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"INSIDER" JUSTICE: DEFENSE ATTORNEYS AND THE HANDLING OF FELONY CASES*

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An enduring issue in the study of the legal process concerns the equal treatment of parties. This area of study has focused particularly on the felony criminal courts, where decisions can have a profound impact on fundamental rights and liberties. Numerous empirical studies have probed the question of how case outcomes are affected by a defendant's bail status, race, sex, and socioeconomic status.[1] Considerably less attention has been given to the defendant's advocate in criminal proceedings. To be sure, the effect of being represented by a publicly paid attorney has received some empirical scrutiny, largely as an extension of the interest in socioeconomic bias within the criminal process.[2] An equally important attribute of the defendant's advocate is the nature of his ties to the local court community. The role of these ties has interested empirically oriented legal scholars for over fifty years.

The reason for this interest is fairly clear. Judges and prosecutors are regarded as full-time, regular members of local court com-

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[1] *See, e.g.*, P. NARDULLI, THE COURTROOM ELITE: AN ORGANIZATIONAL ANALYSIS OF CRIMINAL JUSTICES 41-64 (1978); Hagan, *Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint*, 8 LAW & SOC. REV. 357 (1974); Spohn, Gruhl, & Welch, *The Effect of Race on Sentencing: A Re-Examination of an Unsettled Question*, 16 LAW & SOC. REV. 71 (1981).

[2] For a review of this literature, see Levine, *The Impact of* Gideon *and the Performance of Public and Private Criminal Defense Lawyers*, 8 POLITY 215 (1975). *See also* J. EISENSTEIN & H. JACOB, FELONY JUSTICE: AN ORGANIZATIONAL ANALYSIS OF CRIMINAL COURTS (1977)(extensive examination of attorney types in three jurisdictions).

munities because the organization of their specific functions has traditionally given them full-time responsibility for handling a particular type of case for a certain period of time. Even though specific individuals may shift responsibilities over time, the judicial and prosecutorial roles are still dominated by regulars. The defense bar is structured quite differently. The urbanization of America has permitted some private attorneys to specialize in the practice of criminal law, and the establishment of indigent defense systems has resulted in a "regulars" defense bar in many areas. Its size and importance varies considerably from system to system. In some systems, regulars dominate criminal defense practice, while in others, a large number of "one timers" play a significant role. In every instance, however, there will be much more variance in the defense attorneys' ties to the court community than is the case with judges and prosecutors.

Our primary concern here is with questions relating to the impact of these various ties on the handling of felony cases. Do the clients of "insiders" do better than those of "outsiders?" Does it matter if the regular is a public attorney? Are there other attributes of regulars that have an impact upon their success in felony cases? To address these questions empirically, we use data collected on defense attorneys and felony cases in nine medium-sized court systems in three states (Illinois, Michigan, Pennsylvania). These nine court communities differ markedly with respect to a number of structural and environmental characteristics, thus permitting us to examine whether the role of regulars depends on its context. But before embarking upon this examination, we should first ask why it is important even to consider these questions.

On one level, they are important because their answers can give us important insights into the nature of the justice system. The discovery that some urban criminal courts were dominated by a handful of politically connected lawyers gravely distressed the legal scholars who directed the crime surveys in the 1920s. They were convinced that these insiders were getting beneficial treatment for their clients.[3] This fear is no less real today and is nowhere better demonstrated than in the highly publicized undercover investigation of the Cook County judicial system, termed "Operation Greylord."[4]

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[3] *See* Smith & Ehrmann, *The Criminal Courts*, in CRIMINAL JUSTICE IN CLEVELAND 229-50 (1922).

[4] "Operation Greylord" was a multi-year federal investigation of the Cook County court system which involved the use of undercover agents, hidden tape recorders, and phony crimes. It resulted in the indictment and conviction of several judges, lawyers, police officers, and lesser law enforcement officials. An extensive journalistic review of

The suggestion that "who you know" is as important as "what you did" in the course of the criminal process is a troublesome one that merits extensive empirical investigation.

A related reason for examining these questions is that criminal justice policymakers, who to a large extent control the structure of the criminal defense bar, will surely benefit from an explication of the issues. Whether we switch from an indigent defense system that relies upon a bureaucratized public defender's office to one that relies upon assigned counsel or to one that contracts with a consortium of private attorneys, will have a marked effect upon the mix of publicly paid regulars that appear before the criminal bench. A stringent screening policy by the prosecutor's office, coupled with fairly lax criteria for appointing public counsel, would go a long way toward drying up the private market for criminal defense attorneys, and lead to a highly concentrated defense bar. This would be especially true in smaller jurisdictions where it may be impossible to maintain a full time private criminal practice. Alternatively, the extensive use of decentralized branch courts in a major urban area could lead to a more diffuse defense bar. Before such policies are implemented (or even recommended), a clear understanding of the various dimensions of the situation is needed.

I. Insiders and Felony Cases: Theoretical Speculations and Empirical Evidence

The study of the criminal process raises a number of important questions about which there is near unanimity of opinion but for which there is very little empirical evidence. The role of regular defense attorneys is not such a question. Empirical researchers who have considered it over the years have responded in a variety of ways, and their answers have covered the logical possibilities. These different perspectives are well-reasoned and reveal different conceptions of the very nature of criminal courts. Before moving on, we stop here to review a representative sample of these views. Three perspectives are most important.

One perspective views insiders as manipulators of the system and posits beneficial treatment for insider clients; a second views insiders as cop-out artists whose clients suffer from their relations to the court community. A third perspective, which is based upon a fundamentally different conception of criminal courts, views insid-

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the investigation can be found in 7 *Chicago Lawyer* (Jan. 1984). The entire issue is devoted to "Operation Greylord."

ers as creators and protectors of local norms. It posits no systematic differences across attorney types.

A. INSIDERS AS MANIPULATORS OF THE PROCESS

In this view defense attorneys who have close ties to the local court community take advantage of their personal relationships with judges and prosecutors as well as their "political connections" to obtain maximum consideration for their clients. These ties are their stock-in-trade since, according to this view, they are sorely lacking in professional skills and knowledge. In return for the favorable treatment they receive, these attorneys are expected to make campaign contributions to individual judges, or the local party, and/or distribute graft among the various public actors in the system.

This perspective was first put forward by the pioneers of empirical research in criminal courts, the crime survey researchers.[5] These surveys, conducted in a variety of American cities and counties during the 1920s, were an attempt to diagnose the ills of American criminal justice through extensive empirical examinations of a variety of criminal justice agencies, including the courts. In the first crime survey, *The Cleveland Survey of Criminal Justice*, Reginald Heber Smith and Herbert B. Ehrmann described the connection they found between the "professional criminal lawyer" and the prevailing ills of the justice system:

> Another factor to be considered. . .is the professional criminal lawyer. A poll of the bar of Cleveland shows that most lawyers dislike criminal practice, partly because of a feeling that it is detrimental to civil practice and partly because of professional ignorance or dislike of the required technique. The result is that a large part of the lucrative practice in the criminal courts goes to a small number of specialists. . . . Moreover, many of this small group of professional criminal lawyers are in politics. Were the system as invulnerable as Achilles, these political criminal lawyers would find the penetrable heel.[6]

Raymond Moley, studying the Cook County criminal courts, is even more graphic than Smith and Ehrmann in his analysis of the regulars:

> Many of the branches of the Chicago Municipal Court seem to tolerate a condition in connection with attorneys for the defense which is even more serious than the lack of prosecution already described. It seems to be customary for certain lawyers to assume a proprietary attitude toward defense cases. These privileged characters come to the court daily, deposit their coats and hats immediately upon arrival, and par-

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[5] A review of this tradition and its findings can be found in P. NARDULLI, *supra* note 1, at 3-40.

