A NOTE ON PLEA BARGAINING AND CASE PRESSURE

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I. INTRODUCTION

The demise of the "upper court myth" (see Frank, 1969: 222-24) and the resultant realization of the importance of the "trial" court has spurred research into the dispositional processes of criminal courts. In the forefront of the results yielded by these efforts is a model of case disposition very different from the familiar Perry Mason courtroom interaction, a model predicated on negotiated dispositions rather than adversary combat, in short, a plea bargaining model.

Plea bargaining can be defined as the process by which the defendant relinquishes his right to go to trial in exchange for a reduction in charge and/or sentence. The pervasiveness of plea bargaining is suggested by the fact that roughly only 10% of all criminal cases go to trial.[1]

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1. Trial rates vary across jurisdictions, and precise figures remain elusive. McIntyre and Lippman (1970: 1156-57) reported that the average trials to total dispositions ratio for felony cases from 1965-69 in Kings County, Brooklyn, was 300/3000, at 10%; in Detroit, 900/9200, or 9.8%; in Harris County, Houston, 360/6260, or 5.8%; in Cook County, Chicago, 900/4500, or 20%.

   Blumberg (1967: 30) analyzed the volume of cases disposed of by trial in New York for the years 1950 through 1964:

Year	Indictments found by grand jury	Total cases disposed of by trial	Per cent disposed of by trial
1950	2676	113	4.22%
1951	3217	137	4.25%
1952	3638	127	3.49%
1953	3532	131	3.70%
1954	3934	112	2.84%
1955	3235	102	3.15%
1956	3159	114	3.60%
1957	3524	115	3.26%
1958	3772	107	2.83%
1959	4314	104	2.41%
1960	4750	116	2.44%
1961	4319	142	3.28%
1962	4392	162	3.68%
1963	4997	150	3.00%
1964	5073	145	2.85%

This note will be restricted to an examination of one aspect of the plea bargaining process, namely, the relationship between case pressure and plea bargaining.[2] Much of the informed thought and literature on plea bargaining assumes (or at least conveys the impression) that plea bargaining can be best (though not necessarily exclusively) understood as a function of case pressure. A number of illustrations of this assumption follow:

> Only the guilty plea system has enabled the courts to process their caseloads with seriously inadequate resources. The invisible hand of Adam Smith is at work. Growing concessions to guilty plea defendants have almost matched the growing need to avoid the burdensome business of trying cases. (Alschuler, 1968: 51).

> So long as it remains impossible for our criminal system to permit every defendant to claim his right to a jury trial, some inducements for the surrender of that right will be necessary. At the moment, plea bargaining is our only vehicle for granting such inducements. Moreover, absent a dramatic increase in legal resources or the appearance of some strategy which compensates for our shortage of these resources, plea bargaining is likely to endure. (Yale Law Journal, 1972: 286).

> The guilty plea concept is a relatively recent phenomenon. The ever-increasing crime rate over the past 30 years has led the American criminal justice system to the point where 85 to 90 percent of all criminal convictions are obtained by guilty pleas. (Wayne Law Review, 1971: 1239).

> Because the contemporary American criminal justice system suffers from a critical lack of resources, it has come to rely on the continual sacrifice of the trial rights of the individual. To dispose of the maximum number of cases at minimum cost, prosecutors often attempt to induce a defendant to plea guilty by offering him a bargain—a sentence or charge reduction in exchange for a guilty plea. (Harvard Law Review, 1970: 1387). Realizing the need to relieve their congested dockets, the courts

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Hoffman (1972: 499) observed that "the negotiated guilty plea is an acknowledged procedure made primarily necessary by the fact that approximately 90% of all defendants enter guilty pleas," thus establishing 10% as an "upper limit" on the trial rate. The American Bar Association Project on Minimum Standards for Criminal Justice (tentative draft, 1967: 1-2) noted that in some localities more than 95% of all criminal cases are disposed of without a trial.

By contrast, McIntyre and Lippman (1970: 1156-57) estimated that 10,400/21,300, or 49.0% of Los Angeles felony cases were disposed of by trial; in Baltimore, the figure was 5125/7325, or 70.0%. Both the Los Angeles and Baltimore systems frequently resort to the submission-on-transcript (SOT) trial, where the case is decided on the basis of the transcript of the preliminary hearing.

2. It should be noted that the "plea bargaining" focus is something of a simplification. Processes for the disposition of criminal cases other than full-fledged trial and the plea bargain are utilized in local courts. I assume in the main body of this note that functional equivalents to plea bargaining exist in systems which appear to depend only minimally on plea bargaining. The submission-on-transcript trial, for example, may be such a functional equivalent; Mather (1973: 189) has termed it a "slow plea of guilty."

In a system openly dependent on plea bargaining, all cases are not necessarily disposed of by explicit, give and take, plea bargaining. Some cases may simply be settled by tacit bargaining, or mutual agreement by both prosecution and defense as to "what a case is worth." See Mather (1973: 198-99) and Heumann (1974: 20-25).

