CRIMINAL DEFENSE ATTORNEYS: A STUDY OF PLURALISM IN PRACTICE STYLES AND CONDITIONS

By Norman G. Kittel*

I. Introduction

Criminal defense attorneys perform a most important role in the American criminal justice system. They have a duty to their clients to ensure that those accused of a crime receive due process of law and enjoy every possible benefit from their talent that justice allows. In carrying out these functions, criminal defense attorneys are key participants in the public morality play that is the essential characteristic of the criminal trial.[1] The criminal trial determines what behavior is legal or criminal, good or bad, and moral or immoral. Those convicted of committing crimes are declared to have acted immorally and are punished. Conflicting lifestyles and ideologies often do battle in the criminal courtroom. The values of the entire nation may be affected by the proceedings and outcomes of prominent trials. Major trials can shape public values and determine public policy. Cases like *Griswold v. Connecticut*,[2] *Rowe v. Wade*,[3] and *Miranda v. Arizona*,[4] illustrate the ideological clashes and public policy implications of battle in the courtroom. To a lesser extent these dynamics are characteristic of criminal proceedings in general, although the impact and effect may be limited to very few people or a single defendant.

The nature of the role requires that criminal defense attorneys perform a number of sometimes unpopular functions. These functions include advocacy of positions which are held in disdain, questioning contemporary social values, and challenging the established powers within the criminal justice system. A legitimate perform-

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1. T. ARNOLD, THE SYMBOLS OF GOVERNMENT (2d ed. 1962).

2. Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).

3. Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

4. Miranda v. Arizona, 384 U.S. 436, 16 L. Ed. 2d 694, 84 S. Ct. 1602 (1966).

ance of these functions necessitates that criminal defense attorneys become anti-establishment gadflies who often are viewed as disreputable by establishment law firms, anti-civil libertarian politicians, and majoritarian democrats who see little need for actions of the majority to be limited by the presence of due process rights. Consequently, the role of criminal defense attorneys is essential for the safeguarding of civil liberties in a modern democracy like the United States.

The literature concerning criminal defense attorneys is voluminous but often limited in scope. Lawyers have produced numerous volumes of an instructional or autobiographical nature.[5] Most of this suffers from being impressionistic, possibly self-serving and frequently of limited generality. While works of fiction entertain and may give some good insight into the psychology of some criminal defense attorneys, one may question how much these works contain of general applicability.[6] Historical and biographical works are useful for the understanding of lives of renowned lawyers, their cases and experience.[7] However, these writings do not contain very much information of a general nature concerning the activities of most criminal attorneys. Legal and scholarly studies focusing upon defense of the poor offer description and analysis of certain methods and tactics employed by criminal defense attorneys.[8] But much of this literature tends to be incomplete due to its focus upon the problems related to defense of the poor.

The defense lawyer's role when negotiating plea bargains has been the object of careful description and analysis.[9] Primary among empirical studies of plea bargaining is Abraham S.

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5. F. Bailey & H. Aronson, The Defense Never Rests (1971); M. Belli & M. Carroll, Dallas Justice: The Real Story of Jack Ruby and His Trial (1964); S. Wisham, Confession of a Criminal Lawyer (1981).

6. R. Traver, Anatomy of a Murder (1958).

7. M. Baxter, Daniel Webster and the Supreme Court (1966); B. Twis, Lawyers and the Constitution (1942); A. Lewis, Gideon's Trumpet (1964); D. Carter, Scottsboro: A Tragedy of the American South (1969); I. Stone, Clarence Darrow for the Defense (6th ed. 1961).

8. L. Silverstein, Defense of the Poor (1965); Equal Justice for the Accused (1959).

9. D. Newman, Conviction: The Determination of Guilt or Innocence Without Trial (1966); R. Mendes & J. Wold, Plea Bargains Without Bargaining Routinization of Misdemeanor Procedures in the Criminal Justice Process 187-202 (1976); M. Neuman, Plea Bargaining (1977).

Blumberg's study of the defense lawyer as a double agent.[10] Empirical studies of a general nature dealing with the methods employed by criminal defense lawyers are very limited in number. Noteworthy among them is Arthur Wood's study of the defense lawyer's role.[11] Excellent as this study is, it is partially obsolete because the data reported was gathered in 1955, prior to the U.S. Supreme Court's restructuring of the defense lawyer's role and the development of public defender offices employing larger numbers of attorneys.