[6] Smith & Ehrman, *supra* note 3, at 233-34

> ticipate in the activities exactly as if they were paid attendants. They solicit business through the assistance of clerks, bailiffs and assistant prosecutors, and occasionally through the judges themselves. They also mingle freely among the unfortunates who are hailed before the court, and so get business first-hand. The continuous presence of a "permanent defense lawyer" in the courtroom means that pleasant and sometimes profitable relationships are established between him and court's attaches. Such lawyers have been known to divide their profits with the kindly officers who throw business to them. . . . The ease with which they secure favors in a given court, and the greater degree of success which they seem to have in their cases, indicate the presence of what may be a well-defined "ring" within certain courts, or what may be a less definite, but nevertheless potent, understanding between them and the officials of the court. Where such a "ring" exists the defense lawyer holds his status by giving favors, if not money, to those who assist him.[7]

One need not go as far back as the 1920s, however, to uncover concern that insiders are manipulating the system of justice to their personal benefit and the benefit of their clients. In many ways, such a view reflects today's "conventional wisdom" concerning how at least some criminal courts work. While this conventional wisdom may have its roots in the findings reported in the crime surveys, as well as in personal experiences—or, more likely, reports of the experiences of others—it is reenforced from time to time in highly publicized scandals. None, however, reached the magnitude of the recent multi-year, undercover investigation in Cook County, popularly referred to as "Operation Greylord."[8] As a *New York Times* reporter noted:

> Suspicions—assumptions might be more accurate—of court corruption have long permeated life in Chicago and encompassing Cook County as a whole. "You'd see the same defense attorneys appearing before the same judge over and over," recalled a local political veteran who asked not to be identified, "and that same judge seemed to find for that defense attorney over and over again. And you'd wonder. But a few suspicions are not very powerful in a place like this."
>
> Chicago did not invent the political mixture of patronage and the judiciary, but it did perfect it. Judges were handpicked for election or appointment by the ruling Democrats in a secret "slate-making" session, a delicate process of balancing Chicago's myriad political sectors. Often, a position on the slate was a reward for party work. . . . If a relative or a friend was charged with some infraction, a phone call "downtown" could see that the case was assigned to a "friendly" judge, someone who understood how things worked. And this system also seemed susceptible to corruption by the large amounts of money

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7 R. MOLEY, OUR CRIMINAL COURTS, 64-65 (1930).

8 7 *Chicago Lawyer* (Jan. 1984).

associated with the growth in narcotics trade.[9]

B. INSIDERS AS "COP-OUT" ARTISTS

Underlying the notion that the clients of regular defense attorneys do better than the clients of others is the assumption that the advantages enjoyed by these insiders (or the favors owed them) will be translated into benefits for their clients. This assumption was challenged in a series of works that began to appear in the late 1960s.[10] These works expounded a view of the courts as quasi-autonomous, self-perpetuating organizations to which regular defense attorneys, both private and public, have close ties. In such a system, the quality of the attorneys' life at work, as well as their standard of living, depends heavily on their relations with co-workers. In exchange for benefits accrued to them, but controlled by judges and prosecutors, these regulars have to perform a function, namely, to sell their clients on a deal worked out with the permanent members of the work group. Because of the ties and indebtedness to their co-workers, most of the negotiating done by regulars is with their clients. Outsiders are not encumbered by such ties. Also, because the regulars frequently do not have exceptional trial skills, or indeed any other professional resources with which to enhance their bargaining power within the court organization, prosecutors are less pliable in their negotiations with them. Both factors translate into bargaining advantages for non-regulars, which lead to the expectation of better deals for their clients.

The symbiotic nature of the regular's role is clearly evident in the following passage:

> The larger the fee the lawyer wishes to exact, the more impressive his performance must be; he must show himself to be of great influence and power in the court organization. To some extent court personnel will aid the lawyer in creating and maintaining an image. This is the partial basis for the quid pro quo that exists between the lawyer and the court organization. It is the continuing basis for the lawyer's higher loyalty to the organization; his relationship with his client, in contrast, is transient, ephemeral, and often superficial.[11]

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[9] Malcolm, *Chicago's Inquiry Shows Court's Hidden Side*, N.Y. Times, Dec. 18, 1983, at 17.

[10] A. BLUMBERG, CRIMINAL JUSTICE (1967); J. EISENSTEIN & H. JACOB, *supra* note 2; P. NARDULLI, *supra* note 1; Cole, *The Decision to Prosecute*, 4 LAW & SOC. REV. 331 (1970); Feeley, *Two Models of the Criminal Justice System*, 6 LAW & SOC. REV. 407 (1972); Mileski, *Courtroom Encounters*, 5 LAW & SOC. REV. (1971); Mohr, *Organizations, Decisions, and Courts*, 10 LAW & SOC. REV. 621 (1976); Skolnick, *Social Control in the Adversary System*, 11 J. CONFLICT RESOLUTION 52 (1967);

[11] A. BLUMBERG, *supra* note 10, at 112-14.

Albert Alschuler, in one of his classic articles on plea bargaining, addresses the role of the criminal defense bar in even greater depth and with more refinemement:

> [Plea bargaining] subjects defense attorneys to serious temptations to disregard their clients' interests—temptations so strong that the invocation of professional ideals cannot begin to answer the problems that emerge. Today's guilty-plea system leads even able, conscientious, and highly motivated attorneys to make decisions that are not really in their clients' interests.[12]

To understand how this happens, one must distinguish between public defenders and private practitioners and understand the economics of private criminal practice. With respect to private practice, Alschuler notes:

> There are two basic ways to achieve financial success in the practice of criminal law. One is to develop, over an extended period of time, a reputation as an outstanding trial lawyer. . . . If, however, one lacks the ability or the energy to succeed in this way or if one is in a greater hurry, there is a second path to personal wealth—handling a large volume of cases for less-than-spectacular fees. The way to handle a large volume of cases is, of course, not to try them but to plead them.
>
> These two divergent approaches to economic success can, in fact, be combined. Houston defense attorney Percy Foreman observed that the "optimum situation" for an economically motivated lawyer would be to take one highly publicized case to trial each year and then to enter guilty pleas in all the rest.[13]

This observation leads Alschuler to distinguish between the more conscientious members of the regular criminal defense bar and the writ runners, pleaders or cop-out artists. It is this latter group that is most likely to be indebted to the permanent members of the court organization and who do the greatest disservice to their clients. The attorneys Alschuler interviewed were unanimous in the belief that these cop-out artists comprised a significant portion of most defense bars. While attorneys' estimates of the number of cop-out artists varied from jurisdiction to jurisdiction,[14] their large clientele made them a significant force—and a significant problem.[15]

In addition to distinguishing between more conscientious and able private attorneys and cop-out artists, Alschuler also distinguishes between public and private attorneys. He makes no direct comparison between the various types of private attorneys he identifies and public defenders, but it is clear from his discussion that the clients of public defenders will not necessarily do worse than those

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12 Alschuler, *The Defense Attorney's Role in Plea Bargaining*, 84 YALE L.J. 1179 (1975).
13 *Id.* at 1182.
14 *Id.* at 1184-85.
15 *Id.* at 1186-87.

of all private attorneys.[16]

In short, Alschuler believes an "average" public defender may do better than the private cop-out attorney but less well than the more competent private attorney. However, when making comparisons across roles, attention must be given to both the individual traits of the attorneys and the type of indigent defense system. These individual and contextual factors aside, the ambiguity surrounding the issue of how well public defenders do relative to others is largely institutional. In Alschuler's view, while the public defender is

> subject to many of the same pressures and temptations as the private attorney, he is free of others; and he also confronts some pressures, problems, temptations, limitations, and opportunities of his own. His institutional position apparently gives him both advantages and disadvantages in the plea-bargaining process.[17]

In his analysis of these advantages and disadvantages, Alschuler contends that public attorneys are not subject to the economic pressures that lead private attorneys to engage in trade outs (selling out the interests of one client for another).[18] They are, however, saddled with a heavy caseload which they must move[19] and which may make it more difficult to secure favors.[20] This heavy caseload also leads to many interactions with prosecutors which in turn engenders both a mutual perception of how cases should be handled and feelings of mutual trust. Alschuler quotes Edward Bennett Williams who analogizes the public defender/prosecutor situation to one involving two wrestlers who fight one another every night in different cities.[21] Their primary concern is that no one gets hurt too badly. In other words, public defender cases may involve both fewer "bad deals" and fewer "good deals." By the same token, cases involving private attorneys would produce a greater deviation from the norm. Among privates, the non-regulars and conscientious regulars would be more apt to get good deals, while the cop-out attorneys would be more apt to get bad deals. Whatever the actual breakdown, it is clear that Alschuler would expect outsiders to do better, overall, than insiders.

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16 *Id.* at 1206-24.
17 *Id.* at 1210.
18 *Id.* at 1211-19
19 *Id.* at 1210.
20 *Id.* at 1223.
21 *Id.* at 1210.

C. INSIDERS AS CREATORS AND PROTECTORS OF ROUTINE

This perspective, in which the relations of defense attorneys with the court community do not routinely or markedly affect the nature of the "deal" they obtain for their clients, is premised on the belief that the real role of regulars in the dispositional process is to create the norms that govern standard dispositions within a specific court community. This view is really an extension of the notion that public defenders are less apt to obtain dispositions that deviate much from the norm. Once a consensus has been forged within the community, there is little desire, or incentive, to improve upon it or to deviate from it. Not only would that take time and effort, but by adhering to the standard disposition for the routine case, "no one gets hurt too badly." These norms also provide the basis for plea discussions with outsiders. Deviations do occur, but they are related more to the exigencies of a particular case than to the relationship between the defense attorney and the court community.

