



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute
1980 Volume VI: The Present as History

Administering Criminal Justice

Curriculum Unit 80.06.11
by Burt Saxon

I. Introduction

“Burlington Angry With Sentence” read the headline to a June 20, 1980 *New Haven Register* story. The story noted that Ron W. Neuhausser, 17, pleaded guilty to first degree manslaughter and second degree kidnapping in the death of 12-year old Katherine K. Ebersold and received a 10 to 20-year prison sentence. This sentence meant Neuhausser would be eligible for parole in seven years.

Despite the fact that the Neuhausser family was “one of the oldest and most respected families in town,” most of Burlington seemed to think the sentence was too light. Mrs. Elaine Langley’s view was representative:

It was a premeditated murder and anyone who does that shouldn’t get away with only seven years. The lawyers said he was emotionally disturbed at the time he killed her, and that was the reason he got the lesser charges. Who isn’t emotionally disturbed when they kill someone? I don’t think people who are in their right mind go around killing other people.

Originally Neuhausser had been charged with murder and first degree kidnapping. But Neuhausser and his lawyer were promised reduced charges in return for a guilty plea. In short Neuhausser had engaged in a common though extralegal process called plea-bargaining. Neuhausser saved the state both time and money. In return the state gave Neuhausser a lighter sentence.

Did this transaction represent “justice”? The *New Haven Register* said “no” emphatically. A *Register* editorial the same day decried the sentence. The *Register* was especially critical of the state’s attorney’s failure to try for a murder conviction because psychiatrists believed that Neuhausser was emotionally disturbed at the time of the crime. The newspaper put it this way:

Psychiatry has come a long way since Sigmund Freud, but it is still more an art than a science. What Neuhausser’s state of mind was on that date is more a matter of judgment, on the part of the examining psychiatrists, than any accurate measurement of mental condition, thought processes, brain waves or whatever. All too frequently, as any seasoned court observer can readily attest, psychiatrists who studied the same subject are worlds apart in the judgments and conclusions they reach.

Is mental agitation a mitigating circumstance in a murder case? Is the failure to control one’s feelings an acceptable

excuse for violence? Mrs. Ebersold raises a good point when she observes “anyone who murders has got to be emotionally disturbed.” At what point do we begin to hold individuals responsible for control over their outbursts?

The “temporary insanity” defense, by the way, seemed to be having a heyday June 20, 1980. An article in the sports pages reported that the killer of ex-major league baseball star Lyman Bostock was to be released from a mental institution one year after he shot Bostock. The reason? The killer was no longer insane. The reaction of sports columnists throughout the country made the *Register* editorial on Nsuhausser seem mild.

The conservative critique of plea-bargaining and the insanity defense that is, of light sentences in general enjoys great popularity today. The critique goes something like this: “Yes, we realize achieving justice involves balancing the rights of the accused against the rights of society. But plea-bargaining by its very nature subverts justice by guaranteeing that the criminal will get a lighter sentence than he deserves. What about the rights of citizens to be safe? What about retribution? When you add plea-bargaining to the insanity defense and Supreme Court decisions such as *Miranda* and *Escobedo*, how can the result be anything but a skyrocketing crime rate?”

Radical critics of plea-bargaining respond with arguments like these: “The whole criminal justice system is stacked against the poor. The poor can’t afford bail or expensive lawyers. In many cases poor people plead guilty to crimes they didn’t commit simply to get out of jail sooner. The poor deserve prompt fair trials. Better yet, the poor deserve an assault on poverty and racism. Only social and economic changes will lower the crime rate and eliminate the need for plea-bargaining.

On this issue, the so-called vital center of the American political spectrum is almost invisible. But it is powerful. Writing for the Supreme Court majority in *Santobello v. New York* (1971) Chief Justice Warren Burger maintained

The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called “plea-bargaining,” is an essential component of the administration of justice. Properly administered, it is to be encouraged.

— *Current History* (July/August, 1976, p. 12)

Historian David Rothman would not be surprised by Burger’s statement. In *Conscience and Convenience* (1980) he notes that plea-bargaining developed not to serve society *nor* to protect the rights of the accused, but rather to make life easier for the administrators of the criminal justice system. In this respect, Rothman follows sociologist Roberto Michels, who sees all organizations as subject to an “iron law of oligarchy.” No matter what the organization’s original purpose, its main purpose eventually becomes self-preservation. It would not surprise Michels that the criminal justice system became more concerned with functioning smoothly than with its original purpose—justice.

