth was institutionalized following a plea bargain at pretrial it was usually with the child's agreement. Judges at pretrial were usually unwilling to accept guilty pleas leading to commitment because the juvenile would not have had his day in court before being sent away (see Chapter 8).

[3]That is, trial was necessary to the extent that judges did not want to put a child away on his admission at pretrial.

[4]There is a logic to this "discriminatory" treatment of the consent decree case that gets probation instead of a consent decree if convicted at trial. Consent decrees were meant as diversion. The youth is placed on a consent decree without any opinion or finding as to his guilt. A juvenile who goes to trial has not been diverted. Nor obviously, has a youth been diverted whose case has ended in a delinquent finding. To grant a consent decree to this individual would require the extraordinary move of a rescinding a guilty finding, or of trying to cognitively retrace the steps of the case to the point where guilt or innocence were not known.

[5]In fact, rarely did a plea bargain occur before the probable cause determination. This made sense. There was no need for defense counsel to worry about negotiating a case until the prosecution showed there was sufficient criminal evidence against the accused, which meant that certification was at least a possibility.

[6]When the amenability aspect immediately followed the preliminary hearing, which happened occasionally, the case was instantly recorded as a trial. Otherwise, any amenability hearing that took place was considered a trial.

[7]Six cases went to a preliminary hearing but there was not probable cause to believe the accused committed the crime so the certification matter ended.

[8]A file check was conducted to ascertain the fate of these cases.

[9]Transfer was the stage most likely to involve the defense's calling the district attorney a day or more before the scheduled hearing to see if an arrangement could be worked out, and, although several calls were known by the researcher to have been made by defense counsel, none of the contacts related to any of the cases in the study.

[10]The percentage of continuances rises to 59.9% when disposition/motion/review cases are eliminated. Cases from that category were already litigated, so among live cases the continuance rate was even higher than that presented in Table #36.

[11]One youth had already been certified and the case at hand was a non-transferrable misdemeanor, while the second juvenile had been arrested as an adult.

[12]One theory explaining this is that whereas pretrial occurs within a month of the offense and before defense counsel has had time to evaluate the case and to discuss matters with the defendant, adjudicatory takes place several weeks after the crime. By this time, the defense lawyer has had a better chance to investigate and to talk things over with the accused.

[13]There were 238 cases lost due to lack of prosecution at the adjudicatory level.

CHAPTER 10: PLEADING GUILTY IN JUVENILE COURT

The guilty plea process in juvenile court today is roughly in the same position the adult court occupied several years ago in the pre-Boykin era (Boykin v. Alabama, 1969). The amount of control over the judge's acceptance of a guilty plea ranges from states in which there are no formal requirements to those which have extensively regulated this stage of the juvenile court proceedings. The defendant's tendering a plea of guilty triggers the second important aspect (in addition to participating in versus ratifying deals) of the judge's role in dealing with plea bargaining. It also serves as the foundation for the theoretical framework of the study.

A. Theoretical Framework Of The Study

Whenever a defendant pleads guilty several concerns arise as to the legitimacy of the transaction. The adult court has resolved this legitimacy issue by constitutionally requiring that the guilty plea be given by someone who knows what he is getting into (the fairness question), and who is freely pleading guilty (the voluntariness question) (Boykin v. Alabama, 1969). Many states on their own inquire as to whether the accused is the person who actually committed the crime (the accuracy question). The judge is charged to determine that these questions are answered positively (see ABA, 1980: Ch. 14, pp. 19-32). He is able to ascertain the answers via a colloquy in which he examines the defendant and satisfies himself that the accused truly wants to plead guilty.

Fairness is usually measured by the defendant's competency to plead guilty. That is, he must be aware of his surroundings and the purpose of the court proceedings. The accused should know as

well the nature of the charges, the consequences of pleading guilty (i.e., the rights he is surrendering and the effects thereof), and the potential sentence awaiting him as a result of the guilty plea (Boykin v. Alabama, 1969). The honoring of any bargains that have been made is also essential to fairness (Santobello v. New York, 1971). If these elements exist, consensus would probably hold that the guilty plea was offered in a fair context (Newman, 1966: 32-38; Barkai, 1977: 90; ABA, 1980: Ch. 14, pp. 19-20).

Voluntariness entails the defendant's knowing what he is doing and doing so free from impermissible inducements. In other words, the judge is responsible for discovering the existence of plea discussions and plea agreements. Then he must analyze whether these agreements have overwhelmed the accused's free choice to the extent that pleading guilty is so rewarding that the defendant is not acting voluntarily (Boykin v. Alabama, 1969; Arenella, 1980: 512; Newman, 1966: 22-31; ABA, 1980: Ch. 4, p. 29).

Accuracy is the final concern. Here, the judge's duty involves his guaranteeing that innocent persons do not plead guilty. To ensure this, the judge usually requires the prosecution to establish a factual basis for the plea of guilty from one or more sources (the defendant's statements, police report, witness accounts) (Arnella, 1980: 513-516; Newman, 1966: 10-21, Barkai, 1977: 91; ABA, 1980: Ch. 14, p. 32). This task is not constitutionally required (North Carolina v. Alford, 1970).

B. State Of The Art In Juvenile Court

There is considerable diversity across the country as to what the

state requires of juvenile court when a juvenile defendant pleads guilty in that forum. Table #1 summarizes the national picture and discloses whether a state has a statute, a court rule or a court decision which pays specific attention to the accused who pleads guilty in juvenile court.

TABLE #1

STATE REGULATIONS ON JUVENILE COURT GUILTY PLEAS

State	Statute	Court Rule	Court Decision
Alabama	No	#24 & #25	No
Alaska	No	#12 (e) (4)	No
Arizona	No	#6 & #7	594 P.2d 554
Arkansas	No	No	No
California	§ 657	#1353 & #1354	562 P.2d 284
Colorado	No	#3	No
Connecticut	No	No	No
Delaware	No	#210	No
D.C.	No	#11	No
Florida	§ 39.07	#8.130	No
Georgia	No	No	No
Hawaii	No	#140	No
Idaho	No	#21	No
Illinois	No	No	362 N.E.2d 1024
Indiana	§ 31-6-4-13	No	299 N.E.2d 616
Iowa	§ 232.43	No	No
Kansas	No	No	No
Kentucky	No	No	No
Louisiana	No	#54 & #55	399 So.2d 583
Maine	15 § 3305	Adult Rules	No
Maryland	No	#907	360 A.2d 18
Massachusetts	No	Adult Rules	No
Michigan	No	#8.2	No
Minnesota	No	#5-1 & #5-2	No
Mississippi	§ 43-21-553(557)	No	No
Missouri	No	#119.02	No
Montana	§ 41-51-521	No	No
Nebraska	§ 43-279(1)	No	No
Nevada	§ 62.193(2)	No	630 P.2d 245
New Hampshire	§ 169-B:13	No	No
New Jersey	No	No	No
New Mexico	§ 31-1-31	#44	619 P.2d 194
New York	No	No	216 N.E.2d 627
North Carolina	§ 7A-633	No	230 S.E.2d 198
North Dakota	No	No	No
Ohio	No	#29	No
Oklahoma	10 § 1111	No	554 P.2d 44
Oregon	No	No	501 P.2d 991

TABLE #1
(continued)

State	Statute	Court Rule	Court Decision
Pennsylvania	No	No	No
Rhode Island	No	No	No
South Carolina	No	No	No
South Dakota	No	No	No
Tennessee	No	No	No
Texas	§ 51.09(a) & § 54.03(b)	No	No
Utah	No	No	621 P.2d 705
Vermont	No	No	No
Virginia	No	No	No
Washington	§ 13.40-130	#7.6(b) & #7.7	583 P.2d 1228
West Virginia	§ 49-5-11(a)	No	276 S.E.2d 199
Wisconsin	§ 48.30	No	No
Wyoming	No	No	No

One can readily discern from this table that there are fifteen states, including Pennsylvania, which are silent about the matter. Table #2 outlines these states which have yet to regulate this important aspect of juvenile court procedure.

