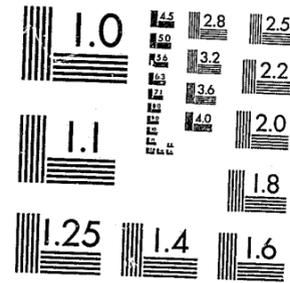


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A. Introduction

In July, 1980, Jefferson County Kentucky was awarded a total of \$179,634 by the National Institute of Justice (N.I.J.) to implement, for the purposes of field research, a Structured Plea Negotiation Project. Two other jurisdictions, Wayne County, Michigan and Pinellas County, Florida also received similar awards.

Simply stated, the award was used to implement, collect data, research and evaluate the Structured Plea Negotiation Conference concept. This concept proposed that all plea negotiations take place in front of a judge and that the victim, defendant and police officer be invited to attend.

N.I.J. thought the utilization of the structured conference for plea negotiations could confront many of the legitimate criticisms leveled at plea bargaining. Participation by the judge and lay parties would make the practice more open and less unseemly. Increased citizen participation was expected to increase the respect for the workings of the law by those directly affected by the crime and its prosecution. Judicial involvement would help ensure that the interests of the public were considered in all settlements. It was hoped that the presence of the victim would focus more attention on the victim's legitimate claims for consideration and possible compensation. The defendant's presence was expected to add emphasis to his individual situation and needs. The open discussion at the conference of the appropriate settlement would lead to the articulation of principles which would develop a precedential value for future settlements. Finally, by means of structure and timing within the pretrial process, it was hoped that prompt consideration

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of the possibility of pretrial settlement would occur and thus lessen last minute disruptions to court scheduling currently caused by plea bargaining.

Because Jefferson County Field test was to served as an examination of the N.I.J. theories about the structured conference concept, the project staff expected some measurable results from a successful implementation of their design. The staff expected the conferences to be used for negotiations and settlement and a high percentage of lay attendance. Therefore, this report focused upon those two expected results.

#### B. Use of the Conference

The Jefferson County project staff tried to implement a field experimental design. Five judges were used as test judges and thirteen were utilized as control judges. One thousand, four hundred and thirty-four defendants were randomly selected\*, of which 515 were assigned to use a structured plea negotiation conference. The remainder, 919 were assigned to the control group where they were processed in the accustomed manner of pretrial settlement for this jurisdiction.

Conferences were held for 282 of the 515 defendants in the test group. The staff believed more conferences were not convened because of the seriousness of some cases, inconsistent conference scheduling by the test judges, some cases were settled before the conference date, and the general indifference of some professional participants toward the project. Preliminary statistics and participant's opinions support these assumptions.

In cases where the conference was held, 44% ended in settlement. More settlements were not reached because of a lack of pre-conference open discovery, a lack of professional participant willingness to conduct negotiations in good faith and differences in judicial conference facilitation styles.

\* Because of a shortage of test defendants late in the test period, total randomness was discarded.

The conferences usually took place in crowded open courtrooms and were less formal than normal court proceedings. The judge usually sat on the bench wearing his/her judicial robes. The professional participants were seated at their normal trial positions. The defendant sat beside his/her attorney and the police officer sat beside the prosecutor. The victims sometimes sat with the prosecutor but most of the time sat behind the other participants. The protocol in four of the courts was that of a business conference, rather than a court proceeding. The other court's atmosphere was one of confusion and disorder. This judge created confusion because all that court's conferences would be scheduled all at the same time and all on one day a month.

The conferences averaged ten minutes in length although there were substantial variation. The shortest lasted less than one minute, the longest two hours. The discussion in the conference clustered around three topics: the facts of the case, the defendant's prior record and settlement recommendations.

#### C. Lay Participation

Because Kentucky criminal rules mandate that the defendant must appear at all court appearances and because the conference was treated as a normal court appearance, defendant attendance at the conference was a 100%. This percentage was achieved even though each defendant was given the choice to not actually participate in his/her conference. Police Officers appeared in 112 conferences for 40%. Victims were present at 52 conferences for a 18% total. The staff believed victims did not appear more often because of victim apathy, the type of case and a failure on the part of the prosecution to invite some of them.

The police officers seemed to have the most impact on the conference discussion. They would often be asked to state the facts of the case and give their opinions on possible agreements. The other lay participants (i.e. defendants and victims) were limited both in the extent to which they directed the flow of the discussion.

#### D. Professional Participant Views

When interviewed after the test period, the attorneys and judges displayed a wide range of attitudes toward the desirability of the use of the conference and lay participation in it. Some perceived it only as another time-consuming step in an already cumbersome process. Others perceived substantial benefits in an enhanced credibility for the system and in the creation of a more personalized and humanized process.

Three test judges said that they would continue the process. However, they all indicated that the conference would be modified in their courts.

