PLEAS WITHOUT BARGAINING: GUILTY PLEAS IN THE FELONY COURTS OF ILLINOIS, MICHIGAN AND PENNSYLVANIA

Peter F. Nardulli
Roy B. Flemming

It is widely agreed that the vast majority of convictions in criminal courts are the result of guilty pleas. There is also surprisingly little disagreement that most guilty pleas are a consequence of plea bargaining, of one form or another. Uncritical acceptance of the notion that guilty pleas are synonymous with bargaining has had several negative results. One of the most significant is that researchers overlook the outlines of two very different conceptions of the guilty plea process in answering the question: What makes the plea system work?

While most observers agree some form of trial penalty exists to encourage pleas (i.e., a more severe sentence will be given to defendants who are convicted after trial), they differ over how pleas are put together. These differences form the basis for two competing models. One could be termed the "concessions" model. Adherents of this model are normally vociferous critics of plea bargaining. Although they span the ideological spectrum, they are in general agreement that charging manipulations and sentencing concessions grease the wheels of justice. The other is the "consensus" model, which stresses the importance of shared understandings in lubricating the court's machinery. Concessions and explicit bargaining have a role to play, but they are restricted to a small subset of cases involving lengthy sentences, evidentiary deficiencies, or some other type of problem.

How two such different models of the guilty plea process could co-exist without attracting more comment can best be explained by reference to the tale of the blind men and the elephant. Depending upon their research technique and design, the type and location of court studied, ideological orientation, etc., plea bargaining researchers left their field sites with different perceptions of the guilty plea process. This suggests two observations. First, the two models are not mutually exclusive in the sense that all guilty pleas in a jurisdiction must result from a series of concessions or emerge from consensus. That is, both sets of blind men were correct as far as they went. A second instructive observation is that plea bargaining researchers too often have failed to document their field perceptions empirically. The perceptions became, in effect, covenants of faith. Moreover, no one rigorously examined their role in the guilty plea process.

Once these covenants of faith are acknowledged for what they are — hypotheses about the very essence of the guilty plea process — gaping holes in empirical research on criminal court operations become quite evident. For example, to what extent do charge modifications characterize the guilty plea process? What is the nature of these modifications? What is the nature of sentencing patterns in plea cases, i.e., are sentences for a given offense characterized by wide disparities or narrow similarities? Answers to these important questions will provide insights into the nature of the guilty plea process and the ability of the competing models to portray it.

Looking only at the implications of the two models for the structure of the guilty plea process, two issues become apparent (see Figure 1). One is the role of charge reductions. Regardless of any other concessions, these are important because they can limit the defendant's legal liability at sentencing. The second issue concerns the role of what some term the "going rate," the normal range of sentences for a particular type of offense, which is largely based upon the historical practice within a given county. It is similar to the price of milk in a supermarket. While the price will vary in different parts of the country, consumers in any single area expect the price for a gallon of milk to be within a given range.

Figure 1 suggests that in a pure concessions model bargaining over guilty pleas will involve substantial revisions in the original legal exposure of defendants as counts are dropped and charges are reduced to satisfy the interests and goals of participants. Sentences will vary considerably not only because the participants change from one case to another, but also because the negotiating skills and resources of the actors will vary and be largely unrestrained by precedent. Modified versions of the concessions model would describe processes characterized either largely by charge or by pre-trial bargaining.

Extensive charge manipulations involving substantial reductions would support the view that guilty pleas are the result of considerable horse trading and that give-and-take characterize the wheels of justice. This argument would be greatly

<table>
<thead>
<tr>
<th>Changes in Defendants' Legal Exposure</th>
<th>Influence of Going Rates</th>
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<tbody>
<tr>
<td>Substantial Charge Reductions</td>
<td>Concessions Model</td>
</tr>
<tr>
<td>Minimal Charge Reductions</td>
<td>Modified Concessions Model</td>
</tr>
</tbody>
</table>