TABLE #2

States Silent On Pleading Guilty

Arkansas	New Jersey	South Dakota
Connecticut	North Dakota	Tennessee
Georgia	Pennsylvania	Vermont
Kansas	Rhode Island	Virginia
Kentucky	South Carolina	Wyoming

Although pleading guilty is addressed by the remainder of the country, another eight states appear to do little more than merely mention the prospect of the child's pleading guilty, and give little or no direction to the judge in accepting the plea. These states are identified in Table #3.

TABLE #3

States Merely Mentioning Guilty Pleas

Hawaii	Missouri	New York[1]
Maryland	Montana	Utah[2]
Michigan	New Hampshire	

Juvenile courts in Maine and Massachusetts have adopted adult court rules of criminal procedure but it is not readily apparent to what extent these states have utilized the adult court mechanics in reviewing guilty pleas in juvenile court.

A little more than half of the country, 26 jurisdictions (including Washington, D.C.), has done more so far than just noting the possibility that a juvenile defendant may plead guilty in juvenile court. The major requirements detailed in these statutes, rules and decisions are that the charges be specified (Table #4), that the youth be advised of his rights (Table #5), that he plead voluntarily (Table #6), and, that he be apprised of the consequences of the guilty plea (Table #7).

TABLE #4

Jurisdictions Requiring Notice Of Charges

Alabama	Illinois	New Mexico
Alaska	Indiana	North Carolina
California	Iowa	Ohio
Colorado	Louisiana	Oklahoma
Delaware	Michigan	Texas
Dist. of Columbia	Missouri	Washington
Florida	Nevada	Wisconsin
Idaho	New Hampshire	West Virginia

TABLE #5

States Requiring Advice Of Rights

Alabama	Iowa	New Hampshire
Alaska	Louisiana	New Mexico
Arizona	Maryland	North Carolina
California	Michigan	Ohio
Colorado	Minnesota	Oklahoma
Delaware	Mississippi	Oregon
Florida	Missouri	Texas
Hawaii	Montana	Washington
Idaho	Nebraska	West Virginia
Illinois	Nevada	Wisconsin
Indiana		

TABLE #6

Jurisdictions Requiring A Voluntary Guilty Plea

California	Louisiana	Ohio
Colorado	Maryland	Oklahoma
Delaware	Mississippi	Oregon
Dist. of Columbia	Nebraska	Texas
Florida	Nevada	Washington
Idaho	New Mexico	Wisconsin
Illinois	North Carolina	West Virginia
Iowa		

TABLE #7

Jurisdictions Requiring Advice Of Consequences

Alabama	Illinois	New Mexico*
Alaska	Indiana	North Carolina**
Arizona**	Iowa**	Ohio*
California*	Louisiana	Oklahoma**
Colorado*	Maryland	Oregon*
Delaware	Minnesota	Texas*
Dist. of Columbia	Mississippi	Washington**
Florida	Nebraska	Wisconsin
Idaho	Nevada	West Virginia**

There appears to be some confusion in interpreting the requirement that the defendant be advised of the consequences of pleading guilty in juvenile court. The first element of the consequences idea is that a guilty plea is a conviction which forces the accused to surrender all trial-related rights. The second aspect of the consequences area is the sentence/disposition that will be imposed upon the defendant for having been convicted. Many juvenile court rules and statutes do not indicate whether they demand the juvenile be informed of the rights part and/or of the sentence feature of pleading guilty. Twelve states (those with either a single or a double asterisk in Table #7) specifically mandate the accused be told both effects of pleading guilty. Only six states (those with a double asterisk in Table #7), however, appear to require the youth be advised of the maximum penalty available upon conviction by guilty plea.

Juvenile court authorities have paid more attention thus far to the fairness and voluntariness question than to the accuracy question. Only eleven states require the judge to find a factual basis for the guilty plea, while another six states make this provision discretionary upon the judge's part. These states are noted in Table #8, with an asterisk marking those states where this duty is not mandatory.

TABLE #8

States Requiring A Factual Basis

Alabama	Hawaii*	North Carolina
Arizona	Iowa	Ohio*
California	Louisiana	Oklahoma
Colorado	Minnesota*	Washington
Delaware*	Missouri*	Wisconsin
Florida	New Mexico	

Fifteen states have specified that the youth must personally admit or plead guilty, while another three have implied the same (Table #9, an asterisk denotes which states imply the requirement). Although the United States Supreme Court has determined there is no constitutional right to plead guilty, only five states have mentioned the juvenile court judge's right to refuse the plea of guilty (Table #10), and only three states have discussed the possibility of the juvenile defendant's withdrawing the guilty plea (Table #11). Despite the Supreme Court's concern that the defendant have effective assistance of counsel before pleading guilty (Brady v. U.S., 1970), only four states have enjoined their juvenile court judges to discover whether the accused was adequately represented (Table #12). Finally, Boykin v. Alabama (1969) required adult court guilty pleas to be a matter of record. Nevertheless, only thirteen states have observed this requirement in juvenile court practice (Table #13). Several other states mention recording the juvenile court's proceedings but they do not tie the recording to pleas of guilty.

TABLE #9

States Requiring Admission By Juvenile

California	Iowa	Oklahoma
Colorado	Louisiana	Oregon
Delaware*	Maryland	Texas
Florida	New Mexico	Washington
Idaho*	North Carolina	West Virginia
Illinois*	Ohio	Wisconsin

TABLE #10

States Permitting Refusal Of Admission

Delaware	Iowa	Oklahoma
Florida	Ohio	

TABLE #11

States Allowing Withdrawal Of Guilty Plea

Florida	Iowa	Oklahoma

TABLE #12

States Demanding Effective Assistance Of Counsel

Iowa	North Carolina	West Virginia
Mississippi		

TABLE #13

States Requiring Recording Of Guilty Plea

Arizona	Maryland	Oregon
California	North Carolina	Texas
Colorado	Ohio	Washington
Idaho	Oklahoma	West Virginia
Illinois		

Apart from the bare acceptance of a guilty plea and determining it is fair, voluntary and accurate, the judge will likely want to know if there has been a plea bargain among the parties. Boykin v. Alabama (1969) strongly implied that the criminal court judge has an obligation to ascertain the existence of plea agreements because promises of reward for cooperation that are offered to the defendant can seriously affect the voluntary character of the guilty plea. Despite the importance of this information to the judge in his analysis of the guilty plea's voluntariness, only eight states have instructed their juvenile court judges to perform this task. Table #14 identifies these states. Among these states only North Carolina has specifically observed that it is improper to pressure a juvenile defendant to plea bargain. Table #15 notes the only three states which have required the judge to warn the accused that the juvenile court is not bound by any plea bargain.