The variety of reaction to the project undoubtedly reflects a number of factors. To some extent the difficulties in implementing any new procedure in a complex system result in imperfect execution of the original design. Furthermore, some of the professional reaction was either clearly idiosyncratic or reflected a narrowly function related view. For example, one prosecutor could clearly articulate that she did not like the procedure in her role as a prosecutor, but if she stepped outside of that role she thought it had merit.

It is hoped that this report will be used as a basis for further testing and studying of the concept of structured pre-trial settlement.

## CHAPTER II

### RESULTS AND BENEFITS

#### A. Introduction

Since the Structured Plea Negotiation Project was to serve as a test of the structured negotiation conference concept, the project staff expected certain measurable results from the successful implementation of the test design. Two primary anticipated outcomes were the use of the conference for negotiation and case settlement and the participation of the victim and defendant in the conference process.

This chapter begins our discussion of the success we may have had in achieving the anticipated implementation results. The first section discusses the test design sample with the second section getting to the heart of the matter, the conference. Thus, this section focusses on some preliminary issues concerning the conference, how many conferences were held, the relationship between type of offense and decision to convene the conference, the attendance of individuals in the conference process and the results of the conference.

The final portion of the chapter details one effect on local criminal practices that the staff believed the project attained, speedier case processing. This section like the other sections of the chapter is comprised of staff observations made from preliminary staff generated statistics. These statistics are not all inclusive and they are not by any means intended to be used in place of the final evaluation statistical results.

If one needs an explanation of the test design, the next chapter and the Appendix outline the design in detail. Chapter IV contains

additional staff observations and impressions plus opinions expressed by participants about what worked and what did not.

B. Test Design Sample

To properly evaluate the structured negotiation conference concept, a sample of 800 cases was to be attained. Four hundred of these cases were to be conferenced cases and the other 400 were to be control cases. Table II-1 shows our success in achieving the sample:

TABLE II-1

JEFFERSON COUNTY STRUCTURED PLEA SAMPLE SELECTION a/

	Number	Percentage
Number of Defendants whose Cases were Selected for the Control Group	919	64%
Number of Defendants whose Cases were Selected for the Test Group	515	36%
TOTAL	1,434	100%

a/ Because each defendant was offered the opportunity to have his/her own conference regardless of the number of co-defendants involved in a case, a case in this report equals one defendant.

Although the project was able to select 515 defendants for the test, Table II-2 illustrates what happened to those defendant's conferences.

Table II-2 indicates the conference procedure was used only 55% of the time for plea negotiations. For the project to have accomplished the 400 conferenced defendant sample, 78% of the 515 defendants selected would have to have been conferenced.

TABLE II-2

STRUCTURED PLEA TEST GROUP SAMPLE

	Number	Percentage
Number of Defendants whose Conferences were Actually Held	282	55%
Number of Defendants whose Conferences were Cancelled (Aborted) by the Prosecution or the Defense	194	38%
Number of Defendants whose Conferences were not Held because of Bench Warrants	30	5%
Number of Defendants whose Conferences were not Held because of other Factors a/	9	2%
TOTAL	515	100%

a/ Dismissals and case transfers

C. Use of Conferences

1. Conferences by Court. As one would expect, some of the judges were more successful in convening conferences than others. Tables II-3, II-4, II-5 illustrate this point:

TABLE II-3

DEFENDANTS SCHEDULED FOR A CONFERENCE BY COURT

Court	Number	Percentage
Division Three	103	22%
Division Seven	83	17%
Division Ten	83	17%
Division Eleven	95	20%
Division Fifteen	112	24%
TOTAL	476 a/	100%

a/ See Table II-4.

TABLE II-4

DEFENDANTS WHOSE CONFERENCES WERE HELD BY COURT a/

<u>Court</u>	<u>Number</u>	<u>Percentage</u>
Division Three	63	22%
Division Seven	51	18%
Division Ten	48	17%
Division Eleven	43	16%
Division Fifteen	77	27%
TOTAL	282	100%

a/ These figures do not include 39 test group defendants on Table II-2, whose conferences were not actually scheduled because of case dismissals, transfers or bench warrants.

TABLE II-5

PROPORTION OF CONFERENCES HELD FROM THOSE SCHEDULED BY COURT

<u>Court</u>	<u>Confs Held/Confs Scheduled</u>		<u>Percentage</u>
Division Three	63	103	61%
Division Seven <u>a/</u>	51	83	61%
Division Ten	48	83	58%
Division Eleven	43	95	45%
Division Fifteen	77	112	69%
TOTALS	282	476	59%

a/ These figures include both conferences conducted by Judge Burton and those conducted for Division Seven by Judge Shobe. Burton was ill for a portion of the test period.

