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# Behind the Plea: Factors that Shape Plea Bargaining Outcomes

by

Jonathon Chierchio

A Capstone Project Submitted in Partial Fulfillment of the  
Requirements for the Degree of Master of Science in  
Criminal Justice

Department of Criminal Justice  
College of Liberal Arts  
Rochester Institute of Technology  
Rochester, NY  
May 3, 2022

# RIT

## **Master of Science in Criminal Justice Graduate Capstone Approval**

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Graduate Capstone Title: **Behind the Plea: Factors that  
Shape Plea Bargaining Outcomes**

Graduate Capstone Advisors: **Dr. John McCluskey &  
Dr. Jason Scott**

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Working Paper 1: Plea Bargaining and Prosecutorial Discretion

Jonathon Chierchio

Criminal Justice Capstone

## **I. Introduction**

In the United States, more than 90 percent of all settled criminal cases are resolved due to plea bargaining (Alkon, 2017; Devers, 2011). Plea bargaining is a process in which a defendant pleads guilty to the charges they were arrested on in exchange for a lighter sentence. Plea bargaining is an incredibly effective tool for increasing efficiency in the criminal justice system, as without it, judges and lawyers would be flooded with caseloads, rendering them incapable of doing their jobs effectively. Plea bargaining can benefit defendants. As a result of plea bargaining, defendants may receive shorter sentences and have less significant crimes on their criminal record. Plea bargaining can also help defendants avoid serving jail time altogether in many cases, allowing defendants to continue with their day to day lives. Plea bargaining, while having its upsides, can also have several negative impacts on defendants. During the plea bargaining process, the prosecutor serves as the sole adjudicator in cases during which they coerce defendants (Langer, 2006). Current practices give the prosecutor near executive authority when it comes to the charging and handling of plea negotiations for each defendant, creating room for abuse. Abuses on behalf of the prosecutor in the plea bargaining process can serve to undermine the American criminal justice system and can violate defendant's constitutional rights to a fair trial. Very little legislation exists which regulates the power of the prosecutor in the plea bargaining process in both substantive and constitutional law (Crespo, 2018). This lack of regulation makes plea bargaining a process ripe for abuse and corruption. This paper will provide an overview of current plea bargaining practices and the impact prosecutors can have on outcomes through various abuses of power, as well as discuss different regulations that exist which impact plea bargaining.

## II. Current Plea Bargaining Practices

A 2011 research summary found that in 2003, there were 75,573 total cases which were settled in federal district courts (Devers, 2011). Of that total, approximately 95 percent of those cases were settled by a guilty plea. More updated numbers from the Vera Institute of Justice indicate that “97 percent [of cases were resolved by plea] in large urban state courts in 2009 and 90 percent in federal courts in 2014,” (Subramanian et al., 2020). Scholars estimate that anywhere from 90-95 percent of all criminal cases are settled by plea bargaining in the United States (Alkon, 2017; Devers, 2011). In most cases, plea bargains themselves take place behind closed doors away from the public, and are incredibly informal in nature (Subramanian et al., 2020). There is also little to zero documentation required of the actors in plea bargains to ensure fair practice, and final plea deals are also rarely ever recorded (Subramanian et al., 2020).

### *The Role of the Prosecutor*

After the arrest of a defendant, it is the prosecutor who oversees every step of the criminal process until sentencing, where the judge theoretically takes over. This means the prosecutor oversees deciding whether to charge each defendant and which crimes to charge them with, on top of extending plea deals themselves (Greth, 2018). Should a prosecutor decline to charge a defendant, the case is dropped, and the defendant is free to go. This is known as dismissal. Should the prosecutor choose to charge a defendant, they must then choose which crimes to charge that defendant with. Prosecutors have the option of engaging in vertical or horizontal charging, or a combination of both. Vertical charging is when a prosecutor will charge a defendant with the same crime, but with different degrees (Greth, 2018). Horizontal charging is when a prosecutor charges a defendant with multiple different crimes for the same offense.

There is large room for abuse in the charging process. These abuses will be covered in a later section.

After charges have been assigned to the defendant, it is then the prosecutor who must decide whether they will offer a plea deal. Should the prosecutor decide to do this, they then have full control of the characteristics of the deal, whether it be reducing time served, altering charges, or a combination of both options. There is typically a standard plea offer for each different type of offense, but prosecutors are free to modify deals in whatever way they see fit (Greth, 2018). There are a multitude of ways in which the offering of pleas can be coercive in nature to defendants, or for prosecutors to use their biases to harm certain groups. These methods of abuse will also be covered in a later section.

### *Legal and Extralegal Factors*

There are several legal factors that prosecutors take into consideration when offering pleas, including the seriousness of the current offense, the defendant's criminal history, and the likelihood a defendant will plead guilty (Devers, 2011). These same legal characteristics all impact the defendant's likelihood to accept a plea, as well as the type of lawyer the defendant has and the defendant's pre-trial detention status (Devers, 2011; Kellough and Wortley, 2002).

Certain extralegal characteristics were also found to have an impact on the likelihood of a defendant to receive a reduced plea charge. There is a consistent relationship between race and plea offers. Black defendants are more likely to receive worse plea offers than white defendants (Devers, 2011; Greenberg, 2021). Greenberg (2021) posits that within the United States there is a "racialized presumption of guilt" which has emerged and significantly impacts

outcomes for Black men. She identifies three aspects of the negotiating process which allow this presumption to manifest: the speed of the negotiation process, the unawareness of prosecutors' and defense attorneys' own implicit biases, and prosecutorial discretion in deciding outcomes (Greenberg, 2021). Both legal and extralegal factors have been found to have profound impacts on the plea bargaining process. These factors will be explored further in a future paper.

### *Outcomes*

Plea bargains are expected to yield more favorable outcomes for defendants than going to trial. One study reviewed by the Vera Institute found that “the odds of incarceration were 2.7 times greater for people tried by a jury than for those who pled guilty,” (Subramanian et al., 2020). The same study also found that sentence lengths for those who went to trial were 57 percent longer than those who pled guilty. Many studies have found supporting evidence that plea bargaining does indeed give defendants a “discount,” however there is significant variation in the level of discount offered. On one end of the spectrum, Marylanders who pled guilty received a 350 percent discount compared to those who went to trial, and on the other end of the spectrum, Washington State residents received no discount in five of the twelve measured crimes (Subramanian et al., 2020). Overall, the literature has found that accepting a plea bargain does indeed provide a “bargain” when it comes to sentencing, the severity of which depends on the offense and jurisdiction.

There is little research which studies the innocent people who have falsely pled guilty to crimes they did not commit. One reason for this is because it is so difficult to find accurate measures of innocence, leading researchers to use defendant interviews and exoneration data

however both of these methods have major flaws (Subramanian et al., 2020). However, researchers still hypothesize that false guilty pleas are likely more common than false confessions due to the added incentives that come with accepting a plea. Despite several large limitations, current research indicates that a large number of innocent people do falsely plead guilty each year. A study reviewed by the Vera Institute showed that of 166 interviewed attorneys, 148 stated that they had at least one client accept a plea despite maintaining their innocence entirely (Subramanian et al., 2020).

### **III. Potential Abuses**

Prosecutors have discretion at every point in time when dealing with defendants. With this discretion comes power, and that power has potential to be abused. Prosecutors also have a wide range of tools at their disposal, creating even more leverage for them in plea negotiations (Subramanian et al., 2020). One article claims that the United States falls into a unilateral system of justice in which the prosecutor acts as the sole adjudicator when they coerce the defendant during the plea bargaining process (Langer, 2006). Examples of this would be when prosecutors overcharge defendants, include unfair trial sentences, and when prosecutors make plea offers in weak cases (Langer, 2006).

#### *Overcharging*

With their power to charge, prosecutors also have the ability to overcharge defendants for their crimes to coerce them to take a plea deal (Greth, 2018). Greth (2018) defines overcharging as “when a prosecutor charges the defendant with a greater crime than the prosecutor could realistically prove.” By doing this, a prosecutor exerts a tremendous amount of

pressure onto the defendant to accept a plea deal, even if it is unfavorable. Prosecutors may engage in this practice to avoid going to trial, or to try and guarantee a “win” for themselves (Greth, 2018). Racial disparities are also present in charging, indicating that extralegal factors also have an influence on charging decisions as well.

### *Hard Bargaining Tactics*

Prosecutors also have the ability to engage in what Alkon (2017) terms “hard bargaining tactics,” which are coercive tactics prosecutors can use to persuade defendants to accept pleas. Prosecutors may use hard bargaining tactics for a number of reasons, including to manage caseload, have political motivations, or simply because they lack experience and want to win cases (Alkon, 2017). Examples of hard bargaining tactics include exploding offers, threats to add enhancements/additional charges, take-it-or-leave-it offers, and threats to seek the death penalty. Exploding offers are offers in which the prosecutor will set a time limit on an offer in order to pressure the defendant into pleading guilty (Alkon, 2017). While this practice is not always coercive and does have appropriate uses, when used solely for the purpose of achieving a conviction, it can be a very dangerous tool. Prosecutors will also threaten to add enhancements or additional charges onto a defendant’s case if the defendant rejects their first offer (Alkon, 2017). Enhancements can be added onto some crimes and often mandate a period of incarceration, and additional charges have the ability to add significantly more prison time. By threatening to add these to a defendant’s current case, defendants can be scared into accepting a deal, and innocent people can end up behind bars. Take-it-or-leave-it offers are named fittingly, as they are defined as when a prosecutor offers a plea deal with no room for negotiation whatsoever (Alkon, 2017). Without being able to negotiate, defendants are forced to either

accept a deal or be forced to go to trial which could lead to a much lengthier sentence. All of these tactics are incredibly coercive in nature and can lead defendants to plead guilty to unfavorable deals or, even worse, to crimes they never committed.