A more recent study written by Paul B. Wice, published in 1978, employed anthropological methods to analyze the role of the criminal defense lawyer.[12] Wice portrays them as individualistic egotists leading a harassed, stressful, poorly paid and little respected existence. Wice finds such lawyers to be an endangered species.

Consequently, there is substantial need for a broad-based study of the conditions of practice, methods and procedures of criminal defense attorneys. The research reported in this paper was carried out to meet this need. The object of this study, then, is to describe the practice styles, methods and tactics of criminal defense attorneys.

II. This Study

A self-reporting survey was employed to poll criminal defense lawyers. The use of this method presented a major difficulty. As criminal law is but one of many legal specialties, mailing to general lists of practitioners would target few criminal practitioners and produce a low response rate. Because no easily obtainable lists of criminal defense attorneys are available, a variety of means were employed to locate America's defense attorneys. These methods included contacting court officials, local practitioners, bar associational officers and similar sources.

These sources were asked for the names of attorneys in their counties who specialized in representing criminal defendants. Employing these methods, lists of criminal defense attorneys were obtained for virtually all counties of the states selected for the study

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10. A. Blumberg, The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession, Law and Society Review (June 1967).

11. A. Wood, Criminal Lawyers (1967).

12. P. Wice, Criminal Lawyers: An Endangered Species (1978).

and the District of Columbia.

Selection was based upon the criteria of regional representation, racial and ethnic diversity, and an appropriate rual-urban balance. The states included: Alabama, California, District of Columbia, Florida, Maine, Minnesota and New Mexico. Every fifth attorney, selected by fixed interval selection from the alphabetical lists compiled as indicated, was mailed a copy of the survey from winter 1983 through summer 1984. Employees of public defender offices were contacted in a similar random manner. Accompanying the survey was a cover letter explaining the purpose of the survey, requesting the respondent's help and stating that individual responses would be kept anonymous and confidential.

Survey forms were mailed to 1100 lawyers who practice criminal law. Responses totalled 485 (44%). Since some respondents failed to answer all questions, total responses will vary from question to question.

III. Profile of This Sample

Profile information requested included sex, race and age. 83.7% of the sample was male and 15.7% [sic] was female. While the minority of females is small, it is a substantial increase in the number of women practicing criminal law from the past. Arthur Wood reported only 2% women in his 1950's study of criminal defense attorneys.[13]

Racial composition consisted of approximately 94% caucasions, 2% blacks and 4% orientals and hispanic Americans. The black percentage is small, but appears to be representative of the numbers of black criminal defense attorneys. The ages of the attorneys in this sample were reported as follows:

24 - 30 years old	99	(20.6%)	
31 - 35 years old	157	(32.7%)	
36 - 40 years old	103	(21.4%)	
41 - 50 years old	76	(15.8%)	
51 - 60 years old	27	(5.6%)	
61 - 73 years old	18	(3.8%)	..... Total = 480.

Perhaps most noteworthy is that a majority of these respondents reported that their age was 35 or younger. These statistics illustrate the relative youth of the legal profession in America and

13. *See supra* note 11, at 35.

are the result of heavy admissions to the profession in recent years. Obviously, the criminal bar reflects these developments as well.

College or university undergraduate majors were reported as follows:

English and Literature	44	(9.1%)	
Social Sciences	282	(58.5%)	
Sciences and Mathematics	28	(5.8%)	
Business	45	(9.3%)	
Education	4	(0.8%)	
Fine Arts and Humanities	14	(2.9%)	
Foreign Languages	10	(2.0%)	
Other	55	(11.4%)	.....Total = 482.

The Social Science major (Political Science, History, Economics, etc.) was the reported undergraduate major for the majority of this group of attorneys. Interesting to note is the relatively small number of Education majors (4), Fine Arts and Humanities majors (14) and Foreign Languages majors (10) attracted to criminal law.

The relative popularity of English and Literature majors (44) may well reflect the belief that such study develops the communication skills so necessary for trial practice. The almost identical popularity of Business majors (45) probably reflects the renewed interest in this field the last 5 to 10 years. The "other" category spanned a variety of majors from architecture to theology.

