DEMYSTIFYING THE PLEA BARGAINING PROCESS

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ISSUE

How does the San Mateo County District Attorney's office provide information to victims of crime and the general public regarding the plea bargaining process, and can this be improved?

SUMMARY

Plea bargaining occurs when a District Attorney and defense counsel negotiate the charges to which a defendant will plead guilty, and the defendant consents to the deal. Plea bargaining eliminates the need for a jury trial. The negotiation in San Mateo County occurs in the presence of a judge who sets the sentence. Plea bargaining has become an integral part of the modern legal system, given the large number of criminal cases filed relative to the number of available judges. In San Mateo County, about 95.5 percent of the criminal cases filed are resolved through plea bargains.

Each county develops its own plea bargaining process. San Mateo County does not publish information about how this County's plea bargaining process works. However, this is not unusual since the Grand Jury was unable to find such publicly available documentation from any county.[1]

Members of the public may not be familiar with San Mateo County's plea bargaining process and may only learn about it as a result of participating in a criminal case as a crime victim, witness, or defendant. The Grand Jury believes that transparency in the administration of justice is essential for maintaining public trust in the integrity of the justice system. This is particularly important because if victims do not understand the plea bargaining process, their right to be heard may be lost.

California voters approved a proposition to amend the California Constitution in 2008 to provide a "bill of rights" for victims of crime, known as Marsy's Law.[2] Marsy's Law grants victims the right to be notified of certain developments regarding their case, to confer with the prosecuting agency, and to be heard at certain proceedings at their request. If victims are not aware of these rights and do not understand how plea bargaining works, they are unlikely to be able to exercise these rights.

The mission of the San Mateo County District Attorney's Office includes "dissemination of public information about law enforcement."[3] In order to assist victims in vindicating their rights,

[1] The Grand Jury confirmed through interviews that San Mateo County does not have information available for the public to learn about the plea bargaining process. The Grand Jury conducted online searches and research at a local law library to find information about the plea bargaining process in other jurisdictions.
[2] California Constitution, Article 1, Section 28(b) (Marsy's Law), https://oag.ca.gov/victimservices/content/bill_of_rights. Discussed further below.
[3] San Mateo County District Attorney's Office, "What Does the District Attorney Do?", https://da.smcgov.org/

the Grand Jury recommends that the Victim Services Division of the District Attorney's Office revise the form letter it initially sends to victims to provide more information about their rights and how to exercise them. The Grand Jury also recommends that the San Mateo County District Attorney's Office develop a summary of the County's plea bargaining procedure and make it available to the public in a brochure and on its website. To demystify that step for the public, the Grand Jury also recommends that the District Attorney's Office develop and publish on its website a video showing a simulation of the portion of the plea bargaining process that takes place in the judge's chambers.

BACKGROUND

The United States Constitution assures all people who become defendants in the legal system due process, a speedy and public trial, an impartial jury, the right to face witnesses, and freedom from self-incrimination.[4] When defendants agree to plea bargains, they relinquish these rights.[5]

San Mateo County's Plea Bargaining Process

In San Mateo County, there are about 14,000 misdemeanor cases and 2,000 felony cases filed each year.[6] With only 32 judges and commissioners in the County and other limited resources for trials,[7] it would be impossible to adjudicate all of these cases through trial. In order to handle large numbers of cases, the County developed a plea bargaining system that allows most cases to be settled without a trial. Under this system, only 0.5 percent of cases go to trial, approximately 4 percent of cases are dismissed, and the remaining 95.5 percent are resolved through plea bargaining.[8]

There is no description of the plea bargaining process available from the San Mateo County District Attorney's Office. However, the Grand Jury developed its own summary of the process based on interviews conducted with the District Attorney's Office personnel (see Appendices A and B). The process involves: a) a plea offer made by the prosecutor that states the charges, b) a proposed sentence by the judge based on those charges, and c) a negotiation between the prosecutor and the defense attorney that may result in a change in charges and sentence. The preceding part of the process takes place in judges' chambers (their offices behind the courtroom) without a court reporter and outside of public view. Once an agreement is reached between the prosecutor and defense attorney, the defense attorney prepares a plea form with the terms of the proposed bargain, and discusses the terms with the defendant. If the defendant accepts the terms, the plea bargain is recorded in open court in front of a "plea taking judge," who might not be the same judge that was present during the negotiation, by a "plea taking

[4] US Constitution Amendments V and VI (https://www.law.cornell.edu/constitution).
[5] Loftus E. Becker, Jr., "Plea Bargaining and the Supreme Court", 21 Loy. L.A. L. Rev. 757 (1988), http://digitalcommons.lmu.edu/llr/vol21/iss3/1.
[6] Grand Jury interviews.
[7] San Mateo County Superior Court of California, "Directory of Judges", https://www.sanmateocourt.org/general_info/judges/directory.php.
[8] Grand Jury interviews.