Figure 1

EMPIRICAL DIMENSIONS OF GUILTY PLEA PROCESS

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strengthened if there were also empirical evidence of wide ranging sentencing disparities (for the early, "untainted" charges). Without such evidence the charge manipulations would be vulnerable to the accusation that they are wholly symbolic, made only to mollify defendants.-and that defendants are being duped

In contrast to the various versions of the concessions model, the consensus model predicts high levels of consistency on both dimensions. Charge and count modifications will be relatively infrequent, and there will be minimal variation in sentencing for comparable cases and circumstances. If charging modifications are in fact infrequent, it would seem reasonable to conclude that common understandings and perceptions among court participants underlie the process and that participants are chiefly concerned with pigeonholing defendants, not with negotiating over relative advantages. It follows that if there is charging consistency there must also be sentencing consistency. Otherwise, it could be argued that beneath the placid surface of charge constancy a lively trade in guilty pleas is being conducted — with sentences as currency.

DATA SOURCES

To examine the level of charging and sentencing disparities, data from a broadly-based, intensive study of criminal courts in nine medium-sized counties (with populations ranging from 100,000 to 1,000,000) in Illinois, Michigan, and Pennsylvania were examined. The Illinois counties were DuPage, Peoria, and St. Clair; the Michigan counties were Oakland, Kalamazoo, and Saginaw; the Pennsylvania counties were Montgomery, Dauphin, and Erie.

The nine counties were selected to gauge the impact of two important county differences on criminal court operations: socioeconomic welfare and political attitudes. To fulfill these criteria, one economically declining county (St. Clair, Saginaw, Erie), one autonomous county (Peoria, Kalamazoo, Dauphin), and one suburban ring county (DuPage, Oakland, Montgomery) was selected from each state.

It will be useful to describe some of the differences in the sites to demonstrate that the data do not represent any single, narrow slice of middle America. Table 1 reports the economic and political characteristics of the nine counties. The ring counties were the most prosperous — with per capita incomes hovering at about $10,000 in 1979. The declining counties were far less prosperous; per capita incomes stood at somewhat over $6,500. Politically, DuPage and Dauphin counties appear to be the most conservative, followed by Peoria and Montgomery counties. The Michigan counties appear to be fairly moderate, while St. Clair and Erie counties are moderately liberal.

The nine counties also showed some important differences in crime rates. According to the FBI reports on violent personal crime rates (per 100,000 population) for the ten years preceding this study (1971-80), Peoria and St. Clair counties had the highest rates; Kalamazoo and DuPage counties were fair. While two Michigan counties (Oakland and Saginaw) had fairly low personal offense rates, two of the ring counties (DuPage and Montgomery) and Erie had the lowest.

It is obvious that these counties differ markedly even though they are all midsized American communities. Indeed, they were selected because of their differences. No claim is made that the criminal courts of these counties are in any way a representative sample. They are not. However, their diversity helps undercut the types of biases that often creep into findings based on only one or two locales.

In these nine counties extensive case data on almost 7,500 felony defendants were collected. The number of defendants ranged from 1,162 in St. Clair County to 594 in Erie County. They represent roughly a year's cases in each county; the nine sets of cases, on balance, reflect about nine years of dispositions. Most were disposed of during 1979 and 1980. In most counties all cases for a given time span were included in the sample. However, in some counties systematic samples were used. In addition, 300 interviews were conducted with the judges, prosecutors, and defense attorneys who handled the cases.

One last point should be made. For the purposes of this paper the analysis rests on a merged pool of the county samples since the primary interest was in painting a broad picture. The fusion of data from a variety of different jurisdictions insures that this picture will be fairly balanced.