The population of the cities in which these attorneys practiced was reported as follows:

0 - 5,000	27	(6.0%)	
5,001 - 25,000	41	(9.0%)	
25,001 - 100,000	39	(8.6%)	
100,001 - 500,000	143	(31.6%)	
500,001 - 1,000,000	118	(26.1%)	
1,000,000 or more	84	(18.5%)	.....Total = 452.

The overwhelming majority practiced in urban areas with a population of 100,000 or more. This reflects recent demographic trends in America and reflects the higher crime rates in urban areas.

The breakdown between respondents who practice as private defense attorneys, lawyers for the public (public defenders or assigned counsel) or as both lawyers for the public and private defense attorneys was as follows:

Private defense lawyers exclusively	102	(21.6%)
Public defender or assigned counsel only	254	(52.7%)
Both lawyers for the public and private defense lawyers	124	(25.7%)
	Total = 580.	

This distribution shows an increase in numbers of public defenders since the poor became entitled to legal representation for all crimes.[14] This distribution also indicates that most criminal defendants cannot afford to pay for the services of private defense attorneys and must resort to the services of lawyers for the public. Consequently, attorneys for the public represent the lion's share of the caseload.

The distribution of criminal defense attorneys in this sample, by state of practice was as follows:

Alabama	30	(6.3%)	
California	144	(30.2%)	
District of Columbia	37	(7.75)	
Florida	160	(33.6%)	
Maine	23	(4.8%)	
Minnesota	52	(10.9%)	
New Mexico	30	(6.3%)	Total = 476.

The states with larger total responses represent more sizeable populations, greater degrees of urbanization and consequently larger numbers of criminal defense attorneys.

The attorneys in this sample stated that they handled the following number of cases per year:

1 - 25	74	(15.6%)	
26 - 50	80	(16.9%)	
51 - 75	35	(7.4%)	
76 - 100	37	(7.8%)	
101 - 150	42	(8.8%)	
151 - 200	32	(6.8%)	
201 - 250	34	(7.2%)	
251 - 300	26	(5.5%)	
301 - 400	29	(6.1%)	
401 - 500	84	(17.8%)	Total = 473.

The rather wide distribution of the number of cases handled

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14. *See* Powell v. Alabama, 287 U.S. 45 (1933) (mandating counsel for capital cases with special circumstances); Gideon v. Wainwright, 372 U.S. 335 (1963); Argersinger v. Hamlin, 407 U.S. 25 (1972).

per year reflect a diversity of practice styles. Some criminal defense attorneys devote virtually all of their time to a relatively specialized practice defending small numbers of complex, lengthy, contested prosecutions involving white collar, corporate, drug offense or constitutional law cases. Others may defend literally hundreds of municipal court, juvenile or felony charges in the course of a year.

The percentage of total 1982 income received from criminal law practice was reported to be:

0 - 25%	92 (20.1%)	
26 - 50%	73 (15.9%)	
51 - 75%	38 (8.2%)	
76 - 100%	255 (55.7%)	Total = 458.

Over half of this sample reported that they had received 76% to 100% of their income from the practice of criminal law. Almost two-thirds stated that they received over half of their income from criminal law. Some attorneys surveyed included those who defended the relatively few criminal prosecutions in predominantly rural areas.

The number of years that the attorneys in this sample had practiced law was reported as follows:

0 - 5	187 (39.3%)	
6 - 9	116 (24.4%)	
10 - 14	93 (19.5%)	
15 - 19	36 (07.6%)	
20 - 24	16 (03.4%)	
25 or more	28 (05.8%)	Total = 476.

Nearly 40% of these criminal defense attorneys stated that they had practiced law five years or less and a substantial majority nine years or less. Clearly the majority of attorneys in this sample are at the beginning of their professional careers and are illustrative of the relative youth of criminal defense attorneys as a professional group.

In order to determine the type of criminal cases that this group of attorneys handled and judicial level at which this sample operated, the following information was requested:

> I spend 15% or more of my time on cases in one or more of the following types or levels of courts:

a) Juvenile (State Courts)	102	(12.7%)	
b) Misdemeanor, criminal and traffic (State Trial Courts)	254	(31.7%)	
c) Felony criminal (State Trial courts)	356	(44.4%)	
d) Federal criminal (Felony and Misdemeanor Trial Courts)	57	(07.1%)	
e) Criminal appeals (State and Federal)	33	(04.1%)	.....Total = 802.