The view of insiders as creators and protectors of routine can be seen in Galanter's discussion of how lawyers representing "one shotters" ("OS") fare in a situation dominated by "repeat players." He describes several distinctive features of such encounters:

> The demands of routine and orderly handling of a whole series of OSs may constrain the lawyer from maximizing advantage for any individual OS. Rosenthal (1970:172) shows that "for all but the largest [personal injury] claims an attorney loses money by thoroughly preparing a case and not settling it early."
>
> For the lawyer who services OSs, with his transient clientele, his permanent "client" is the forum, the opposite party, or the intermediary who supplies clients.[22]

Galanter also notes that the episodic nature of relations with their OS clients leads to a stereotypic and uncreative brand of legal service, and cites a similar observation made by Carlin and Howard in 1965.[23] This merely underscores the importance of creating and adhering to routine behavior in such a setting. It is the basis for the efficient handling of large numbers of seemingly similar cases. Deviations and exceptions can only undermine the strength of the governing norms, creating work and enhancing uncertainty for all concerned.

Rossett and Cressy emphasize the significance of consensus and routine in the criminal court setting even more strongly in the following passage:

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22 Galanter, *Why the Haves Come Out Ahead: Some Speculation on the Limits of Legal Change*, 9 LAW & SOC. REV. 95, 117 (1974).

23 *Id.*

> Even in the adversary world of law, men who work together and understand each other eventually develop shared conceptions of what are acceptable, right and just ways of dealing with specific kinds of offenses, suspects and defendants. These conceptions form the bases for understandings, agreements, working arrangements and cooperative attitudes. Norms and values grow and become a frame of reference which prosecutors, defense attorneys, judges and experienced offenders all use for deciding what is fair in each case. Over time, these shared patterns of belief develop the coherence of a distinct culture, a style of social expression peculiar to the particular courthouse.[24]

The view underlying these remarks is becoming increasingly popular among empirically-oriented students of criminal courts.[25] It might be termed a consensus perspective and stands in marked contrast to the view of these attorneys as manipulators or as "cop-out" artists, which is based upon what might be termed a concession perspective.[26] The two perspectives—the consensus perspective and the concession perspective—are useful descriptions of how researchers have seen the inner workings of the criminal justice system. Under the consensus perspective, shared perceptions and common understandings are the grease that make the wheels of justice turn. Under the concession perspective, it is the concessions that provide the lubricant. As Rossett and Cressy note:

> Undeniably, prosecutors and defenders sometimes use the adversary tactics of poker and chess in an attempt to win concessions from each other. . . . But in practice, most cases are disposed of in cooperative agreements reaching a consensus on facts and, therefore, on appropriate punishment.[27]

II. Insiders and Guilty Pleas: The Structure of the Analysis

Despite the importance of the issues raised here, and the diversity of thought on them, little empirical research has been done in this area. Moreover, the research that has been done is contradictory and can be used to support each of the views just described.[28]

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24 A. Rossett & D. Cressy, Justice By Consent: Plea Bargains in the American Courthouse (1979).

25 *See* L. Mather, Plea Bargain or Trial? The Process of Criminal Case Disposition (1979); M. Heumann, Plea Bargaining: The Experience of Prosecutors, Judges, and Defense Attorneys (1978); Maynard, *The Structure of Discourse in Misdemeanor Plea Bargaining*, 18 Law & Soc. Rev. 75 (1984).

26 For a more detailed analysis of the consensus and concession perspective, see P. Nardulli, R. Flemming, & J. Eisenstein, The Tenor of Justice (1987).

27 A. Rossett & D. Cressy, *supra* note 24, at 15.

28 For example, early research by Smith and Ehrmann in the Cleveland crime survey found that the clients of "political" criminal lawyers had lower conviction rates and a

The aim of the following analysis is to help clarify some of this ambiguity. As was true of the earlier empirical analyses, we want to know how the clients of insider defense attorneys fare, particularly in guilty plea cases. In addition, the present analyses promise to enhance our understanding of the questions we have raised because the data base we employ allows us to develop more refined categories of defense attorneys, along the lines suggested by Alschuler. In addition, it employs data from nine mid-sized counties which have very different criminal defense bars and guilty plea systems. This, of course, permits us to see if context has an impact upon how insiders can operate. First, we discuss our data sources. Then we present our approach to differentiating among defense attorneys, and describe some of the more relevant differences across the nine counties. Finally, we lay out the planned analysis.

III. DATA SOURCES

We used 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 to examine the impact of regulars on plea cases. The Illinois counties we studied were DuPage, Peoria, and St. Clair; the Michigan counties were Oakland, Kalamazoo, and Saginaw; the Pennsylvania counties were Montgomery, Dauphin, and Erie.

We selected nine counties to gauge the impact of two important county differences on criminal court operations: socioeconomic welfare and political attitudes. To fulfill these criteria, we chose from each state one economically declining county (St. Clair, Saginaw, Erie), one autonomous county (Peoria, Kalamazoo, Dauphin), and one suburban ring county (DuPage, Oakland, Montgomery).[29]

It will be useful to describe some of the differences in these counties to demonstrate that the data do not represent a single, narrow slice of middle America. Table 1 reports the economic and political characteristics of the nine counties. The ring counties were

higher incidence of suspended sentences than the clients of other attorneys. Smith & Ehrmann, *supra* note 3, at 229-50. P. NARDULLI, on the other hand, found that nonregulars did better than regulars in obtaining dismissals in Chicago's drug courts. P. NARDULLI, *supra* note 1, at 189. Also, nonregulars negotiated better sentences for their clients in guilty plea cases within the general felony trial courts. P. NARDULLI, *supra* note 1, at 212. Finally, in a more recent study, Phillips and Ekland-Olsen, using techniques similar to Nardulli, found that the nature of the defense attorney ties to the court made no difference in the handling of cases. Phillips & Ekland-Olsen, *Repeat Players in a Criminal Court: The Fate of Their Clients*, 19 CRIMINOLOGY 530 (1982).

[29] By suburban ring counties we mean bedroom counties that "ring," lie outside of, a major city, such as Chicago, Detroit or Philadelphia.

TABLE 1
SELECTED MEASURES OF ENVIRONMENTAL CHARACTERISTICS

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
Per Capita Income, 1979	10,495	8,388	6,550	10,675	7,776	7,263	9,764	7,581	6,680
Public Assistance Recipients (per 100,000 population) February 1980	713	4,689	12,409	3,202	5,838	9,778	1,569	5,165	5,361
Average vote for conservative presidential candidate(s) in "ideological" elections (1980, 1972, 1968, 1964)	68%	55%	43%	53%	53%	51%	56%	60%	46%
Overall Political Categorization	Conservative	Conservative	Moderately Liberal	Moderate	Moderate	Moderate	Moderately Conservative	Conservative	Moderately Liberal
FBI's UCR for offenses against persons (1971-1980 average; rate per 100,000 population)	205	860	792	442	582	333	201	520	243

the most prosperous—with per capita incomes close to $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 while those in Kalamazoo and Dauphin counties were far lower. 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 mid-sized 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 we collected extensive case data on almost 7,500 felony defendants. The number of defendants ranged from 1,162 in St. Clair County to 594 in Erie County (see Table 2). Most of these dispositions were guilty pleas of one sort or another (diversions in the Michigan and Pennsylvania counties were counted as pleas to make them comparable to the Illinois dispositions) (see Table 2, row 2). These cases represent roughly a year's work in each county; the nine sets of cases, on balance, reflect about nine years of dispositions. Most cases 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, we conducted 300 interviews with the judges, prosecutors, and defense attorneys who handled the cases. We spent several months in the various courts doing extensive field research.

IV. Differentiating Among Defense Attorneys

To differentiate among the different types of attorneys in these counties, we first created a trichotomous defense counsel variable. One category included public defenders; the other two covered

TABLE 2
CASES COLLECTED AND AVAILABLE FOR ANALYSIS

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
Total Number of Cases Selected	908*	1042*	1162*	915	719	682	687	1187**	594
Total Guilty Plea Cases	565	689	746	739	565	484	602	875**	466

* These samples involve some cases disposed of in the lower court which were not included in the following analyses.