TABLE #14

States Directing Discovery Of Plea Bargains

Colorado	Oklahoma	West Virginia
Iowa	Oregon	Wisconsin
North Carolina	Washington	

TABLE #15

States Saying Court Is Not Bound By Plea Bargain

Colorado	Iowa	Washington

Obviously, uniformity is not the word that should be used to describe the current status of juvenile court regulation of the guilty plea procedure. Many states have completely ignored Boykin v. Alabama (1969) and the implications the Supreme Court case has for juvenile court. Other states have given only token recognition to the decision

and have endorsed one or two of the Supreme Court's requirements while accepting a youth's plea of guilty. At the other extreme, a number of states have adopted Boykin as fully applicable to juvenile court proceedings. In fact, some states have gone even further than Boykin and adult court standards and have demanded a factual basis be established before a guilty plea is acceptable by the juvenile court. This diversity and lack of national coordination suggests a situation ripe for Supreme Court intervention. Before long it would seem likely that the nation's highest tribunal will be called upon to resolve the question as to exactly what the judge must do when a youth pleads guilty in juvenile court.

C. The Judge's Role In The Guilty Plea Process

The use of a colloquy is probably the only complete and definite way in which to ascertain whether a guilty plea is fair, voluntary and accurate. The conciliator never conducted a colloquy. He did much of the bargaining himself and seemed to believe that he alone was responsible for guaranteeing the integrity of the guilty pleas. Here, a colloquy would not be considered as vital by the conciliator because a judge controlled the plea bargaining process. Even if judicial plea bargaining is viewed as an adequate substitute for scrutinizing the guilty plea process, this perspective does not account for the conciliator's not conducting a colloquy when only opposing counsel negotiated deals and when defense counsel offered non-negotiated guilty pleas. Perhaps a more important and conclusive explanation is that the conciliators appeared to regard the three concerns as primarily legal concerns which did not deserve as much of the court's attention

as the juvenile's treatment needs.

The administrator also did not perform a colloquy. Instead, he relied upon defense counsel. The administrator's theory seemed to be that since the defense counsel consummated the deal he was responsible also for making sure the plea bargain was fair and voluntary. This perspective is not unusual. Alschuler contends that the Supreme Court assumes that a competently counseled guilty plea is a knowing and voluntary one (Alschuler, 1975b: 1). Ensuring accuracy was also the defense's job. Shifting the burden of monitoring guilty pleas to defense counsel was in keeping with the administrator's general shunning of responsibility.[3]

The legalist was the only juvenile court judge who required a colloquy every time the defendant pled guilty. At times the judge asked the questions himself. Otherwise, the defense lawyer or the prosecutor examined the accused. Some colloquies were cursory, encompassing only a few questions; others were more detailed and lengthy, lasting longer than many adjudicatory hearings. At the very least, the legalist seemed to believe it was his duty to try to guarantee that each guilty plea was knowingly and voluntarily given.

D. The Mechanics Of Pleading Guilty

Since even the legalists were not consistent it is impossible to give a single account of what the typical colloquy was like. The first order of business in pleading guilty is that the accused is supposed to plead for himself.[4] Defense counsel actually pled guilty in juvenile court, however. This departure from established adult

court practice did not matter when the legalist presided because the juvenile answered at least one or two questions during the colloquy and, in effect, tendered his own guilty plea. Before the conciliator and the administrator, however, the juvenile never said a word about pleading guilty. Defense attorneys did all the talking. Although every youth had to respond to some inquiry before a legalist, less than half of the colloquies determined whether the defendant was competent to plead. The judges who required competency to be proved directed questions as to the juvenile's age, schooling, understanding the English language, mental condition, and any potential alcohol or drug addiction.

Very few defendants were acquainted with the second aspect of the guilty plea process. Rarely was the juvenile informed of the charges and the elements of the offense. The conciliator and the administrator did not discuss these items with the accused. Even the extreme legalists' colloquies did not often address the nature of the delinquency petition. In addition, never was a youth advised of available defenses.

The third part of the colloquy (the consequences of pleading guilty with respect to notice of rights waived) was ignored by the conciliator and the administrator but was faithfully executed by most legalists. Ordinarily, the juvenile was instructed that he was surrendering the right to trial, in which the complainant would have to come to court and tell the judge what the accused did, and the right to appeal except in the areas of voluntariness, jurisdiction and the legality of the sentence. The right to seek suppression of illegally seized evidence, the privilege not to incri-

minate oneself, the right to testify and to present evidence, and the requirement of proof beyond a reasonable doubt to convict are the juvenile's other trial-related constitutional rights which were not usually included in the list of rights the judge told the accused he was giving up by pleading guilty. Thus, the legalist's colloquy frequently did not quite match the Boykin standards which control the adult court operation (1969: 243).

The second half of the consequences aspects involves telling defendants the worst sentence that is possible due to conviction. In one area at least the juvenile court seemed to protect its defendants more than the adult court protects theirs. The juvenile court prosecutor regularly announced to the judge which guilty pleas were negotiated. The most prominent negotiated guilty pleas were the complete sentence bargains (see Chapter 6). They were presented to the judge as an inviolable package which he had to either accept or reject. In other words, modification by the judge was not really possible, unless the juvenile acquiesced in the change. Thus, the youth who agreed to plead guilty in exchange for probation could not thereupon be institutionalized, unless he agreed to that alteration in sentence. Unlike the adult defendant, the juvenile defendant who plea bargained a complete sentence bargain could not be "set up" or "slammed" at disposition. He was aware of the maximum possible sentence. The operation of Philadelphia's juvenile court prevented surprise sentences in complete sentence bargains.

The issue was not as easily resolved for incomplete sentence bargains, charge bargains, and non-negotiated guilty pleas, however. In incomplete sentence bargains the youth narrowed but did not completely

control the parameters of sentencing (see Chapter 6). Nevertheless, the youth was not instructed at the bar of the court that what he hoped to gain (e.g., district attorney silence or an institution referral) could be an illusion at best. The juvenile did not appear to know (unless defense counsel had previously warned him) the maximum sentence that could occur if the plea bargain did not match his aspirations. For example, if the youth pled guilty to obtain a referral to St. Gabriel's Hall and that facility refused to accept him, the juvenile could end up in Glen Mills or even in Cornwells Heights. No one told the defendant this at the colloquy. The same results were noted in charge bargains and non-negotiated guilty pleas. Defendants tendering these pleas had gained no control whatsoever over sentencing (see Chapter 6). Youth were generally not told the alternatives the judge could employ at disposition.[5] Despite the lack of warnings juveniles were generally protected by the judge when the former offered guilty pleas without guaranteed results.