DDA" (Deputy District Attorney), who might not be the same Deputy District Attorney who negotiated the bargain, and the case is closed.

A Brief History of Plea Bargaining

Plea bargains were almost unheard of prior to the Civil War. Only in its aftermath, as city populations and crimes multiplied, did courts start documenting exchanges that resemble the modern practice.[9] In 1970, when the United States Supreme Court considered the constitutionality of plea bargaining, it could refer to nearly a century of experience with plea bargaining and the growing problems of the criminal process.[10] In *Brady v. United States,*[11] the Court concluded that plea bargaining in general was constitutional, and the practice has continued to be a part of the American legal system.[12]

While the Supreme Court validated the concept of plea bargaining that was already in practice across the country, it did not stipulate the procedure to be followed. Each county has developed different local practices, within frameworks that have been developed through various court cases and restrictions pursuant to applicable federal and state law. The structure developed in San Mateo County evolved in the 1980's and has remained relatively unchanged since that time.[13]

DISCUSSION

Criminal justice in colonial America was the business of laypeople, where victims functioned as prosecutors and defendants often represented themselves.[14] In contrast, the modern criminal justice system is a system of pleas, dominated by knowledgeable professionals who are repeat players in the system.[15] Professional insiders come to know the intricacies of the system, its technical rules, and largely run the show. To outsiders, the system is opaque, cloaked in jargon, ridden with technicalities, and sometimes hidden behind closed doors.[16]

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[9] Dylan Walsh, "Why U.S. Criminal Courts Are So Dependent on Plea Bargaining," The Atlantic, May 2, 2017 https://www.theatlantic.com/politics/archive/2017/05/plea-bargaining-courts-prosecutors/524112/.

[10] Brady v. United States, 397 U.S. 742 (1970); see also Walsh, "Why U.S. Criminal Courts Are So Dependent on Plea Bargaining."

[11] 397 U.S. 742 (1970)

[12] Ibid.

[13] Grand Jury interviews.

[14] Stephanos Bibas, "Transparency and Participation in Criminal Procedure" *New York University Law Review* 81, No. 3 (2006): 912.

[15] Ibid.

[16] Ibid at 913. See also Laurie L. Levenson, "Peeking Behind the Plea Bargaining Process," *Loyola Law School of Los Angeles* (2012): 3-4. (Plea bargains are the "lifeblood of the American criminal justice system"; "[P]rosecutors and defense counsel engage in a process . . . resembling horse trading. The focus is frequently on expeditiously resolving cases while defendants, especially those least educated and sophisticated, often get left in the fog.") (citing Robert E. Scott and William J. Stuntz, "Plea Bargaining as Contract" *Yale Law Journal* (1992): 1909, 1912.) See also *Missouri v. Frye*, 566 U.S. 134 (2012): 144 (Justice Kennedy notes that "the reality [is] that criminal justice today is, for the most part, a system of pleas, not a system of trials…. It is not some adjunct to the criminal justice system; it is the criminal justice system.").

The Grand Jury asked representatives of the San Mateo County District Attorney's office whether they knew of any resources available to the public to help them understand the County's plea bargaining process. They were not aware of any such resources. All agreed that information about how plea bargaining works should be more widely available, that transparency into the plea bargaining process is in the public interest, and they could not think of any reason that this information should not be made public.[17]

Understanding the plea bargaining process is important because misunderstandings can result in frustration. For example, while Marsy's Law[18] guarantees victims a right to be heard before a defendant is sentenced, in misdemeanor plea bargaining cases sentencing often takes place simultaneously with the defendant's acceptance of the bargain, and as a result, the victim's oral impact statement at the same hearing may have little or no effect on sentencing.[19] A victim cognizant of the plea bargaining process would know that a written statement submitted to the District Attorney's Office before development of a plea offer would be more likely to influence charging and sentencing in the case.

Victims' Rights in the Context of Plea Bargaining

On November 4, 2008, California voters approved Proposition 9,[20] known as "Marsy's Law," which amended the California Constitution to provide a bill of rights for victims of crime.[21] Marsy's Law includes safeguards in the criminal justice system to protect those rights and ensure that crime victims are treated with respect and dignity as a matter of "high public importance."[22]

Marsy's Law is named after Marsy, a 21-year-old college senior at U.C. Santa Barbara who was preparing to pursue a career in special education for handicapped children.[23] She was murdered on November 30, 1983, by a former boyfriend who lured her to his home by threatening to kill himself. Instead, he used a shotgun to end her life.[24] Following her murderer's arrest, Marsy's mother was shocked to see him at a supermarket. He had been released on bail with no notice to Marsy's family and without any opportunity for them to be heard.[25] The law recognizes that