II. Curriculum Boundaries

By now the reader has no doubt surmised that plea-bargaining is the main focus of this curriculum unit. That is correct. But the unit's focus is somewhat broader. We will be concerned with the administration of criminal justice from arrest to conviction and/or acquittal. The unit will be geared toward advanced students in either American history or sociology. The unit will try to develop inquiry and research skills, rather than to just stress the acquisition of information. To do this, students and teacher together should begin by posing the questions to be answered during the unit. These questions will include:

1. What is plea-bargaining? What are the various types of plea-bargaining?
2. How is plea-bargaining used in the investigative process?
3. What differences are there between plea-bargaining and criminal trials? What are the advantages and disadvantages of each method to society and to the accused?
4. When did plea-bargaining begin in New Haven? When did it replace trials as the most common process of criminal justice? Why did this change occur? Why weren't more courts built? How was the role of plea-bargaining in New Haven both alike and different from its role in other cities?
5. How prevalent is plea-bargaining? What percentage of cases nationwide are settled through plea-bargaining?
6. What are some other aspects of criminal justice administration?
7. What are the advantages and disadvantages of various proposals to reform the criminal justice system?

To answer these questions, students will be requested to use several sources. Some sources, mostly books and articles, will be general and theoretical. These sources will not necessarily contain any specific references to New Haven. Specific information about New Haven's criminal justice system will be obtained from microfilm of the New Haven *Register* and through interviews and documents available from personnel in both Superior Court and the State's Attorney's offices. This research will enable students to answer the fourth question. To answer the third question posed above, a mock trial and a filmstrip on plea-bargaining (*The Justice Game*) will be used.

III. An Example of the Research Process

I plan to participate in the research process for questions two and three with my students. While developing this unit, my own research has focused on question five. My findings and conclusions, based on David Jones' *Crime Without Punishment* have surprised me somewhat. As the title of Jones' book implies, the author believes that the criminal justice system is failing to convict most criminals. Jones is critical of plea-bargaining as it now exists. But as an empirically oriented social scientist, Jones secured data which, I believe, leads to some surprising conclusions. Let's begin by examining a table from the Uniform Crime Reports (see Table 1).

Before presenting this table, Jones tells us that "less than one third of all crimes against the person in 1975 were reported to the police." Roughly 40% of household crimes and of commercial crimes were reported (Jones, p. 27). Combining this with the data in Table 1 we see that only about 15% of all violent crimes and about 10% of property crimes are even cleared by arrest. Think about that for a minute. These statistics are staggering. They tell us that there is a dire need to improve crime reporting and crime solving procedures. Yet critics of the administration of criminal justice focus much of their attention on plea-bargaining. Look, then, at the Uniform Crime Reports on disposition of persons formally charged by the police (see Table 2).

Plea-bargaining, that is, pleading guilty to a reduced *charge*, is relatively rare. It accounts for the result in only about 1% of all violent crimes and about 0.5% of all crimes. Admittedly, many cases may result in *sentence bargaining*, but a careful analysis of the two tables leads to an inescapable conclusion:

For every criminal who gets a light sentence due to pleabargaining, there are at least fifty crimes which aren't reported and at least thirty reported crimes which are not solved.

(figure available in printed form)

(figure available in printed form)

But the skeptics respond, look at Table 2 again. Note that plea-bargaining is most likely to occur in homicides. True, but every crime study has showed that the person committing a so-called crime of passion is actually the person *most* likely to be rehabilitated (Ohlin et al.). Perhaps critics of plea-bargaining, both conservative and radical, should direct their efforts toward defects in criminal justice administration other than plea-bargaining. This may or may not be the conclusion reached by my students as they study plea-bargaining. I simply want to note that my research led me to express reservations about the knee-jerk conservative-liberal position that plea-bargaining is the biggest problem in the criminal justice system.