> have resorted to various methods to expedite the legal process. One of these methods, plea bargaining, is not designed to accelerate the trial level but instead eliminate it. (Duquesne Law Review, 1971: 253).
>
> Properly administered, it [plea bargaining] is to be encouraged. If every criminal charge were subjected to a full-scale trial, the states and the federal government would need to multiply by many times the number of judges and court facilities. (*Santobello* v. *New York*, 1972).
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> They [negotiated dispositions] serve an important role in the disposition of today's heavy calendars. (*Santobello* v. *New York*, 1972, [Douglas, concurring])
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> . . . the emergence of "bureaucratic due process," a non-adversary system of justice by negotiation . . . consists of secret bargaining sessions, employing subtle, bureaucratically-ordained modes of coercion and influence to dispose of *onerously large caseloads* [emphasis supplied] in an efficacious and "rational" manner. (Blumberg, 1967:21).[3]

These comments are illustrative of the purported case pressure-plea bargaining linkage. The heavy caseloads of criminal courts are coupled with observations of the prevalence of plea bargaining so as to suggest that plea bargaining is an expedient developed to manage "onerously large caseloads." The impression is conveyed that plea bargaining results from increases in case pressure, although quantitative analysis of the relationship is not undertaken. The literature does not expressly posit direct variation between plea bargaining and case pressure; for the most part, it is silent on the precise nature of the relationship and is content to observe that case pressure and plea bargaining appear to "go together."

Only a handful of scholars have explicitly questioned this assumption (see Feeley, 1973: 415-21; Skolnick, 1967: 52-67), and their comments underscore the need for a more thorough and intensive consideration of the subject. Malcolm Feeley (1973: 418-19), for example, suspects that "Blumberg has somewhat overstated the importance of heavy case loads" and calls for more "systematically gathered and presented evidence" to test alternate hypotheses to the case pressure explanation.

The data that I shall employ were gathered from published State of Connecticut reports, as well as from interviews I conducted with 71 individuals (judges, prosecutors, public defenders and private criminal attorneys) working in Connecticut's criminal justice system.[4] Although I shall not continually repeat the

3. See also *People v. Byrd* (1968), Thomas (1974: 303) and White 1971: 439).
4. These interviews were conducted for a larger study which deals with the adaptation and socialization of local criminal court personnel to plea bargaining processes.

requisite *caveat* on limits of generalizability, it is obvious that my arguments are based exclusively on data from and about Connecticut and must be viewed in this light.

II. TRIAL RATES, PLEA BARGAINING, AND CASE PRESSURE

Table 1 shows that in recent years recourse to trial has been the exception rather than the rule in Connecticut's Superior Courts.[5]

Table 1. Disposition of Criminal Cases by Defendants in Connecticut Superior Courts, 1966-73*

Method of Disposition	1966-67	1967-68	1968-69	1969-70	1970-71	1971-72	1972-73
Guilty Plea	1635	2107	2696	3186	3680	3332	2244
Nolle or Dismissal	267	419	686	1110	1302	1302	646
Trial	164	241	301	191	231	156	114
Total Dispositions	2066	2767	3683	4487	5213	4790	3004
% Trial/Total Disposition	7.9%	8.7%	8.2%	4.3%	4.4%	3.3%	3.8%

* Data Sources: for 1966-67 through 1970-71: Connecticut Planning Committee on Criminal Administration, *The Criminal Justice System in Connecticut—1972*, p. 111. For 1971-72: *Twenty-third Report of the Judicial Council of Connecticut* (December, 1972), p. 41. For 1972-73: Personal written communication with Joseph Shortall, Assistant Executive Secretary, Judicial Department, State of Connecticut.

In not one of the seven years analyzed does the ratio of trials to total dispositions exceed 9%. The trial, perceived by many as the touchstone of our legal system, accounted for the final outcome of only 114 of the 3004 cases resolved in one fashion or another by the Superior Courts in 1972-73.

The probability of trial in a given case across these years is very low. If the case is not filtered out by means of a nolle[6]

5. The Superior Courts have concurrent jurisdiction with Connecticut's Circuit Courts over all misdemeanors and felonies punishable by up to five years imprisonment, and exclusive jurisdiction over felonies punishable by more than five years imprisonment.

The scope of plea bargaining in a jurisdiction is commonly determined albeit indirectly, by reference to the frequency of trial. In the analysis that follows, I shall, for the most part, use trial rates, although it should be emphasized that trial dispositions other than plea bargains are included in the denominator when trial rates are calculated. Examination of the trial rate is sufficient to develop the central argument of this note, and data constraints militate against the use of a more refined measure.

