GUilty PleA HearIngs And JUDICIAl SupervisorIOn: some differences between federal and state judges regarding rule 11 and a defendant's right to due process

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ABSTRACT

Samples of 120 district court judges from six randomly selected circuit court jurisdictions were compared with 62 circuit and criminal court judges in Tennessee concerning their compliance with Rule 11 of the federal Rules of Criminal Procedure (U.S.C.A., 1986) governing guilty plea hearings. Among other things, Rule 11 provides that judges will inquire of defendants in open court about the voluntariness of their guilty pleas, whether they understand that they are waiving several important constitutional rights, whether there is a factual basis for the guilty plea, whether they realize they have a right to an attorney, and whether they understand the nature and consequences of the charges against them. It was found that federal judges are substantially in compliance with these provisions of Rule 11, although full compliance was not observed for all issue areas. By comparison, Tennessee trial judges adhered to these provisions (duplicated in the Tennessee Rules of Criminal Procedure verbatim) much less frequently. Various reasons for these discrepancies are discussed, as are some implications for defendant's access to due process and certain constitutional guarantees.

INTRODUCTION:

Plea bargaining is not new. Historically, evidence of its use can be traced to the twelfth century. Plea bargaining is so pervasive in the United States today that it is regarded as a fairly permanent feature of our justice system (Alschuler, 1979; Rhodes, 1979; Stitt and Siegel, 1986).

Plea bargaining or "plea negotiating" is a preconviction agreement between the state and the accused whereby the defendant trades a plea of guilty for a reduction in the charge, a promise of sentencing
leniency, or some other concession from full, maximum implementation of the conviction and sentencing authority of the court (McDonald, 1985:5; Wheatley, 1974; Uhlman and Walker, 1979). Over 90 percent of all criminal convictions in U.S. courts are obtained currently through plea bargaining agreements reached between the prosecution and defense, thus avoiding the considerable time and expense of a trial (Mather, 1979; Langbein, 1979; Utz, 1978).

While most states permit and encourage plea bargain agreements as a speedy means of concluding criminal cases and reducing the trial judge's caseload, some jurisdictions ban its use outright. Currently, there are "no plea bargain" policies in effect in the states of Alaska and Michigan, and in cities such as New Orleans and El Paso (Rubinstein and White, 1980; Iowa Law Review, 1975; Champion, 1987c).

At the federal level, district court judges supervise guilty plea hearings and consider the appropriateness of plea bargain agreements before approving them. The court is obligated to adhere to a number of rules pertaining to this plea agreement procedure. For instance, Rule 11 of the Federal Rules of Criminal Procedure (hereafter referred to simply as "Rule 11") generally applies to the alternative pleas a defendant may enter. These pleas include guilty, not guilty, or nolo contendere. (See Title 18, USCA, Rule 11, 1986).

Among other things, the court is required to maintain a verbatim record of these proceedings. This record shall include the court's advice to the defendant, an inquiry as to the voluntariness of the plea including any plea agreement, and an inquiry as to the accuracy of a guilty plea. Before accepting a plea of guilty, the judge must address the defendant personally in open court and inform him of, and determine that he understands, the following: (1) the nature of charges to which the plea is offered; (2) the mandatory minimum penalty and maximum possible penalty provided by law; (3) the defendant's right to an attorney and representation at every stage of the proceeding; (4) if the defendant cannot afford an attorney, the court will appoint one for him; (5) that he has a right to plead not guilty and to be tried by a jury; (6) that he can confront and cross-examine witnesses against him, and he cannot be compelled to