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[17] Grand Jury interviews. See also Bibas, supra note 13, at 911, 916-917 (Advocating for transparency and describing costs of "great gulf" dividing insiders and outsiders in the criminal justice system: "Identifying this tension is the first step toward resolving it."; "If opacity frustrates and misleads outsiders, transparency and fuller disclosure can alleviate these problems."; "Greater transparency and participation would also facilitate the monitoring of insiders by checking their self-interests and agency costs."). See generally Mirko Bagaric, Julie Clarke, and William Rininger, "Plea Bargaining: From Patent Unfairness to Transparent Justice" *Missouri Law Review* (2019) (Arguing that dysfunction in the plea bargaining process, in which the prosecutor has stronger negotiating power, is one of the main reasons the United States is in the midst of a mass incarceration crisis.)

[18] California Constitution, Article 1, Section 28(b) (Marsy's Law), https://oag.ca.gov/victimservices/content/bill_of_rights.

[19] Grand Jury interviews.

[20] State of California Department of Justice, "Victims' Bill of Rights Act of 2008: Marsy's Law", https://oag.ca.gov/victimservices/marsys_law.

[21] California Constitution, Article I, Section 28.

[22] Ibid, Section 28(a)(2).

[23] State of California Department of Justice, "Text of Proposed Laws, Proposition 9, Section 2.2", https://vig.cdn.sos.ca.gov/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop9.

[24] Ibid, Sections 2(2) and 2(7).

[25] Ibid, Section 2(7).

Marsy's family's situation was not unique and that thousands of other crime victims had similar experiences caused by "the failure of our criminal justice system to notify them of their rights, failure to give them notice of important hearings in the prosecutions of their criminal wrongdoers, [and] failure to provide them with an opportunity to speak and participate…."[26]

Marsy's Law grants specific rights to victims[27] in the context of the criminal justice process and plea bargaining.[28] These include the right to:[29]

- Reasonable notice of and to reasonably confer with the prosecuting agency, **upon request**, regarding, the arrest of the defendant if known by the prosecutor, the charges filed . . . and, **upon request**, to be notified of and informed before any pretrial disposition of the case [emphasis added].[30]

- Reasonable notice of all public proceedings . . . and the right to be present at all such proceedings.[31]

- Be heard, **upon request**, at any proceedings . . . involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue [emphasis added].[32]

- Be informed, **upon request**, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant . . . [emphasis added].[33]

Marsy's Law also includes a number of provisions intended to ensure that victims are informed of these rights, requiring that, among other things, law enforcement agencies provide victims with "Marsy's Rights"[34] cards (see Appendix C), information about a website called "Marsy's Page,"[35] and a toll-free telephone number to enable a crime victim to contact a local victims assistance office.[36] San Mateo County's Victim Services Division may be reached by e-mail at victimservices@smcgov.org or by telephone at (650) 599-7479.[37]

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[26] Ibid, Section 2(9).
[27] A "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. California Constitution, Article I, Section 28(e).
[28] Ibid, Section 28(b) (sometimes referred to as "Marsy's Rights").
[29] This is not a complete list of Marsy's Rights, just those pertinent to the plea bargaining process.
[30] Ibid, Section 28(b)(6).
[31] Ibid, Section 28(b)(7).
[32] Ibid, Section 28(b)(8).
[33] Ibid, Section 28(b)(12).
[34] Appendix C, Available in English at https://oag.ca.gov/sites/all/files/agweb/pdfs/victimservices/marsy_pocket_en_res.pdf and in several other languages at https://oag.ca.gov/victimservices/marsy.
[35] See https://oag.ca.gov/victimservices/marsys_law.
[36] Local resources can be found through http://victims.ca.gov/victims/localhelp.aspx.
[37] San Mateo County Victim Services does not appear to have a toll-free number. See https://da.smcgov.org/victim-services.

The Role of Victims and Victim Services[38]

Victims have a role to play and a voice in the criminal justice process, though this is often dependent on the victim's level of engagement. An informed and engaged victim is more likely to be able to have an impact on their case.

The San Mateo County District Attorney's Victim Services Division ("Victim Services") tries to reach out to victims early enough in the process to make sure they know they have a voice, and know how to exercise that voice. Victims are encouraged to submit written statements early in the process. These statements may be considered by the prosecutor and the judge in decision-making about the case, and they also become part of the written record of the case for parole purposes. They are an opportunity for the victim to tell the judge and the defendant how the crime impacted them. Victims may also make oral statements. Victim Services will assist victims who wish to make a statement and will help them understand when they should do so.