6. The complete term is "nolle prosequi" (unwilling to prosecute). The prosecutor can decide not to pursue any or all charges against the defendant (that is "nolle" the charges). He can reconsider at any time within a year of this decision; after a year has elapsed, however, the case can no longer be reopened and the defendant can petition to have the "nolle" ("nolle" is used both as a verb and noun in the court) removed from his record. In practice, it is rare for the

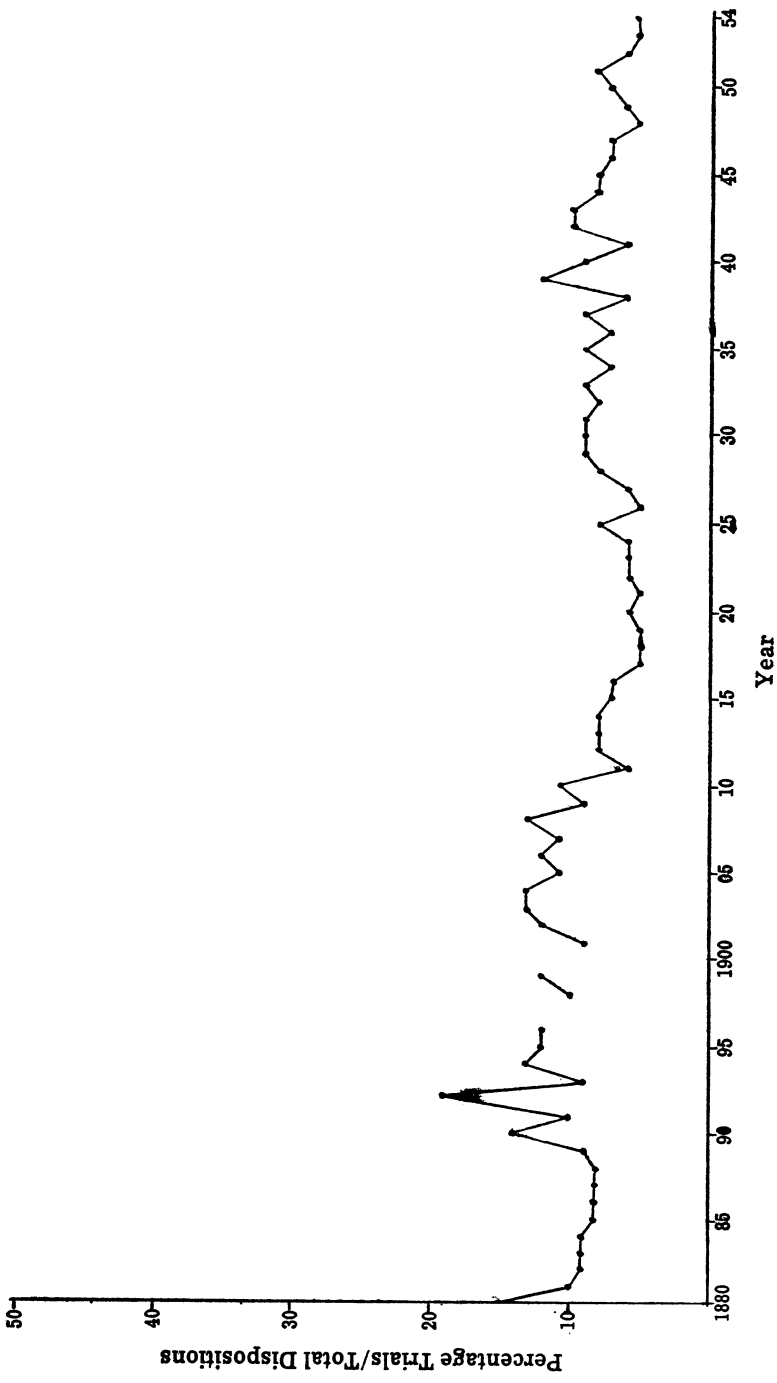

Figure 1: *Ratio of Trials to Total Dispositions for Connecticut Superior Courts, 1880-1954.* (Sources: For 1880-1900: "Annual Report of the Comptroller of Public Accounts . . . ," *Connecticut Public Documents*: For 1901-1925, "Annual Reports in Relation to the Criminal Business . . . ," *Public Documents of the State of Connecticut*; For 1926-1954, Judicial Council of Connecticut, *Connecticut Judicial Statistics* (March, 1956). See Footnote 9 for detailed citation. Data for 1897 and 1900 were unavailable.

prosecutor to reopen the case and rare for the defendant to bother to have it erased.

Though the nolle is not equivalent to a dismissal, it is frequently used in lieu of a dismissal; thus the nolle rate in Connecticut is substantially higher than the dismissal rate. The nolle is also used in plea bargaining as a means of dropping a number of counts in return for a plea, further inflating the nolle rate.

or a dismissal, it is at least eight times more likely that the defendant will choose to plead guilty in lieu of trial. In the "trial" court the guilty plea reigns.