IV. Objectives

Social studies objectives should integrate content, skills, and affect. Content objectives deal primarily with the acquisition of information. Students need to learn facts about the subject they are studying. Skills objectives deal primarily with learning procedures which can be applied to material other than the subject currently being studied. Affective objectives deal with students' values, feelings, and experiences.

Very few curricula set forth objectives at all three levels and integrate these objectives successfully. Most social studies teachers teach content sometimes successfully but give little attention to the other two areas. The history of social studies education over the last twenty years is the story of attempts to emphasize skills or affect at the expense of content. Inquiry-structure proponents such as Edwin Fenton helped teachers train

their students to think like historians, sociologists, etc., but the inquiry-structure method neglects the affective domain. Sid Simon's values clarification method glorifies affect but ignores content and skills.

As a curriculum developer, I have two assumptions: 1) The three types of objectives are equally important and 2) The three types of objectives must be integrated for the curriculum to be truly effective. Of course, I haven't always practiced what I preach. As a beginning teacher, I tended to overemphasize affective objectives at the expense of skills objectives. Lately I've been trying not only to integrate the three levels, but to develop a model for doing so.

In this unit the content objectives focus on questions such as:

1. What are the different types of plea-bargaining?
2. How prevalent is plea-bargaining?
3. When and how did plea-bargaining develop in New Haven and throughout the country?
4. What happens during a trial?

Skills objectives for this unit are concerned with both data collection and data interpretation. When collecting data on plea-bargaining in New Haven, students will learn how to use primary sources such as court records and newspaper articles. Interviewing skills will also be stressed. Data interpretation will be the second skills objective of the unit. Some of these skills will be specific. For example, students will be provided graphs and tables on plea-bargaining throughout the country and asked, "What do these graphs tell us about the incidence of plea-bargaining? Some data, however, will be historical. This data will be used to develop broader interpretive skills. We will ask questions such as "What factors led to the increase in plea-bargaining during the twentieth century?"

Affective objectives are closely related to both content and skills objectives. Asking students to evaluate a procedure such as plea-bargaining and to make suggestions for public policy requires that students think and feel how plea-bargaining affects both the accused and the rest of society.

V. Lesson Plans

This will be a fifteen-day unit. Activities will include the following:

DAY 1

Finding out what students already know about plea-bargaining is one of the best ways to introduce the unit. Certain basic terms will be discussed, questions will be posed, and the structure of the unit outlined. Rosett and Cressey's *Justice by Consent* will be assigned.

DAY 2

A discussion of *Justice by Consent* will help students understand both plea-bargaining and its role in the investigative process. Students will be prepared for a visit to Superior Court. They will be asked to write down any questions raised by their observations.

DAY 3

Students will watch actual plea-bargaining take place in Superior Court. If your class is large, advance arrangements will have to be made.

DAY 4

Carefully discuss the visit to Superior Court. Prepare students for the following day's visit to the Yale library, Superior Court, and the States' Attorney's office.

DAY 5

At the Court and the States' Attorney's office, have some students investigate records while others interview officials including a judge, if possible. Again advance preparations must be made.

Then take the class to the Yale library. Use the microfilms of *The New Haven Register* to find out more about the development of plea-bargaining in New Haven.

DAY 6

After interpreting and discussing the data you have collected, you will have covered questions one, two and four posed at the beginning of this unit. Assign chapter 5 in *Crime Without Punishment*

DAY 7

Chapter 5 in *Crime Without Punishment* is titled "The Disposition of Criminal Cases in the United States Historically." Use it to discuss factors leading to the increase in pleabargaining in the United States. A handout containing a representative quote from *Conscience and Convenience* would also be useful here. Assign chapters 3 and 4 in *Crime Without Punishment* .

DAY 8

Interpreting Jones' tables, particularly those provided in this unit, will enable students to answer the questions "How prevalent is plea-bargaining? Is plea-bargaining really the biggest problem of criminal justice administration?" In addition, prepare questions for tomorrow's speaker(s).

DAY 9

This is an ideal time to have a panel consisting of a defense lawyer, an assistant states' attorney and/or a police department official. Again this must be planned well in advance.

DAYS 10-14

This activity is the culmination of the unit. It involves the use of one of the best commercially-available filmstrips Warren Schloat's *The Justice Game* (available from Lee High School History Department). The filmstrip is a four part depiction of the arrest and subsequent plea-bargain of a young man named Paul Martin.