**These are weighted figures used to adjust for a systematic undersampling of diversion cases.

nonregular private attorneys and regular private attorneys. Two criteria were used to differentiate regular privates from nonregular privates. The most important criterion was the number of cases they represented in our case samples. This criterion enabled us to make fairly easy decisions with respect to most private attorneys because a large majority represented only one or two cases; at the other end of the continuum, a handful of attorneys represented eight to ten defendants or more. Each of the attorneys in this latter group normally accounted for about one percent of the cases in their respective county sample, and this one percent figure was used as the criterion to define regular private attorneys.[30] In addition to this one percent criterion, we used a list of private regulars compiled from field discussions with judges and prosecutors. There was a great deal of overlap between the two sets of regulars. However, if the one percent criterion did not define an attorney listed by the judges and prosecutors as a regular, then that attorney was still included as a regular.[31] This led to the reclassification of fifty attorneys out of the more than 900 who represented defendants in one of our samples, or between four and five in each county.

Table 3 shows the number and percent of cases handled by each of the categories of attorneys just described. Significant variations are immediately apparent. The role of private, nonregular attorneys was greatest (60-66%) in two of the suburban ring counties (Oakland, Montgomery) as well as in Saginaw, which had an assigned counsel system for indigents (as did Oakland). Nonregular privates played a rather minor role in Peoria, St. Clair and Kalamazoo (16-23% of all trial court cases), but a somewhat larger role (33-47%) in the remaining three counties. Private regulars represented the highest percentage of cases (33-36%) in the two coun-

[30] More troubling than the differentiation between regulars and nonregulars was the categorization of a group of private attorneys that represented between four and seven defendants in a county sample (about .5% of the cases in a county sample). These "semiregular" attorneys accounted for 7.6 percent of all defendants in the merged pool of county samples, except in Saginaw, which has an assigned counsel system for indigent defense, and where these semiregulars accounted for over 54 percent of the cases. A separate semiregular category was created because of the concern that these semiregulars might be skilled trial attorneys doing both civil and criminal trial work. However, preliminary comparisons on outcomes indicated that the semiregulars were not dissimilar from nonregulars. For this reason they were finally coded as nonregulars.

[31] Attorneys defined as regulars on the basis of representation in the case samples, but not noted by judges and prosecutors, were not reclassified as nonregulars. Especially in the larger counties, regulars could easily be overlooked by the other participants; the case samples provided us with a rigorous basis for identifying the private regulars. We modified this list with the "reputational regulars" because we felt that the reputational method revealed relationships and perceptions that might not be picked up in the case sample method.

TABLE 3
CASES HANDLED BY REGULAR AND NONREGULAR ATTORNEYS

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
Percent of cases handled by:									
Private Non Regulars (includes assigned counsel in Oakland and Saginaw)	47.3% (280)	16.1% (148)	23.0% (212)	66.4% (497)	17.5% (118)	64.8% (400)	60.5% (314)	33.5% (339)	43.1% (245)
Private Regulars (includes assigned counsel in Oakland and Saginaw)	8.4% (50)	20.1% (185)	20.7% (191)	33.6% (252)	8.7% (59)	35.2% (217)	3.9% (20)	18.5% (187)	11.8% (67)
Public Regulars (public defenders and Kalamazoo contract attorneys)	44.3% (262)	63.8% (588)	56.2% (518)	— —	73.8% (499)	— —	35.6% (185)	48.1% (487)	48.1% (256)
Number of cases with missing information	(57)	(9)	(75)	(151)	(5)	(33)	(154)	(38)	(20)

ties with assigned counsel systems (Oakland and Saginaw). They represented the lowest proportion of cases (4-8%) in the two ring counties with geographically dispersed private bars and public defender offices (DuPage and Montgomery), and in Kalamazoo which assigns almost 75% of its cases to five contract attorneys who represent all indigent cases for the county. The private regulars in the other counties represented 18-20% of the defendants except for Erie, where they handled only about 12%. The variance in the proportion of cases handled by public defenders (contract attorneys in Kalamazoo) is also considerable. As just mentioned, Kalamazoo has by far the largest portion represented by these public regulars, followed by Peoria and St. Clair (64%, 56%). In the remaining counties these public attorneys represented 44-48% of the cases except in Montgomery, where the figure was only about 36%.

A thorough examination of the role of regular defense attorneys requires that we go beyond the data reported in Table 3 and differentiate among types of regulars. To do this we collected data from all the judges and prosecutors in each county that evaluates each of the regular defense attorneys (public or private) on a number of different criteria. We asked these judges and prosecutors to evaluate defense attorneys in terms of their trial competence, accommodativeness, trustworthiness, predictability, informality, and several other dimensions.[32] While the question on trial competence stood by itself, the questions on accommodativeness, trustworthiness, predictability, and informality were highly intercorrelated and, through the use of factor analysis, were combined into a single measure, termed "Attorney Responsiveness."[33] Attorney Responsiveness relates to the concern an attorney shows for the personal and work related needs of co-workers.

Responsiveness and Trial Competence define two of the most important dimensions of what might be termed a criminal defense attorney's operating style. An attorney can be nice (highly responsive), good (a respected trial lawyer), both, or neither. By combining our measures of Responsiveness and Trial Competence, we can categorize our regular attorneys in a way that addresses some of the concerns raised by Alschuler and permits us to analyze in a more refined way the role of regular defense attorneys.

To combine these two variables, we categorized attorneys, by

[32] A full discussion of the design and collection of these evaluation data is beyond the scope of this work; it is presented in detail elsewhere. *See* P. NARDULLI, R. FLEMMING, & J. EISENSTEIN, THE TENOR OF JUSTICE (IN PRESS).

[33] For a description of the derivation of these measures, see *id.* at Chapter Three and the accompanying appendix.

county, into two groups (high, low) on each variable (Trial Competence, Responsiveness). The attorneys were categorized on the basis of their ranking vis-a-vis other attorneys in a county, without reference to the number of cases each handled. Those above the mean for the defense attorneys on the Responsiveness scale in a county were scored "Hi"; the others "Low." The same procedure was used on the "Trial Competence" variable. They were then combined into one of four categories: "not nice, not good," "nice, but not good," "not nice, but good," and "nice and good."

Table 4 shows the frequency with which the various types of regulars in each county handled cases. A couple of observations are worth making. First, the largest number of cases were handled by attorneys regarded as "nice" (see rows two and four); the actual numbers of attorneys involved varied between eight and fourteen. However, the breakdown between "nice and good" and "nice, but not good" varied considerably across counties. There was a fairly good balance in the Illinois counties. But in Oakland, Kalamazoo, Dauphin and Erie, the "nice and good" handled a much larger percentage of the cases than was true for the other county (or counties) in their respective states. As for those regulars evaluated as neither nice nor good—numbering between four and seven attorneys—they accounted for 20-35% of the regulars' cases in most of the counties. However, in Peoria, St. Clair, and Kalamazoo their relative share was 4-16%. Insiders considered "not nice, but good" numbered only between one and five but accounted for 14-25% of the regulars' cases in five counties (St. Clair, Oakland, Saginaw, Dauphin, and Erie).

Table 4 also reports the total number of cases involving regulars and the number of those handled by attorneys we were not able to categorize because we lacked evaluation data. Typically, these were attorneys who were not classified as regulars early enough to be included in the evaluation procedures. This is not a major problem in most counties, the number of cases range from twenty to fifty in the counties outside of Illinois. More cases are lost in Illinois, but the sample sizes in these counties tend to be larger. For example, while we are missing data on 160 St. Clair cases, this represents only about 22.5 % of the regulars' cases. We are missing about the same percent in DuPage and less than 17% of the regulars' cases in Peoria. While this slippage is unfortunate, it is almost inevitable in studies such as this. Moreover, in most counties we are dealing with complete information on 80-95% of all regulars' cases.