However, the relative infrequency of trials compared to alternate modes of disposition is *not* a recent phenomenon. Figure I plots the percentage of trials to total dispositions for the Superior Courts from 1880-1954.[7] The mean percentage trial to total disposition over this 75-year period is 8.7%. From 1880 to 1910 the ratio was slightly above 10%; from 1910 to 1954 it reached the 10% mark only three times. Overall, the trial ratio does not differ to any great extent from the current figures. It appears that the trial, as far back as 1880, did not serve as a particularly frequent source of case dispositions.

These data speak indirectly to the nature of the relationship between plea bargaining and case pressure.[8] However, if we disaggregate the data and compare trial rates in low volume Superior Courts with those in high volume Superior Courts, a more direct test of the relationship is possible. This test is at best "rough" because without data on the number of prosecutors and judges working in the court, we cannot be sure that volume re-

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However, the Connecticut nolle statistics do not reflect this dismissal of charges, with one exception. The Connecticut statistics are compiled by defendant, regardless of the number of charges against him, with the proviso that some defendants may have more than one "file" of charges against them. If a defendant has one "file," and he pleads guilty to a charge in the file in exchange for the nolle of the rest of the charges in the file, only one guilty plea is tabulated. If, however, he has two files, and he pleads guilty to a charge in one file in exchange for a nolle of the charges in the other file, one guilty plea and one nolle are counted.

7. For the years 1880-1900, the Superior Court disposition data can be found in the annual volume of *Connecticut Public Documents.* These reports are entitled: "First Annual (and so on) Report of the Comptroller of Public Accounts of the State of Connecticut in Relation to the Criminal Business of the Courts for the Year Ending July 1, 1880 as shown by the Returns of the State's Attorneys." After 1900 both the title of the collection, and of the reports, changed. From 1900-1926 they were reported biennially in *Public Documents of the State of Connecticut,* as Public Document #27, "Annual Report in Relation to the Criminal Business of the Courts of the State of Connecticut for the Year Ending July 1, 1901 as shown by the Returns of the State and Prosecuting Attorneys." In 1926 the Judicial Council of Connecticut was created, and it reports biennially on Superior Court dispositions. See: *First (through 22nd) Report of the Judicial Council of Connecticut.* A summary of the Judicial Council data from 1926-1954 was obtained fortuitously in the office of a public defender. Because these data were complete, and gaps existed in the available Council reports post 1954, the 1954 cutoff was used for the historical time series. This summary report is entitled: *Connecticut Judicial Statistics as Reported to the Judicial Council* (March, 1956).

8. The test is indirect because the data were compiled in aggregate, and it is possible that the small, low-volume courts provided most of the trials. The data should, however, put to rest the notion that trials were historically the preponderant mode of case disposition.

flects pressure. Nevertheless, these data should yield some clues concerning the capacity of local courts to try cases.

Case volume was used as a surrogate for pressure for purposes of further analysis. Connecticut's nine Superior Courts were arrayed on the basis of the mean number of total cases disposed of annually between 1880 and 1954. The rank order based on these means is provided in Table 2.

Table 2. Rank Ordering of Connecticut Superior Courts by Mean Number Cases Disposed Annually, 1880-1954*

Superior Court	Total Cases	Mean	Standard Deviation
Tolland	2468	34	21
Middlesex	4143	56	20
Windham	5362	73	25
Litchfield	6235	85	51
Waterbury**	6655	95	171
New London	8553	117	43
Fairfield	19,043	261	71
New Haven	20,326	278	104
Hartford	24,212	332	158

* Source: Same as for Figure I.

** Data missing for 1897 and 1900. The Waterbury Superior Court was established in 1893, thus the N is 70 for Waterbury and 73 for the others.

The three courts with the lowest mean number of cases per year (34, 56, and 73 cases per *year*) were called "low volume courts"; Fairfield, New Haven and Hartford were similarly labelled "high volume courts." The ratio of trials to total dispositions for each of these six courts was computed, and the mean of these ratios for the low and high volume groupings for each year was determined. The summary statistics over the 75-year period for each court are presented in Table 3; the means of the high and low volume groupings for each year are plotted on Figure 2.

Table 3. Means of Annual Trial to Total Cases Ratio for Low and High Volume Superior Courts, 1880-1954*

	Low Volume Courts			High Volume Courts		
	Tolland	Middlesex	Windham	Fairfield	New Haven	Hartford
Mean Trials/Cases	.16	.14	.11	.07	.12	.07
Standard Deviation	.12	.07	.07	.05	.06	.04

* Source: Same as for Figure I.

Figure 2 and Table 3 indicate that over this 75-year period the low volume courts did not try a substantial percentage of their cases. Particularly from 1910 on, despite the large difference in actual case volume which was used to dichotomize the two groupings, trial rates between them varied minimally, and

indeed often the low volume courts tried proportionately fewer cases.