CHARGING MODIFICATIONS AND GUILTY PLEAS

The modification of charges pending against a defendant can have an important effect upon the decision to plead guilty because it limits his potential exposure to legal sanctions. This exposure depends upon the severity and range of penalties associated with the charges lodged against him upon which he could be convicted and sentenced after a trial. While the going rate for an offense normally limits the probable range of sentences, its outermost boundaries are still set by statute. Modifying charges can, therefore, change potential exposure in ways that are either positive or negative for the defendant. Because of the differences in potential and probable sentences — and the possibility that some charge reductions may be largely symbolic — the analysis of charge reduction is relatively involved and multifaceted. First, we will look at the incidence and pattern of charge modifications. Second, we will measure the magnitude of these changes.

**Frequency and Focus of Charge Modifications**

Four empirical patterns of charge modification were found in guilty plea cases: (1) no changes in charges; (2) a "pure" reduction in the number of counts or seriousness of offenses; (3) a "mixed" modification, with an enhancement of counts or charge seriousness later followed by a reduction; and (4) a straightforward enhancement in exposure through increases in the number of counts of charge seriousness. Diagram 1 reports the frequency of these patterns.

Complete consistency — no modifications in any count or charge from the time of arrest through final disposition — occurred in 60 percent of the cases. "Pure" reductions were made in over a quarter of the cases (26.7 percent). Enhancements took place in roughly 13 percent of the cases, but the lion's share of these were "mixed" cases. 71 percent of the enhancements were later mitigated through reductions. Charge
Table 1

SELECTED MEASURES OF ENVIRONMENTAL AND STRUCTURAL CHARACTERISTICS

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Assistance Recipients (per 100,000 population) February 1980</td>
<td>713</td>
<td>4,689</td>
<td>12,409</td>
<td>3,202</td>
<td>5,838</td>
<td>9,778</td>
<td>1,569</td>
<td>5,165</td>
<td>5,361</td>
</tr>
<tr>
<td>Average vote for conservative presidential candidate(s) in 'ideological' elections (1980, 1972, 1968, 1964) Overall Political Categorization</td>
<td>68% Conservative</td>
<td>55% Conservative</td>
<td>43% Moderately Liberal</td>
<td>53% Moderate</td>
<td>53% Moderate</td>
<td>51% Moderate</td>
<td>56% Moderately Conservative</td>
<td>60% Conservative</td>
<td>46% Moderately Liberal</td>
</tr>
<tr>
<td>FBI's UCR for offenses against persons (1971-1980 average, rate per 100,000 population)</td>
<td>205</td>
<td>860</td>
<td>792</td>
<td>442</td>
<td>582</td>
<td>333</td>
<td>201</td>
<td>520</td>
<td>243</td>
</tr>
</tbody>
</table>

*a* February 1980  
*c* 1971-80 average, rate per 100,000 population

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**DIAGRAM 1**

CHARGE MODIFICATIONS FROM ARREST TO DISPOSITION, GUILTY PLEA CASES ONLY

- **Guilty Pleas** (5600)
  - Some Charge Reduction 26.7% (1500)
  - Complete Consistency in Charges 60% (3364)
  - Some Charge Enhancement 13.3% (735)
  - Reduction of Secondary Charges 68.4% (1026)
  - Reduction of Primary Charge 31.6% (474)
  - Followed by a Charge Reduction 71.4% (525)
  - Not Followed by a Charge Reduction 28.6% (210)
  - Reduction of Secondary Charges 50.1% (263)
  - Reduction of Primary Charge 49.9% (262)
enhancements normally took place when the indictment or information was filed, reductions were made later on in trial court. Comparisons of the arrest and conviction charges show that this two-step process produced real reductions, and they should, therefore, be combined with the "pure" category to gain an accurate picture of concessions.

Together the two groups accounted for 36 percent of the entire pooled sample of cases, at first glance a rather sizable proportion. This should be qualified by the observation that the concessions usually focused on secondary or tertiary offenses, not the primary or most serious charge. For example, 68.4 percent of the "pure" reductions entailed alterations in these secondary charges. For the "mixed" cases, the proportion was 50.1 percent. Altogether only about 15 percent of the cases involved a reduction in the primary offense. As a final matter, it bears mentioning that the number of true enhancements amounted to only 210 cases, or slightly less than 4 percent of the pooled sample. For this reason the following discussion generally concentrates on charge reductions.