> Illustration No. 1: The public defender pled guilty on-the-nose to robbery. He secured the district attorney's agreement not to make a recommendation. The defense lawyer wanted the defendant to continue attending correctional group counseling, in which he was placed after he committed the robbery. The prosecutor read the youth's record and realized he should have argued for incarceration, but it was too late at this point to say anything. The judge reviewed the file and said he had to go with commitment. Instead of convicting and institutionalizing the accused, which he could legally have done, the judge allowed the juvenile to withdraw his guilty plea. The district attorney was angered. He noted under this approach the public defender could never lose in a deal since he can always withdraw the plea if he does not like the results.

After providing notice of the consequences, the judge's next job was to ascertain if there had been a plea agreement. This function was often unnecessary for the conciliator since he had conducted many deals personally. Otherwise, the judges were informed by the district

attorney which guilty pleas were negotiated and which were "open". Although the judges were thus aware of the existence of a plea bargain, the judges did not evaluate the bargain itself to see if either undue pressure or an exceptionally rewarding deal had prompted the defendant to plead guilty. The conciliator and the administrator never attempted to determine if the judge (in the conciliator's case), the prosecutor or the defense attorney had wrongly induced the accused to convict himself. The legalist at least could infer that a defendant who truly did not want to plea bargain would protest at some time during the colloquy. There were very few, if any, exceptionally rewarding deals in juvenile court. The absence of severe sentences (like death penalties and life sentences) and the control of the dispositional ladder combined to prevent the likelihood of any plea bargains of this sort in juvenile court. The dispositional ladder, moreover, was the judge's guideline in recognizing plea bargains that were not in the defendant's interests or were simply not fair agreements. Judges were not unwilling to chastise opposing counsel when a plea negotiation seemed detrimental to the youth's cause.

> Illustration No. 2: The juvenile was in pretrial, charged with robbery. It was his first arrest. The district attorney arranged with defense counsel to grant probation in exchange for a guilty plea and testimony against a co-defendant. The judge nearly reprimanded the defense attorney, reminding her that probation is the disposition for first offenders so she was gaining nothing by pleading guilty. The judge also pointed out that counsel was jeopardizing her client's life by supporting his testifying against a youth who could very well retaliate against the informer. The judge sent the case to trial.

The judge's fifth task as supervisor of the guilty plea process was to establish a factual basis for the defendant's guilt. The conciliator and the administrator by-passed this feature. The legalist,

on the other hand, frequently had the district attorney read the police report and then asked the accused to confirm or to deny the accuracy of the report. Only on a couple of occasions was there testimony by witnesses to support the truth of the complaint. The legalists' commitment to discovering a factual basis was actually beyond the standards constitutionally required by the Supreme Court in the adult system (North Carolina v. Alford, 1970).

In the sixth part of the colloquy the judge was responsible for determining the defendant's willingness to plead guilty. All the judges tended to infer voluntariness from the absence of protest by the accused. For the most part, juveniles were not asked if they were pleading guilty of their own free will and not due to any force or threats, or because of any promises (other than a plea bargain) that had not been disclosed to the court. In this respect, the juvenile court judge did not observe the mandate of Boykin v. Alabama (1969). Related to this matter is the question of accepting a guilty plea from an accused who insists upon his innocence. A number of juveniles told their attorneys that they did not commit the crimes with which they were charged. These juveniles usually plead guilty, nevertheless (see Chapter 7, Illustration No. 24). Most often the youths did not repeat their reluctance to the judge. At any rate, no guilty plea was accepted where the accused told the judge he had done nothing wrong. Thus, Alford pleas were not tendered in juvenile court (see North Carolina v. Alford, 1970). Juveniles who claimed innocence were told to withdraw their guilty pleas and go to trial.

Next, the judge was supposed to examine whether the juvenile was satisfied with defense counsel's representation. In addition, the

judge could inquire if the youth had discussed the case and his proposed admission with an interested adult. The conciliator and the administrator did not explore this question. Even the legalist only rarely questioned the accused in this regard. Again, the absence of protest seemed to be equated with the defendant's overall satisfaction with the situation.

The judge's eighth responsibility was to allow the youth to withdraw his guilty plea if the former could not honor the plea bargain, or if it appeared unfair or unwise to accept the guilty plea. All the judges appeared to observe this duty faithfully. Judges regularly refused proposed deals and instructed the accused to go to trial. As was mentioned in Chapter 8, judges often rejected guilty pleas where the youth was destined for institutionalization. The judge simply did not think it fair to incarcerate a juvenile until he had his day in court.

The final order of business was to officially record the guilty plea. The guilty plea itself was recorded by the court stenographer in all the judge's courtrooms. The colloquies, however, were only rarely taken down. The legalist did not appear to feel it necessary to record every exchange made between the court and the defendant as the latter pled guilty.

As is evident from the foregoing, the juvenile court, in general, has not dedicated the resources the adult court has in protecting the integrity of the defendant's guilty plea.[6] That is not surprising. The United States Supreme Court has often had to command both the adult and the juvenile courts to implement many constitutional protections during the last three decades. Moreover, the juvenile

court, which has always had a minimal commitment to legalise, has traditionally resisted the adoption of legally-oriented, adult court-related standards and procedures.

The conciliator and the administrator, in particular, largely avoided the measures the Supreme Court has determined must be observed in criminal court. The conciliator's explanation is a commitment to treatment problems and an antipathy towards legal concerns. The administrator's excuse is that he performs no task unless he has been directed to do so. But even the legalist did not consistently adopt all the adult court-based standards in pleading guilty.

Arguably, the juvenile court judge does not need to emulate adult court practice. For one thing, the absence of Boykin has not necessarily meant that guilty pleas in juvenile court are inherently unfair and involuntary (or inaccurate, for that matter). Although they seemed to stumble along without higher, appellate court direction, juvenile court judges, for the most part, appeared committed not to run roughshod over juvenile defendants and their rights. The defense attorney was simply charged with ensuring the validity of the defendant's plea. According to some authorities, that is in keeping with current United States Supreme Court thinking (see Alschuler, 1975b). The conciliator would argue, moreover, that the business of juvenile court is to get the best suited treatment to the youth as quickly as possible and not to engage in some esoteric examination of the accused's purported rights and what it means to give them up. McKeiver v. Pennsylvania (1971) suggests the conciliator is not totally off base.

Second, the united States Supreme Court has not yet determined

that Boykin applies to juvenile court. Therefore, unless the state makes that determination, the juvenile court judge is under no obligation to follow the Boykin prescriptions. Finally, the Supreme Court has required only fundamental fairness in juvenile court (In re Gault, 1967). It is highly probable, then, that the Justices would be satisfied with the status quo and would not order the juvenile court to observe Boykin.

FOOTNOTES

[1]The New York Court of Appeals (in In re D., 261 N.E. 2d 627, (1970), appeal dismissed, cert. denied, D. v. Onondaga County, 403 U.S. 926 (1971)) implied that Boykin v. Alabama (1969) applied to juvenile court, but it is unclear whether the adult standards have been enforced in juvenile court. It appears that Boykin is not observed throughout the state because a number of cases have arisen sporadically which have granted one or more of the Boykin provisions. See, for example, Matter of Karen B., 353 N.Y.S. 2d 160 (2d Dept. 1974); Matter of John R., 419 N.Y.S. 2d 625 (2d Dept. 1979); and, In re Daniel B., 440 N.Y.S. 2d 207 (1st Dept. 1981).