Based on the data in Table 4, we should be sensitive to one last point. A handful of categories represent so few attorneys (one to

TABLE 4
CASES HANDLED BY REGULAR DEFENSE ATTORNEYS, BY TYPE

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
Not Nice, Not Good	27.8%	10.6%	4.6%	20.4%	15.9%	21.1%	35.4%	20.8%	29.4%
Number of Cases	(67)	(65)	(25)	(42)	(85)	(37)	(57)	(133)	(82)
Number of Attorneys	(7)	(5)	(5)	(5)	(6)	(5)	(6)	(4)	(7)
Nice, Not Good	27.8%	46.5%	34.1%	6.3%	9.3%	40.6%	39.8%	19.8%	12.0%
Number of Cases	(67)	(285)	(187)	(13)	(50)	(71)	(64)	(127)	(33)
Number of Attorneys	(4)	(3)	(8)	(1)	(2)	(5)	(6)	(4)	(2)
Not Nice, But Good	8.3%	2.4%	14.6%	22.8%	.7%	25.1%	6.8%	17.8%	19.2%
Number of Cases	(20)	(15)	(80)	(47)	(4)	(44)	(11)	(114)	(53)
Number of Attorneys	(5)	(2)	(4)	(1)	(1)	(3)	(4)	(2)	(3)
Nice and Good	36.1%	40.5%	46.8%	50.5%	74.1%	13.1%	18.0%	41.6%	39.1%
Number of Cases	(87)	(248)	(257)	(104)	(397)	(23)	(29)	(267)	(108)
Number of Attorneys	(10)	(6)	(9)	(9)	(7)	(3)	(6)	(7)	(8)
Total Number of Cases Involving Regular Defense Attorney	312	773	709	252	558	217	205	674	323
Cases with Missing Information on Defense Attorney	71	130	160	46	22	42	44	33	47
Percent of Regulars' Cases that are Missing	22.7%	16.8%	22.5%	18.2%	3.9%	19.3%	21.4%	4.9%	14.5%

two), or such a small number of cases (less than twenty-five), that they may not permit a valid analysis of a particular type of attorney's impact in a given county. It is a factor which must be kept in mind in assessing the results of the quantitative analyses.

V. Types of Guilty Plea Systems

The primary focus of the quantitative analyses will be on the impact of insiders on guilty plea cases. The informal nature of the plea process makes it the most likely arena in which personal relationships can make a significant difference. Indeed, most of the commentary reviewed earlier was concerned with the role of insiders in it. However, months of observations and interviews with hundreds of attorneys and judges in our nine counties, and extensive analyses of case outcomes, have sensitized us to important differences in the guilty plea process.[34] Several of these differences must be noted here because they can affect the impact of a defense attorney's ties to the court community in handling cases, and are essential to an understanding of the questions addressed here. They include prosecutor policies affecting plea offers, the locus of sentencing power, the availability of plea routing (a procedure by which plea cases can be sent to a judge of choice), and the dominant pattern of charge reductions in the county's plea process (see Table 5).[35]

Prosecutor policies affecting plea offers must be considered because some offices severely restrict the discretion of trial assistants; this could curtail tendencies to favor, or take advantage of, defense attorneys with whom the assistants have close ties. DuPage, for example, had a committee that set all plea offers. Any deviation from that offer had to be approved by the committee. A formal review of all dispositions served as a check against departures from "the bottom line." Kalamazoo had an equally elaborate, centralized system for setting plea offers and restricting the discretion of assistants. Initial offers were set in the warrant office, and systematic, numerical evaluations of the viability of the cases were made at different points in the case's life. Moreover, all reductions had to be approved by the "hard-nosed" chief of the criminal division. Peoria, Oakland, and Dauphin also had centralized plea offer systems, but they were not as elaborate as those in DuPage and Kalamazoo; these systems largely involved a supervisor approving all offers before a plea

[34] For a more in-depth discussion of these differences, see *id.*

[35] For more complete information on the methods used to measure charge reductions and the actual incidents of reduction, see *id.*

agreement could be finalized. The remaining counties had what could be termed laissez-faire systems. Large amounts of discretion were vested in individual assistants, who were normally guided by only the most general policies. The impact of personal relations is expected to be greater in these counties because the assistants are not constrained by any significant centripetal influences.

The locus of sentencing power in plea cases is just as important as the degree of discretion enjoyed by assistant prosecutors. In some counties prosecutors and defense attorneys agree on both charge and sentence, and judges routinely respect the agreement. In other counties, either because of prosecutoral policies or the judges' refusal to relinquish their prerogatives, sentence agreements are not the norm. An understanding of the locus of the sentencing power in a county's plea process is important because it affects the nature of the concessions which an assistant prosecutor can offer as well as the nature of the plea process. If a defense attorney cannot achieve a firm commitment on a sentence *before* a plea of guilty is entered, the defense attorney's bargaining resources (based on ability or rapport) are severely eroded. This is especially important because judicial participation in plea discussions was rare in most of our counties and unheard of in others. The best result a defense attorney may be able to secure is for the prosecutor to make no sentencing recommendation during the post plea sentencing hearing, but this result simply enlarges the discretion of the judge.

Row two of Table 5 shows that sentencing agreements are the norm in only three counties—DuPage, Peoria, and Montgomery. The judges in Saginaw, Dauphin and Erie refused to accept sentencing agreements, and the prosecutors in Kalamazoo and Oakland did not permit their assistants to agree to specific sentences. In St. Clair, the head prosecutor discouraged sentencing agreements—assistants were strictly forbidden to agree to probation—but where a sentence agreement was essential to a plea involving incarceration, they were permitted. Perhaps most interesting is a comparison of row two with row one; the latter shows information on plea centralization. Only Montgomery and, to some extent, St. Clair, have laissez-faire prosecutorial policies combined with significant prosecutorial control over sentence agreements. In every other county, the discretion of assistant prosecutors is checked by the centralized plea policies of the office or by the judge's control over sentences.

The third important characteristic of plea systems is the availability and use of plea-routing. Plea-routing enables an attorney to route a case to a judge of choice, one who will either be favorable to

TABLE 5
THE STRUCTURE OF THE GUILTY PLEA PROCESS, BY COUNTY

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
Prosecutor Policies Affecting Plea Offers	Highly Centralized	Centralized	Laissez Faire	Centralized	Highly Centralized	Laissez Faire	Laissez Faire	Centralized	Laissez Faire
Locus of Sentencing Power in Guilty Plea Cases	Prosecutor	Prosecutor	Mixed	Judge	Judge	Judge	Prosecutor	Judge	Judge
Availability and Use of Plea Routing	Not Available	Not Available	Limited	Not Available	Not Available	Not Available	Widespread	Widespread	Limited
Dominant Pattern of Charge Reductions	Symbolic	Middling	Middling	Middling	Minimalist	Maximalist	Symbolic	Minimalist	Symbolic

the agreement or one to whom the defense attorney can go with a "blind plea" (i.e., a plea with no sentence agreement). This is important because in counties where judges can be selected, the "plea agenda"—the number of points covered in plea discussions—is quite different. Bargaining resources may be expended in getting the "right judge," and therefore more observable concessions, such as charge reductions, may be less frequent. Insiders, however, may have an advantage in such a system because they may know the inclinations of a judge better than non-regulars and know how to get their case in front of the desired judge. Plea routing is not available in systems that employ individual calendars. It is frequently available where a master calendar is used, but even then in some counties a court administrator has control over the flow of cases to judges and impedes the routing process. Untrammeled plea routing occurred in only two counties, Montgomery and Dauphin (see Table 5), and the identity of the judge was a major component of most plea agreements in both counties. This observation is particularly important in Montgomery due to the high level of prosecutorial discretion and control over sentencing, the role of regular defense attorneys could be expected to be most clear in that county. The fact that resources can be expended in negotiations over judge selection may diminish or obscure the direct impact of an insider's status.

Finally, we note the role of charge reductions in plea cases. Analyses of the incidence of such reductions—primary charge reductions and secondary count drops[36]—in our nine counties revealed four dominant patterns. Dauphin and Kalamazoo were characterized as minimalist counties because they have a very low incidence of primary charge reductions (5-13%) and a low incidence of count drops (9-12%). DuPage, Montgomery, and Erie were characterized as symbolic counties because while they had a low incidence of primary charge reductions (8-12%), they had a high incidence of count drops (42-59%). Peoria, St. Clair, and Oakland were termed middling counties because they had moderate rates of primary charge reductions (17-21%) and moderate rates of count drops (22-38%). Saginaw was labeled a maximalist county because over 43% of its plea cases involved a primary charge reduction and 38% had some type of count drop.

36 Primary charge reduction refers to situations in which the most serious or central charge was reduced. For example, if someone is charged with rape and theft, rape would clearly be the primary charge. A secondary charge reduction refers to situations where the individual is charged with a lesser offense. For example, a situation in which the theft charged was reduced, say to misdemeanor theft. In a count drop the theft count would be dropped altogether.

These differences are important for the present analysis because factors that restrict the granting of charge concessions, or lead to the use of largely symbolic count reductions, can affect the treatment accorded the various types of defense attorneys described earlier. Where charge concessions, especially primary charge reductions, are scarce commodities, it is unlikely that they are used to benefit a particular type of attorney. They are more likely to be used where some evidentiary deficiency exists or some inappropriate charging occurred. Counties with more "wide-open" concession practices are more likely to use them to benefit one type of attorney over another. This is especially true where the discretion of assistants is most unfettered and/or where judges control sentencing (Saginaw, Erie and, to some extent, St. Clair).