For the calendar year 2018, Victim Services served about 9,100 victims of crime (including non-charged crimes, with no suspect or no arrest).[39] The current staffing of Victim Services consists of 20 staff member positions, including four vacancies. Victim Services spends more staff time per case working on felony cases because victims of felonies generally have a greater need for victim support, the cases tend to be more complex, and they take longer to resolve. It is estimated that victims make statements in less than five percent of cases, for both felonies and misdemeanors.

Victim Services generally makes three attempts to contact a victim over a period of about three weeks. The first contact is usually by form letter (Appendix D). This letter itself does not contain information about Marsy's Rights, the plea bargaining process, or the criminal justice system. However, a copy of the Marsy's Rights card and a brochure about the Victim Services Division are sent with the letter. The body of the letter provides a phone number for reference and says "Our program may be able to assist you and/or your family with information regarding Victim's Rights, understanding the Criminal Justice System, referring you to community resources, and/or accompanying you to Court." A victim can get in touch with a staff member at Victim Services to get more information. The second attempt to contact a victim is usually by phone, and the third is either a phone call, text, or email.

Victim Services tries to contact victims at or before the defendant's arraignment. An arraignment is usually held two court days after an arrest when the defendant is in custody. If the defendant is "out of custody" where an officer cites someone at a scene and no arrest is made, that person will be given a notice to appear at a specific date, in which case the goal would be to contact the victim before the defendant's appearance. The standard period for this is four to six weeks.

[38] Unless otherwise noted, all of the information contained in this section was obtained through Grand Jury interviews.

[39] This number includes victims to whom a form letter was sent, but who may not have responded to the letter. Approximately 50 percent of the 9,100 were felonies, 40 percent were misdemeanors, and 10 percent were not charged.

When Victim Services first talks to a victim, the victim advocate will usually immediately discuss criminal procedures, how the process works, and how the case might resolve through a plea deal. It is important to convey this information early since misdemeanors may resolve relatively quickly, in less than 60 days. Judges sometimes ask the prosecutor if they had a chance to confer with the victim before resolution of the case. If a victim wishes to be heard, judges will continue a case to allow a victim to speak if the judge is advised that the victim is interested in addressing the court.

Victims who have not had any contact with Victim Services may feel left out of the process, for example regarding charging decisions or pretrial deals. If Victim Services has the opportunity to walk victims through the process, to educate them about their rights and let them know what to expect, victims may feel less frustration. Much of Victim Services' work is about expectations management. According to Victim Services, it would be beneficial if members of the public had some understanding of the process, including plea bargaining, beforehand rather than having to learn all of it quickly during the short, traumatic period when they become a crime victim.

Existing Sources to Learn About Plea Bargaining in San Mateo County

As previously described, there are no publicly available sources that explain the plea bargaining process used in San Mateo County.[40] The Grand Jury performed extensive library and online searches to find documentation about the plea bargaining process from other jurisdictions. While several articles exist on the goals of plea bargaining, the circumstances under which plea bargaining should be conducted, and debates about the merits of plea bargaining, the Grand Jury was unable to find sources that present the specific roles, responsibilities, workflow, and timing of a plea bargaining process. Currently, the "Orientation to Criminal Justice System" section of the website of the San Mateo County District Attorney's Office does not mention the plea bargaining process.[41]

The mission statement of the San Mateo County District Attorney's Office reads, "The mission of the District Attorney's Office is the prosecution of adult and juvenile offenders, to provide services to victims of crime, enforcement of consumer and environmental laws, provision of legal and investigative support to other law enforcement agencies, and **dissemination of public information about law enforcement** [emphasis added]." The Grand Jury therefore recommends: that Victim Services provide more information in its initial form letter to victims about victims' rights to participate in the criminal justice process and how they may exercise those rights; and that the District Attorney publish information about how plea bargaining works in San Mateo County to demystify the process for victims and the general public.

[40] The Grand Jury reviewed the websites of District Attorneys' Offices in other Bay Area counties and found the same deficiency.

[41] San Mateo County District Attorney's Office, "Orientation to Criminal Justice System", https://da.smcgov.org/orientation-criminal-justice-system.

FINDINGS

F1. While the Supreme Court of the United States has validated the constitutionality of plea bargaining, it did not set out the procedure to be followed, and different jurisdictions have developed different processes.

F2. The San Mateo County District Attorney's Office does not provide printed materials or information on its website describing the County's plea bargaining process.

F3. Oral victim statements have less of an impact on charges and sentencing of misdemeanors when they are delivered after the plea bargain is concluded and the sentence decided, while written statements delivered to the District Attorney's Office before the plea bargain is developed are more likely to have an effect on the outcome of the case.