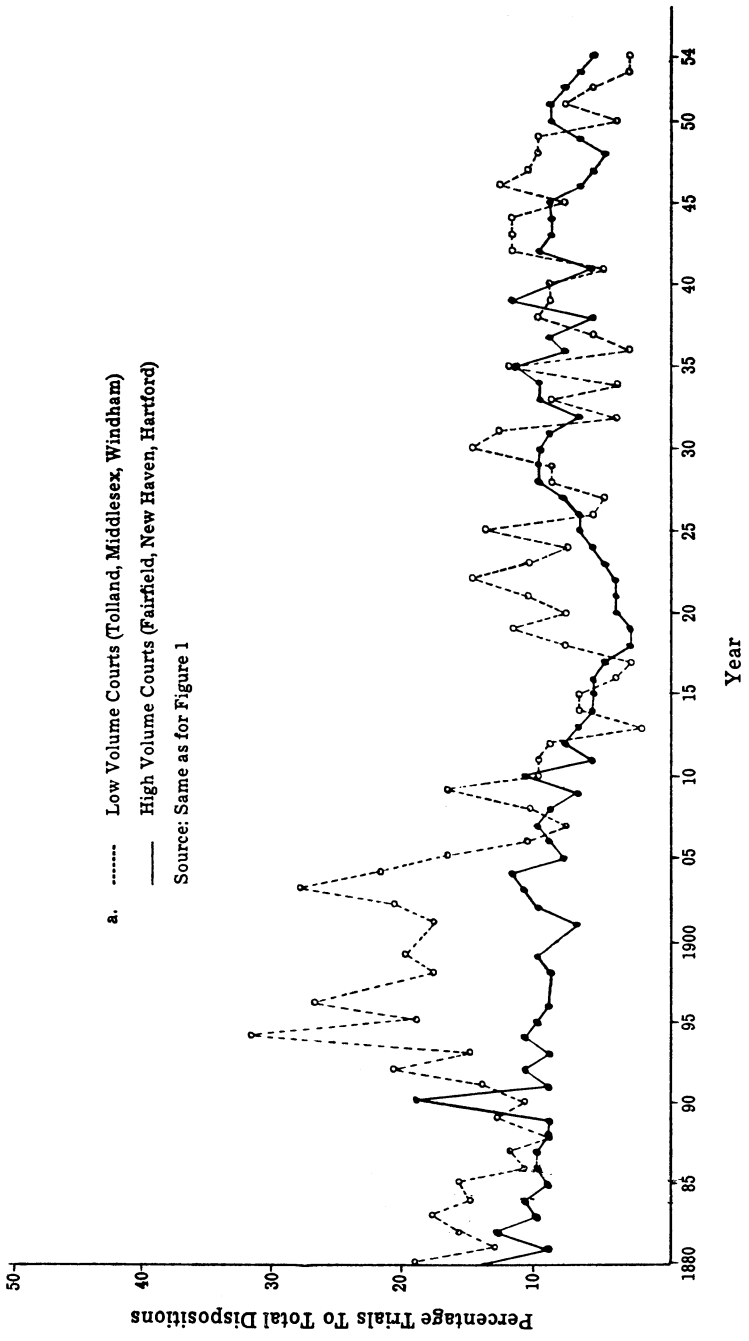

Figure 2: Mean Annual Trial to Total Cases Ratio of High and Low Volume Connecticut Superior Courts, 1880-1954.[a]

A second test of the relationship between case pressure and trials is afforded by the data presented in Table 4. As of September, 1971, the Circuit Court's criminal jurisdiction was ex-

tended to include crimes punishable by up to five years imprisonment. Previously, it had bound over to the Superior Court all cases with potential sentences of more than one year. One of the effects of this enlarged Circuit Court jurisdiction was to lighten the Superior Court caseload. However, during this same period no decrease in Superior Court personnel levels took place;[9] the same number of state's attorneys and judges that disposed of 5213 cases between July 1970 and June 1971 disposed of only 3004 cases between July 1972 and June 1973. The fact that personnel levels remained constant allows us to examine the impact of the relative decrease in case pressure on the specific Superior Courts.[10] (Table 4).

Table 4. Trial Rate Pre- and Post-Change in Circuit Court Jurisdiction for Connecticut Superior Courts, 1970-71 and 1972-73.*

	Pre-Changed Jurisdiction: 1970-71			Post-Changed Jurisdiction: 1972-73		
Superior Court	Total Number Cases	Number Trials	Percent Trials of Total Cases	Total Number Cases	Number Trials	Percent Trials of Total Cases
Tolland	196	11	5.6%	117	8	6.8%
Middlesex	203	7	3.4%	134	4	3.0%
Windham	160	6	3.8%	101	3	3.0%
Litchfield	164	30	18.3%	108	6	5.6%
Waterbury	536	18	3.4%	345	6	1.7%
New London	286	19	6.6%	349	13	3.7%
Fairfield	889	42	4.7%	441	21	4.8%
New Haven	955	43	4.5%	482	23	4.8%
Hartford	1822	55	3.0%	927	30	3.2%

* Sources: For 1970-71, Connecticut Planning Committee on Criminal Administration, *The Criminal Justice System in Connecticut—1972*, p. 114. For 1972-73: Personal written communication with Joseph Shortall, Assistant Executive Secretary, Judicial Department, State of Connecticut.