### *The Death Penalty and Plea Bargaining*

Prosecutors have the option of threatening to seek the death penalty during plea negotiations in certain states. This is perhaps the most coercive tactic a prosecutor can use to try and achieve a conviction, as the defendant has their literal life on the line. Both prosecutors and defense attorneys alike found that “the option to file a death notice puts the prosecution in a unique position of strength and affects the defense’s decision regarding a plea in ways that a potential life or life without parole sentence does not,” (Ehrhard, 2009). Studies have found that the ability to pursue the death penalty has a significant effect on plea bargaining (Subramanian et al., 2020). One study conducted in New York State after the reinstatement of the death penalty in 1995 found that defendants in murder cases were 25 percent more likely to accept pleas than before the death penalty was reinstated (Subramanian et al., 2020). In Ehrhard’s 2009 study, she found that more than half of the prosecutors she interviewed admitted to using the death penalty as a bargaining chip in negotiations. One prosecutor even stated “most of what we do in the criminal justice system is about the exertion of proper leverage,” (Ehrhard, 2009).

#### **IV. Regulations**

With the incredibly vast majority of cases being resolved by plea bargaining, one may assume there would be many regulations or laws governing the process. This is not the case. In fact, there is practically no legislation that mentions plea bargaining in both substantive and

constitutional criminal law (Crespo, 2018). However, certain laws that may not explicitly mention plea bargaining still have an impact on the plea bargaining process. For example, the American Bar Association's Model Rule 3.8 has been found to have a statistically significant impact on the rate of plea bargaining (Fletcher, 2019). Two court cases, *Lafler v. Cooper* and *Missouri v. Frye*, helped to establish new precedents that defense attorneys must inform defendants of and recommend defendants accept reasonable plea offers (Work, 2014). There also exists a "hidden third body of law" which establishes the legal frameworks of prosecutorial power, being the sub-constitutional state law of criminal procedure (Crespo, 2018). This section will explore these regulations and their impact on prosecutorial discretion and the plea bargaining process.

### *Model Rule 3.8*

The American Bar Association's Model Rule 3.8, specifically amendments (g) and (h), have to do with the prosecutorial handling of exculpatory evidence (Fletcher, 2019). Exculpatory evidence is evidence that is favorable to the defendant in a trial and can often dissuade prosecutors from offering plea deals in favor of dismissing these weak cases. While the Brady Rule establishes that prosecutors must disclose any "material exculpatory evidence" deemed useful to a defendant, this phrasing still allows prosecutors to use evidence to their advantage (Fletcher, 2019). Model Rule 3.8 attempts to address this by addressing the ethical handling of exculpatory evidence and "compels the disclosure of any evidence, even after conviction (Fletcher, 2019). The amendments also make the prosecutor disclose exculpatory evidence whenever it is discovered, even if the case does not go to trial. In many states, prosecutors are not required to release exculpatory evidence in cases that do not go to trial, so this evidence is oftentimes never discussed in plea negotiations (Fletcher, 2019). Fletcher's 2019 study sought to

examine the impact Model Rule 3.8 had on the rate of plea bargaining in states that adopted amendments (g) and (h). The study assessed 17 total states, ten which adopted the amendments to the rule and seven which had not. The study found a statistically significant decrease (13.4%,  $R^2 = 0.15$ ) on the rate of plea bargaining in the states which have adopted the amendments (Fletcher, 2019). This indicates that prosecutors since prosecutors are no longer able to withhold exculpatory evidence during plea negotiations, prosecutors are more likely to simply dismiss weak cases rather than try to secure additional convictions to plea agreements.

*Lafler v. Cooper & Missouri v. Frye*

In 2011, the Supreme Court handed down two rulings on the same day which greatly impacted the plea bargaining process. In *Lafler v. Cooper*, repeat offender Anthony Cooper was charged with multiple crimes and expressed his willingness to accept a plea deal (Work, 2014). His defense attorney encouraged him not to accept the deal, stating that he was confident the state would not be able to establish Cooper's guilt of the crimes he was accused. When the case went to trial, Cooper was found guilty and sentenced to a mandatory minimum 185 to 360 months imprisonment (Work, 2014). The deal the prosecutor offered was 51 to 85 months imprisonment. Lafler appealed his case, stating that he would have accepted the deal if not for the ineffective counsel of his attorney.

In *Missouri v. Frye*, Galin Frye was offered two different plea deals by a prosecutor. However, neither of these deals were communicated to Frye by his attorney. Frye was arrested yet again for the same crime of driving with a revoked license two days before his preliminary hearing, two days after the plea offers expired (Work, 2014). Frye later pleaded guilty without

accepting any plea offer and was sentenced to 3 years imprisonment. One of the offers the prosecutor had initially offered was a reduction from a felony to a misdemeanor and a recommendation of only 90 days imprisonment (Work, 2014). Work appealed his case, stating that had he been made aware of the initial plea offers, he would have accepted the 90 day offer and that this failure amounts to ineffective counsel.

The Supreme Court ruled in favor of both Cooper and Frye, establishing important new precedents in the plea bargaining process (Work, 2014). To be exact, “The Court’s holdings in these cases make clear that prejudice arising from counsel’s deficient performance extends beyond acceptance of a guilty plea based on misinformation concerning consequences of a plea,” (Work, 2014). These cases also establish new legal precedents in the plea bargaining process. As a result of *Missouri v. Frye*, a precedent that defense attorneys must inform defendants of all plea offers available to them has been established. *Lafler v. Cooper* established a new precedent that defense attorneys must assess plea offers “relative merits,” so as to properly inform defendants of offers and ensure any acceptance or denial of an offer is voluntary (Work, 2014).

#### *Sub-Constitutional State Laws of Criminal Procedure*

Crespo (2018) posits that while there exists no substantive or constitutional laws to govern the prosecutor in the plea bargaining process, there is a hidden third body of law known as the sub-constitutional state law of criminal procedure which regulates and establishes the mechanisms the prosecutor has at their disposal. Crespo divides these laws into three categories: piling on, overreaching, and sliding down.

The law of joinder and the law of severance are two laws under the piling on category, which establish a prosecutor's charging power and a judge's power to sever charges from a case (Crespo, 2018). Joinder is used to represent the number of charges a prosecutor can file in a case. For example, if a state grants prosecutors unlimited joinder, they can file as many applicable charges to the defendant as they would like (Crespo, 2018). On the other end of the spectrum, if a state grants a prosecutor no joinder, they are only permitted to file one charge per case. This law is applied differently across the United States, with most states granting prosecutors "similar offense" joinder, the power to file charges similar to the offense (Crespo, 2018). 43 total states would fall closer to an unlimited joinder model than a nonjoinder model. This grants prosecutors a significant amount of power in the charging process. The law of severance also provides a spectrum of power for judges to sever charges from cases, from having no severance mechanism at all to allowing judges to strike all charges from a case (Crespo, 2018).

## **V. Conclusion**

Plea bargaining remains a largely unregulated process, despite some legislation which has impacted the process in a variety of ways. Still, this low amount of regulation allows for a plethora of abuses on the behalf of prosecutors. Different types of hard bargaining tactics such as exploding offers and take-it-or-leave-it offers are extremely coercive in nature and can cause defendants to accept bad plea offers (Alkon, 2017). Threatening to pursue the death penalty can also cause a significant increase in the likelihood of a defendant to accept a guilty plea (Ehrhard, 2009; Subramanian et al., 2020). Several legal and extralegal factors can influence the prosecutor's charging and plea bargaining decisions, including the severity of the crime, the criminal history of the defendant, and the race of the defendant (Devers, 2011; Greenberg, 2021;

Subramanian et al., 2020). Despite these potentials for abuse, it does not mean that they occur very often. Outcome statistics have shown that by accepting plea bargains, defendants receive an average of a 57 percent decrease in their sentence compared to defendants who choose to go to trial (Subramanian et al., 2020). Plea bargaining is a largely necessary part of the United States' current criminal justice system, but it also contains a large room for abuse at this moment in time.

## Works Cited

- Alkon, C. (2017). Hard Bargaining in Plea Bargaining: When do Prosecutors Cross the Line? Retrieved January 31, 2022, from <https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1859&context=facscholar>
- Crespo, A. M. (2018). The Hidden Law Of Plea Bargaining. *Columbia Law Review*, 118. Retrieved January 31, 2022, from <https://www-jstor-org.ezproxy.rit.edu/stable/pdf/26434609.pdf>.
- Devers, L. (2011). Plea and charge bargaining - Bureau of Justice Assistance. Bureau of Justice Assistance. Retrieved December February 2, 2022, from <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>.
- Ehrhard, S. (2009). *Pleading guilty for life: An exploration of plea bargaining in the face of death* (Order No. 3387064). Available from Criminal Justice Database. (305097761). <https://ezproxy.rit.edu/login?url=https://www-proquest-com.ezproxy.rit.edu/docview/305097761?accountid=108>
- Fletcher, A. (2019). The Effect of Prosecutorial Control of Exculpatory Evidence on Plea Bargaining. Retrieved January 31, 2022 from [https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/43802/LRA2019\\_Fletcher.pdf?sequence=1&isAllowed=y](https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/43802/LRA2019_Fletcher.pdf?sequence=1&isAllowed=y).
- Greenberg, E. E. (2021). Unshackling Plea Bargaining From Racial Bias. *Journal of Criminal Law & Criminology*, 111(1), 93-144.