VI. Structure of the Quantitative Analysis

The fundamental question we are trying to answer here is: How well do the various types of attorneys succeed in the informal disposition of cases? We use two types of measures to gauge guilty plea packages. One deals with the existence and type of charge concessions, the other with the nature of the sentence received. These two measures, especially the sentence component, are the most crucial aspects of any plea package. While some charge reductions (but not all) may be largely symbolic, sentence is the bottom line for defendants. Even charge reductions, though, can be viewed as a measure of the defense attorney's ability to "do something" for his client. If the impact of different defense attorneys did not show up in these measures it would be difficult to argue that they systematically made much of a difference in the guilty plea process.

Because of the possibility that different attorneys systematically handle different types of cases, we must use multivariate analysis (multiple regression) in conjunction with a set of control variables (offense seriousness, bail status, criminal record, etc.) to conduct a refined analysis of the impact of attorney type. We also conduct the analysis separately for each county because of the important structural differences in guilty plea systems noted in the previous section.

We used a single measure (CHRGBRK) to determine the type of charge concession an attorney was able to secure for his client. If there was no change at all in a defendant's charge(s) between arrest and sentencing the CHRGBRK variable was coded "0." If only a reduction in the number of counts charged was registered (from two to one, for example), the CHRGBRK variable was coded "1." If the primary charge was reduced (from armed robbery to robbery, rape

to aggravated assault, burglary to theft, etc.), CHRGBRK was coded "2." We made a distinction between a mere count drop and a primary charge reduction because prior analyses have shown that while primary charge reductions normally lead to reduced sentences, count drops do not.[37] Such charge concessions are largely symbolic.

Preliminary analyses revealed that only two control variables were required in the analysis of charge concessions (CHRGBRK)—the existence of a multicount indictment and offense seriousness. A multicount indictment was a necessary condition for the most frequent type of charge concession, a count drop, and these two variables were highly correlated in most counties. Also, charge concessions were somewhat more frequent in more serious offenses where prosecutors had more leeway and, perhaps, more counts to knock down. Neither bail status nor criminal record was systematically related to the likelihood of a charge concession.

To capture an attorney's impact on sentencing, we employed three measures, largely because first offenders are normally handled differently than repeat offenders. Most first offenders, with the notable exception of those convicted of very serious offenses, receive no jail time. Indeed, in our pool of cases from all nine county samples, almost 93% of first offenders received probation, diversion, or some other punishment not involving detention. Thus, it is fair to assume that a first offender will not normally receive any incarceration. To determine whether that expectation was realized we created a FRSTJAIL variable. If a first offender received incarceration of some type, FRSTJAIL was coded "1"; it was coded " 0" for first offenders who received no incarceration.

The second sentence measure dealt with repeat offenders. Examination of sentence distributions for individual offenses in each county revealed that most fell within one of two clusters—a probation or a detention cluster (six to seven months, for example).[38] For repeat offenders, many of whom could expect incarceration, the detention cluster can be regarded as the "going rate" or norm for that particular offense in a given county. That going rate may be eight months for burglary, forty-two months for armed robbery, and two months for theft in County X. A very different structure, more lenient or more punitive, may exist in County Y. Despite this, the detention cluster, or going rate, is a good bench mark for evaluating

37 P. NARDULLI, R. FLEMMING & J. EISENSTEIN, THE TENOR OF JUSTICE (in press).

38 For a complete discussion of how these sentence clusters were determined, see *id.*

how well a defendant did in terms of sentence, for a particular offense in a given county.

We used this information on sentencing patterns for repeat offenders to evaluate attorney effectiveness by creating a SENTNORM variable. If a repeat offender received a sentence that was within the detention cluster for a given offense, SENTNORM was coded "0"; sentences below the cluster were coded "-1"; those above were coded "1". We also created a second version of this measure, NORMDEV. It measured, in months, how far above or below the norm a particular defendant's sentence was. For example, if the norm for burglary in a given county was eight months, and a defendant received three months, he would be given a score of "-5" since the sentence was five months *below* the norm. Conversely, a sentence of twelve months would be given a score on the NORMDEV measure of "+4."

These sentencing measures have several advantages. First, they permit us to see if attorney impacts vary with different clients. Any defense counsel may be able to get probation for a first offender charged with battery; a real test of an attorney's effectiveness maybe revealed by what happens to repeat offenders. Secondly, the use of the SENTNORM and NORMDEV variables allows us to gauge the impact of defense attorneys while we control for the type of offense with which a defendant is charged. Both were measured with respect to the modal detention sentence for a particular offense within a county.

Despite these advantages, we must utilize several control variables if we expect a valid analysis of the impact of the various attorney types. For the FRSTJAIL variable we control for the bail status of the defendant (confined, released) as well as the severity of the most serious offense with which the defendant is charged.[39] Both could have a marked impact on the probability of a detention sentence. A person already incarcerated will often receive a sentence equivalent to time already served, even though no additional time is actually spent. Holding bail status constant controls for this and makes comparisons across attorneys more valid, considering that more public defender clients are likely to be detained than private attorney clients. Much the same can be said for offense severity. A first offender charged with rape is much more likely to receive de-

[39] The offense seriousness measure is based on the average sentence for all defendants charged with a similar offense in that county. For more details on the construction of offense seriousness, see *id.* at Chapter Three.

tention than one charged with theft, and these differences must be controlled.

Because the sentence variables for repeat offenders (SENTNORM, NORMDEV) are based upon deviation from the county norm for specific offenses, controls for offense seriousness are not as important as in the first offender analysis. However, because deviations occur more frequently with more serious offenses, we control for offense seriousness. In the repeat offender sentencing analysis, we also control for bail status and the severity of the defendant's criminal record.[40] Preliminary analyses showed relatively strong correlations between these variables and sentence severity, and they must be controlled when trying to isolate the effects of attorney type.

TABLE 6
INFORMATION ON CONSTRUCTED VARIABLES

Variable Name	Variable Meaning	Variable Coding
PRIVDC	Is the defense attorney privately retained or publicly paid?	1 = privately retained; 0 = publicly paid (public defender, contract attorney, assigned counsel)
REGULAR	Is the defense attorney a regular or a nonregular?	1 = regular; 0 = nonregular (from TABLE 3)
NG, NG	Is the defense attorney categorized as "Not Nice, Not Good?"	1 = Not Nice, Not Good; 0 = All Others (from TABLE 4)
N, NG	Is the defense attorney categorized as "Nice, Not Good?"	1 = Nice, Not Good; 0 = All Others (from TABLE 4)
NN, BG	Is the defense attorney categorized as "Not Nice, But Good?"	1 = Not Nice, But Good 0 = All Others (from TABLE 4)
NAG	Is the defense attorney categorized as "Nice and Good?"	1 = Nice and Good; 0 = All Others (from TABLE 4)

To analyze fully the impact of the various types of attorneys upon the charge concession and sentence variables, while holding constant the real control variables, we employed a set of attorney "dummy" variables in an analysis of covariance utilizing multiple regression analysis. Multiple regression is necessary because we need

[40] Our criminal record variable is a composite measure based upon the number of prior arrests, convictions, and incarcerations. For more details on its deviation, see *id.*

TABLE 7
CHRGBRK AND ATTORNEY TYPES—REGRESSION RESULTS

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
PRIVDC									
B-coefficient	—	—	—	—	.20	—	—	—	—
Level of Significance	—	—	—	—	.03	—	—	—	—
F-value					(.47)				
REGULAR									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—	—	—	—	—	—
F-value									
NN, NG									
B-coefficient	—	—	.37	—	—	—	—	—	—
Level of Significance	—	—	.05	—	—	—	—	—	—
F-value			(3.9)						
N, NG									
B-coefficient	—	—	—	—	—	—	—	—	−.29
Level of Significance	—	—	—	—	—	—	—	—	.04
F-value									(4.3)
NN, BG									
B-coefficient	—	—	—	—	.73	—	—	—	—
Level of Significance	—	—	—	—	.01	—	—	—	—
F-value					(6.4)				
NAG									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—	—	—	—	—	—
F-value									
R^2	.42	.24	.30	.14	.28	.03	.24	.13	.10
N of Cases	428	448	534	540	521	419	406	778	390