[2]Utah supposedly uses adult court rules in juvenile court (see State in Interest of Hill, 621 P.2d 705 (1970)), but the connection seems very weak.

[3]Not conducting a colloquy also enabled the administrator to leave court that much quicker, which was a chief concern of this type of judge.

[4]This section discusses the purported duties of the judge in accepting a guilty plea. The discussion is based upon the American Bar Association's interpretation of the judge's obligations in this regard (1980: Ch. 14).

[5]This is not to imply that juvenile defendants who offered these types of guilty pleas were necessarily taken advantage of by the judge. First of all, defense attorneys sanctioned these pleas of guilty only when no other course looked feasible and very often in situations in which a severe sanction was inevitable (see Chapters 6 and 8). Second, the dispositional ladder would more than likely restrict the chances of a youth's receiving a sentence out of character with his offense and record. Finally, judges were ordinarily solicitous of the defendant's circumstances and usually attempted to ensure that no child was legally misused. For example, judges frequently rejected non-negotiated guilty pleas where commitment was likely (see Chapter 7).

[6]Juvenile law in Pennsylvania changed following completion of the study. The statues now provide for adult court to consider all juvenile felony convictions when sentencing an adult offender. Thus, felony adjudications in juvenile court have assumed even greater importance than

they had during the research period (perhaps giving even more incentive for seeking a charge reduction). The district attorney's office has initiated a policy where all felony guilty pleas must be subjected to a colloquy. This was done in order to protect the guilty plea's validity for later use in adult court sentencing.

IV. THE SIGNIFICANCE OF PLEA NEGOTIATION IN JUVENILE COURT

CHAPTER 11: SUMMARY OF THE FINDINGS OF PLEA NEGOTIATION IN JUVENILE COURT

Perhaps the first and foremost finding of this study is that previous research efforts have mistakenly grouped their analyses of guilty pleas into one monolithic category of plea bargaining. For example, even non-negotiated guilty pleas have been called implicit plea bargains. This was an unfortunate decision because it forces the part to consume the whole. The negotiated guilty plea is but a subset of guilty pleas, in general, and, consequently, cannot and should not be expected to explain the world of pleading guilty. It is much more logical and useful to focus upon the larger entity of guilty pleas, and then try to examine what all guilty pleas are like, and try to comprehend why some are negotiated while others are non-negotiated. This study has done precisely this and has identified and labelled several non-negotiated guilty pleas, which are related to but are nevertheless different from the bargained plea of guilty.

In addition, this research has pointed out the misleading way in which plea bargaining has been documented in the field. In no jurisdiction does plea negotiation dispose of 95% of the caseload. Yet, authorities cite figures like this as the plea bargaining rate (see ABA, 1980). What plea negotiation does achieve is an extremely high percentage (perhaps 95%) of the total number of convictions. Nevertheless, the public has been misinformed as to the criminal justice system's reliance upon the negotiated guilty plea. This study has sought to rectify this situation by disclosing the numbers that truly belong in the numerator and the denominator of the plea bargaining ratio.

This study has also recognized the relationship that exists between

negotiated and non-negotiated guilty pleas on the one hand and negotiated and non-negotiated dismissals on the other hand. Together, the two types of guilty pleas and dismissals comprise what this research has called mitigated justice. The mitigated justice concept not only highlights the distinct yet related aspects of pleading guilty and dismissing cases, it also provides an ability to understand how the criminal and the juvenile justice system tend to tolerate considerable misbehavior before "throwing the book" at the typical defendant (see Chapter 12).

Interesting discoveries were made about juvenile court as well. For one thing, the dispositional ladder puts sentencing in juvenile court into perspective. That is, the youth climbs through several plateaus on his way towards the ultimate sanction in juvenile court: transfer to adult court. The presence of these distinctive disposition levels, in turn, serves as the fundamental incentive for defense counsel to plea bargain in juvenile court. The defense attorney simply tries to have the defendant placed on the least serious level possible. This study has demonstrated also that the creation of a new plateau on the ladder (e.g., a consent decree) will create as well another level (or added motivation) over which to negotiate a case. Ordinarily, the defense lawyer acted like an advocate, securing the least restrictive disposition for his client. Contrary to the situation in adult court, however, defense counsel sometimes helped plea bargain the juvenile into an institution when the child could possibly have avoided it. This assistance, consistent with the treatment goals of the juvenile justice system, occurred only when the youth agreed to it.

Perhaps the most significant find concerns the three types of judges who work in juvenile court. Contrary to the apparent directives of Gault,

there are judges who are either antagonistic towards (the conciliator) or indifferent to (the administrator) the leaglise the Supreme Court has introduced into juvenile court. These judicial attitudes are instrumental in shaping the judge's behavior in handling cases, including, in particular, the judge's reaction to plea negotiation. Whereas the conciliator actively plea bargained and the administrator passively accepted it, the legalist had uneasy feelings about plea negotiation and its proper place in juvenile court. Undoubtedly, to some the most disturbing feature about plea negotiation in juvenile court will be the conciliator's bargaining directly with the youth.

The third major character in this study, the prosecutor, was found to have a number of reasons to plea bargain in juvenile court and to assume a variety of roles while negotiating. Primarily, the district attorney did exactly what he was expected to do: act like an advocate for the Commonwealth. He sought informal arrangements when they represented the best disposition available. In general, the prosecutor was trying to build a certifiable record against the defendant. Eventually, the youth would commit enough wrongs to climb all the way to certification. Otherwise, the district attorney was an administrator seeking to regulate case flow through his office by plea bargaining, and a judge when he informally disposed of cases because the juvenile's needs were best answered that way.

Probably the most distinctive attribute about plea negotiation in juvenile court in personnel terms, was the effect caused by the probation officer and the parent. Unlike adult court, the probation officer gets involved with juvenile court early in the processing of a case, and directly and indirectly (through the presentence report) influences plea bargaining. Again, unlike the adult court, the parent can play an integral

role in plea bargaining in juvenile court. Single-handedly, the parent frequently promoted or blocked deals in that forum.

Essentially, the plea bargains found in juvenile court are structurally similar to (i.e., charge and sentence bargains), and are generated by many of the same reasons (i.e., both sides get acceptable results) as the plea bargains occurring in adult court. That fact suggests that there is perhaps more comparability between juvenile and adult court than is commonly (and willingly) recognized. Of course, adult court has no such thing as a certification deal. There are other crucial differences worthy of mention, also.

First, plea bargains take place in juvenile court even though jury trial is not offered to juvenile defendants. Caseload pressure is much less persistent in juvenile court than in adult court and yet much plea negotiation transpires in the former. This lends support to the proposition that caseload pressure is not the reason d'etre of plea bargaining (Feeley, 1979b; Heumann, 1975). Nevertheless, everything probably is relative. Juvenile court seemingly works to its capacity and its personnel would argue (as did the judges and opposing counsel) that plea negotiation facilitates case movement and prevents backlog in the juvenile court system. Theoretically, every non-diverted juvenile case could be given a hearing. That would mean many trials and much longer days in court, however. Tolerance towards juvenile misbehavior would also possibly decrease since giving more time to an accused before and during a trial seems to be correlated to giving an offender more time after conviction. So, although juvenile court could probably do alright without plea bargaining, juveniles might not fare as well. In other words, juvenile court could live without plea negotiation but life would not

necessarily be as pleasant as it is currently (or pleasant at all, for that matter).