Depending upon one's views these data show either too much charging manipulation or too little (i.e., the reductions of secondary offenses are insignificant and wholly symbolic, resulting in the deception of most defendants). While such an assessment is premature at this point, we cannot even begin to address such issues without comparing charge changes in guilty plea cases with those in trial convictions. Some adjustments are bound to occur in a process as complex as the criminal justice system. Hence, a certain level of charge reductions may not be unique to plea cases but simply inevitable within the dispositional process. Table 2 reports data on the occurrence of a charge reduction by mode of conviction.

In general, charge modifications were neither ubiquitous in guilty plea cases nor rare in trial convictions. Reductions were significantly more likely (statistically speaking) in guilty plea cases than in the trial cases. But it also is quite evident that charge modifications were not unknown in trial convictions, due to dismissal or the acquittal of certain counts. Reductions were made in 30 percent of the trial cases, a figure not greatly dissimilar from that for guilty pleas (38.4 percent). The differences narrow when focusing on reductions of the primary charge: 10.9 percent of the convictions in trial cases were for reduced primary charges compared to 15.1 percent of the guilty pleas.

The fundamental similarity in the charge reduction patterns of guilty plea and trial cases introduces a certain element of ambiguity to the data reported in Diagram 1. The fact that yawning gaps do not appear by mode of conviction suggests that at least some of the charging concessions (which supposedly limit a defendant's legal exposure at sentencing) might have occurred even if a plea had not been submitted.

An examination of the magnitude of these concessions may erase some of this ambiguity.

**Magnitude of Charge Reductions**

Modifications in defendants' potential legal exposure occurred roughly one-third of the time and most often involved only the secondary charges, leaving the primary charges untouched. Could these changes be largely symbolic? Or were they real concessions? To shed light on whether the reductions were meaningful or not, two measures of magnitude were used. The first was the number of counts dropped. The other was more refined and measured the change in probable or projected sentences due to charge reductions.

**Count Drops**

The most common form of charge concession in guilty plea cases was the dismissal of one or more counts in a multicharge indictment or information. Such drops occurred in 29.9 percent of the cases, as can be seen in Table 3. The average number of counts dropped (for the cases where a count drop occurred) ranged between 1 and 2 (mean = 1.7, median = 1.3). The counts dropped accounted for half of the counts charged (mean proportion of all counts dropped = 55, median = 50). Count drops occurred in only 23.1 percent of trial convictions, but the mean number dropped was 2.0 (median = 1.6), somewhat larger than the mean in guilty plea cases. Both statistics are significantly different from those in guilty plea cases, but substantively the differences are not very meaningful.

**Projected Sentence**

The analysis of count modifications is not totally satisfactory because it is crude and does not say much about their substantive significance. Its crudeness is due to the fact that it equates the dropping of a theft charge with a rape charge, and it misses cases involving only charge modifications unaccompanied by count modifications (e.g., reducing aggravated battery to simply battery). Also, the count analysis lacks strong substantive implications because the consequences of count modifications for any realistic assessment of a defendant's projected sentence are uncertain. Dropping the third and fourth counts of a "string" indictment may have little or no impact on the actual sentence.

To examine the magnitude of charge modifications, an "offense seriousness score" was constructed. It measures the differences between the original mix of charges and the final set. These offense seriousness scores are equivalent to the average sentence received in a county for a particular

<table>
<thead>
<tr>
<th>Table 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COUNT REDUCTIONS BY TYPE OF CONVICTION</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Percent of all cases</th>
<th>Average number of counts dropped</th>
<th>Average counts dropped as a proportion of counts charged</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Between Arrest and Disposition</strong></td>
<td>Mean</td>
<td>Median</td>
</tr>
<tr>
<td>Guilty Pleas</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1622)</td>
<td>29.9*</td>
<td>1.7*</td>
</tr>
<tr>
<td>(5564)</td>
<td>23.1*</td>
<td>2.0*</td>
</tr>
</tbody>
</table>

* Significant at .05 level
** Significant at .01 level
offense. For example, if the average armed robbery sentence was 48.6 months, then the offense seriousness score would be 48.6. These scores were highly correlated ($r = .70$) with the actual sentences, as one would guess, and gives us a good basis for estimating the impact of a charge reduction on a defendant’s sentence. If a reduction is from an offense with an average sentence of 16.4 months to one with an average sentence of 12.4 months, we can project that the reduction is “worth” about 4 months at the sentencing state.  