TABLE 8
FRSTJAIL AND ATTORNEY TYPES—REGRESSION RESULTS

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
PRIVDC									
B-coefficient	—	—	—	—	—	—	—	−.07	—
Level of Significance	—	—	—	—	—	—	—	.005	—
F-value								(7.9)	
REGULAR									
B-coefficient	—	—	—	—	.23	—	—	—	—
Level of Significance	—	—	—	—	.02	—	—	—	—
F-value					(5.3)				
NN, NG									
B-coefficient	—	—	—	—	—	—	—	—	.20
Level of Significance	—	—	—	—	—	—	—	—	.01
F-value									(6.2)
N, NG									
B-coefficient	—	—	—	—	—	—	.17	—	—
Level of Significance	—	—	—	—	—	—	.03	—	—
F-value							(4.9)		
NN, BG									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—	—	—	—	—	—
F-value									
NAG									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—	—	—	—	—	—
F-value									
R^2	.10	.22	.13	.26	.07	.03	.13	.29	.18
N of Cases	203	196	199	208	135	108	157	451	176

to control simultaneously for the effect of the extraneous variables (offense seriousness, bail status, criminal record etc.) while examining the effect of the attorney variables. Analysis of covariance permits us to "force" the covariates (control variables) into the initial stages of the regression analysis, before the variables of interest are entered.[41] The variables of interest here, of course, are the defense attorney dummy variables.[42]

Table 6 describes the categoric attorney dummy variables used in the quantitative analyses. The PRIVDC and REGULAR dummy variables are necessary for detecting and adjusting for the differences between private and public attorneys, and regulars and nonregulars. They are entered in an intermediate stage in the regression analyses—after the case level control variables but before the dummy variables which capture differences among regulars (NN,NG; N,NG; NN,BG; NAG). This permits us to assess the impact of PRIVDC and REGULAR independent of the impact of the dummy variables for the regular attorneys. This last set of variables is then allowed to enter the regression analysis, one at a time in the order of their statistical significance (strongest to weakest). This procedure allows each to explain as much variance as possible after appropriate controls have been made.

VII. The Quantitative Analysis

We begin our examination of insider defense attorneys and concessions in guilty plea cases by looking at the charge reduction variable. The results are reported in Table 7. Wherever there is a significant finding we report the B-coefficient (to give some idea of the average difference across the dichotomous independent variables), the level of significance (only findings significant at .05 or above are reported), and, in parentheses, the F-value. The total R^2 is reported for the entire analysis (including the control variables) in

41 A succinct explanation of this method can be found in Cohen & Cohen, Applied Multiple Regression/Correlation Analysis for the Behavioral Sciences (1975).

42 Dummy variables are dichotomous variables (normally coded 0, 1) and are used to capture the effects of categoric variables such as race (white = 0, black = 1), political affiliation (0 = Republican, 1 = Democrat), and bail status (0 = released; 1 = confined). They are extremely useful here because it is not possible to "scale," a priori, the different types of defense attorneys listed in Tables 3 and 4. For example, we do not know how a private regular attorney (or a private nonregular) should be ranked vis-a-vis a public regular attorney. Nor do we know, a priori, how "nice and good" attorneys should rank vis-a-vis "not nice, but good" attorneys. For this reason, we constructed a set of dummy attorney type variables for each of the various possibilities. This permits us to detect whether any individual category has a statistically significant effect upon charge or sentence, without worrying that any artificial structure we have given the different attorney categories is suppressing their real effect.

TABLE 9
SENTNORM AND ATTORNEY TYPES—REGRESSION RESULTS

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
PRIVDC									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—	—	—	—	—	—
F-value									
REGULAR									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—	—	—	—	—	—
F-value									
NN, NG									
B-coefficient	—	—	—	−.61	—	—	—	—	—
Level of Significance	—	—	—	.04	—	—	—	—	—
F-value				(4.2)					
N, NG									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—	—	—	—	—	—
F-value									
NN, BG									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—	—	—	—	—	—
F-value									
NAG									
B-coefficient	—	−.24	—	—	—	—	—	—	—
Level of Significance	—	.05	—	—	—	—	—	—	—
F-value		(3.9)							
R^2	.19	.30	.21	.42	.11	.30	.21	.25	.49
N of Cases	155	218	217	80	218	102	93	151	80

TABLE 10
NORMDEV AND ATTORNEY TYPES—REGRESSION RESULTS

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
PRIVDC									
B-coefficient	—	−7.6	—	—	—	8.6	—	—	—
Level of Significance	—	.04	—	—	—	.05	—	—	—
F-value		(4.0)				(3.9)			
REGULAR									
B-coefficient	—	—	−6.0	—	—	—	—	—	—
Level of Significance	—	—	.03	—	—	—	—	—	—
F-value			(4.7)						
NN, NG									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—	—	—	—	—	—
F-value									
N, NG									
B-coefficient	—	—	—	—	—	—	8.7	—	—
Level of Significance	—	—	—	—	—	—	.000	—	—
F-value							(13.2)		
NN, BG									
B-coefficient	—	—	—	14.7	—	—	—	—	—
Level of Significance	—	—	—	.01	—	—	—	—	—
F-value				(6.3)					
NAG									
B-coefficient	—	−4.3	—	—	—	—	—	—	—
Level of Significance	—	.05	—	—	—	—	—	—	—
F-value		(4.0)							
R^2	.10	.18	.23	.26	.17	.19	.26	.20	.27
N of Cases	199	237	303	170	253	170	66	212	119

each county, as well as the number of cases upon which the analysis is based. This number will vary from the total number of guilty plea cases reported in Table 2 because of missing information on the control variables or the defense attorneys. The sentencing analyses are based on smaller Ns because they are split between first and repeat offenders.

Table 7 indicates that significant differences across attorney types on the CHRGBRK variable are sparse. No differences emerge in the REGULAR variable and only in Kalamazoo do private attorneys do better than public attorneys. Only three other significant findings emerge, and two (NN, NG in St. Clair, N, NG in Erie) are just barely significant at the .05 level. The third (NN, BG in Kalamazoo) suggests that "not nice, but good" attorneys fare somewhat better in charge concessions than all other groups. This was unexpected because charge concessions are rare in Kalamazoo.

Table 8 reports the results of the FRSTJAIL regression, which relates to whether first offenders received a detention sentence. Significant results are as sparse here as in the CHRGBRK analysis. In only one instance, Kalamazoo, did the REGULAR variable make a difference; it shows that the clients of regulars fared worse than others. PRIVDC was significant in Montgomery, where defendants who retained private attorneys were somewhat less likely to get any type of incarceration. Only two other significant findings emerged: first offender clients of attorneys regarded as "not nice, not good" in Erie and of those regarded as "nice, not good" in Montgomery fared worse than others.

We thought that the greatest difference among attorneys would be in how they handle repeat offenders, because in these instances the attorneys have, in a sense, more to "work with." This was expected to magnify differences in their effectiveness. This expectation was only partially realized. Table 9 reports the results of the regression analysis of the SENTNORM variable which detects whether a sentence was above, below, or within the norm for a given county. Only two significant differences emerge, and they are quite marginal from a statistical perspective. The NORMDEV analysis (Table 10), which measures the magnitude (in months) of the deviation from the norm, shows more significant differences. However, nothing approximating a clear picture emerges. The PRIVDC variable is significant in two counties, but it has a negative impact in Peoria and a positive impact in Saginaw. The REGULAR variable is significant only in St. Clair. But, contrary to every other analysis, the clients of regulars fared better than others! The clients of "nice and good" attorneys in Peoria did better than others and the clients

of "nice, but not good" attorneys in Montgomery did worse. Given the literature on the subject, this should not come as a surprise. In Oakland the clients of "not nice, but good" attorneys fared worse than others, a surprising result which is the opposite of what might be expected. In short, rather than a clear pattern of results emerging, we get very sparse results which appear to be almost random in their occurrences.

One of the reasons for the sparse and random nature of the results reported here, it could be contended, is that the real impact of insiders or outsiders, occurs at an earlier or different point in the criminal process. That is, the most effective attorneys get their clients "off the hook" entirely, meaning that fewer of their cases would end up in the pool of cases analyzed here. Systematic differences in these pools of cases would skew the interpretation of these results, regardless of the control variables used here, because we would, in a sense, be comparing "apples with oranges." The slippage of cases could happen in two ways. First, some attorneys may be more successful in obtaining a dismissal at the lower court for their clients. Because we are largely working with trial court samples (only the three Illinois county samples had lower court cases), we cannot really examine this possibility. However, it should be stressed that the lower courts in these counties—many of which were dispersed throughout the county and staffed by locally elected magistrates—did not screen many cases. Most estimates were in the 10-15% range, and the data we have on lower court dismissals in the Illinois counties suggests that the actual number is somewhat less than 10% (8.9 percent of the DuPage cases were dismissed in the lower court, but only 7.9 percent in Peoria and 3.1 percent in St. Clair). The incentive, especially in the Michigan and Pennsylvania counties, was to send the cases to the trial courts and let them take responsibility for whatever dismissals occurred.