Second, plea bargaining took place in juvenile court without threat of a trial penalty. There is little doubt that sentence differentials (i.e., a more severe sanction for trial conviction vis-a-vis guilty plea conviction) are believed to be the major impetus in a defendant's seeking a negotiated plea in adult court. Despite the absence of a trial penalty (and, indeed, in face of some defendant's being rewarded for non-cooperation and refusing deals) there were enough gains to be realized that defense counsel were often willing to initiate plea negotiation when the situation warranted. Defense attorneys were quick to admit that it felt reassuring not to have to risk a trial penalty when deciding whether to accept or to reject the prosecutor's proposals.

The third instrumental difference about juvenile court plea bargaining is that role distortion did not take place. Plea negotiation in the adult court reportedly causes defense attorneys to become dishonest (i.e., they sell out and trade-out clients) and/or paranoid (i.e., they are afraid to play with the defendant's life), judges to become impotent (i.e., they must abide by the prosecutor's wishes or the system collapses), and prosecutors to become multi-functioning usurpers of the criminal justice process (i.e., they charge, convict and sentence) (Alschuler, 1968, 1975, 1976). The judge controls plea bargaining in juvenile court, however. The conciliator directly dominates the plea negotiation process in his courtroom. More important, all the judges have the prerogative of rejecting any deal that appears inappropriate. Without the jury trial problem, juvenile court judges could afford to send a multitude of cases into hearings without the threat of system collapse. Defense attorneys

could not easily be coerced into bargaining since three was no trial penalty. But, on the other hand, defense attorneys could not threaten to slow down the system with countless jury trial requests. The prosecutor could not threaten anyone with a trial penalty if he chose not to cooperate. All three participants were able to pick and choose when they would plea bargain. In fact, this freedom contributed to their being numerous impediments to plea negotiation in juvenile court.

After finding so many obstacles to the practice, it is, in retrospect, somewhat surprising that so much plea bargaining activity occurs in juvenile court. The juvenile court structure is such that plea negotiation seems unlikely. There are no jury trials, no trial penalty and the charge and sentence are not necessarily related in any one case. Moreover, as was just discussed each of the participants operated with more freedom than their adult counterparts. Plea bargaining, then, demanded a coalescing of the right situation, incentive- and stage-wise, and the right people. Despite this plea negotiation took place frequently in juvnille court.

The final note on this study's findings involves the low priority that was placed on judicial supervision of the guilty plea process. For the most part, juvenile court judges did not give heavy emphasis to examining the fairness, voluntariness, and accuracy of the juvenile's guilty plea. This is not surprising. Legal considerations have traditionally assumed second place to the youth's treatment needs in juvenile court. Absent some extraordinary condition, juvenile court judges are not likely, on their own initiative, to introduce legal protections into a procedure whose primary concern is the welfare of the child. Irrespective of the lack of legal input at the guilty plea stage, pleading guilty in juvenile

court did not appear to undermine justice or the juvenile's interests. With only one exception there were no reneged deals. Whenever complete sentence bargains occurred there were not surprise sentences. In these respects, pleading guilty in juvenile court had more fairness about it than what frequently happens in the adult court. To be sure, requiring colloquies for all guilty pleas, putting all deals (and colloquies) on record, and requiring the prosecutor to establish a prima facie case for each guilty plea would do much to further the cause of justice in juvenile court (and in adult court, too, for that matter) (see Heumann, 1978: 166-167). But, even without these reforms, plea negotiation and pleading guilty in juvenile court do not currently appear to violate the fundamental fairness constitutionally owed each juvenile defendant.

CHAPTER 12: IMPLICATIONS AND FUTURE DIRECTIONS OF THE STUDY OF PLEA NEGOTIATION IN JUVENILE COURT

A. The Implications

This study has a number of implications. Perhaps the most obvious ones concern the ways in which past and future research on plea negotiation will be affected by this study's discovery of the myriad guilty pleas that can be offered by a criminal defendant, whether in juvenile or adult court. This study has demonstrated that revisions are necessary in how plea negotiation is categorized and documented; that additional examination is needed in the area of non-negotiated guilty pleas; and, that the larger picture of mitigated justice and its relationship to the juvenile and criminal justice systems requires further investigation. Even more serious implications involve just how juvenile court should be viewed considering the import of this study's findings.

Many will probably suggest that the one, crucial, and, at the same time, most dangerous implication of this study is that the plea negotiation activity in juvenile court forces the juvenile court to be presented in a light too similar to the adult court. As many of the authorities cited in Chapter 2 propose, it is virtually unconscionable for anyone to attribute a pure criminal justice phenomenon, like plea negotiation, to the halls of juvenile justice. The two simply do not seem to mesh. If nothing else, this study conclusively shows that plea bargaining belongs in juvenile court; it lays to rest the reasoning discussed in Chapter 2.

The National Advisory Commission was a group of respected criminal justice experts who, in both their preliminary report in 1976

and their final draft of 1980, emphasized that plea negotiation was an evil to be kept out of juvenile court at all costs. The group recommended the abolition of plea bargaining wherever it exists in juvenile court. Their opinions were based upon a knowledge vacuum, however. The NAC simply did not know what plea negotiation in juvenile court represented. More important, the commission's conclusions were built upon an unrealistic conception of what juvenile court is really like.

In support of its elimination recommendation, the NAC cited numerous undocumented abuses that are supposedly associated with plea bargaining in juvenile court.[1] These alleged abuses were mentioned in Chapter 3. They primarily involve plea negotiation's being coercive and damaging to the protection of society. In addition, according to the NAC, the juvenile court's treatment goals are undermined by the presence of plea bargaining.

The NAC was simply incorrect in its assertions.[2] The absence of a trial penalty meant juveniles were not coerced into plea negotiation. Moreover, the first offender's representation by defense counsel and his virtually automatic elegibility for probation, whether by plea negotation or via trial conviction, refutes the proposition that the first-timer will be taken advantage of wherever plea bargaining exists in juvenile court.

The commission's assumption that plea bargaining accounts for the undermining of society's protection is myopic. It ignores the valuable contributions made by lenient sentencing, post-adjudicatory dismissals, the unavailability of institutions in which to incapacitate dangerous

juveniles, the cumbersome process of transferring cases to adult court, and the prophylactic, constitutionally-mandated provisions such as speedy trial and exclusionary rules. Moreover, it is pure irony that plea bargaining often serves to protect society since it guarantees the conviction and punishment of many juveniles, who, upon a demand for trial, would, for one reason or another, be set free to prey upon society.

The NAC implied that the treatment mentality of the juvenile system acts as an insurmountable philosophical bar to plea bargaining in juvenile court.[3] This view seems to rely upon a number of interrelated assumptions that neither history nor logic supports.