The majority of respondents reported spending 15% or more of their time representing clients in state misdemeanor courts (criminal or traffic) and/or state felony courts. Often attorneys concentrate in these areas and handle few cases in other specialty areas.

III. Methods and Procedures

Plea bargaining is unquestionably the central legal practice or strategy in the criminal justice system. The judicial process, for the overwhelming majority of cases, culminates with a plea, sentence or charge negotiation as the final outcome of the prosecution. Because of the importance of this practice the following question was asked:

> I negotiate a bargain concerning a plea, charge or sentence in the following percentage of criminal cases that I defend:

a)	0 - 50%	85	(17.7%)	
b)	51 - 75%	90	(18.8%)	
c)	76 - 80%	48	(10.0%)	
d)	81 - 85%	52	(10.9%)	
e)	86 - 90%	99	(20.7%)	
f)	91 - 95%	76	(15.9%)	
g)	96 - 100%	26	(05.4%)	.....Total = 476.

The most important finding is that a majority of the respondents stated that they negotiate a bargain in 76% or more of the cases handled. These responses parallel findings that the great majority of all criminal cases culminate with a plea, charge or sentence bargain. Clearly, this practice warrants the attention given it by lawyers and scholars.

While plea bargaining has received considerable scholarly attention, much less attention has been focused upon styles of de-

fense. Consequently the following question was asked:

> If a bargain or settlement is not reached, my most characteristic style of defense is:
>
a)	Delaying tactics	16 (03.8%)	
b)	A largely technical defense on every point and at every step of the process	56 (13.1%)	
c)	Concentrating on 1 or 2 main defenses	302 (70.9%)	
d)	Other (please specify)	52 (12.2%)	Total = 426.

Delaying tactics seem most appropriate when no other defense exists. They may be successful for cases of low visibility, limited prosecutorial concern and jurisdictions where the system tends to be inefficient.

A largely technical defense on every point and at every step of the process was reported on 56 (13.1%) of the responses. This type of defense consumes substantial time and resources and is, in many respects, a war of attrition. Employed by a skillful practitioner this can be successful, especially should the prosecution's resolve to convict weaken.

Over 70% of the respondents reported that their most characteristic style was a concentration on 1 or 2 main defenses. This true strategy is more efficient of time and resources than a largely technical defense and may be effective when employed for less complex cases.

There were 130 optional written responses to this question. Eighty indicated that a variety of or combination of strategies would be employed dependent upon the individual facts. The following were characteristic responses:

> Each case demands a separate, distinct defense.
> Each case is treated individually as to specific tactics.
> There is no "most characteristic" style. Each case turns on its own facts and law.
> Combination of all whenever necessary.
> Some cases you plead, some you defend on significant technical issues, some you try on the facts, some you do everything.
> Whatever the case lends itself to — I will not make a defense of whole cloth, but if delay, technical, legal, factual or whatever is in the case, I'll use it.
> If the case fails to bargain, they, the prosecution, should have to work for whatever sentences he receives. Sometimes a tech-

> nical defense is the best route if there is nothing substantive available.
> . . . sometimes if I delay, the state gives up (i.e., makes a better offer or witnesses disappear).
> I do believe that, in general, delay is a tactic which helps the defense if a case cannot be negotiated. Every technical legal issue should be raised. Whether I assert one or multiple defenses depends on the particular case.
> One or two main defenses usually emerge, but I try to prolong the case (if defendant is not in custody) and press every imaginable technical point.
> Cause as much difficulty as possible for the prosecutor and set the matter for trial; preparing for trial by employing every discovery motion possible that requires the prosecutor to expend time and effort—out-work the prosecutor.
> Obfuscation.
> I may also get technical, but I usually focus on one or two major legal theories of defense, justification or mitigation and push them to the hilt.
> . . . if there is little or no defense, I delay and then depend on a technical defense (requiring the state to prove everything correctly); if there is a legal or factual defense, I try to get the case over with quickly. Justice delayed is justice denied.
> As a practical matter, it is almost impossible to successfully argue multiple defenses in a jury trial of a criminal case.
> Try to create error by either the court or prosecutor.
> In juvenile cases, time restraints make it impossible to use delay tactics and "complete" preparation is difficult to achieve.