9. For 1970-71, the Connecticut Planning Committee on Criminal Administration (1972: 107, 114) reported that there were 35 judges and 31 state's attorneys in Superior Court. The 1972-73 data are in the process of being published; a personal communication with the Connecticut Planning Committee on Criminal Administration revealed that there were 35 judges and 31 state's attorneys in 1972-73 as well.

10. One problem with this test is that the increased jurisdiction of the Circuit Court altered the distribution of types of offenses coming to the Superior Court. If, for example, the Superior Court's trials prior to 1972 largely were for offenses now adjudicated in the Circuit Court, then the 1972-73 statistics would underestimate the impact of the changed jurisdiction. In other words, the Superior Courts in 1972-73 would be trying cases that in 1971-72 they had plea bargained, and though trial rates remain constant, trial rates for the comparable cases increased. The available data do not allow a check on this hypothesis. (A priori, however, there is no plausible substantive argument that would lead one to believe that the distribution of trials was as hypothesized above.)

Given the available data, it is also impossible to determine whether there was a reallocation of judicial resources to civil jurisdiction within a court. Connecticut's Superior Courts adjudicate civil cases as well, and in a one-judge court exercising both civil and criminal jurisdiction, more time may have been devoted to the civil caseload.

In the three busiest courts, case pressure was roughly halved and personnel levels remained constant, but the rate of trials remained the same; it did not increase appreciably as the decreased case pressure-increased trials relationship would have predicted. In the lower volume courts, the pattern was mixed. Litchfield evidenced a substantial decrease in trial rates, while Middlesex and Tolland showed slight increases. Overall, though, one is struck more by the relative constancy of the trial rates in the face of dramatic changes in case pressure, than by the slight, and not always consistent, changes in these rates.

III. AN EXPLANATION: IMPLICIT AND EXPLICIT PLEA BARGAINING

That trials are not now, nor have they been since 1880, the predominant method of case resolution emerges from both the annual aggregate statistics for all the Superior Courts, and from the breakdown by individual courts. Furthermore, we have seen that variations in case pressure do not directly and appreciably affect trial rates—low volume courts historically have not tried a substantial portion of cases, and recent decreases in volume have not led to markedly greater rates of trial.

Guilty pleas, and to a lesser extent nolles, have always been the best traveled routes to case disposition. We know that today these guilty pleas are the product of discussion and negotiation between the defense attorney and the state's attorney, and there is reason to believe that plea bargaining has always played a role in the local courts.

One cannot speak with assurance about the procedures followed in the "old days" to obtain the high percentage of guilty pleas. However, several clues harvested from my interviews lend credence to the argument that plea bargaining is no "Johnny come lately." Old timers—court personnel and private attorneys who have been active in criminal courts since the 1930's—scoffed at the current clamor about plea bargaining. Though indicating that some of the steps followed in negotiating dispositions have changed, these "old timers" maintained that the core notion of arranging a deal with the state's attorney in return for a guilty plea was always central to the practice of criminal law.[11]

11. Moley's study (1928: 97-127) of the criminal court in the 1920's and Miller's work (1927: 1-31) indicate that negotiated dispositions were central to the criminal process over fifty years ago. Moley and Miller speak of the bargaining between defense attorneys and prosecutors; it is possible that in the "old days" there were many unrepresented defendants who pled guilty in lieu of bargaining. However, the best evidence we have (though gathered three decades after the

This evidence is admittedly piecemeal, and subject to the problem of selective recall. But several of my other findings support the contentions of these "old timers." Almost every respondent accepted as empirically correct that: (1) between 80 and 90% of the defendants in the Superior Court are factually guilty; (2) of these, a sizeable percentage have no substantial grounds to contest the state's case—that is, they are factually and legally guilty, and their trials would be barren of any contentions likely to produce an acquittal;[12] (3) if a defendant pleads guilty he is likely to be rewarded[13] in terms of a reduction in charge and/or sentence.[14] These perceptions do not necessarily add up to a negation of the legal tenet of the presumption of innocence. Court personnel and defense attorneys simply recognize the factual culpability of many defendants, and the fruitlessness, in terms of case outcome, of a trial. From these perceptions flows the notion that if the obviously guilty defendant "cops a plea" he will receive some reward. Whether this results from his show of contrition, or from the more prosaic saving of state time and money, is not of concern here; the fact that he is perceived to receive a reward is the key point. It should be emphasized that this is not normatively avowed by all court personnel, but is accepted by them as the empirical reality.

Assuming that the criminal justice system has always

Moley and Miller studies) (Newman, 1956: 189) indicates substantial bargaining between unrepresented defendants and state's attorneys.