The Justice Game can be used to compare the results of plea-bargaining with the results of a criminal trial. The first day you should show Parts 1 and 2 of the filmstrip, which introduce the case and the evidence against Martin. On the second day you should assign parts for the trial (prosecutor, public defender, defendant, witnesses, bailiff/clerk and at least six jurors). You should also verse students in trial procedure—see part VII of this unit. The trial will take the next two days. The final day you should show Part 3 of *The Justice Game* and compare the results of your trial with Martin’s actual plea-bargain. Assign for reading “Reforming the Criminal Justice System” a symposium in *Current History* (July, 1976).

DAY 15

Conclude the unit by discussing and evaluating proposals to reform the criminal justice system. You may want to show part 4 of *The Justice Game*, which is a good discussion on plea-bargaining by a judge and two lawyers.

VI. Bibliography

This bibliography is for both students and teachers, since the unit is designed for advanced students.

Books

1. Jones, David. *Crime Without Punishment* (New York: D.C. Heath, 1979).
This statistical analysis of the criminal justice system was discussed in Part III of this Unit.
2. Rosett, Arthur and Cressey, Donald. *Justice by Consent* (New York: Lippincott, 1976).
This is a well-written case-study of plea-bargaining by two social scientists. The book is jargon free, although the analysis is sophisticated.
3. Rothman, David. *Conscience and Convenience* (Boston: Little, Brown, 1980).
This book is concerned with much more than plea-bargaining. Rothman asks, “Were the Progressives really reformers or merely conservatives with reformers’ rhetoric?”
4. Silberman, Charles. *Criminal Violence, Criminal Justice* (New York: Random House, 1978).
This is the best recent study of the criminal justice system. It could be assigned as a book report to be completed at the end of the unit or it could be broken up into several shorter reading assignments to be used throughout the unit.

Articles

1. "Criminal Justice: A View From the Bottom" by J.D. Casper in *Intellect* (Feb. 1975).
2. "Criminal Justice in America" a Symposium in *Current History* (June, 1976).
3. "Reforming the Criminal Justice System" A Symposium in *Current History* (July 1976).
4. D.R. Cressey, "Crime, Science and Bureaucratic Rule" in *Center Magazine* (July 1978).
5. "Toward the Humanization of the Criminal Justice System" A Symposium in *The Humanist* (Sept. 1978).

Filmstrip

The Justice Game (Warren Schloat Productions, 1972).

VIII. Resources

The following pages should be used as handouts to prepare students for the mock trial.

Trial Procedure

1. Explanation of charge by the judge
2. Plea by the defendant
3. Jury selection each lawyer may excuse a certain number of jurors without cause (peremptory challenges)
4. Prosecution opening statement
5. Prosecution witnesses
 - a. prosecution questions
 - b. defense cross examination
6. Defense opening statement
7. Defense witnesses
 - a. defense questions
 - b. prosecution cross examination

8. Recall of witnesses
9. Prosecution closing statement
10. Defense closing statement
11. Judge's charge to jury
12. Jury reaches verdict
13. Judge sets sentence if guilty

Grounds for Objection!

1. Irrelevance "That question has nothing to do with this case."
2. Giving an opinion "The witness should stick to the facts."
3. Hearsay "In general, the Court doesn't care what someone else told you."
4. Leading the witness "The lawyer is putting words into the witness' mouth."
5. Badgering the witness "The lawyer is bothering the witness."

If the judge allows an objection, he says " *sustained* ." If he rejects the objection, he says "overruled."

During a young man's trial for resisting arrest, the following questions are asked. Tell when you would object if you were the other lawyer and *on what grounds* .

1. Tell the Court what happened on the night of February 15th.
2. Is your mother on welfare?
3. Do you expect the jury to believe a stupid, long-haired freak like you?
4. Did Pete hit the policeman?
5. So the policeman told him to get out of the car and Pete hit him, right?
6. What did your friend John tell you about Pete?
7. Whose fault was the fight?
8. Have you ever been arrested before?

<https://teachersinstitute.yale.edu>

©2019 by the Yale-New Haven Teachers Institute, Yale University

For terms of use visit <https://teachersinstitute.yale.edu/terms>