Table 4 reports data on the changes in weighted seriousness scores between arrest and conviction. Almost a quarter of the guilty plea cases in this subset of most frequent offenses received a reduction in one of the first three arrest offenses. The mean projected sentencing value of these reductions was 7.6 months, but that figure is highly skewed by a handful of extreme cases. As the median value of 1.4 months indicates, half of those pleading guilty had charge reductions “worth” somewhat less than two months in projected sentence. Almost 80 percent of the defendants received reductions under six months.

Another way to view this is that, of all defendants who pleaded guilty, only about 5 percent received a charge concession likely to be “worth” at least six months. It should be remembered that the absolute level of charge reductions is limited by the projected sentence of the total package of charges. Thus it is important to note that the last two columns in Table 4 report the reductions as proportions of the summed seriousness scores. The mean value of these proportions is 39, and the median is 24. According to the median figure, then, the projected sentences of half of the defendants who pleaded guilty and received some form of charge reduction was cut by a quarter.

While these proportions seem fairly significant, it should be kept in mind that they represent less than one quarter of all guilty plea cases. Moreover, if these statistics, as well as the others reported in Table 4 are compared with the attrition of charges in trial cases (row 2), it is not at all clear that the charge reductions which do occur are real concessions. There is no significant difference between plea and trial cases in terms of the proportion of cases receiving some charge reduction or the magnitude of charge reductions.

**“Knockdown” Patterns in Primary Charges**

The magnitude of reductions (“knockdowns”) in sentencing exposure for defendants does not appear to be substantial. Count drops are common, but they usually focus on secondary charges. The sentencing impact of these changes is correspondingly limited, because second and third charges are not translated into units of punishment equal in weight to those of the primary charge. Most charge modifications, then, subtract very little from a defendant’s probable sentence irrespective of what the penalties of the dropped or reduced charges may be in the criminal code. If more than symbolic alterations occur, the primary charge or major offense clearly must be changed. However, only about 15 percent of the cases had such changes. Although they are relatively rare events, there is merit in looking at what happens when primary charges are reduced to see if there is any pattern to the reductions and whether they are concentrated in a handful of charges. The analysis is again restricted to the basic types of offenses handled in the courts.

A relatively small number of charges were subject to knockdowns. The seven primary offenses listed in the first column of Table 5 accounted for 68 percent of all knockdowns in the pooled sample of cases. That the reductions were guided by fairly clear-cut decision rules is made clear by the fact that the reduced charges listed in the fourth column amounted to nearly half (45.6%) of all knockdown charges. In other words, when changes in primary charges took place, the odds were good that the offense was one of those listed in this table and that the charge to which it was reduced involved one of those arrayed in the “knockdown” column of the table. Reductions in primary charges, however, tended to concentrate in two charge categories — burglary and aggravated battery. Over 40 percent (44.1 percent) of all knockdowns occurred in cases with these charges. While serious, these offenses are not in the same league as murder, rape, and armed robbery which altogether accounted for about 16 percent of the knockdowns (134 cases in total). With the exception of theft and possession of hard drug cases, the other charges were more likely to lead to a conviction on reduced charges than what might be expected given their representation in the total pool of cases.