<https://ezproxy.rit.edu/login?url=https://www.proquest.com/scholarly-journals/unshackling-plea-bargaining-racial-bias/docview/2528247713/se-2?accountid=108>

Greth, W. (2018). *Prosecutorial Discretion: Charging & Plea Bargaining* (Unpublished master's thesis). University at Albany, State University at New York. Retrieved January 31, 2022 from

[https://scholarsarchive.library.albany.edu/cgi/viewcontent.cgi?article=1016&context=honorscollege\\_cj](https://scholarsarchive.library.albany.edu/cgi/viewcontent.cgi?article=1016&context=honorscollege_cj)

Kellough, G., & Wortley, S. (2002). Remand For Plea: Bail Decisions and Plea Bargaining as Commensurate Decisions. *The British Journal of Criminology*, 42(1), 186–210.

<http://www.jstor.org/stable/23638767>

Langer, M. (2006). Rethinking Plea Bargaining: The Practice and Reform of Prosecutorial Adjudication in American Criminal Procedure. *American Journal of Criminal Law*, 33(3), 223-299. [https://ezproxy.rit.edu/login?url=https://www-proquest-](https://ezproxy.rit.edu/login?url=https://www-proquest-com.ezproxy.rit.edu/docview/206263055?accountid=108)

[com.ezproxy.rit.edu/docview/206263055?accountid=108](https://ezproxy.rit.edu/docview/206263055?accountid=108)

Subramanian, R., Digard, L., Washington, M., & Sorage, S. (2020). *In The Shadows: A Review of the Research on Plea Bargaining*. Vera Institute of Justice. Retrieved February 17, 2022, from <https://www.vera.org/downloads/publications/in-the-shadows-plea-bargaining.pdf>

Work, M. (2014). Creating Constitutional Procedure: Frye, Lafler, and Plea Bargaining Reform. *Journal of Criminal Law & Criminology*, 104(2), 457-487.

<https://ezproxy.rit.edu/login?url=https://www.proquest.com/scholarly-journals/creating-constitutional-procedure-frye-lafler/docview/1526947633/se-2?accountid=108>

Working Paper 2: Legal and Extralegal Factors in Plea Bargaining

Jonathon Chierchio

Criminal Justice Capstone

## **I. Introduction**

Prosecutors are handed an incredible amount of discretion to use in their day-to-day practices. Since the charging and plea bargaining processes are dependent on this discretion, there is much variability in the charges and sentences which are handed out to defendants. This variability can be explained through the legal and extralegal factors which prosecutors use to make their decision. Legal factors are the factors in cases which are directly related to the criminal justice system, such as the severity of the crime in a case, the defendant's criminal history, the detention status of the defendant, as well as several others (Devers, 2011). Extralegal factors are the factors in cases which are not related to the criminal justice system, such as a defendant's age, race, gender, and socioeconomic status (Devers, 2011). Prosecutors are not obligated to consider extralegal factors when issuing charges or plea offers, but the vast majority of them do, whether it be explicitly or implicitly (Greth, 2018). Implicit bias regarding a defendant's demographics can influence a prosecutor's decision making process without them even realizing, which in turn helps create disparities in charging, plea bargaining, and sentencing for particular groups of defendants (Greenberg, 2021; Lu, 2007). This paper will provide an overview of the legal and extralegal factors which influence prosecutors' decision-making process in charging and plea bargaining, as well as discuss the role of implicit bias in a prosecutor's decision making process and how implicit bias contributes to certain disparities found in the United States criminal justice system.

## **II. Legal Factors**

Naturally, prosecutors consider the legal factors involved in every case they handle when considering both the initial charge and any plea offers they extend. Prosecutors will consider a

variety of factors, but the factors that have the largest impact on their decision-making process are the severity of the crime, the defendant's criminal history, and a defendant's pre-trial detention status (Devers, 2011). Certain legal characteristics, particularly the severity of the crime and a defendant's criminal history, greatly influence a defendant's likelihood to plead guilty due to the uncertainty in outcomes should a chronic or serious offender choose to go to trial (Devers, 2011). Other legal characteristics, such as the type of legal counsel a defendant has, can have an impact on the plea deals a defendant receives. One study which focused on 166 different prosecutors in Kentucky, Tennessee, and Virginia found that of the total number of convictions these prosecutors obtained from 1981-1984 which were secured through plea bargaining (15,522), 59% involved public defenders and 41% involved private attorneys (Champion, 1989). In cases in which the charges were dropped, 93% of defendants had private attorneys and just 7% had public defenders (Champion, 1989). Other research suggests that private defense attorneys and public defenders seek plea bargains at the same rate (McKenzie, 2015). This shows that private attorneys are more likely to obtain favorable results for their client (dropped charges, better pleas, etc.), whereas those with a public defender will likely have to settle with some sort of plea deal.

### *Crime Severity & Criminal History*

Two of the most important factors which prosecutors consider in charging and plea bargaining are the severity of the crime the defendant is being charged with and the defendant's criminal history (Devers, 2011). One study which examines the impacts of legal and extralegal factors on pleas and sentencing in drunk driving cases unsurprisingly found that the greatest factor in both plea and sentence severity was the severity of the incident (Meyer & Gray, 1997).

Other research done on domestic violence cases to examine the impacts legal and extralegal factors had on charging decisions revealed that the severity of injury to the victim and the defendant's prior criminal record were the most important factors prosecutors considered (Schmidt & Steury, 1989). In fact, most research in felony courts has reached the same conclusion that the severity of the crime is the single most important factors which impact sentence severity (Meyer & Gray, 1997). Other research relating to charge severity has revealed that when defendants are charged with more severe crimes, they are less likely to plead guilty, however more serious charges are associated with greater likelihoods of charge reductions (Subramanian et al., 2020). Studies conducted on the relationship between a defendant's criminal history and plea bargaining outcomes found that defendants with more substantial criminal histories are more likely to receive harsher plea deals for certain charges, and other research found that defendants with substantial criminal histories are more likely to be offered pleas with incarceration included than defendants without criminal history (Subramanian et al., 2020).

A study assessing private defense attorney's and public defender's motivations for plea bargaining revealed that the legal factors of a case matter significantly more to public defenders than for private defense attorneys (McKenzie, 2015). When seeking plea deals, public defenders were found to consider their defendant's criminal history as the most important factor, whereas private attorneys were found to consider their defendant's trial tax as the most important factor (McKenzie, 2015). When accepting pleas, private attorneys had no particular factor which mattered more than any other, but public attorneys considered the type of crime to be the most important factor (McKenzie, 2015).

### *Strength of Evidence*

The strength of the evidence in a case is also an important factor for prosecutors and defense attorneys alike in the plea-bargaining process (Redlich et al., 2016). Prosecutors have been found to become less willing to engage in plea bargaining when the probability of conviction is higher, whereas defense attorneys become more willing to plea bargain (Redlich et al., 2016). Defense attorneys also reported that they do not consider extralegal factors in their decision to plea bargain and only consider legal factors (e.g., the discount a defendant will get by accepting a plea offer instead of going to trial) (Redlich et al., 2016). One study which asked 166 prosecutors revealed that 38% of respondents would increase the harshness of a plea if the evidence was in their favor, while 82% of respondents would decrease the harshness of a plea if the evidence were weaker (Subramanian et al., 2020).

In a 2016 study, Redlich et al. assess the “shadow of trial” model, which claims that decisions to offer, accept, and reject pleas are based on the perceived trial outcome for a given case (Redlich et al., 2016). Since the strength of the evidence is often the driving factor in convictions at trial, the authors hypothesize that this also must apply to guilty pleas (Redlich et al., 2016). Using a sample of 1585 different legal actors (378 prosecutors, 835 defense attorneys, and 372 judges), the authors conducted a survey in which they were asked about a plea-bargaining scenario with 16 different combinations of evidence to which participants were randomly assigned, as well as 31 legal fact files (e.g., Additional Evidence, Confession Statement, Defendant’s Race, Alibi, etc.). Participants then answered a series of questions about the previous scenario. Results of the study show that the fact file checked first most often was Additional Evidence at 21.9%, the next highest being Defendant’s Prior Record at 19.4% (Redlich et al.,

2016). It was found that defense attorneys consider a wider range of factors in plea decision-making scenarios than prosecutors, and defense attorneys also viewed more files relating to Non-Evidentiary Factors and Defendant Characteristics (Redlich et al., 2016). Confession evidence also significantly increases the likelihood of a defendant pleading guilty. While this is not surprising, it was found that more than 97% of defendants who confessed to the police pled guilty but did not receive as good of discounts (Subramanian et al., 2020).

### *Pre-Trial Detention Status*

The pre-trial detention status of a defendant is also an important factor in a prosecutor's charging and plea-bargaining decisions, as well as a defendant's likelihood to plead guilty (Kellough & Wortley, 2002). A 2002 study in Canada sought to examine different factors which influence the likelihood of pre-trial detention as well as if those held in pre-trial detention are more likely to plead guilty than those who are released before trial (Kellough & Wortley, 2002). The authors also sought to examine whether prosecutors were more likely to drop charges for those not held in pre-trial detention. The results of their study clearly show that the chance of coercing a guilty plea from a defendant is greatly enhanced if the defendant is held pre-trial, and law enforcement is much more likely to drop charges for defendants that are not held pre-trial (Kellough & Wortley, 2002). While controlling for all other factors. The authors found those who are held in pre-trial detention are 2.5 times as likely to plead guilty than those who are not (Kellough & Wortley, 2002). Another study in 2018 further reinforced the negative impact pre-trial detention can have on defendants, finding that defendants who were detained were 46% more likely to plead guilty (Subramanian et al., 2020).