F4. Victims of crime are afforded the right to participate in a meaningful way in the criminal justice process, but they are not likely to be able to exercise their rights if they are not informed of them early enough. The form letter, Marsy's Rights Card, and brochure that the San Mateo County District Attorney's Victim Services Division uses to make initial contact with a victim do not include any timeline or understandable explanation of key procedures. A victim might not know they have a right to make a statement, and if they wanted to make a statement, they would not know when.

F5. The form letter that the San Mateo County District Attorney's Victim Services Division uses to make initial contact with a victim does not include a link to its website.

RECOMMENDATIONS

R1. The San Mateo County District Attorney's Victim Services Division should revise the form letter it initially sends to victims to include:

a. A basic summary of victims' rights, including the right to deliver a statement.
b. A basic description and timeline of early hearings in criminal cases in a manner sufficient to communicate to victims that important rights may be lost if they do not act, including to deliver written impact statements, early enough in the process. (Appendices A and B are not intended for this purpose.)
c. A link to the Victim Services website.

This information should be written in a manner that the general public can easily understand. This recommendation should be implemented by December 31, 2019.

R2. The County District Attorney's office should develop its own explanation of the County's plea bargaining process in a manner that the general public can easily understand (Appendices A and B are not intended for this purpose), and make it available to the public in brochure form and on its website. This explanation should include at least the following: a description of routine court hearings in criminal cases relevant to the plea bargaining process, a timeline of these hearings, a description of the roles and responsibilities of

participants at each of these hearings, and a description of the critical stages where participants, including victims, have a role to play that could influence a case's outcome. A link to this website should be included in the initial form letter that Victim Services sends to victims. This recommendation should be implemented by March 31, 2020.

R3. The San Mateo County District Attorney, using input from Victim Services, should develop and place on the District Attorney's Office's website a video showing a simulation of the portion of the plea bargaining process that takes place in the judge's chambers. As an alternative, the District Attorney's Office could consider using a video such as "Victims of Violence: A Guide to Help Bring Justice" produced by the California Commission on Peace Officer Standards and Training (POST), or some similar video, as a resource to share with victims. This recommendation should be implemented by June 30, 2020.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows:

From the following elected official:

- San Mateo County District Attorney

METHODOLOGY

Documents

- In investigating documentation of the plea bargaining process used in San Mateo County, the Grand Jury sought information from published articles on plea bargaining and reviewed the websites of legal professional organizations and the San Mateo County District Attorney's Office. The bibliography contains a full list of these documents.

Interviews

- The Grand Jury interviewed eight persons, including representatives from the San Mateo County District Attorney's Office, the Victim Services Division of the San Mateo County District Attorney's Office, and the San Mateo County Private Defender Program, who have experience with the plea bargaining process used in San Mateo County from the aspects of prosecution, defense, and advocacy for victims.

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APPENDIX A

San Mateo County Misdemeanor Plea Bargain Process[42]

- In the plea bargaining procedure for misdemeanors, a single Deputy District Attorney who usually has between 18 months to three years of experience in the San Mateo County District Attorney's Office, will be assigned as the "Expediter" for six to eight months, occasionally staying in the position up to 12 months, for all misdemeanor criminal cases in their branch of the county (Northern or Southern). Someone with less than 18 months of experience will only be responsible for plea deals if necessary due to a lack of personnel.

- Generally, plea bargaining proceeds as follows:

    1. Expediters receive at least one week notice of which cases will be on the court calendar. During that week they review materials and prepare for plea negotiations. On a daily basis, each Expediter organizes their information about all the misdemeanor cases that have been filed and are due for a pretrial meeting with the judge the next day. The Expediter identifies what charges the District Attorney's Office will offer, which may differ from charges previously filed by the District Attorney's Office at arraignment. Expediters also make sure that the case has been correctly charged based on the facts and existing evidence.

    2. The following day, the Expediter sits with the judge in a room outside of the courtroom without a court reporter and each defense attorney is brought in for each case. The Expediter states the charges they are offering and the judge then states the sentence he or she would impose for these charges. The defense attorney bargains with the Expediter and the judge revises the sentence depending on the final agreed charges. The Expediter can suggest appropriate sentences, but the judge has sole sentencing authority, subject to law.

    3. Once the plea bargain is agreed to, it is the responsibility of the defense attorney to fill out a plea form setting out the charges and sentencing discussed with the Expediter and the judge and bring this to the defendant to review and decide whether or not to accept.

    4. If the plea bargain is accepted by the defendant, the case will move to a courtroom where a plea taking judge will have a direct conversation with the defendant, called a colloquy, to ascertain that the defendant understands the plea agreement, agrees to waive all further rights to a trial, and accepts the sentence as laid out in the plea form. This plea taking judge also checks the plea form against the electronic notes from the Expediter and the judge who was present in the plea bargaining meeting and then reads the terms of the agreement into the record in open court. This process closes the case. The plea taking DDA present at this point is often not the Expediter due to the number of cases that are processed in parallel on the same day. The plea taking Deputy District Attorney is usually someone from the misdemeanor department who is assigned for this purpose on a given day. If the defendant does not accept the plea bargain, the case will proceed towards trial.