Five of the responses stressed strategy, planning, knowledge of the case and investigation of the facts. These responses included:

> I love to go to trial and gladly do so when opportunity arises . . . this is well known to local prosecutors, which may account for the high percent of settlements.
> Fight the Facts.

These optional responses were at differing levels of abstraction and specificity. While these responses made it clear that available defenses must of necessity be adopted to the particular facts and circumstances of a specific case and available resources, it is also clear that individual attorneys use the available defenses in very different mixes.

It appears that, when the circumstances make a choice available, some attorneys may be more oriented toward delaying tactics,

others may be more oriented toward a technical war of attrition, while a third group may be more apt to pursue one or two main defenses. The defense of criminal cases gives every indication that it is an art that is being practiced on an individualistic basis.

To explore the extent to which these criminal defense attorneys engage in discovery procedures, the following question was asked:

> In felony cases in which the prosecutor's file is available for defense attorneys to read, I request to see the file.
>
a)	Always	368	(85.4%)
b)	Frequently	39	(09.0%)
c)	Sometimes	12	(02.8%)
d)	Seldom	7	(01.6%)
e)	Never	5	(01.2%)

The overwhelming majority, 368 (85.4%), indicated that they always asked to see the prosecutor's file. Equally important were the 123 optional responses to this question. Forty of these responses indicated that they took full advantage of discovery processes available to them including reading the prosecutor's files. Others reported that the file was not available to them, but that extensive discovery was available through depositions. Representative responses included the following:

> I will xerox file and generally review with defendant.
> Minnesota has very liberal discovery rules and the contents of the prosecutor's file are made available in every case.
> We are entitled to all discovery available to the District Attorney and thus, theoretically, we get copies of all information in D.A. file.
> Open file policy of D.A. here.
> California has full discovery, so we always get copies of the reports. In serious cases I examine both the D.A.'s file and the police file.
> Florida discovery makes this unnecessary.

Ten attorneys responded that the prosecutor's file was not available, but that they sought and received discovery. Comments included:

> Rarely available to defense counsel. Usually have to fight for discovery.
> Not available, but always seek and get discovery.

Six responded that the prosecutor's file was not available for

them to read and reported problems with discovery proceedings. These attorneys wrote:

> Not available in Florida; prosecutors in So. Florida (my main area of practice) are insecure and generally hostile.
> In this jurisdiction we are never shown police reports.
> Discovery is virtually non-existent in criminal cases under Alabama procedure. Thus defense attorneys *rarely* have an opportunity to review the prosecutor's file.
> Ha! No such thing in this jurisdiction. —We operate under archaic and draconian discovery rules and do not even get names of witness, let alone their statements.
> Alabama has no discovery—this question seldom applies to my practice.
> Through our discovery procedures, it is not always that productive. Also, the prosecutor's file is rarely available for my reviews.

In a related comment one attorney wrote:

> Can't see minutes of Grand Jury.

Three indicated that they pursued both informal discovery (reading prosecutor's file or submissions) and also formal discovery proceedings. One attorney stated that he requested formal discovery in lieu of accepting the prosecutor's offer to allow the attorney to read the prosecutor's file.

Additional responses included eight who did not handle felonies, but instead argued appeals, represented misdemeanants or defended juveniles. Nine commented that not to carry out discovery was malpractice, unethical conduct or negligence. Four indicated that discovery was not always necessary because of no question of guilt, the case was diverted out of the system, the case will not be tried or the attorney feels that the prosecutor does not have needed information.

Fifteen percent of this sample reported that they did not request to see the prosecutor's file. Some interpreted the question literally and responded that they never requested to see the file because state rules and/or local practice did not permit access to the file. However, some of this 15% did not request access to the prosecutor's file because they felt there was no question of guilt, the case would not be tried or for a similar reason.

The overwhelming majority of the respondents to this question, (85%), reported that they always requested to see the prose-

cutor's file. The written comments evidenced a wide variety of practices between the states concerning formal discovery rules and informal relationships. Formal discovery that was reported available ranged from Minnesota's full discovery to Alabama's limited discovery. Local practices interpreting state rules also varied substantially from judicial district to judicial district. Local working relationships between criminal defense attorneys and prosecutors extended from cordial cooperation to bitter and strained adversariality. As reported, the practice of criminal law would appear to be much more difficult to carry out in some jurisdictions than in others.