**GOING RATES AND GUILTY PLEAS**

Count modifications, and to a lesser extent changes in primary charges, occurred with some regularity in the courts, but their impact on sentencing was marginal at best. Reductions

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**Table 4**

**WEIGHTED CHARGE REDUCTIONS BY TYPE OF CONVICTION**

<table>
<thead>
<tr>
<th>Charge Reduction</th>
<th>Percent of all cases</th>
<th>Average weighted modification (in months)</th>
<th>Percentage of all weighted changes that are less than six months</th>
<th>Average weighted modifications as a proportion of weighted charges</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Mean</td>
<td>Median</td>
<td>Mean</td>
</tr>
<tr>
<td>Guilty Pleas</td>
<td>23.9% (965)</td>
<td>7.6%</td>
<td>1.4</td>
<td>79</td>
</tr>
<tr>
<td>Trial Convictions</td>
<td>22.0% (62)</td>
<td>11.6%</td>
<td>1.1</td>
<td>79</td>
</tr>
</tbody>
</table>

Note: N.S. = Statistically not significant

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1 The existence of multi-count indictments compounded the difficulties of analysis somewhat because the impact on sentencing of a charge when it is listed as a second or third count on an indictment is not nearly as great as when it is the most serious count charged. To handle this problem, the average impact of second and third counts was estimated. These estimates were used to weight the impact of the second and third counts. Thus in the case of multi-count indictments, the offense seriousness score is a weighted, summed measure. The interpretation of changes in these scores, however, remains the same.

One last point should be mentioned. To enhance the reliability of the analysis, infrequent miscellaneous offenses were excluded from it. These offenses occurred too infrequently to obtain reliable measures of their seriousness. This eliminated about 28 percent of the guilty plea cases, but 4038 still remained for the analysis.
of one kind or another typically shaved less than two months off probable sentences. About 15 percent of common felony offenses had primary charges altered, and nearly half of them involved burglary and aggravated battery cases. More surprising, perhaps, than the somewhat spotty occurrence and marginal effects of these modifications is the fact that similar patterns often prevailed in both guilty plea and trial conviction cases. Thus, charge modifications are not attributable solely to the widespread use of guilty pleas.

The argument that common perceptions and understandings characterize the guilty plea process to a greater extent than horse trading and explicit bargaining would seem to hold up well in the face of these results. However, it is possible that charge manipulations are superfluous, and hence less frequent than supposed, because courthouse participants concentrate their time and resources negotiating sentences; few of them have been buffed into believing that count drops or charge reductions mean much. This argument is powerful in part because it is plausible but most of all because it raises new questions.

An important implication of this position is that there should be marked sentencing disparities. If bargaining and negotiation are rife throughout the courthouse “bazaar” and bartering over sentences is the sine qua non of the process, sentences ought to vary widely as workgroup combinations of personalities and skills shift from one case to the next. At a minimum, there should be wide disparities within charge categories. If they do not exist and sentences are tightly clustered within each offense type, it would be difficult to maintain the position that concessions grease the wheels of justice, especially in light of the limited and largely symbolic role of charge reductions found in the preceding section. Before this conclusion is warranted, however, the role of going rates in the guilty plea process must be assessed.

**DETECTING “GOING RATES”**

The notion of “going rates” has become popular among researchers, who find the guilty plea process more orderly than commonly perceived. The concept is, however, very difficult to define. Generally, establishing a link between charges and sentences has been deemed sufficient. Thus, an ordinary or typical theft case may be “worth” probation, a burglary one or two years in prison, or an armed robbery may have a going rate of three years in prison. These are norms or averages. But what are the cut-off points in defining a going rate? An unstated assumption is that the distribution around these norms is narrow, but how narrow? For that matter, how dispersed can the distributions be before the idea loses its meaning? And why should it be assumed that each offense has only one going rate, especially given the varying criminal records of defendants? If charges do indeed have more than one going rate, how can one be distinguished from another?