[42] All information in this section was obtained through Grand Jury interviews.

5. The colloquy between the judge and the defendant may take place on the same day as the plea negotiation, depending on circumstances. Also, the defense attorney may request a delay, which happens in about 20-30% of cases, for reasons such as determining immigration consequences of the plea agreement to the defendant. If so, the colloquy for plea taking will be scheduled on the Disposition and Confirmation (referred to as the "Dispo Confirm") Calendar which is held on Friday afternoon of each week.

- Pretrial Conferences during which plea offers are made for the Northern Branch are scheduled as three hour sessions on Monday afternoon, Tuesday afternoon, Thursday morning, and Thursday afternoon each week. The sessions for the Southern Branch are scheduled for Tuesday morning, Wednesday morning, Wednesday afternoon, and Friday morning. The Southern Branch Pretrial Conference sessions average 30-35 cases and sometimes more, perhaps 50-60 cases. The Northern Branch Pretrial Conference sessions are heavier and average 50-65 cases, and sometimes more. From this schedule it can be seen that at the rate of about 30 cases per three-hour session, each plea bargain is completed in about six minutes.

- Domestic violence cases are handled in a similar manner but on a different court calendar, and the Deputy District Attorney who participates in the plea bargaining session is a member of the Domestic Violence Unit. These cases also differ from other misdemeanor cases in that a victim's advocate from the Victim Services Division also attends the plea bargaining session, and the judge and Deputy District Attorney who participate in the plea bargaining discussion are the same as those who take the plea inside the courtroom, on the record.

APPENDIX B

San Mateo County Felony Plea Bargain Process[43]

- The process for "general felonies" is similar to that for misdemeanors except that there may be up to four "rounds" of plea bargaining. General felonies include such crimes as robbery, burglary, and grand theft auto. Defendants with "strike" offenses under California's Three Strikes Law[44] are not eligible for a plea in the first round. The four possible points where a successful plea bargain can resolve a case without a trial are as follows:

    1. After initial arraignment on charges taken from the police report, defendants charged with less serious felonies go to a Superior Court Review where a plea offer is made by the Deputy in Charge, who generally has more than ten years of experience (in the Northern Branch), or an Assistant Deputy in Charge (in the Southern Branch). If accepted by the defendant, the case will be resolved at this time.

        Superior Court Reviews during which plea offers are made for the Northern Branch are scheduled as three hour sessions on Thursday afternoon each week and sessions for the Southern Branch are scheduled for Wednesday afternoons. About 20 to 30 cases are scheduled in each session for the Northern Branch and 10 to 20 are scheduled for the Southern Branch.

        If the case is not resolved in the Superior Court Review, it proceeds to a Preliminary Hearing where the District Attorney's Office shows probable cause followed by a second arraignment on charges based on further investigation that augments the police report that was the basis for the initial arraignment.

    2. The case then proceeds to a Pretrial Conference at which the defendant is provided with a plea offer from the District Attorney's Office including those charged with more serious felonies who did not qualify for a Superior Court Review. A general felony Deputy District Attorney negotiates the plea bargain. Felony Deputy District Attorneys are more experienced (generally more than five years of experience) than Deputy District Attorneys who work on misdemeanors. If accepted by the defendant, the case will be resolved at this time.

    3. If not resolved at the Pretrial Conference, the case goes to a Trial Conference where the same general felony Deputy District Attorney again makes a plea offer to the defendant. This offer may differ from the previous offers due to changes in information supporting the charges. If accepted by the defendant, the case will be resolved at this time.

        If the case is not resolved at the Trial Conference, it will be scheduled for trial in the Trial Department and assigned to a trial judge who is different from the judge who has heard the case from initial arraignment through the Trial Conference.

[43] Unless otherwise noted, all information in this section was obtained through Grand Jury interviews.
[44] California Penal Code 1192.7 and 1192.8

4. Once received by the Trial Department, the trial judge will review the plea bargaining process that has been undertaken and if that judge believes that the two sides are close to a resolution may hold an additional session with the parties to determine whether the case can be resolved without going to trial.

- The Presiding Criminal Judge hears all plea offers for all felonies in the first three rounds described in sections 1, 2 and 3 above so they are familiar with cases where offers have been made in previous rounds.

- The offer by the District Attorney's Office made at any stage of the process may be a reduction of charges to incentivize the defendant to resolve the case without going to trial, however, in some cases the District Attorney's Office may offer that the defendant "plea to the sheet," meaning that the defendant should plead guilty to all of the charges present at that time against the defendant.