Some defendants who were held in pre-trial detention explained their reasoning for pleading guilty to the authors. A portion of them stated that the denial of bail left them with few other options, while others thought of the denial of bail as an equivalent to a guilty sentence at trial, so they pleaded guilty to receive lower punishment (Kellough & Wortley, 2002). Overall, most defendants thought that fighting their charges at trial was a waste of time and it was easier to plead guilty to move on with their lives (Kellough & Wortley, 2002). These findings are consistent with other research on pre-trial detention. A 2012 study found that defendants who were detained reached case dispositions much faster than those who weren't, largely because defendants were pleading guilty to get out of jail (Subramanian et al., 2020). There are multiple other studies which all reinforce the finding that pre-trial detention results in increased negative outcomes for defendants.

### **III. Extralegal Factors**

Extralegal factors also play a pivotal role in legal actors' decision-making processes in both charging and plea bargaining. Extralegal factors can work in a defendant's favor and earn them favorable outcomes, but they can also work against the defendant, even though many extralegal factors, particularly demographics, are not controllable by the defendant. As stated earlier, extralegal factors can have an impact on prosecutors' decision-making without them even knowing due to implicit bias (Greth, 2018). The race, age, and gender of a defendant all have an impact on what charge(s) and plea offer(s) the defendant may receive and can even impact sentencing (Johnson, 2003). A defendant's socioeconomic status can also have an impact on criminal justice outcomes. As previously stated, by not being able to afford private counsel,

defendants are more likely not have their cases dropped and plead guilty to charges (McKenzie, 2015).

### *Race*

The relationship between the race of a defendant and the criminal justice system has been found to have the most consistent findings in outcomes of all extralegal factors (Devers, 2011). A considerable amount of literature exists which examines the relationship between race and criminal justice outcomes, at all stages of the criminal justice process. Greenberg (2021) posits that racial bias is ever present in the plea-bargaining process, and that black people cannot possibly hope to have the same experience as a white person in plea negotiations. Research on the relationship between race and charging shows found that black people are less likely to receive charge reductions than white people, and other research found that black people are less likely to receive as reduced sentence due to prosecutorial discretion during plea bargaining than white people (Devers, 2011). In Kellough and Wortley's (2002) previously mentioned study, they found that a disproportionate number of black defendants were detained pre-trial (35.5%) than defendant's from other racial background (23.4%). Meyer and Gray (1997) found that in their study of how legal and extralegal factors influence pleas and sentences of drunk drivers that white people were twice as likely to not plead guilty than black people. This is different than findings in most other research which suggests black people are less likely to plead guilty because white people are offered better deals and have more faith in a system "in which bargains are struck in the dark," (Meyer & Gray, 1997).

Greenberg's (2021) article discusses the perpetuation of racial bias in the plea-bargaining process. Greenberg explains that *Brady vs. Maryland* was a pivotal point in plea bargaining as it

ensured that defendants could not be legally coerced into accepting pleas, however Greenberg posits that the line between coercion and voluntarily pleading guilty is blurry, and not applied in a “racially-neutral way,” (Greenberg, 2021). Another study conducted in 2003 sought to examine racial disparities across different modes of conviction, including non-negotiated and negotiated pleas (Johnson, 2003). The author posited that there would likely be very little prosecutorial discretion used in non-negotiated pleas, whereas negotiated pleas would have a high level of discretion applied (Johnson, 2003). The results of this study showed that in negotiated pleas (which the author hypothesized as having the highest amount of prosecutorial discretion), black people have 24% worse odds of receiving a downward departure than white people (Johnson, 2003). Miller’s (2020) study of Iowa prison system and its racial disparities revealed that in certain counties, prosecutors may be abusing their discretion to disproportionately convict black people of more serious crimes. Miller describes these counties as having a “complete intersection of race and class which has increased the majority-whiter community’s tolerance for selective prosecution of African American defendants for more serious offenses (Miller, 2020).

### *Age*

The age of a defendant can also have a rather significant impact on the charges and plea offers that defendant receives. Johnson’s previously mentioned study which examined racial disparities across modes of conviction also found a relationship between age and sentence (Johnson, 2003). In his study, Johnson found that a 65-year-old offender would have 71% greater odds of receiving a downward departure than a 20-year-old offender (Johnson, 2003). This also applies to upward departures. Age was found to have a “significant negative effect” on the likelihood of receiving an upward departure (Johnson, 2003). These findings are consistent with

other research, which also found younger offenders to be less likely to receive a reduced charge (Devers, 2011). Kellough & Wortley's (2002) analysis of the impact of pre-trial detention on plea bargaining and sentencing found that younger people are more likely to be detained (30.3%) compared to older people (24.3%). This is not a very big difference, and other research on the impact of age in plea bargaining remains inconclusive overall (Devers, 2011; Shermer & Johnson, 2010).

### *Gender*

Research on the impact of gender in the charging, negotiating of pleas, and sentencing of defendants largely suggests males are more susceptible to harsher treatment. In Kellough and Wortley's (2002) study, male defendants were much more likely to be detained (29.5%) than female defendants (14.9%). As previously mentioned, pre-trial detention status significantly impacts case outcomes. By detaining males at nearly twice the rate as females, the system is practically ensuring higher conviction rates for men. Females were also found to have 63% greater odds at receiving a downward departure than males and males were found to have 31% greater odds at receiving an upward departure than female defendants (Johnson, 2003). Another study by Johnson which examined federal prosecutorial decision-making reinforced these findings, with male offenders being roughly 0.68 times as likely as female offenders to receive a charge reduction (Shermer & Johnson, 2010). In Schmidt and Steury's 1989 study which examined relevant factors in domestic violence cases, only male on female violence was included in their definition of domestic violence (Schmidt & Steury, 1989). This blatant disregard of female offenders is a great limitation of this study and is also indicative of the role implicit bias can play in criminal justice environments.

#### **IV. Implicit Bias**

Implicit bias can be used to partially explain the impacts of extralegal factors on charging and plea-bargaining outcomes. Greenberg posits that implicit bias is the main reason why racial bias is perpetuated in modern plea bargaining practices (Greenberg, 2021). Greenberg also points to three specific factors which explain the perpetuation of this bias: the speed of the negotiation process, the attorneys ignorance of their biases, and the attorneys discretion in deciding outcomes (Greenberg, 2021). This claim of attorneys being ignorant to their biases is supported in Barone's (2013) dissertation which examined female prosecutorial decision-making. In this dissertation, respondents claimed that they don't consider any extralegal factors when determining charges and plea offers (Barone, 2013). This is not a reasonable claim to make, as social research indicates that everyone has implicit biases which help influence decision-making (Greenberg, 2021). Implicit biases can cause prosecutors to charge certain groups of people disproportionately, as is the case with young, black, and male offenders. Greenberg claims that prosecutors are likely to offer black defendants less favorable plea offers due to these implicit biases (Greenberg, 2021).

Other research on the racial disparities found in federal sentencing revealed that unconscious racial bias exists within a federal context as well. One attorney, when discussing with another attorney about wanting to drop a gun charge against a defendant stated "He is a rural guy who grew up on a farm. The gun he had with him was a rifle. He is a good ol' boy, and all the good ol' boys have rifles, and it's not like he was a gun-toting drug dealer," (Lu, 2007). That defendant was in fact a gun-toting drug dealer, but the race of the defendant influenced the attorney's decision-making process. Implicit bias is also perpetuated through racially-neutral laws

which disproportionately affect specific races of people (Lu, 2007). For example, the sentencing ratio for crack-to-cocaine is 100-1, but 85% of people charged with offenses involving crack are black (Lu, 2007). It is nearly impossible to detect racial bias, so if attempts to reduce the impacts of implicit bias are to be made, widespread education and sensitivity training must take place (Lu, 2007). Greth's (2018) thesis examines whether prosecutors are aware of the concept of implicit bias and how it may impact their decision-making process. While every respondent was familiar with the concept of implicit bias, none of the respondents thought it made any difference in their decision-making process, with one respondent claiming more implicit bias is likely to be found in a defense attorney's office. (Greth, 2018).

## **V. Conclusion**

Defendants with more substantial criminal histories are more likely to get worse plea offers from prosecutors, and defendants who are charged with more severe charges are less likely to plead guilty (Subramanian et al., 2020). The strength of the evidence in each case is perhaps the largest legal factor prosecutors consider when negotiating plea offers, with many prosecutors reducing charges in cases where the evidence is weak and becoming less willing to negotiate when evidence is stronger (Redlich et al., 2016; Subramanian et al., 2020). The pre-trial detention status of a defendant largely influences the likelihood of them pleading guilty and not having their case dropped by prosecution (Kellough & Wortley, 2002). Extralegal factors such as the race, age, and gender of a defendant also have impacts on prosecutorial decision-making, causing the system to disproportionately charge and convict young, black men. The race of a defendant has a significant impact on the likelihood of receiving both upward and downward

dismissals (Johnson, 2003). The perpetuation of racial bias is present in the United States' criminal justice system today primarily due to the implicit bias of the legal actors involved (Greenberg, 2021). Implicit bias education and sensitivity training would be beneficial in reducing the impact of implicit bias on decision making processes (Lu, 2007). Overall, a multitude of factors play a role in determining charging and plea bargaining outcomes for defendants, both legal and extralegal.