To identify, examine, and define these clusters the distribution of sentences was examined for each offense within each county. We restricted the analysis to offenses that had ten defendants each (in a county) at the sentencing stage to insure that enough cases existed for a cluster to emerge. The examination of these clusters was a difficult process since it had to be sensitive to competing concerns. Obviously the wider the span, the greater the number of cases that would fall within a cluster. At the same time, the actual distribution of sentences might be obscured by unrealistically stringent criteria. Thus the working definitions used in the “search” process needed a measure of slack.

It turned out that a three-month span would be a serviceable rule of thumb in the initial search; ultimately, however, the vast majority of the spans turned out to be narrower and tighter. Indeed, 90 percent of the cases were classified in “point” clusters (i.e., clusters that had no spans). Most offenses in a county had two clusters—a probation cluster and a “low” cluster. A handful of serious offenses also had an identifiable “high” cluster. If we examine all clusters, 98 percent (encompassing 97.7 percent of all cases) had spans of three months or less.

**Sentencing Clusters and Guilty Pleas**

The larger the proportion of cases not encompassed by the clusters, the less relevant going rates are to the guilty plea

<table>
<thead>
<tr>
<th>Original primary charge at arrest</th>
<th>Percentage of all knockdowns accounted for by this primary charge</th>
<th>Percentage of all cases at initial appearance</th>
<th>Common knockdowns</th>
<th>Percentage of all knockdowns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>3.7 (31)</td>
<td>1.6</td>
<td>Manslaughter</td>
<td>27 (23)</td>
</tr>
<tr>
<td>Rape</td>
<td>4.8 (40)</td>
<td>2.0</td>
<td>Indecent Liberties</td>
<td>7 (6)</td>
</tr>
<tr>
<td>Armed Robbery</td>
<td>7.5 (63)</td>
<td>4.1</td>
<td>Lesser Sex Offense</td>
<td>1.3 (7)</td>
</tr>
<tr>
<td>Aggravated Battery</td>
<td>12.8 (108)</td>
<td>3.6</td>
<td>Aggravated Battery</td>
<td>8 (7)</td>
</tr>
<tr>
<td>Burglary</td>
<td>31.3 (264)</td>
<td>17.1</td>
<td>Unarmed Robbery</td>
<td>3.0 (25)</td>
</tr>
<tr>
<td>Theft</td>
<td>4.6 (39)</td>
<td>16.9</td>
<td>Theft</td>
<td>1.5 (13)</td>
</tr>
<tr>
<td>Possession of Hard Drugs</td>
<td>3.5 (30)</td>
<td>8.0</td>
<td>Simple Battery</td>
<td>4.4 (37)</td>
</tr>
<tr>
<td>Total</td>
<td>68.2</td>
<td>53.3</td>
<td>Aggravated Assault</td>
<td>2.9 (24)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Interfering with Officer</td>
<td>1.2 (10)</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>11.7 (99)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Attempted Burglary</td>
<td>6.5 (55)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Vandalism</td>
<td>4.3 (36)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Disorderly Conduct</td>
<td>8 (7)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Building Larceny</td>
<td>1.8 (15)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Attempted Theft</td>
<td>1.4 (12)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Possession of Controlled Substance</td>
<td>6 (5)</td>
</tr>
</tbody>
</table>
process. The first column of Table 6 presents the data on this question for defendants who pleaded guilty.

When the three major clusters are combined, they include 79 percent of the guilty plea cases. Going rates clearly play a prominent role in determining sentences in guilty plea cases. The fact that the probation cluster had 65.3 percent of the cases does not diminish the significance of these findings, the simple reality is that many felony cases involve first offenders or people convicted of routine crimes who receive minimal punishment. What is not apparent from this table is that proportionately fewer cases are located in clusters as the charges mount in seriousness and hence sentencing latitude. The correlation between offense seriousness and being in a cluster is r = 29, indicating that sentence bargaining is concentrated in the more serious cases.

Are the sentencing norms represented by these clusters as effective in constraining sentencing after a trial conviction? The short answer is No. While nearly 79 percent of the plea cases fell within one cluster or another, only 52.3 percent of the trial cases did, a difference that is statistically significant well beyond the .001 level. As the second column of Table 6 indicates, the probation cluster includes proportionately fewer cases and the “off-cluster” categories include more, raising the possibility of a trial penalty that moves defendants who fail to plead guilty “up a notch” in the sentencing hierarchy.