The other possible early screening was a dismissal at the trial level. We have data on that decision and can use the methods outlined in the previous section—analysis of covariance employing multiple regression (covariates = offense seriousness, criminal record, and bail status)—to examine the impact of attorney types upon the probability of a dismissal.

Table 11 reports the results of the dismissal analysis. The regression analyses do a very poor job of predicting dismissals, as is evident by the very low R^2s. This is probably because the use of dismissals is very infrequent in these counties (4-18% of all trial court cases), and because when they are employed it is due to evidentiary deficiencies, lack of victim interest, or some other idiosyn-

cratic factor beyond the scope of our data. Nonetheless, it is clear from Table 11 that in three counties (Peoria, Saginaw, and Erie) the REGULAR variable has a very significant and uniformly negative impact. Regulars are less likely to obtain a dismissal for their clients than non-regulars. The difference in probabilities is about fifteen percentage points; it makes no difference whether the regular is a private or public attorney. If we look at the different types of insiders, we see a few other differences, but no consistent patterns. In Saginaw, regulars who are considered "not nice, but good" are more likely to receive a dismissal than the other regulars. Indeed, the B-coefficient for the NN, BG variable (.14) is almost the mirror image of the B-coefficient for the REGULAR variable (−.15); this suggests that these attorneys are treated on a par with non-regulars in Saginaw. Attorneys in St. Clair who are considered "nice, but not good" are somewhat less likely than other types of attorneys to get a dismissal for their clients, but the difference is not great (about five percentage points). The same can be said for "nice and good" attorneys in Dauphin.

The pattern of findings indicating that clients of non-regulars in Peoria, Saginaw, and Erie have higher dismissals rates than clients of regulars have the greatest implications for our earlier analyses. Further analyses showed that clients of non-regulars in these counties also had lower conviction rates and guilty plea rates. Thus, the earlier findings that non-regulars did no better for their clients in these counties is called into question. However, for the other six counties we can say that the pools of guilty plea cases analyzed are comparable across attorney types within counties, and that the comparisons of guilty plea cases were valid.

VIII. Conclusions and Implications

If we are searching for patterns of significant findings involving the impact of defense attorney types upon the composition of plea packages, the results reported here are both disappointing and somewhat confusing. While a few patterns emerge, they relate to overall disposition patterns, not to the composition of plea packages. For example, regulars in three counties were less likely to obtain dismissals for their clients than outsiders; this leads to higher overall conviction rates and guilty plea rates. However, if we look at the data on plea packages, we find that only sixteen results out of the 220 that we examined were statistically significant. More importantly, none of our findings hold true for more than one county. This raises some important questions about the statistically signifi-

TABLE 11
PROBABILITY OF DISMISSAL BY ATTORNEY TYPES

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
PRIVDC									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—		—	—	—	—
F-value									
REGULAR									
B-coefficient	—	−.13	—	—	—	−.15	—	—	−.15
Level of Significance	—	.001	—	—	—	.000	—	—	.002
F-value		(10.8)				(12.7)			(10.1)
NN, NG									
B-coefficient	—	—	—	—	—	—	—	—	—
Level of Significance	—	—	—	—	—	—	—	—	—
F-value									
N, NG									
B-coefficient	—	—	−.05	—	—	—	—	—	—
Level of Significance	—	—	.03	—	—	—	—	—	—
F-value			(5.0)						
NN, BG									
B-coefficient	—	—	—	—	—	.14	—	—	—
Level of Significance	—	—	—	—	—	.05	—	—	—
F-value						(3.8)			
NAG									
B-coefficient	—	—	—	—	—	—	—	−.06	—
Level of Significance	—	—	—	—	—	—	—	.006	—
F-value								(7.6)	
R^2	.00	.05	.02	.01	.02	.07	.01	.02	.05
N of Cases	448	636	523	439	550	364	339	826	359

cant results that do emerge. Any time such a large number of effects is examined some will emerge as significant simply by chance. Here only about 7% of the effects examined were statistically significant. This figure, when considered in light of the unpatterned nature of the results, suggests that at least some may be simply random occurrences.

What does this mean for the controversy concerning the role and impact of "insiders" in criminal courts? Which of the competing perspectives is closest to the empirical evidence, and what does this mean for our understanding of criminal courts? Clearly, even if we accept the significant findings as valid, there is little evidence to suggest that insiders systematically manipulate the system to the benefit of their clients. No findings emerge in which regulars "do better" than non-regulars in plea packages. The finding that non-regulars, in some counties, have higher dismissal rates than regulars, in addition to the scattered results showing differences among types of regulars, provide some support for the notion that insiders are cop-out artists. However, a fair assessment of the results reported here suggests that neither of these perspectives is given much support by the data.

We are thus left with the view of regulars as creators and protectors of the status quo. In this view of the guilty plea process, certainty, uniformity and routine are extremely important to those who control the dispositional process. The procedures and norms established to attain these goals would be inconsistent with the extensive and systematic use of favors, breaks, concessions, etc. to favor or hinder one type of attorney or another. This would undermine the effectiveness of the norms and understandings which are so crucial to the smooth operation of the system, as preferential treatment would cause turmoil and demands for more preferential treatment. According to the consensus perspective, insiders play a crucial role in the formulation and evaluation of norms which govern particular types of cases. Once established, they affect cases involving both insiders and outsiders on a routine and systematic basis. Exceptions would be based upon case characteristics not interpersonal relations.

This consensus perspective fits the data on plea packages (Tables 8-11) particularly well as no systematic biases emerge. Indeed, one might even be able to explain the higher dismissal rate of outsiders in light of this perspective. Regular prosecutors may have a greater tendency to dismiss cases involving outsider attorneys simply because they are less likely to share a common view of a particular case. These outsiders may be more inclined to raise what

insiders view as extraneous issues and dwell on "irrelevant" points. In marginal cases the trouble caused by such quibbling may well lead the prosecutor to favor a dismissal over a possible trial or a nonconforming, norm-threatening guilty plea.

What enhances the plausibility of the consensus interpretation of these results is that they are consistent with earlier, more general analyses of the same data sets. These analyses suggest that the role of concessions and disparities in the guilty plea process is not nearly as great as many believe.[43] For example, across all nine counties, about 60% of all pleas were to the original set of arrest charges; only 15% of the plea cases were to a reduced primary charge (all other reductions were simply count drops). Moreover, sentences were not widely disparate; almost eighty percent fell within one or another well defined sentencing cluster. Finally, the reduction and disparities which did occur in guilty plea cases did not appear to be allocated in any patterned fashion, suggesting that they may be simply responses to situational factors.

The finding that defense attorney types are largely irrelevant to the formulation of plea packages is consistent with, and reinforces, these other findings. Moreover, they are somewhat reassuring in that they suggest that disparities and preferential treatment do not play as significant a role in the criminal process as many believe. This finding notwithstanding, we must be cautious in our effort to explain these results from a consensus perspective and to make general statements about all criminal courts. At least two important points preclude such a move. First, these results may be explained as much by the structural arrangement of the guilty plea process in these counties as by the existence of shared perspectives on the part of court community regulars. Table 5 and the accompanying discussion show that a variety of checks exist on the discretion of individual prosecutors. In most counties pleas were centralized, in one way or another, in the prosecutor's office, or else judges retained effective control over sentencing. Only in Montgomery did individual prosecutors have unlimited discretion. In that county, however, the widespread use of plea routing may have obscured the impact of a defense attorney's ties to the court community. Future research into the general questions raised here should take care in selecting jurisdictions where prosecutors have more discretion. Even more fruitful would be a study using different kinds of structural controls so that their impact upon the level of systematic disparities could be measured.

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[43] P. NARDULLI, R. FLEMMING, & J. EISENSTEIN, *supra* note 37.

A second important point is that because the counties studied here are all mid-sized jurisdictions, the results may not be generalizable to large urban court systems. The structural checks on the discretion of individuals just noted may be the result of a strong viable court community acting to enforce and protect its norms. If that is the case, then we must consider the impact of a jurisdiction's size upon the emergence of a viable court community, one able to effectively establish and police norms. Do large court systems suffer from the same degree of disorder as many large urban areas? Are there simply too many individuals in large urban court systems interacting in too many different contexts to create an environment which controls systematic disparities? We must be able to address these issues empirically before it is possible to pose more generalizable answers to the questions posed here.