Discovery procedures were inquired into further with the following question:

> When defending felony cases, I carry out investigations of the facts of the case in addition to conferences with my client and reading the prosecutor's file:
>
a)	Always	259	(56.6%)	
b)	Frequently	158	(34.5%)	
c)	Sometimes	34	(07.4%)	
d)	Seldom	7	(01.5%)	
e)	Never	0	(00.0%)	..... Total = 458.

The majority of the sample always conducts an independent investigation in addition to conferring with clients and reading the prosecutor's file. While such investigation does not guarantee adequate preparation, it certainly tends to indicate such preparation. Whether the remaining 199 (44.4%) responses ranging from frequently to seldom indicate adequate preparation is a determination for further analysis, including analysis of the 113 optional written responses.

Thirty responses indicated that investigation in addition to formal discovery and talking to the client is not required for the defense of some cases. Sixteen of these attorneys indicated that they did not investigate when there was no question of guilt, defendants admitted culpability, or the defendant desired to plead guilty. Fourteen responded that they did not carry out such investigation when further investigation was neither possible nor needed. Attorney replies included:

> The factual situation in many cases is so cut and dried as to defy additional investigation.
>
> I do not ask our investigators to duplicate the investigation by the police unless I think the results would be different. Other-

> wise, I try to investigate the facts thoroughly.
> About 40-50% of cases require further investigation including sworn depositions because of factual differences, legal reasons or seriousness of the likely sentence.
> Depends on information available from named sources and severity of case. I almost always do some outside factual investigation with P.I.
> I always interview my client —investigate facts when warranted, but never am afforded the opportunity to see police reports.

Five attorneys for public defender offices responded that a staff was available for investigations. One of these five said he supplemented the investigators limited efforts with his own investigation as time permitted. One attorney (a private practitioner) stated that he almost always hired a private investigator. Another private practitioner wrote that he hired outside investigators when the fee allowed, otherwise he and his wife investigated the case. Two private practitioners replied that an investigation was not carried out when private clients could not afford an investigation. Four public defenders reported that their agencies had inadequate investigatory resources.

Some replied that factual investigation was important or essential. Comments included:

> It is particularly important to investigate alleged facts as so often the police reports present half-truths, inaccuracies, speculation and even falsehoods.
> Again, I believe it's at least borderline malpractice for a lawyer not to supplement his efforts independent of the client and the prosecutor's file.
> Anybody who doesn't investigate his or her cases is committing malpractice, whether they're overworked or because they're lazy.
> It is not adequate to count on client and prosecutor to investigate the case for you. The state is looking at facts with a view to convict and client is not trained adequately.

Nine attorneys responded that a failure to investigate beyond conferences with the client and reading the prosecutor's file (and other discovery) was inadequate representation, negligence or malpractice.

Even where no question of guilt exists or the defendant desires to plead guilty, investigation may produce facts important for plea

negotiations or possible mitigating factors. The fact that police reports may be inaccurate or the client may not totally recall or perceive what transpired at the time of the crime indicates a need for investigation. Likewise, an assumption that a case is "cut and dried" may lead to a simplistic approach that, upon further investigation, might be disapproved.

An additional question was asked concerning the submission of mitigating evidence to probation officers for use in presentence reports. To obtain evidence concerning the frequency of this practice, the following question was asked:

> When appropriate, I submit to the probation officer information favorable to my client for inclusion in the presentence report:
>
a)	Always	261	(55.4%)
b)	Frequently	113	(24.0%)
c)	Sometimes	66	(14.0%)
d)	Seldom	25	(05.3%)
e)	Never	6	(01.3%) ..... Total = 471.

Submitting mitigating evidence to probation officers for inclusion in a presentence report can be the most important act of representation. Again, while the adequacy of such an action cannot be evaluated by this study, the presence of such a submission tends to indicate appropriate representation. The majority of those who responded said they always submitted such information to probation officers. However, the remaining responses, especially the 30% who wrote that they submitted such information sometimes, seldom or never, indicate that this potentially beneficial task is being denied in many cases where it might be useful to the clients.