Table 6 suggests that sentencing is dominated by a small handful of going rates for a specific offense, but it cannot reveal whether the pigeonholing process was consistent. The assignment of going rates to defendants could be distorted by bargaining or capriciousness. An examination of the criminal records of the defendants in various clusters provides some insight into the consistency of this assignment procedure. To do this a trichotomized criminal record variable was constructed. About half of the defendants were first offenders, and these were assigned a separate category. The remaining half were divided roughly in half based on whether they had less serious or more serious records. This variable was then cross-tabulated with the three cluster categories to produce Table 7.

In general, the matches were consonant with what might be expected as there was a moderately high association between criminal record and cluster placement. This is scarcely surprising, of course. But it does show that the classification of defendants was not grossly distorted by unreasonable decision rules. For instance, 65 percent of the probation cluster comprised first offenders, while only 10 percent of the defendants had serious criminal histories. The low cluster has fairly equal representations of each set of defendants, suggesting that other factors (aggravating or mitigating circumstances, bargaining positions, victim-defendant relationship, etc.) may affect placement in this grouping. Since these defendants had neither the least serious nor the worst criminal records, there may have been more ambiguity as to the appropriateness of sentences and more room for disagreement. A look at the high cluster dispels such uncertainty, since it is clearly a mirror image of the probation cluster. This third cluster is dominated by more serious offenders: 53.4 percent of the defendants had extensive criminal histories. Only 11 percent of the defendants in the high cluster were first offenders.

CONCLUSIONS

This study confirms the suspicions expressed in recent plea bargaining research that the popular concessions view of plea bargaining has impeded the development of a more refined understanding of the guilty plea process. More importantly, the data on guilty plea outcomes from nine very different counties are quite inconsistent with this perspective. While some charge reductions occurred in about 35 percent of guilty plea cases, there was complete consistency in 60 percent of those cases. Moreover, most of the charge reductions involved secondary or tertiary offenses; only 15 percent of the guilty plea cases involved a reduction in the most serious, primary offense.

The notion that most charge concessions are largely symbolic is reinforced by the analysis of their projected impact on sentence. The average projected reduction was less than two months of incarceration, and that occurred only in one-quarter or so of the guilty plea cases involving reductions in one of the first three counts. Perhaps even more startling is the fact that the charge reduction patterns in guilty plea cases were not meaningfully different from those in trial cases.

The data on sentencing patterns are very consistent with those on charging, and confirm the strong role of going rates. Over 79 percent of the defendants who pleaded guilty to a particular offense fell within one of three sets of going rates (a probation cluster, a low cluster, a high cluster). Cluster
assignment was heavily influenced by the defendant's criminal record.

While one could develop the implications of these findings along several lines, two seem most fruitful. The first concerns our understanding of the dispositional process. Perhaps the most obvious implication here is that while the concessions model may explain an important fragment of the guilty plea process, it is but a fragment. The consensus model provides a more realistic perspective from which to explain how routine policies and courthouse culture shape the guilty plea process. However, the two are not mutually exclusive.

Equally important are the policy implications of these findings. They speak to those who would abolish plea bargaining and replace it with some modified trial form, such as prevailed in the United States in the mid-nineteenth century or as presently exists in some West European systems.

The data suggest that the costs of a plea oriented dispositional process are not as great as many had earlier presumed. Many felony cases involve mundane situations which are currently handled in a routinized, consistent manner. To dispose of these cases by means of a trial would lead to the demise of the trial as we now know it. To accommodate the increased flow of cases would inevitably entail many modifications in trial procedure, some of which may not be salutary. More importantly, the large volume of "undisputed disputes" would dull the sensitivities of those charged with the responsibility of conducting trials. Ultimately trials could become less effective in cases where they are most needed.