1. The Juvenile System Helps The Youth

The anti-negotiation stand appears to depend, in large part, upon the belief that plea bargaining frustrates the court's ability to help the juvenile. This proposition, in turn, requires that the juvenile system actually rehabilitate the youth. The system's prospect of successful rehabilitations is beyond the scope of this study. Suffice it to say that many reports have disclosed the juvenile court's inability to treat juvenile offenders, or at least to convince youths not to recidivate (President's Commission, 1967). At the very least, this position is inconsistent with the recent movement, which the commission endorses, to divert as many cases as possible away from juvenile court, which is thus employed only as a last resort (1976: 216). If the use of the juvenile system itself is not sacrosanct, it is difficult to conceive why plea bargaining, if it at all prevents or minimizes the system's control of the youth, is sacrilegious.

2. The Judge Is The Only One Competent To Assess The Youth's Needs

The desire to eliminate plea negotiation stems somewhat from the treatment perspective that the judge alone is qualified to determine the rehabilitation plan the juvenile requires. This study does not consider the competency of juvenile court judges to serve as child psychologists. It is enough to state that the proposition is unrealistic. At disposition the judge relies heavily upon the probation officer's recommendations. It is surely incongruous to hold that the prosecutor and defense counsel cannot evaluate their own and/or others' treatment proposals, and arrive at a conclusion equal in merit to that which the judge would draw. Moreover, this assumption, like the rationale used in the McKeiver decision (where the judge and not the defendant was given the right to jury trial), turns the concept of rights and duties on its head. It is the right of the juvenile, as exercised through the advice of defense counsel and not through the wishes of the judge, to choose the fate of the case: guilty plea (with or without negotiation) or trial.

3. Negotiation And Proper Treatment Are Mutually Exclusive

The NAC proposed that plea bargaining necessarily yields results not "rationally related" to the juvenile's needs, and that everyone will "lose sight" of the court's "essential function" if negotiation occurs (Id.: 410-411). Exactly why rational results are automatic when the case is decided by an unsolicited admission or formal trial is not explained by the commission, however. The NAC necessarily and unreasonably implies that the judge, defense counsel and prosecutor could never agree on the disposition of

a case. This implication is necessary because only the lack of agreement would necessitate a formal resolution of the dispute. This implication is unreasonable in that the parties frequently concur and avoid the waste of resources by foregoing the time and expense of trial. Just as much as the adversary proceeding does not assure rational treatment results and does not enhance everyone's vision of the juvenile court's purpose, plea bargaining does no violence to the attempt to attain the right treatment plan for the juvenile.

4. The Juvenile Cannot And Should Not Want To Minimize The State's Intervention

In the adult system, plea bargaining is a mechanism to limit punishment. Its corresponding role in the juvenile context is to minimize treatment. Implicit in the position that plea bargaining does not belong in juvenile court is the belief the youth is not entitled to resist what the state has determined to be adequate control of the juvenile's fate. This belief distorts both reality and the juvenile's rights. Very often the juvenile system interferes substantially in the life of the youth. Regardless of the intention, the interference is punitive since deprivation of liberty, total if custodial, is a necessary result of a guilty finding by the court. For years the elevation of rhetoric above reality served to confuse the effect of juvenile court intervention, and, consequently, to deprive the youth of constitutional rights. The analogy is no less forceful, here. It is too easy to infer from the anti-negotiation stance that a juvenile should be compelled to accept his destiny as plotted by others,

without recourse to otherwise permissible available measures to avoid or to alter that destiny. In a similar vein, the stance restricts defense counsel's capacity to use otherwise acceptable means to secure the best resolution (i.e., the least restrictive state intrusion) for the client. Finally, the stance assumes that minimizing the intervention will actually hurt the defendant. In light of the juvenile system's documented failures, this assumption is hardly tenable.

Acceptance of the treatment ideal does not require an abandonment of plea bargaining in juvenile court. The philosophical argument presented by the commission is unconvincing. The commission's rationale represents more a reluctance to incorporate into juvenile court a technique that is associated with punitiveness, than an ability to establish a conflict between plea barganing and the treatment purpose of juvenile court. However, the NAC has succeeded in putting itself in a philosophical bind by constructing a rather anomalous juvenile court: a non-negotiating, adversary proceeding within a non-punitive, treatment system.

To accept plea bargaining as philosophically congruent with the purpose of juvenile court, it is not necessary to either camouflage the question or abandon the treatment objective of the system. One only has to acknowledge the punitive nature of the juvenile system, and the adversary character of juvenile court proceedings.

The juvenile court's traditional commitment to rehabilitation is legendary. The juvenile court seeks to help and to educate youths rather than to merely warehouse them. Whether or not these goals

are achieved, at least the attempt is praiseworthy. It is not as commendable, however, to imply that the juvenile system operates in a non-punitive capacity. This perspective served to deny juveniles constitutional rights for nearely seven decades. It suggests that punitive measures cannot be therapeutic. Moreover, the rhetoric distorts what is involved in juvenile court dispositions, as Allen observed several years ago:

> Measures which subject individuals to the substantial and involuntary deprivation of their liberty contain an inescapable punitive element, and this reality is not altered by the facts that the motivations that prompt incarceration are to provide therapy or otherwise contribute to the person's well-being or reform... (1964: 37).

It is not necessary or accurate to portray treatment and punishment as antithetical. What is imperative is the recognition that control of the youth's life in the community or in an institution is a punitive response by the state, reagrdless of the latter's benevolent motivations. It is crucial, as well, to concede that the juvenile, like the adult, has a right, through constitutionally-permissible means, to avoid or to minimize the state's infliction of punishment.

Occasionally, the interests of a juvenile and the state may actually coincide. Both may agree that a certain approach is required and desired to remedy the youth's problem. More often, however, the interests conflict. The state wants to impose some level of supervision upon the juvenile who wants to return home in an unaltered condition. This reality is not changed by the gratuitous concern of the state, as one commentator has noted:

> When the child and the state confront each other in the juvenile justice system, no amount of benevolent intentions, studied informality, or euphemistic terminology should be allowed to obscure the fact that they are, in fact, adversaries... (Wizner, 1972: 389).

Once the juvenile justice network is described as a treatment-oriented, albeit punitive system, which has, at times, interests opposed to those of the youth, the role of plea bargaining in juvenile court is easily defined. It simply parallels the plea bargaining function in adult court: to minimize the severity of state treatment/punishment. Ironically, the recognition that plea bargaining belongs in juvenile court can advance the cause of the youth's constitutional rights. This acknowledgement, although it leaves the treatment goal intact, gives concrete force to the youth's availing the full import of the right to counsel: to work rigorously on the juvenile's behalf to counteract the state's proposed intervention into the client's life. From this perspective, it is not difficult to conclude that plea bargaining has no philosophical hurdle to overcome in order to serve a legitimate purpose in juvenile court.

The bottom line of the anti-negotiation in juvenile court position is a fear of the domino-like effect this practice could produce. Recognizing the merit of plea bargaining in juvenile court and its philosophical congruence provides yet another incursion into the uniqueness of the juvenile court concept. This recognition establishes, in turn, significant similarity between the juvenile and the adult systems, which may lead to a demand that youths have all the constitutional rights enjoyed by their adult counterparts. Constitutional parity brings about the collapse of the final domino (i.e., the juvenile court) as the equality of rights and pro-

cedures yields a conclusion that the state no longer requires a separate juvenile court system. The Supreme Court revealed its concern that this progression is possible in McKeiver v. Pennsylvania:

> If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court, there is little need for its separate existence... (1971: 551).