- There is another category called vertical felonies which include domestic violence, gang violence, homicide, sexual assault, elder abuse, insurance fraud, and electronic crimes. The steps for vertical felonies are the same as for general felonies except that all steps are carried out by the same felony Deputy District Attorney (but not a general felony Deputy District Attorney) from the respective vertical unit.

- Whereas in misdemeanor cases the defense attorney is responsible for filling out the plea form and filing it with the court, and the prosecutor does not sign or review the plea form, in general felonies and specialized (vertical) felonies, the Deputy District Attorney does review and sign the form.

- As with misdemeanors, the plea taking judge and the plea taking Deputy District Attorney are often not the same persons who were present when the plea offer was made. The plea taking Deputy District Attorney is usually someone from the felony department that is assigned for this purpose on a given day.

APPENDIX C

Marsy's Rights Card

California Attorney General's Office

Contact Name: _____

Phone No.: _____

Police Report / Case No.: _____

Notes: _____

Marsy's Card and Resources

The California Constitution, Article 1, Section 28(b), confers certain rights to victims of crime. Those rights include:

1. **Fairness and Respect** – To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
2. **Protection from the Defendant** – To be reasonably protected from the defendant and persons acting on behalf of the defendant.
3. **Victim Safety Considerations in Setting Bail and Release Conditions** – To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
4. **The Prevention of the Disclosure of Confidential Information** – To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
5. **Refusal to be Interviewed by the Defense** – To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
6. **Conference with the Prosecution and Notice of Pretrial Disposition** – To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
7. **Notice of and Presence at Public Proceedings** – To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post–conviction release proceedings, and to be present at all such proceedings.
8. **Appearance at Court Proceedings and Expression of Views** – To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post–arrest release decision, plea, sentencing, post–conviction release decision, or any proceeding in which a right of the victim is at issue.
9. **Speedy Trial and Prompt Conclusion of the Case** – To a speedy trial and a prompt and final conclusion of the case and any related post–judgment proceedings.
10. **Provision of Information to the Probation Department** – To provide information to a probation department official conducting a pre–sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
11. **Receipt of Pre-Sentence Report** – To receive, upon request, the pre–sentence report when available to the defendant, except for those portions made confidential by law.
12. **Information About Conviction, Sentence, Incarceration, Release, and Escape** – To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
13. **Restitution**
    A. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
    B. Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
    C. All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.
14. **The Prompt Return of Property** – To the prompt return of property when no longer needed as evidence.
15. **Notice of Parole Procedures and Release on Parole** – To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.
16. **Safety of Victim and Public are Factors in Parole Release** – To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
17. **Information About These 16 Rights** – To be informed of the rights enumerated in paragraphs (1) through (16).

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Additional Resources

The Attorney General does not endorse, have any responsibility for, or exercise control over these organizations' and agencies' views, services, and information.

Victim Compensation Board – Can help victims pay for: mental health counseling, funeral costs, loss of income, crime scene cleanup, relocation, medical and dental bills. **1-800-777-9229** *www.victims.ca.gov*

CA Dept. of Corrections and Rehabilitation, OVSRS – Provides information on offender release, restitution, parole conditions and parole hearings when the offender is incarcerated in prison. **1-877-256-6877** *www.cdcr.ca.gov/victim_services*

McGeorge School of Law – Victims of Crime Resource Center - Provides resources for victims by their geographic area along with information on victims' rights. **1-800-Victims** (**1-800-842-8467**) *www.1800victims.org*

National Domestic Violence Hotline – 1-800-799-7233 *www.thehotline.org*

Adult Protective Services County Information – (Elder abuse) 24 hour hotline numbers by county in California. *www.cdss.ca.gov/inforesources/County-APS-Offices*

National Child Abuse Hotline – Treatment and prevention of child abuse. **1-800-422-4453** *www.childhelp.org*

Rape, Abuse & Incest National Network – 1-800-656-4673 *www.rainn.org*

National Human Trafficking Resource Center Hotline – 24-hour hotline: **1-888-373-7888** *www.humantraffickinghotline.org*

The California Relay Service: For speech impaired, deaf or hard-of-hearing callers: Dial 711. TTY/HCO/VCO to Voice for English: 1-800-735-2929 and for Spanish: 1-800-855-3000. Voice to TTY/VCO/HCO for English: 1-800-735-2922 and for Spanish: 1-800-855-3000. Speech to Speech – English and Spanish: 1-800-854-7784.

Attorney General's Victims' Services Unit – Provides local victim/witness information, geographic resource information and appeal status to victims of crime. For more information, call **1-877-433-9069** or visit: *www.oag.ca.gov/victimservices* For local Human Trafficking information, visit: *www.oag.ca.gov/human-trafficking*

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A 'victim' is defined under the California Constitution as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term 'victim' does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim." (Cal. Const., art. I, § 28(e).)