## Works Cited

- Barone, P. A. (2013). Plea bargaining: The lived experience of female prosecutorial discretion and decision-making (Order No. AAI3553906). Available from Social Science Premium Collection. (1520342673; 201416291).  
<https://ezproxy.rit.edu/login?url=https://www.proquest.com/dissertations-theses/plea-bargaining-lived-experience-female/docview/1520342673/se-2?accountid=108>
- Champion, D. J. (1989). Private counsels and public defenders: A look at weak cases, prior records, and leniency in plea bargaining. *Journal of Criminal Justice*, 17(4), 253.  
<https://ezproxy.rit.edu/login?url=https://www.proquest.com/scholarly-journals/private-counsels-public-defenders-look-at-weak/docview/237263923/se-2?accountid=108>
- Devers, L. (2011). Plea and charge bargaining - Bureau of Justice Assistance. Bureau of Justice Assistance. Retrieved December February 2, 2022, from  
<https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>.
- Greenberg, E. E. (2021). Unshackling Plea Bargaining From Racial Bias. *Journal of Criminal Law & Criminology*, 111(1), 93-144.  
<https://ezproxy.rit.edu/login?url=https://www.proquest.com/scholarly-journals/unshackling-plea-bargaining-racial-bias/docview/2528247713/se-2?accountid=108>

Greth, W. (2018). *Prosecutorial Discretion: Charging & Plea Bargaining* (Unpublished master's thesis). University at Albany, State University at New York. Retrieved January 31, 2022 from [https://scholarsarchive.library.albany.edu/cgi/viewcontent.cgi?article=1016&context=honorscollege\\_cj](https://scholarsarchive.library.albany.edu/cgi/viewcontent.cgi?article=1016&context=honorscollege_cj)

Johnson, B. D. (2003). Racial And Ethnic Disparities In Sentencing Departures Across Modes Of Conviction\*. *Criminology*, 41(2), 449-489. <http://dx.doi.org/10.1111/j.1745-9125.2003.tb00994.x>

Kellough, G., & Wortley, S. (2002). Remand For Plea: Bail Decisions and Plea Bargaining as Commensurate Decisions. *The British Journal of Criminology*, 42(1), 186–210. <http://www.jstor.org/stable/23638767>

McKenzie, R. L. (2015). Motivational factors to plea bargain in georgia: Public versus private attorneys (Order No. 3732847). Available from ProQuest Dissertations & Theses Global; Social Science Premium Collection. (1735405569). <https://ezproxy.rit.edu/login?url=https://www.proquest.com/dissertations-theses/motivational-factors-plea-bargain-georgia-public/docview/1735405569/se-2?accountid=108>

Meyer, J. a., & Gray, T. (1997). Drunk drivers in the courts: Legal and extra-legal factors affecting pleas and sentences. *Journal of Criminal Justice*, 25(2), 155-163. <https://ezproxy.rit.edu/login?url=https://www-proquest-com.ezproxy.rit.edu/scholarly->

[journals/drunk-drivers-courts-legal-extra-factors/docview/237265500/se-2?accountid=108](https://ezproxy.rit.edu/login?url=https://www.proquest.com/scholarly-journals/drunk-drivers-courts-legal-extra-factors/docview/237265500/se-2?accountid=108)

Miller, D. W. (2020). Discrimination, discretion, and iowa's packed prisons. *Iowa Law Review*, 105(2), 901-946.

<https://ezproxy.rit.edu/login?url=https://www.proquest.com/scholarly-journals/discrimination-discretion-iowas-packed-prisons/docview/2381617625/se-2?accountid=108>

Redlich, A. D., Bushway, S. D., & Norris, R. J. (2016). Plea decision-making by attorneys and judges. *Journal of Experimental Criminology*, 12(4), 537-561.

<http://dx.doi.org.ezproxy.rit.edu/10.1007/s11292-016-9264-0>

Shermer, L., & Johnson, B. D. (2010). Criminal Prosecutions: Examining Prosecutorial Discretion and Charge Reductions in U.S. Federal District Courts. *Justice Quarterly*, 27(3), 394-430.

Retrieved January 31, 2022, from <https://heinonline-org.ezproxy.rit.edu/HOL/Page?lname=Shermer&handle=hein.journals/jquart27&collection=&page=394&collection=journals#>

Subramanian, R., Digard, L., Washington, M., & Sorage, S. (2020, September). *In The Shadows: A*

*Review of the Research on Plea Bargaining*. Vera Institute of Justice. Retrieved February 17, 2022, from <https://www.vera.org/downloads/publications/in-the-shadows-plea-bargaining.pdf>

Working Paper 3: Types of Defense and Their Impact on Plea Bargaining

Jonathon Chierchio

Criminal Justice Capstone

## **I. Introduction**

In each criminal case, defendants have the right to an attorney. Defendants either hire private attorneys or in instances where they cannot afford one, they can have one appointed to them by their respective county/state. Indigent defendants are defendants who are arrested and do not have the necessary resources to hire a private attorney. Indigent defense systems are systems set up by counties and states to provide indigent defenders with legal counsel. There are three types of indigent defense systems: public defender programs, contract attorney programs, and assigned counsel programs (Hanson & Ostrom, 2004). Each of these types of programs are unique in their function but all serve to provide indigent defenders with legal representation. While a body of research has found the type of attorney a defendant has to have an impact on criminal justice outcomes, other research has found the type of attorney to have no significant impact on criminal justice outcomes (Devers, 2011; Hanson & Ostrom, 2004; Hartley et al., 2010). This paper will provide a background of indigent defense systems in a variety of cities and states, as well as discuss the existing research which examines the impact the type of attorney has on different criminal justice outcomes.

## **II. Indigent Defense Systems**

Indigent defense systems exist to provide defendants who do not have the resources to hire private attorneys with legal representation for the duration of their case (Hanson & Ostrom, 2004). Indigent defense systems are created and ran at either the state or county level, with 28 states administering their own indigent defense systems, as well as Washington D.C. (Strong, 2016). Twenty-four of the 28 states used multiple delivery methods to provide defense, while four states relied on one method. In 25 of the states, public defenders were treated as

government employees (Strong, 2016). While states are required by law to provide legal counsel to indigent defendants, it does not need to be free. In fact, only six states charge zero fees to use their indigent defense services (Strong, 2016). Nine states charge defendants both an application fee *and* recoupment (the cost of the legal representation itself), while four states only charge an application fee and ten others only charged recoupment (Strong, 2016). Application fees ranged from \$10 to \$212 dollars, and recoupment varied from case to case. Of the three types of indigent defense systems, public defenders are by far the most popular, closing 67% of the total cases received by state administered indigent defense programs in 2013 (Strong, 2016). State administered indigent defense systems have many employees, but caseloads remain high and have a wide variance. In 2013, caseloads ranged from 50 cases per attorney in Minnesota to 590 cases per attorney in Arkansas (Strong, 2016). Only twelve states and Washington D.C. had caseload limits for their attorneys.

A 1989 study examined indigent defense systems in nine communities. The communities varied in size and contained a good mixture of the three types of indigent defense systems (Hanson & Ostrom, 2004). They were also spread out geographically across the country. Three of the nine communities received their funding from the state while the remaining six communities received their funding from their county (Hanson & Ostrom, 2004). Three communities (Seattle, Denver, and Monterey) used public defender systems, four communities (Detroit, Norfolk, Oxford, and Island) used assigned counsel systems, and two communities (San Juan and Globe) used contract systems (Hanson & Ostrom, 2004). These indigent defense systems handled anywhere from 52.9% to 90% of the cases in their respective communities, with private attorneys handling the remainder of cases (Hanson & Ostrom, 2004).

### **III. Performance of Indigent Defense Systems**

There is a somewhat small body of research dedicated to understanding how indigent defense systems compare to private attorneys in the criminal justice outcomes they achieve. Clarke (2021) conducted a small meta-analysis of this body of research, identifying 40 empirical studies which compared outcomes across attorney types. Results of the meta-analysis found significant differences between indigent defense systems and private attorneys in six different court case outcomes: case dismissal, case resolved by plea, case resolved by trial, acquittal, conviction, and conviction severity (Clarke, 2021). The following section will discuss several outcomes: time to disposition, case dismissals, charge reductions, sentencing outcomes, and plea-bargaining outcomes.

#### *Time to Disposition*

The same 1989 study found that indigent defenders process cases in less time than private attorneys in all the communities except Island County (Hanson & Ostrom, 2004). Indigent defense systems were also found to be better at resolving felony cases within 180 days, which ABA standards stipulate that 98% of cases be resolved within (Hanson & Ostrom, 2004). While they performed better, that is not to say they meet ABA standards. In fact, in six of the nine communities, more than 21% of felony cases remain unresolved after 180 days, and three communities have more than 44% of felony cases unresolved after 180 days (Hanson & Ostrom, 2004). Hanson & Ostrom identified several implications as a result of indigent defenders solving cases in less time. One implication is that by resolving cases more quickly, it reduces time spent in jail for the defendant as well as the times a defendant needs to show up in court (Hanson &

Ostrom, 2004). It also saves the courts money by needing less court appearances per defendant. Timeliness is only valuable, however, if it does not come at the expense of the defendant (Hanson & Ostrom, 2004). If a defendant receives a worse sentence because a defense attorney rushes through proceedings or doesn't effectively negotiate a plea deal, is resolving the case in a shorter time worth it? The next section will examine how public defense systems fared versus private defense systems, both in court and in plea bargaining processes.

### *Case Dismissal*

Overall, indigent defendants were roughly 25% less likely to have their cases dismissed than private attorneys, however results contained a large amount of heterogeneity (Clarke, 2021). One report from Harris County, Texas found that public defenders and retained counsel achieved almost an identical percentage of dismissals. Public defenders had all charges dismissed in 17% of their cases while private attorneys received full dismissals for 18% of their cases (Fabelo et al., 2013). Hartley et al. reported findings in their study which used data from Cook County, Illinois which also suggest type of attorney has no impact on the decision to release a defendant (Hartley et al., 2010). Another study which analyzed outcomes across attorney types for domestic violence cases in New York City found that public defenders are less likely to have their cases dismissed than private counsel during the plea-bargaining process, but more likely to have charges acquitted in trial settings (Kutateladze & Leimberg, 2019). The previously mentioned 1989 study of nine communities found that dismissal rates were remarkably similar for all types of attorneys (Hanson & Ostrom, 2004). Champion (1989) found that there was a very significant difference in the likelihood of cases being dropped, with private attorneys having their cases dropped 48% of the time while public defenders had their cases dropped just 11.3% of the time

(Champion, 1989). The heterogeneity of this research is geographical in nature, as studies conducted in the southeast and southwest regions of the United States were found to have significantly lower differences in case dismissal rates compared to other geographic regions (Clarke, 2021).