There were 61 optional written responses to this question. Ten attorneys responded that submitting such favorable information to probation officers was a very important action. Three of these attorneys emphasized the benefits of informal cooperation with probation officers. They wrote that they sometimes had private probation or sentencing alternative reports prepared. Comments included:

> The job does not end upon conviction.
>
> - - - It is the most important stage of my practice.

Fifteen attorneys reported that they always or usually submitted such information or a specific plan suitable for the client to probation officers. Comments included:

> I always do this. It is helpful to provide the court with your own report since if you don't, the probation officer's report often contains erroneous information.
> I also make selected portions of my file available. Often it's better organized than other information available to the Probation Officer.

One attorney reported that she always has the client's friends and family submit information.

Eight attorneys responded that probation officers usually will not listen to defense attorneys and that submitting such information to them is a worthless gesture. Twelve attorneys wrote that they believe it is more effective and better policy to submit favorable information directly to the sentencing judge. Several expressed a belief that probation officers are pro-prosecution and counter favorable information with negative factors. Comments included:

> Direct contact with probation is usually fruitless, it is better to contact judge with pertinent information.
> Those idiots wouldn't know what to do with it . . . it makes much more sense to present it to the judge directly, personally.

Nine attorneys responded that they frequently did not have any favorable information to submit to probation officers or that such submission was not needed. Comments included:

> By the time your case is referred to the probation department, you've lost at trial. Also, it's seldom that we ever get to know our clients to the degree that I deem it necessary to add my own thoughts in sentencing.

These responses indicate two very different types of relationships between the respondents and probation officer. Several of those who viewed such submission as important and stated that they always or frequently did so, appeared to have close cordial relationships with probation officers. Others who doubted the worth of these submissions or believed that it was preferable to deliver such information to judges appeared to have strained formal relationships with probation officers.

Conclusion

The criminal defense lawyers in this sample of 485 attorneys from six states and the District of Columbia were largely male,

white, young (under 35), practiced in urban areas of over 100,000 population, earned most of their income from criminal law and practiced law less than nine years. The majority were public defenders, and spent 15% or more of their time in state felony, misdemeanor and traffic courts. Individual case loads varied widely.

A majority of the respondents in this survey reported that they plea bargained 76% or more of their cases. Plea bargaining is clearly the central practice in the Criminal Justice System and deserves the attention that lawyers and academicians have given to it.

While some reported delaying tactics and a largely technical defense at every step of the process as their most characteristic style, the majority of the sample reported that they concentrated on one or two main defenses. However, this response was modified by a substantial number of written comments that illustrate the respondents employed different strategies or a combination of strategies dependent upon the "facts" or "circumstances" of individual cases.

The overwhelming majority (85%) of this sample of criminal defense attorneys reported that they always requested to see the prosecutor's file. Wide variations were reported between the states regarding extent and availability of formal discovery procedures. Local practices concerning discovery also varied substantially. The failure to employ discovery proceedings in a small minority of responses may be evidence of simplistic handling of cases.

A majority of respondents reported that they investigated the facts of cases in addition to conferences with their clients and reading the prosecutor's file. Reasons for not investigating some cases included beliefs that the facts were cut and dried, guilt was certain or a plea was being entered. These reasons, like the answers to the previous question, suggest stereotyped representation of these cases. In addition, some attorneys reported that a lack of resources limited investigation.

A majority of this sample also reported that they always submitted mitigating evidence to probation officers for use in presentence reports. Several respondents who did not submit such information indicated a belief that the probation officer had a pro-prosecution bias due to poor relationships, and/or that such submissions of mitigating evidence were ineffective.

The defense attorneys in this sample indicated a diversity, individualism, and pluralism regarding practice styles and strategies.

Problem areas involving adequacy of representation include investigatory services, difficulty in obtaining discovery in some jurisdictions, and bitter relationships with other actors in the Criminal Justice System. It appears clear that the formal rules, informal norms, working relationships between criminal defense attorneys and other participants in the Criminal Justice System and relative ease or difficulty of practice varies substantially from jurisdiction to jurisdiction both between the states and within them. The practice of criminal law, as reported by this sample, is characterized by individualism and pluralism both of practice styles and conditions of practice.