2 Legal Procedures Used to

WASHINGTON, Oct. 10 — Spiro T. Agnew has resolved the criminal case against him by using two procedures long recognized in the law and long relied upon by both defendants and prosecutors. Those procedures have also been long questioned and criticized, for they are both devices through which defendants avoid the full force of the law.

Mr. Agnew, through his lawyers, negotiated with the prosecutors to arrange that the charges against him and the sentence imposed be as light as possible—a procedure called "plea bargaining" or, as Federal District Judge Walter E. Hoffman put it this morning, "plea negotiations."

Then in court this morning, to a single charge of income tax evasion, Mr. Agnew pleaded "nolo contendere" — a Latin phrase meaning "no contest"—whereby a defendant acquiesces to his conviction and sentencing but does not admit any guilt.

For years defendants have bargained over their pleas. Despite the tradition that this is a nation where guilt is determined through trial by jury, the majority of convictions in the criminal courts are obtained through guilty pleas given after such bargaining.

Far fewer defendants have used the nolo contendere route, but it is a heritage of the English Common Law, first used centuries ago, and lately some highly regarded legal groups have urged that it be used more extensively.

The New York Times/Mike Lien

Attorneys for Vice President Agnew, Martin London, right, and next to him, Jay H. Topkis, leaving Federal Court in Baltimore yesterday.

Legal Impact of Plea

The legal impact of a nolo contendere plea is almost identical to the impact of a guilty plea. The defendant who enters such a plea stands convicted in the same way as the defendant who please guilty. He can be sentenced to as high a penalty as the defendant who pleads guilty. His plea can be used as evidence of his conviction in any proceeding.

Thus, because conviction of a felony is ground for disbarment, Mr. Agnew's nolo contendere plea could be used to expel him from the legal profession.

There is, however, one major distinction between the two pleas. The nolo plea, unlike the guilty plea, may not be introduced in a civil lawsuit as evidence that the person actually committed the offense.

It is this distinction that has prompted many companies charged with antitrust violations to plead nolo contendere rather than guilty.

There is also a difference in the conditions under which the two pleas may be accepted by a judge. To accept a nol contendere plea in jurisdictions where such pleas are allowed, the judge, generally, need know only the charges against the defendant and be convinced that the defendant understands the consequence of the plea and gives it voluntarily.

To accept a guilty plea, the judge must also feel that there is strong evidence of the defendant's guilt.

Controversial Ruling

In neither case, however, in the Federal courts at least, need the defendant say he committed the crime to which he is pleading. In a controversial ruling in 1970—in a case in which a defendant told the court, "I pleaded guilty to second degree because they said there is too much evidence, but I ain't shot no man"—The Supreme Court ruled that a guilty plea may be admissible even where the defendant insists he's innocent.

It is enough, under that ruling, that the judge consider the defendant probably guilty. Not every judge is willing to accept such a plea, of course; the Supreme Court's ruling merely permits him to.

Nolo pleas are currently permitted in the Federal courts and abotu half the states; in a very few states the defendant has a statutory right to enter such a plea, but generally he does not. And in states when nolo pleas are permitted, they are relatively rare.

The reasons lie in part in the traditional view of many prosecutors—and many members of the public as well—that the defendant should be forced to

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publicly admit his guilt (unless, of course, he chooses to go to trial).

"There is almost a mystical quality in the minds of those opposed to nolo pleas," says Yale Kamisar, professor at the University of Michigan Law School.

The tentative draft of the rules of criminal procedure by the National Conference of Commissioners on Uniform State Laws contains a recommendations for expanded use of nolo pleas. It was discussed at the commisioners' meeting this summer and, according to Professor Kamisar, one of the draft's authors, there were "a lot of emotional speeches" about the need for public admissions of guilt.

Wayne La Fave, associate dean of the University of Illinois Law School, explains the opposing rationales thus:

"We think there's a public benefit to having someone stand up and say he's guilty. But there is the argument the other way: Why should we force a person into that, if he says that he'll take his medicine?"

To great extent, the arguments in favor of accepting nolo pleas are similar to those in favor of plea bargaining. The state and the defendant are each saved the expense and risk of trial, a saving, prosecutors and judges contend, that often has several justifications.

For one thing, the courts would not be able to try all the cases in which people are indicted. There are far too many. For another, the state's case may be weak.

Plea bargaining benefits the defendant because he can win concessions from the state in return for saving the state the problem of trying him. If he knows the case against him is fairly strong, he can also avoid the embarrassment and cost a trial could bring.

In several cases in the last few years, the Supreme Court has taken note of the argument in favor of plea bargaining and, generally, has approved the practice.

Associated Press

Attorney General Elliot L. Richardson arriving at Federal Court, Baltimore.

Yet plea bargaining, like nolo contendere, has been greatly criticized, in New York, for example, the courts and prosecutors are being attacked lately for "giving away the courthouse," by offering defendants minimal penalties in return for pleas.

Anothe recurring criticism of plea bargaining had been the secrecy that it usually entails, taking place, as it does, outside the courtroom and hence the public view.

In court today, the Attorney General tried to meet some of the traditional complaints, dealing with the secrecy one, for example, by discussing the negotiations and releasing a 40-page summary of the evidence against Mr. Agnew.

Through a spokesman, he declined to elaborate on his in-court explanation until his news conference tomorrow morning.