### *Charge Reductions*

Clarke's meta-analysis of ten studies found there to be no significant difference in charge reductions across types of counsel (Clarke, 2021). Hartley et al.'s examination of Cook County courts also revealed no difference in decisions to reduce primary charges based on attorney type (Hartley et al., 2010). Further analysis showed that specifically for Black defendants, those with private counsel were twice as likely to receive a primary charge reduction than those with public counsel (Hartley et al., 2010). The study of domestic violence cases in New York City found that defendants with indigent defense were more likely to have charges reduced than defendants with private counsel (Kutateladze & Leimberg, 2019). Hanson & Ostrom (2014) found there to be a significant difference in charge reduction rates across attorney type, with contract defense systems achieving charge reductions 50.9% of the time, versus 31.9% of the time for private counsel, 26.4% of the time for assigned counsel systems, and 25.7% of the time for public defenders (Hanson & Ostrom, 2004). Fabelo et al. (2013) also report that in Harris County, Texas, public and private counsel receive charge reductions within two percentage points of each other. Generally, the body of research on this area has found there to be no significant difference in charge reduction rates across types of attorneys.

## *Sentencing Outcomes*

While there is somewhat of a consensus in the research relating to charge reductions, this is not the case for sentencing outcomes, where studies have shown conflicting findings. The study examining New York City domestic violence cases found that indigent defendants were much more likely to receive custodial sentences than defendants with private attorneys (Kutateladze & Leimberg, 2019). This finding is consistent in Clarke's (2021) meta-analysis, in which she found defendants with indigent defense were significantly more likely to be incarcerated than defendants with private counsel (OR = 2.265,  $p < .0001$ ). However, Hartley et al.'s 2010 study of Cook County Courts found the type of attorney to have no significant impact on the decision to incarcerate and sentence length (Hartley et al., 2010). A study of sentencing outcomes for defendants with public defenders versus retained counsel in Florida also reported that type of attorney had no impact on defendant's rates of receiving probation, being incarcerated, and sentence length (Williams, 2002). Hanson & Ostrom found that incarceration rates were lower for defendants who had private counsel than public defenders (57.1 versus 78.2), but stresses that while this is the case, the advantage to private attorneys is still limited (Hanson & Ostrom, 2004). They also found that felony defendants with indigent defense ended up incarcerated 72.4% of the time while defendants with private counsel were incarcerated 58.2% of the time (Hanson & Ostrom, 2004). Results of the meta-analysis showed that studies conducted in the southwest had higher differences in sentencing across types of counsel (Clarke, 2021). A Harris County, Texas report found that for defendants facing felony charges, public counsel was more likely to result in incarceration, while defendants with private counsel were significantly more likely to receive probation (11% versus 2%) (Fabelo et al., 2013).

A 2000 report from the Bureau of Justice Statistics (BJS) which examined the 75 largest counties along with federal district courts found that defendants with public defense were more likely to be incarcerated than defendants with private counsel but found defendants with private counsel more likely to receive longer sentences (Harlow, 2000). While in general this is the case, results vary by crime type. Defendants with public defenders for representation received longer sentences for violent crimes on average than defendants with private counsel, but this is reversed when examining drug offenses (Harlow, 2000).

#### **IV. Indigent Defense Systems in Plea Bargaining**

There is a relatively small body of research dedicated to comparing indigent defense systems to private attorneys. In fact, Clarke (2021) found only four studies which compared guilty pleas across attorney type. Public defenders and private attorneys were compared from a different perspective by McKenzie, who sought to compare the motivations attorneys have to plea bargain (McKenzie, 2015). He conducted a survey to compare which variables matter most to attorneys when seeking a plea bargain and when accepting a plea offer (McKenzie, 2015). There were 133 total respondents composed of 76 public defenders and 57 private attorneys. Results of the study showed that public defenders consider the defendant's criminal history to be the most important variable when seeking a plea deal while private attorneys consider the difference between the plea offer and the anticipated trial outcome to be most important when seeking a plea deal (McKenzie, 2015). In regard to accepting pleas, the type of crime was the most important factor to public defenders, while private attorneys had no factors influence them significantly (McKenzie, 2015). The study also found that both public defenders and private attorneys are most influenced by a "supportive collegiality" within the office when seeking plea

deals (McKenzie, 2015). Public defenders were found to be most influenced by legal/clerical support when accepting plea deals while private attorneys were not found to be significantly influenced by any workplace variable (McKenzie, 2015). Champion (1989) found in a survey of prosecutors that they believe type of attorney makes a difference in plea bargaining. Of the 42 prosecutors that stated they believe public defenders made a difference in outcomes, 36 of them thought this difference would be less favorable to the defendant (Champion, 1989).

### *Plea Bargaining Outcomes*

The four studies in the meta-analysis indicated that indigent defendants were significantly more likely to accept plea offers than defendants with private counsel (Clarke, 2021). From a sample of 28,315 cases of felony defendants, they were found to accept guilty pleas 36% of the time when represented by private counsel versus a staggering 87.7% of the time when represented by public counsel (Champion, 1989). Champion posits that this is due to prosecutors making a distinction in their plea negotiations based on the type of counsel the defendant has (Champion, 1989). Some prosecutors also thought that since public defenders are poorly paid, they don't view their cases to be very important (Champion, 1989). A report from the Harris County Public Defender office in Harris County, Texas, states that public defenders were significantly more likely to have defendants plead guilty on all charges than private attorneys (Fabelo et al., 2013). The 2000 BJS report, however, reports very similar guilty plea rates between public and private counsel. In the 75 largest counties, defendants with public counsel plead guilty 71% of the time while defendants with private counsel plead guilty 72.8% of the time (Harlow, 2000). In the federal district courts, public counsel had defendants plead guilty 87.1% of the time versus 84.6% of the time for defendants with private counsel (Harlow, 2000). Kutateladze &

Leimberg (2019) found that in New York City, generally public and private counsel have similar likelihood to resolve cases by guilty plea. McKenzie (2015) also found that public defenders were not any more likely than private attorneys to recommend accepting guilty pleas to their defendants.

## **V. Mitigating Factors**

Indigent defendants were found to be 75% more likely to be detained pre-trial than defendants who could afford to hire private counsel (Clarke, 2021). These findings are also supported by the BJS report, which shows 52.9% of defendants with public counsel released pre-trial while 79% of defendants with private counsel were released pre-trial (Harlow, 2000). It has also been shown that defendants who are detained pre-trial are 46% more likely to plead guilty (Subramanian et al., 2020). This fact may partially explain the results that show indigent defense systems are more likely to resolve cases by guilty plea than private attorneys and shows that quality of defense may not be the only factor which explains this difference (Clarke, 2021; Hartley et al., 2010). The findings that indigent defendants are more likely to be detained pre-trial should prompt an examination of the relationship between socioeconomic status and plea bargaining outcomes

Indigent defendants are also more likely to have criminal records than defendants with private counsel (Harlow, 2000). Criminal history of the defendant has shown to be one of the most two important factors in determining plea offers (Devers, 2011; Subramanian et al., 2020) If defendants have more significant criminal histories, they are more likely to be detained pre-trial, receive harsher plea offers, and are more likely to receive plea offers which still include

incarceration (Subramanian et al., 2020). This fact may partially explain why indigent defense systems are more likely to have clients end up incarcerated.

## **VI. Conclusion**

The body of research which compares outcomes across attorney type remains generally inconclusive. The only factors examined in this paper which had generally homogenous findings were time to disposition and case dismissal. Public defense systems were found to be faster at resolving cases than private counsel (Hanson & Ostrom, 2004). Cases are also more likely to end in dismissal if a defendant has private counsel (Clarke, 2021; Hartley et al., 2010). While most research on charge reductions and attorney type found little difference on the rate in which cases have charges reduced, Hanson & Ostrom (2004) found there to be a significant difference in charge reduction rates across attorney types. The body of research dedicated to sentencing outcomes is very heterogenous in nature. Some studies reported finding no difference in incarceration rates and sentence length (Hartley et al., 2010; ;Williams, 2002), however several studies reported finding significant differences in incarceration rates (Clarke, 2021; Fabelo et al., 2010; Hanson & Ostrom, 2004; Harlow, 2000). The small body of research on attorney type and plea bargaining outcomes is not very conclusive. In fact, government reports find very little difference in the plea bargaining rates in the nations largest counties (Harlow, 2000), however studies performed in other areas found significant differences in the rate of guilty plea dispositions (Champion, 1989, Fabelo et al., 2013). Public counsel and private counsel were also found to have different motivations in seeking and accepting plea offers for their client, and were also influenced by different workplace variables (McKenzie, 2015). Some of the differences found in the studies may be due to reasons other than quality of counsel (Hartley et

al., 2010). Since indigent defendants are much more likely to be held pre-trial and are more likely to have criminal records, it would make logical sense that they are more likely to attain worse outcomes because of this. Further research needs to be conducted on the difference in outcomes between attorney type for any significant conclusions to be made in the area.