12. Mather's "dead bang" cases are equivalent to these cases, and it is of particular interest to note that the Los Angeles public defenders estimate that the majority of their cases fall under this rubric. See Mather (1973: 197-98).

13. Some respondents were inclined to view it as a "penalty for trial" rather than a "reward for pleading."

14. It is difficult to assess whether or not these perceptions—that is, the three shared views discussed in this note—are empirically justified. I reviewed the files of 88 defendants represented by the public defenders of one of the Superior Courts. Though it is difficult to develop criteria for evaluating whether the state has a strong case, my overall impression of these files comported with what the respondents had been telling me—in many of the cases the defendant was simply caught red-handed, or a co-defendant was ready to testify against him, or the defendant had sold heroin to an undercover agent and no evidence of entrapment was found in the record, etc. There did not appear to be much the defense attorney could do to win the case outright for these defendants.

To assess empirically whether there is actually a reward for pleading guilty poses even more difficult problems. Matching cases by factors that could justifiably be related to sentence (e.g., age, prior record, facts of crime and particularly the degree of contact between the defendant and the victim, the extent of the defendant's contriteness, etc.) is a very complicated and risky task, and the results are subject to the problems commonly associated with "matching" as a methodological approach. A quasi-experimental design would offer a more fruitful and satisfactory plan, but implementation would be dependent on cooperation from court personnel. It seems doubtful that such cooperation would be forthcoming.

processed a substantial number of defendants who were factually guilty and who did not stand a very good chance of acquittal at trial, the low rate of trials historically, and the reliance on the guilty plea, becomes more understandable.[15] Whether or not actual discussions took place between prosecutors and defense attorneys as the old timers asserted, the plea of guilty itself probably earned the defendant—or was perceived as likely to earn the defendant—a more favorable disposition than if he insisted on trial. Pleading guilty was (and is) tantamount to engaging in "implicit plea bargaining." Today perhaps defense attorneys are more forceful in insuring that the reward is forthcoming, and perhaps their efforts in the "explicit plea bargaining" encounter yield even greater rewards, but the difference is one of degree and not of kind.[16]

To state the argument starkly, plea bargaining appears to be as integral and inevitable in the local criminal court (whether high or low volume) as is the committee system in the Congress. I suppose it would be possible to proscribe actual plea bargaining negotiations as some have suggested, and announce with a great flourish "the abolition of plea bargaining."[17] But the guilty plea is legally protected, and concessions to the defendant who pleads guilty may readily be justified in terms other than saving the state time and money.[18] Factually guilty defendants without much hope at trial would probably be disposed to plead guilty and avail themselves of the reward reputedly accorded the contrite and cooperative defendant. And defense attorneys would seek

15. A plausible rival hypothesis which is beyond the scope of this note is that a constant level of plea bargaining does not necessarily imply that new causes for it may not have arisen. Changes in the technology of policework, elaboration of criminal guarantees, and provision of counsel, among others, may have affected the defendant's desire to plea bargain.

16. Moley (1928: 103) argued that defense attorneys during the 1920's engaged in both implicit and explicit plea bargaining. "[Plea bargaining] has in the practice of American criminal courts become a definite type of defense strategy. *It usually follows discussion between the counsel for the defense and the prosecuting attorney in which either implied or expressed conditions are imposed by the defense in return for a willingness to plead guilty.*" [Emphasis mine].

17. The most prominent group calling for the "abolition of plea bargaining" has been the National Advisory Commission on Criminal Justice Standards and Goals (1973:42-49).

18. Many explanations for the "reward" or "penalty" were suggested by the respondents. The defendant who pleads guilty, some say, is contrite, and this is the first step toward rehabilitation, thus justifying a more lenient disposition. If a defendant goes to trial, he not only fails to show remorse, but if he takes the stand, and still is subsequently convicted, he perjures himself, an unhealthy posture for a soon-to-be incarcerated individual to take, and therefore more time in a "structured environment" is called for. Also the trial will bring forth in vivid detail the exact nature of the crime, and this too can make the case "look worse," and lead to a higher sentence.

assurance from prosecutors that the expected implicit reward would be forthcoming. As these discussions multiply, I would hypothesize, a more explicit plea bargaining system would emerge again, albeit in *sub rosa* fashion.[19]

IV. SOME CONCLUDING COMMENTS

The notion that plea bargaining and case pressure "go together" must be reexamined in light of the evidence presented in this note. It should now be evident that guilty pleas will be proffered and accepted for reasons other than case pressure, and that at a minimum, implicit plea bargaining will be the norm even in those courts that handle few cases annually.

However, the argument that case pressure can be removed and plea bargaining remain does not mean that case pressure is without effect on plea bargaining processes. When volume increases and staff remains constant, changes in the plea bargaining process may become manifest. The prosecutor may nolle the marginal case which he might have pursued for a plea earlier. He may offer to reduce more charges and recommend lighter sentences, or he may simply demand more severe sentences after trial. Additional hypotheses along these lines can be posited, but I think these few make plain that not much is plain about the very involved relationship between volume and plea bargaining. Unraveling its complete impact will require more precise and accurate data than now available.