2. Relation of Offenses to Decision to Hold Conferences. One element in the decision by either the prosecution or defense counsel to convene a conference may have been the type of offense involved. As discussed in Chapter IV, some participants felt that certain categories of offense were inappropriate for the conference procedure. Table II-6 shows the proportion of cases by offense category for which the conference was held.

TABLE II-6

PROPORTION OF DEFENDANTS WHOSE CONFERENCES WERE HELD FROM TOTAL SCHEDULED BY OFFENSE CATEGORY

<u>Offense Category</u>	<u>Number Held</u>	<u>Number Scheduled</u>	<u>Percentage</u>
PFO I <u>a/</u>	9	59	15%
PFO II	33	50	66%
Violent Crime*	45	70	64%
Assault #	14	21	67%
Burglary	52	78	67%
Larceny	39	58	67%
Other Property **	27	34	79%
Drugs	27	43	63%
Other	36	63	57%
TOTALS	282	476	59%

a/ PFO I and PFO II are career criminal or persistent felony offender statute charges. Because of their seriousness, these charges were considered over and above all other charges the defendant may have for this table.

\* Murder, Rape and Robbery

# Any type of Assault

\*\* Fraud, Forgery and Stolen Property

It appears that the only type of offense that was thought to be inappropriate was the PFO I. By the nature of the PFO I, the prosecution made a decision in most of those cases to cancel the conference. A look at the next section will provide some further insight into the decisions to convene a conference.

3. Who Cancelled Conferences and When. Table II-7 provides a breakdown of the sources of conference cancellations:

TABLE II-7  
CONFERENCE CANCELLATION BY SOURCE

<u>Source</u>	<u>Number</u>	<u>Percentage</u>
Prosecution	81	42%
Defense Attorney	58	30%
Both Prosecution & Defense Attorney	37	19%
Unknown <u>a/</u>	<u>18</u>	<u>9%</u>
TOTAL	<u>194</u>	<u>100%</u>

a/ This figure represents conferences where the source of cancellations could not be determined from staff records.

One disturbing aspect about the sources of cancellation was the percentage of conferences cancelled by both parties. This might indicate that agreements were being reached in some of these cases before the conference date. Another annoying point about cancellations was the manner in which conferences were cancelled, Table II-8 illustrates when conferences were cancelled.

TABLE II-8

POINT IN PROCESS WHEN CONFERENCES WERE CANCELLED

<u>Point in Process</u>	<u>Number</u>	<u>Percentage</u>
Date of Conference	110	57%
Before Conference Date <u>a/</u>	66	34%
Unknown	<u>18</u>	<u>9%</u>
TOTALS	<u>194</u>	<u>100%</u>

a/ According to the test design, a conference could be cancelled within a 14 day period after the conference was scheduled at arraignment.

Because most conferences were cancelled on the day of the conference, the system became very inefficient. Also as mentioned earlier, it was believed by the staff that some of the cases cancelled on the conference date had already been negotiated and settled. The next section may lend further evidence that out of conference settlement did occur.

4. The Conference Disposition. Two hundred eighty-two conferences were held according to staff records. Table II-9 shows the immediate results of these conferences.

TABLE II-9

CASE STATUS AT CONCLUSION OF THE CONFERENCE

<u>Case Status</u>	<u>Number</u>	<u>Percentage</u>
Settlement Agreed Upon at Conference	109	39%
Tentative Settlement Agreed Upon at Conference (Subject to Review)	15	5%
Case set for Trial at Conclusion of Conference	<u>158</u>	<u>56%</u>
TOTAL	<u>282</u>	<u>100%</u>

Thus, in only 44% of the conferences was a settlement reached. Table II-10 shows what happened to those defendants who were scheduled for a trial date.

TABLE II-10

STATUS OF CASES AFTER INCONCLUSIVE CONFERENCES

<u>Status</u>	<u>Number</u>	<u>Percentage</u>
Plea Taken after Conference & before Trial	54	34%
Trials	20	13%
Case Dismissed	3	2%
Cases Pending <u>a/</u>	<u>81</u>	<u>51%</u>
TOTALS	<u>158</u>	<u>100%</u>

a/ Cases pending as of February 26, 1982.

Although 51% of the cases were still pending action, 34% of the defendants whose conferences did not produce a settlement had their cases eventually settled by a plea negotiated agreement. Table II-11 shows the known dispositions of all conferenced defendants.

TABLE II-11

ALL DEFENDANTS WHOSE CONFERENCES WERE HELD BY CASE DISPOSITION

<u>Type of Disposition</u>	<u>Number</u>	<u>Percentage</u>
Plea Bargain (in conference or outside)	178	89%
Trials	20	10%
Dismissals	<u>3</u>	<u>1%</u>
TOTALS	<u>201</u>	<u>100%</u>

Therefore, 89% of all known dispositions for those defendants having a conference were pleas. Finally a look at the case dispositions of defendants whose conferences were cancelled demonstrates that plea bargaining did not cease because conferences were cancelled. Table II-12 profiles this point.