The Court was "disinclined to give impetus" to this development, and accordingly, denied juveniles the constitutional right to trial by jury. That this evolution is automatic is unlikely, however. The McKeiver Court was unpersuaded by the argument of the juveniles from Philadelphia, who based their request for jury trial, in part, upon the fact that counsel regularly plea bargain in juvenile court. Thus, the domino theory is speculative at best: plea bargain's takeover of juvenile court will not necessarily guarantee the latter's demise.

Actually, plea negotiation in juvenile court makes perfect sense. After all, the entire juvenile justice system seems to operate on a negotiation or mitigated justice basis. First, the juvenile system itself is a mollified version of the criminal justice system. Punishment for juveniles is not nearly as severe as that reserved for adults. Of course, adults have access to bail and jury trial which are generally denied the juvenile defendant. In effect, the juvenile trades rights for less punishment. Even within the juvenile system negotiation is a constant. Police regularly send children home (before and after arrest) without invoking the formal channels of the system. The intake conference is specifically designed to work things out and to return home those juveniles who do not need juvenile court treatment. Probation officers consistently divert juveniles into

informal supervision where the latter can earn a dismissal if he refrains from crime for a period of time. Since all the other parts of the juvenile justice system negotiate with or extend mitigated justice to juveniles there would seem to be no logical reason to expect that the courtroom would be immune from this behavior.

The entire juvenile justice system seems committed to exempting youths from rigorous treatment by the state. Mitigated justice in the juvenile court (of which plea negotiation is a major part) works in the same context. It appears to parallel the general objectives of the system to divert children out of the system or to at least lessen the blow against the juvenile defendant wherever possible. Experts have noted the similarities that exist between diversion and plea bargaining (McDonald, 1979: 389). Not surprisingly, plea negotiation in juvenile court has diversion-related characteristics. Although plea bargaining, like diversion, makes it impossible to impose the maximum possible disposition against the youth:

a. The juvenile might not need the maximum disposition anyway;
b. The system could not control all juveniles to the maximum possible(there is not enough room in the system);
c. If the system tried to fully process all defendants, most would slip through its control via either acquittal or lack of prosecution; and,
d. If the youth escaped the system totally unscathed, the latter loses credibility while the former gets no help at all.

The aim of the system becomes to get the vast majority of defendants under at least a minimum of supervision. It appears the juvenile system wants to give nearly every juvenile offender at least a touch of juvenile court treatment so that the youth will be convinced not to return. Some will have had enough juvenile court medicine and will not recidivate. Those who do commit more crimes will slowly climb the dispositional ladder but, even here, more and more juveniles will fall out of the system as the climb gets steeper. The juvenile system, then, tries to keep a lid on how many juveniles they must handle at one time, and how many are passed on towards the adult system.

Besides convincing some youths not to return to court, mitigated justice gains for the state limited control over greater numbers of children, less court backlog, information which helps convict some defendants, and convictions in many cases which would have been lost otherwise. What the state loses in quality it compensates for in quantity. Plea negotiation and mitigated justice thus seem to fit quite well into the juvenile justice system: they serve as safety valves, filtering out of the juvenile system countless numbers of youths the system could not accommodate anyway.

B. Future Directions

Although this study was comprehensive in scope, as the first major research in the area it has necessarily just scratched the surface of plea negotiation in juvenile court. More work is needed to see how the Philadelphia Juvenile Court compares with those in the rest of the country. For one thing, the typologies developed in this study are surely not exhaustive. For example, in New Mexico,

consent decree bargaining involves the defendant's first pleading guilty. If the youth behaves, the record is wiped clean. If the juvenile acts up, however, a conviction on the basis of the original guilty plea will occur (see Harris, 1976: 354-355; Lauer, 1980: 351-352). This differs greatly from dismissal bargaining in Philadelphia.

Since this study was qualitative in nature many quantitative questions remain unanswered. Basically, research in this respect would be expected to follow what has been done in the adult court. For example, an intensive, control-oriented investigation seems called for to determine whether there are plea bargaining differences among defense counsel, depending upon the type of defense attorney. Similar research would appear useful in discovering whether there are differences among prosecutors. Quantitative studies could also help ascertain whether discrimination, on racial or sexual bases, compromises equal access by youths to plea bargain in juvenile court. Another interesting numbers question that research could address is whether it makes a difference for a youth to approach the adjudicatory level via a detention hearing versus pretrial.

A number of larger issues cannot be resolved by research per se. The legislatures and the courts will have to come up with the solutions. For example, is plea negotiation proper in juvenile court? The data suggest that there is nothing compromising or devisive about any mitigated justice feature in juvenile court. There surely appears to be no greater reason to elimnate plea bargaining from juvenile court as opposed to banning it in adult court. Yet, authorities may still determine that juvenile court is simply not the proper forum for plea negotiation. Similarly, one may question whether the guilty plea pro-

cess should be made more formal than it is in many jurisdictions across the country. Before long, the United State Supreme Court may very well be faced with this same interrogatory. Chances are the Court will decide in the negative.

This study will conclude with an observation of irony rather than with a rhetorical research question. Prior to 1967 juvenile court was a non-adversary tribunal with no procedure even resembling a modern criminal trial. In re Gault changed this and introduced the fundamentals of adversariness to juvenile court. Gault also introduced the basics of plea bargaining to juvenile court by providing juvenile defendants defense counsel. The Supreme Court decision was much decried by juvenile court defenders. Four years later the Supreme Court saved juvenile court by refusing to grant juvenile defendants a constitutional right to trial by jury. Besides delaying the potential demise of the juvenile system, the Supreme Court's primary defense for this holding was its argument that juvenile court was becoming too adversarial. The Court denied the application for jury trial to assure that adversariness did not overwhelm juvenile court. Ironically, the Supreme Court's desire to prevent greater adversariness in juvenile court probably guaranteed exactly what it sought to exclude. Today the juvenile court is probably more adversarial than its adult couterpart. Opposing counsel pursue trial more frequently in juvenile court than in adult court. The most likely reason is that whereas jury trials make the use of litigation cumbersome and impossible on a large scale basis in adult court, bench trials are quick and easy and frequently used in juvenile court. Interestingly, it seems that the archetypical symbol of adversariness, the jury trial, is the direct enemy of adversariness

and the direct proponent of negotiation. Had the Supreme Court forced jury trial upon the juvenile court, and had the juvenile court survived, perhaps this study would have found even more plea negotiation.

FOOTNOTES

[1]Much of the following commentary is based upon a paper the researcher presented at the Academy of Criminal Justice Sciences Annual Conference, in March, 1981, in Philadelphia, Pennsylvania. The paper was titled, "The Negotiation-Oriented Juvenile Court: Philosophical Conflict or Congruity?"

[2]This answer to the NAC observations is based only on the findings in Philadelphia's juvenile court and cannot speak for the world of plea negotiation in juvenile court. The NAC's fears might be accurate in some jurisdictions. Philosophically, though, the NAC is on weak grounds by arguing that all plea bargaining conflicts with the treatment purpose of juvenile court.

[3]Sometimes plea bargaining served the interests of treatment quite directly. This occurred whenever a youth was adjudicated delinquent and was given a disposition, whereas going to trial would have ended in an acquittal or lack of prosecution.

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