## Works Cited

- Champion, D. J. (1989). Private counsels and public defenders: A look at weak cases, prior records, and leniency in plea bargaining. *Journal of Criminal Justice*, 17(4), 253.  
<https://ezproxy.rit.edu/login?url=https://www.proquest.com/scholarly-journals/private-counsels-public-defenders-look-at-weak/docview/237263923/se-2?accountid=108>
- Clarke, S. E. D. (2021). *Indigent injustice? A systematic review and meta-analysis of defendants' criminal justice-related outcomes* (Order No. 28747822). Available from ProQuest Dissertations & Theses Global. (2607286923).  
<https://ezproxy.rit.edu/login?url=https://www.proquest.com/dissertations-theses/indigent-injustice-systematic-review-meta/docview/2607286923/se-2?accountid=108>
- Devers, L. (2011). Plea and charge bargaining - Bureau of Justice Assistance. Bureau of Justice Assistance. Retrieved December February 2, 2022, from  
<https://bjia.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>.
- Fabelo, T., Reynolds, C., & Tyler, J. (2013). Improving indigent defense: Evaluation of the Harris County public defender. Council of State Governments Justice Center.  
<http://harriscountypublicdefender.org/wpcontent/uploads/2013/10/JCHCPDFinalReport.pdf>
- Hanson, R. A., & Ostrom, B. J. (2004). Indigent Defenders Get the Job Done and Done Well. In *The criminal justice system: Politics and policies* (pp. 227–251). essay, Wadsworth.

Harlow, C.W. (2000). Defense Counsel in Criminal Cases. Bureau of Justice Statistics. Contract No.: NCJ 179023.U.S Department of Justice. Retrieved from:  
<https://www.bjs.gov/content/pub/pdf/dccc.pdf>

Hartley, R. D., Miller, H. V., & Spohn, C. (2010). Do you get what you pay for? type of counsel and its effect on Criminal Court outcomes. *Journal of Criminal Justice*, 38(5), 1063–1070.

Kutateladze, B. L., & Leimberg, A. (2019). The Influence of Type of Defense Counsel on Prosecutorial and Judicial Decision Making in Domestic Violence Cases. *Crime & Delinquency*, 65(12), 1623–1647. <https://doi.org/10.1177/0011128718806901>

McKenzie, R. L. (2015). Motivational factors to plea bargain in georgia: Public versus private attorneys (Order No. 3732847). Available from ProQuest Dissertations & Theses Global; Social Science Premium Collection. (1735405569).  
<https://ezproxy.rit.edu/login?url=https://www.proquest.com/dissertations-theses/motivational-factors-plea-bargain-georgia-public/docview/1735405569/se-2?accountid=108>

Strong, S. (2016). *State-administered Indigent Defense Systems, 2013*. Bureau of Justice Statistics. Retrieved April 16, 2022, from <https://bjs.ojp.gov/content/pub/pdf/saids13.pdf>

Subramanian, R., Digard, L., Washington, M., & Sorage, S. (2020). *In The Shadows: A Review of the Research on Plea Bargaining*. Vera Institute of Justice. Retrieved February 17, 2022, from <https://www.vera.org/downloads/publications/in-the-shadows-plea-bargaining.pdf>

Williams, M. R. (2002). A comparison of sentencing outcomes for defendants with public defenders versus retained counsel in a florida circuit court. *Justice System Journal*, 23(2), 249-257. <https://ezproxy.rit.edu/login?url=https://www-proquest-com.ezproxy.rit.edu/scholarly-journals/comparison-sentencing-outcomes-defendants-with/docview/194774236/se-2?accountid=108>

Working Paper 4: Pleading Guilty to Lesser Charges: Which Factors Matter?

Jonathon Chierchio

Criminal Justice Capstone

## **I. Background**

Plea bargaining is an incredibly common practice in the United States criminal justice system, with over 95% of felony cases being resolved by some sort of plea (Devers, 2011). Plea bargaining is a process in which a defendant admits their guilt to a crime in exchange for a lighter sentence. Plea bargaining is considered a “bargain” due to the assumed reduction in sentence a defendant receives from admitting their guilt. It has been found that on average, defendants receive a 57% reduction in their sentence if they plead guilty (Subramanian et al., 2020). The body of research which is dedicated to the plea bargaining process has found many different legal and extralegal factors which prosecutors may consider during the plea bargaining process, all of which may have an impact on plea bargaining outcomes. Some of these factors are the race, gender, and age of the defendant as well as the strength of the evidence in a case and the defendant’s criminal history (Devers, 2011).

## **II. Literature Review**

Prior research has shown that race, gender, and criminal history are factors which have an impact on a defendant’s likelihood to plead guilty (Devers, 2011; Subramanian et al., 2020). Specifically, criminal history is one of the most important factors in predicting plea bargaining outcomes for defendants (Devers, 2011). Defendants with more significant criminal histories were found to be more likely to receive harsher plea offers from prosecutors and are also more likely to receive plea offers which include incarceration than defendants with no criminal history (Subramanian et al., 2020). The criminal history of the defendant was also found to be the most influential factor in public defenders’ decision-making process when seeking a plea deal for their client (McKenzie, 2015).

Race has also been shown to have an impact on plea bargaining outcomes (Devers, 2011; Greenberg, 2021; Subramanian et al., 2020). In fact, race is the extralegal factor which has been shown to have the most consistent findings in outcomes (Devers, 2011). Black defendants were found to be more likely to be held pre-trial than defendants from other racial backgrounds, which increases the likelihood of pleading guilty by 46% (Kellough & Wortley, 2002; Subramanian et al., 2020). Other research has found that Black defendants are less likely to receive charge reductions than white people, and has also found that black people are less likely to receive reduced sentences in plea bargaining than white defendants because of decisions made by the prosecutor (Devers, 2011).

Research on the impact of gender in charging and plea bargaining has found that in general, males tend to receive harsher treatment. Males are more likely to be detained pre-trial and were also found to be significantly less likely to receive charge reductions than female defendants (Kellough & Wortley, 2002; Shermer & Johnson, 2010). In sentencing, female defendants were found to have 63% greater odds of receiving a downward departure than male defendants, and male defendants had 31% greater odds of receiving an upward departure from sentencing guidelines (Johnson, 2003).

### **III. The Present Study**

The present study seeks to examine which factors are most associated with pleading guilty to lesser charges. This study will examine the impact of a defendant's race/ethnicity, gender, and criminal history on the defendant's likelihood to receive a reduced charge through a guilty plea. There are two groups of hypotheses which this study will seek to examine,

comprised of a grand total of eight hypotheses. The distinction between groups is the initial charge a defendant is charged with, whether it be a felony or misdemeanor.

*Group 1:*

H1) In felony cases, male defendants will be statistically significantly more likely to plead guilty to felony charges than female defendants.

H2) In felony cases, Black defendants will be statistically more likely to plead guilty to felony charges than white defendants.

H3) In felony cases, Hispanic defendants will be statistically significantly more likely to plead guilty to felony charges than White defendants.

H4) In felony cases, defendants with some known criminal history will be statistically significantly more likely to plead guilty to felony charges than defendants with no criminal history.

*Group 2:*

H5) In misdemeanor cases, male defendants will be statistically significantly more likely to plead guilty to felony charges than female defendants.

H6) In misdemeanor cases, Black defendants will be statistically significantly more likely to plead guilty to misdemeanor charges than White defendants.

H7) In misdemeanor cases, Hispanic defendants will be statistically significantly more likely to plead guilty to misdemeanor charges than White defendants.

H8) In misdemeanor cases, defendants with some known criminal history will be statistically significantly more likely to plead guilty to misdemeanor charges than defendants with no criminal history.

#### **IV. Data/Methodology**

Data was obtained through New York County's District Attorney's Office (DANY). Since case-level data was not readily available, several queries were completed to obtain the data used in this analysis. Queries were performed to obtain the total number of cases for each dependent variable (plea to felony, plea to misdemeanor, plea to violation/infraction) for both felony and misdemeanor cases in the year 2018. A separate query was performed for each independent variable (race, gender, and criminal history).

##### *Dependent Variables*

The dependent variables in this study are the three final possible case dispositions. *Plea to Felony* is a variable which captures the total number of cases in which the defendant pleads guilty to felony charges. This outcome is only possible for cases in which the initial charge is a felony. *Plea to Misdemeanor* captures the total number of cases in which the defendant pleads guilty to misdemeanor charges, and *Plea to Violation/Infraction* captures the total number of cases in which the defendant pleads guilty to a violation/infraction. Cases where the initial charge was either a felony or misdemeanor are eligible for both outcomes.

##### *Independent Variables*

The independent variables in this study are the race/ethnicity, gender, and criminal history of the defendant in each case. The *Race/Ethnicity* variable captures cases which involve

White, Black, and Hispanic defendants. Other races/ethnicities have not been given consideration in this study. The *Gender* variable captures cases which involve male or female defendants. Other genders are unavailable to be accounted for as the data did not make the distinction between defendants whose gender was not male or female and defendants whose gender was unknown. The *Criminal History* variable captures whether defendants have any known criminal history or not.

### *Methodology*

A total of six different crosstabulations were completed to answer the research questions presented earlier. Two crosstabulations were completed for each independent variable: one crosstabulation which included felony cases and one which involved misdemeanor cases. Chi-square tests were also completed to measure the statistical significance of any relationship between the independent and dependent variables.

## **V. Results**

In Manhattan, NY in 2018, there were a total of 29,082 cases which were disposed of with a conviction. There was a total of 6,853 felony convictions in which the defendant plead guilty, and 21,609 misdemeanor convictions in which the defendant plead guilty. These two subsets of data will be used to answer the research questions in Group 1 and Group 2, respectively.