TABLE II-12

KNOWN DISPOSITIONS FOR DEFENDANTS WHOSE CONFERENCES WERE CANCELLED

<u>Type of Disposition</u>	<u>Number</u>	<u>Percentage</u>
Plea at Conference <u>a/</u>	21	26%
Plea at Trial Date	48	59%
Case Dismissed	5	6%
Trials	7	9%
TOTALS	<u>81*</u>	<u>100%</u>

a/ Pleas taken on Structured Plea Conference Date.

\* Of the 194 cases cancelled, 113 or 58% were still pending as of February 26, 1982.

5. Settlements by Court. As might be expected, the settlement rate varied for each Judge. Table II-13 shows settlement by court.

6. Conference Settlement Analyzed by Offense Category. To better understand the nature of settlements in the conferences, Table II-14 is presented. These findings were fairly consistent with those disclosed in the decision to convene a conference section. The type cases that seemed to be most appropriate for a conference settlement were the less serious offenses. However, PFO II cases, a serious charge with a mandatory prison sentence provision, were settled 45% of the time.

TABLE II-13  
SETTLEMENT IN CONFERENCE BY COURT a/

<u>Division</u>	<u>Number Settled/Number Held</u>		<u>Percentage</u>
Division Three	34	65	54%
Division Seven	12	51	24%
Division Ten	15	48	31%
Division Eleven	22	43	51%
Division Fifteen	26	77	34%
TOTALS	109	282	39%

a/ For this analysis, only full settlements reached at the conferences were used.

TABLE II-14

PROPORTION OF CONFERENCES REACHING A SETTLEMENT BY OFFENSE CATEGORY a/

<u>Offense Category</u>	<u>No. Confs Settled/No. Held</u>		<u>Percentage</u>
PFO I	1	9	11%
PFO II	15	33	45%
Violent Crime	9	45	20%
Assault	4	14	29%
Burglary	31	52	60%
Larceny	21	39	54%
Other Property	13	27	48%
Drugs	10	27	37%
Other	20	36	36%
TOTALS	124	282	44%

a/ Both full and partial settlements

D. Attendance When Conference Was Held

One purpose of the conference was to provide victims, defendants and police officers an opportunity to participate in discussions about a possible settlement of a case. Because of a mandatory Kentucky criminal rule, a defendant has to appear at all his/her court appearances. Therefore, there was 100% defendant attendance. Victims were present at 52 conferences for an 18% total. Police officers who were invited to all conferences appeared at 112 conferences for a total of 40%.

For the lay participants, attendance at the conference was voluntary. At one level of explanation, the decision to attend for the victim may have been based on the type of offense involved. Table II-15 illustrates this point.

TABLE II-15

VICTIM ATTENDANCE AT CONFERENCE BY TYPE OFFENSE INVOLVED

<u>Type of Offense</u>	<u>Number of Victims</u>	<u>Percentage</u>
PFO I	1	2%
PFO II	4	8%
Violent Crime	11	21%
Assault	5	10%
Burglary	14	27%
Larceny	3	6%
Other Property	6	12%
Other	8	14%
TOTALS	52	100%

Outside of some violent crimes and burglary, the type of offense did not seem to have any impact on a victim's decision to attend a conference.

#### E. Benefits to or Effects on Local Practices

A speedier case processing time was an expected benefit from the implementation of the test design. Our analysis based on very preliminary statistics indicated that this benefit may have been achieved. From the sample of test cases with a disposition, it was determined that a case was disposed of in an average of 80 days once the case was arraigned. By comparison, a sample of 144 control cases with a disposition showed that those control cases took an average of 97.8 days to dispose of after arraignment. Other time lapse figures are in Table II-16.

TABLE II-16

TIME LAPSES FOR THE STRUCTURED PLEA PROJECT  
(test cases only)

Average Time Between Arraignment and Conference	36.6 Days
Average Time Between Conference and Disposition (if no settlement is reached)	41.9 Days

#### F. Summary

One of the primary objectives of the test design was the generation of enough conferences so that the structured plea negotiation conference concept could be effectively studied. Because the design as implemented did not produce the expected 400 conferences, it is difficult to say whether or not such a radical concept like structured plea bargaining can be evaluated with only 282 conferences. However, there are some things that can be said for the implementation. From the 282 conferences, the project attained

a settlement rate of 44%. Therefore, because of both the low number of conferences and the small settlement rate, it was clear that the conference procedure was not used by the participants to negotiate cases. Explanations for this lack of utilization are subjective and they are outlined in Chapter IV.

Victim attendance was a critical factor for the test. Some explanations for our victim attendance rate of 18% are also included in Chapter IV.

**END**