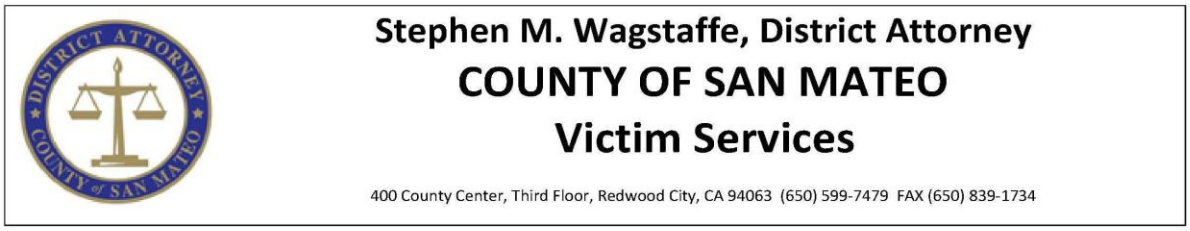
A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the above rights in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request. (Cal. Const., art. I, § 28(c)(1).)

Funding is made possible through the United States Department of Justice, Victims of Crime Act, 2016-VA-GX-0057

VSU Rev 10/2017

APPENDIX D

San Mateo County District Attorney's Office – Victim Services First Contact Form Letter



Stephen M. Wagstaffe, District Attorney
COUNTY OF SAN MATEO
Victim Services

400 County Center, Third Floor, Redwood City, CA 94063 (650) 599-7479 FAX (650) 839-1734

DATE

NAME
ADDRESS
ADDRESS

Dear NAME,

Our office has received a report of a crime that identifies you or a family member as a victim. The Victim Services Division is here to help. Our services include:

- Support and information about your case including: case updates, support in court, education and enforcement of victim's rights;
- Assistance with the California Victim Compensation Board (CalVCB) application which may pay for crime related expenses such as medical costs, therapy/counseling, lost wages and/or funeral expenses;
- Assistance requesting restitution from the defendant after conviction;
- Referrals to community agencies and information to help you locate the right resources to meet your needs.

You have specific rights afforded to you as a victim of crime. Our office takes our responsibility to protect your rights seriously. Please see the attached document outlining your rights.

If you would like more information, please contact me either by phone at (650) 599-ABCD or by email at VICTIM ADVOCATE NAME@smcgov.org to schedule an appointment or to learn more about how we may be able to help you. The Victim Services Division is open Monday through Friday from 8 AM – 5 PM.

Sincerely,

VICTIM ADVOCATE NAME
Victim Advocate
VICTIM ADVOCATE PHONE NUMBER

Enclosures

Our services are free of charge and are provided to all individuals regardless of immigration status, race, religion, sexual orientation or income

Otro lado en Español

Issued: August 8, 2019

Stephen M. Wagstaffe, District Attorney
COUNTY OF SAN MATEO

CHIEF DEPUTY
ALBERT SERRATO

ASSISTANT DISTRICT ATTORNEYS
JAMES WADE
SEAN F. GALLAGHER
SHIN-MEE CHANG

400 COUNTY CENTER, 3RD FLOOR | REDWOOD CITY | CALIFORNIA 94063 | TEL: (650) 363-4636

October 7, 2019

The Honorable Judge Ayoob
San Mateo County Hall of Justice
400 County Center
Redwood City, CA 94063

Dear Honorable Ayoob:

In accordance to Grand Jury Report: "Demystifying the Plea Bargaining Process", please find our responses. Thank you for the opportunity to address these important questions.

Findings

Finding 1. The respondent agrees with the finding.
Finding 2. The respondent agrees with the finding.
Finding 3. The respondent agrees with the finding.
Finding 4. The respondent agrees with the finding.
Finding 5. The respondent agrees with the finding.

Recommendations

Recommendation 1. The District Attorney agrees with the Grand Jury recommendation. The recommendation has not yet been implemented but work on implementation has been started and will be completed within the time frame set forth in the Grand Jury recommendation which is December 31, 2019.

Recommendation 2. The District Attorney agrees with the Grand Jury recommendation. The recommendation has not yet been implemented but discussion on the implementation has been conducted. Implementation will be completed within the time frame set forth in the Grand Jury recommendation which is March 31, 2020.

Recommendation 3. The District Attorney agrees with the Grand Jury recommendation. The recommendation has not yet been implemented but discussion on the implementation has been conducted. Implementation will be completed within the time frame set forth in the Grand Jury recommendation which is June 30, 2020.

Sincerely,

Stephen M. Wagstaffe

STEPHEN M. WAGSTAFFE, DISTRICT ATTORNEY