CASES

People v. Byrd, 12 Mich. App. 186 (1968)
Santobello v. New York, 404 U.S. 257 (1972)

REFERENCES

ALSCHULER, Albert (1968) "The Prosecutor's Role in Plea Bargaining," 36 *University of Chicago Law Review* 50.

AMERICAN BAR ASSOCIATION (tentative draft, 1967) "Project on Minimum Standards for Criminal Justice, Standards Relating to Pleas of Guilty." New York Institute of Judical Administration.

BLUMBERG, Abraham S. (1967) *Criminal Justice*. Chicago: Quadrangle Books.

CASPER, Jonathan (1972) *American Criminal Justice: The Defendant's Perspective*. Englewood Cliffs, New Jersey: Prentice-Hall.

COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF CONNECTICUT 1901-1925. "Annual Report in Relation to the Criminal Business of the Courts of the State of Connecticut for the Year

19. I am hypothesizing that over the long run, it is unlikely that defense attorneys would be satisfied with the implicit arrangement, and would therefore pressure for an explicit promise of a reward. Casper (1972: 67, 87) observes that the desire for certainty weighs heavily in the decision of many defendants to "cop a plea." I assume that the defendant's need for certainty would be transmitted to defense counsel, who would then pressure for an explicit guarantee.

Ending July 1, 1901 (through 1925) as shown by the Returns of the State and Prosecuting Attorneys," Public Documents of the State of Connecticut.

———— (1890-1900) "Annual Report of the Comptroller of Public Accounts of the State of Connecticut in Relation to the Criminal Business of the Courts for the Year Ending July 1, 1880 (through 1900) as shown by the Returns of the State's Attorneys," Connecticut Public Documents.

CONNECTICUT PLANNING COMMITTEE ON CRIMINAL ADMINISTRATION (1972) "The Criminal Justice System in Connecticut—1972." Hartford: Connecticut Planning Committee on Criminal Administration.

DUQUESNE LAW REVIEW (1971) "Plea Bargaining: The Judicial Merry-Go-Round," 10 *Duquesne Law Review* 253.

FEELEY, Malcolm M. (1973) "Two Models of the Criminal Justice System: An Organizational Perspective," 7 *Law & Society Review* 407.

FRANK, Jerome (1969) *Courts on Trial.* New York: Atheneum.

HARVARD LAW REVIEW (1970) "The Unconstitutionality of Plea Bargaining," 83 *Harvard Law Review* 1387.

HEUMANN, Milton (1974) "Plea Bargaining Systems and Plea Bargaining Styles: Alternate Patterns of Case Resolution in Criminal Courts." Presented at the 1974 Annual Meeting of the American Political Science Association, August 29-September 2, 1974.

HOFFMAN, Walter E. (1972) "Plea Bargaining and the Role of the Judge," 53 *Federal Rules Decisions* 499.

JUDICIAL COUNCIL OF CONNECTICUT (1956) Connecticut Judicial Statistics (March). Hartford: Judicial Council of Connecticut.

———— (1926-1970) "First (through Twenty-second) Report of the Judicial Council of Connecticut." Hartford: Judicial Council of Connecticut.

———— (1972) "Twenty-third Report of the Judicial Council of Connecticut." Hartford: Judicial Council of Connecticut.

MATHER, Lynn (1973) "Some Determinants of the Method of Case Disposition: Decision-Making by Public Defenders in Los Angeles," 8 *Law & Society Review* 187.

MCINTYRE, Donald M. and David LIPPMAN (1970) "Prosecutors and Early Disposition of Felony Cases," 56 *American Bar Association Journal* 1154.

MILLER, Justin (1927) "The Compromise of Criminal Cases," 1 *Southern California Law Review* 1.

MOLEY, Raymond (1928) "The Vanishing Jury," 2 *Southern California Law Review* 97.

NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS (1973) *Courts.* Washington: Government Printing Office.

NEWMAN, Donald J. (1956) "Pleading Guilty for Considerations: A Study of Bargain Justice," in George F. Cole (ed.), *Criminal Justice.* Belmont, California: Duxbury Press.

SKOLNICK, Jerome (1967) "Social Control in the Adversary System," 11 *Journal of Conflict Resolution* 51.

THOMAS, Ellen (1974) "Plea Bargaining: The Clash Between Theory and Practice," 20 *Loyola Law Review* 303.

WAYNE LAW REVIEW (1971) "Profile of a Guilty Plea: A Proposed Trial Court Procedure for Accepting Guilty Pleas," 17 *Wayne Law Review* 1195.

WHITE, Welsh (1971) "A Proposal for Reform of the Plea Bargaining Process," 119 *University of Pennsylvania Law Review* 439.

YALE LAW JOURNAL (1972) "Restructuring the Plea Bargain," 82 *Yale Law Journal* 286.