### *Group 1*

### Type of Plea \* Gender of Defendant Crosstabulation

			Gender of Defendant		Total
			Male	Female	
Type of Plea	Felony	Count	2136	253	2389
		Expected Count	2133.7	255.3	2389.0
		% within Gender of Defendant	40.0%	39.6%	40.0%
	Misdemeanor	Count	2258	380	2638
		Expected Count	2356.1	281.9	2638.0
		% within Gender of Defendant	42.3%	59.5%	44.1%
	Violation/Infraction	Count	946	6	952
		Expected Count	850.3	101.7	952.0
		% within Gender of Defendant	17.7%	0.9%	15.9%
Total	Count	5340	639	5979	
	Expected Count	5340.0	639.0	5979.0	
	% within Gender of Defendant	100.0%	100.0%	100.0%	

Fig. 1

### Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	139.096 <sup>a</sup>	2	<.001
Likelihood Ratio	202.808	2	<.001
Linear-by-Linear Association	30.518	1	<.001
N of Valid Cases	5979		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 101.74.

Fig. 2

The chi-square test results (Chi-Square = 139.096,  $p < .001$ ) show there is a statistically significant relationship between gender and final plea disposition in felony cases. However, the difference is not found in felony pleas, but rather misdemeanor and violation pleas. Male defendants were found to be almost twenty times more likely than female defendants to plea to violations/infractions (17.7% versus 0.9%), while female defendants were found to be 1.41

times more likely to plead guilty to misdemeanors as male defendants. Therefore, H1 cannot be accepted.

**Type of Plea \* Race/Ethnicity of Defendant Crosstabulation**

		Race/Ethnicity of Defendant			Total	
		White	Black	Hispanic		
Type of Plea	Felony	Count	208	1279	817	2304
		Expected Count	280.5	1229.6	794.0	2304.0
		% within Race/Ethnicity of Defendant	27.9%	39.2%	38.7%	37.6%
	Misdemeanor	Count	323	1382	830	2535
		Expected Count	308.6	1352.8	873.6	2535.0
		% within Race/Ethnicity of Defendant	43.4%	42.3%	39.4%	41.4%
	Violation/Infraction	Count	214	605	462	1281
		Expected Count	155.9	683.6	441.4	1281.0
		% within Race/Ethnicity of Defendant	28.7%	18.5%	21.9%	20.9%
Total	Count	745	3266	2109	6120	
	Expected Count	745.0	3266.0	2109.0	6120.0	
	% within Race/Ethnicity of Defendant	100.0%	100.0%	100.0%	100.0%	

**Fig. 3**

**Chi-Square Tests**

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	56.475 <sup>a</sup>	4	<.001
Likelihood Ratio	56.405	4	<.001
Linear-by-Linear Association	12.433	1	<.001
N of Valid Cases	6120		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 155.94.

**Fig. 4**

The chi-square test results (Chi-Square = 56.475,  $p < .001$ ) indicates that there is a statistically significant relationship between the race of a defendant and final plea disposition in felony cases. Fig. 3 shows that Black and Hispanic defendants are roughly 1.4 times more likely

to plead guilty to felonies than white defendants (~39% versus 27.9%). All groups plead guilty to misdemeanors at similar rates, indicating the difference is made up for in pleas to violations/infractions. The results of this test allow us to reject the null hypotheses for H2 & H3, indicating that Black and Hispanic defendants are more likely to plead guilty to felonies than White defendants in felony cases.

**Type of Plea \* Criminal History Status Crosstabulation**

		Criminal History Status		Total	
		No Criminal History	Some Criminal History		
Type of Plea	Felony	Count	1221	755	1976
		Expected Count	1403.1	572.9	1976.0
		% within Criminal History Status	33.5%	50.7%	38.5%
	Misdemeanor	Count	1204	676	1880
		Expected Count	1335.0	545.0	1880.0
		% within Criminal History Status	33.0%	45.4%	36.6%
	Violation/Infraction	Count	1222	58	1280
		Expected Count	908.9	371.1	1280.0
		% within Criminal History Status	33.5%	3.9%	24.9%
Total	Count	3647	1489	5136	
	Expected Count	3647.0	1489.0	5136.0	
	% within Criminal History Status	100.0%	100.0%	100.0%	

**Fig. 5**

### Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	497.864 <sup>a</sup>	2	<.001
Likelihood Ratio	627.949	2	<.001
Linear-by-Linear Association	376.715	1	<.001
N of Valid Cases	5136		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 371.09.

**Fig. 6**

The chi-square test results (Chi-Square = 497.864,  $p < .001$ ) indicate that there is a statistically significant relationship between the criminal history of a defendant and the final plea disposition in felony cases. While defendants with no criminal history resolve cases relatively evenly across each disposition, defendants with some known criminal history very rarely plead guilty to violations/infractions, just 3.9% of the time. They are statistically significantly more likely to accept pleas to both felonies (50.7% compared to 33.5%) and misdemeanors (45.4% versus 33.0%). The results of these tests allow us to reject the null hypothesis for H4.

#### *Group 2*

**Type of Plea \* Gender of Defendant Crosstabulation**

		Gender of Defendant			
		Male	Female	Total	
Type of Plea	Misdemeanor	Count	8861	1206	10067
		Expected Count	8597.1	1469.9	10067.0
		% within Gender of Defendant	48.1%	38.3%	46.6%
	Violation/Infraction	Count	9575	1946	11521
		Expected Count	9838.9	1682.1	11521.0
		% within Gender of Defendant	51.9%	61.7%	53.4%
Total	Count	18436	3152	21588	
	Expected Count	18436.0	3152.0	21588.0	
	% within Gender of Defendant	100.0%	100.0%	100.0%	

**Fig. 7**

**Chi-Square Tests**

	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	103.924 <sup>a</sup>	1	<.001		
Continuity Correction <sup>b</sup>	103.531	1	<.001		
Likelihood Ratio	105.018	1	<.001		
Fisher's Exact Test				<.001	<.001
Linear-by-Linear Association	103.920	1	<.001		
N of Valid Cases	21588				

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 1469.85.

b. Computed only for a 2x2 table

**Fig. 8**

The results of the chi-square test (Chi-square = 103.924,  $p < .001$ ) indicate that there is a relationship between a defendant's gender and the final plea disposition in misdemeanor cases. As shown in Fig. 8, male defendants were found to be 1.26 times more likely to plead guilty to misdemeanors than female defendants (48.1% versus 38.3%). Therefore, we reject the null hypothesis for H5.

**Type of Plea \* Race/Ethnicity of Defendant Crosstabulation**

		Race/Ethnicity of Defendant				
		White	Black	Hispanic	Total	
Type of Plea	Misdemeanor	Count	1385	5348	3092	9825
		Expected Count	1505.7	4808.3	3510.9	9825.0
		% within Race/Ethnicity of Defendant	44.1%	53.3%	42.2%	47.9%
	Violation/Infraction	Count	1759	4692	4239	10690
		Expected Count	1638.3	5231.7	3820.1	10690.0
		% within Race/Ethnicity of Defendant	55.9%	46.7%	57.8%	52.1%
Total	Count	3144	10040	7331	20515	
	Expected Count	3144.0	10040.0	7331.0	20515.0	
	% within Race/Ethnicity of Defendant	100.0%	100.0%	100.0%	100.0%	

**Fig. 9**

**Chi-Square Tests**

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	230.748 <sup>a</sup>	2	<.001
Likelihood Ratio	231.203	2	<.001
Linear-by-Linear Association	37.044	1	<.001
N of Valid Cases	20515		

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 1505.72.

**Fig. 10**

The results of the chi-square test (Chi-square = 230.748,  $p < .001$ ) reveal that there is indeed a relationship between the race/ethnicity of the defendant and the final plea disposition in misdemeanor cases. H6, which posited that Black defendants will be more likely to plead guilty to misdemeanor charges than White defendants, is supported by the results (53.3% versus 44.1%), allowing us to reject the null hypothesis in support of H6. The null hypothesis for H7 cannot be rejected as Hispanic defendants were found to be less likely to plead guilty to a misdemeanor than White defendants (42.2% versus 44.1%).

**Type of Plea \* Criminal History of Defendant Crosstabulation**

			Criminal History of Defendant		Total
			No Criminal History	Some Criminal History	
Type of Plea	Misdemeanor	Count	1927	3745	5672
		Expected Count	3902.1	1769.9	5672.0
		% within Criminal History of Defendant	19.6%	84.1%	39.7%
	Violation/Infraction	Count	7893	709	8602
		Expected Count	5917.9	2684.1	8602.0
		% within Criminal History of Defendant	80.4%	15.9%	60.3%
Total	Count	9820	4454	14274	
	Expected Count	9820.0	4454.0	14274.0	
	% within Criminal History of Defendant	100.0%	100.0%	100.0%	

**Fig. 11**

**Chi-Square Tests**

	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	5316.578 <sup>a</sup>	1	.000		
Continuity Correction <sup>b</sup>	5313.887	1	.000		
Likelihood Ratio	5553.306	1	.000		
Fisher's Exact Test				.000	.000
Linear-by-Linear Association	5316.206	1	.000		
N of Valid Cases	14274				

a. 0 cells (.0%) have expected count less than 5. The minimum expected count is 1769.87.

b. Computed only for a 2x2 table

**Fig. 12**

The results of the chi-square test (Chi-square = 5316.578,  $p < .001$ ) show that there is a relationship between the criminal history of the defendant and the final plea disposition defendants receive in misdemeanor cases. As shown in Fig. 11, defendants with a known criminal history are 4.29 times more likely to plead guilty to misdemeanors (84.1%) than

defendants with no criminal history (19.6%). Therefore, the null hypothesis for H8 can be rejected.

## **VI. Discussion**

The review of the existing literature in this analysis has shown that while some research has been conducted on plea bargaining, there are several holes in the data. While studies have focused on the impact of particular legal or extralegal factors in the plea bargaining process, there is a very limited number of studies which examine the relationship between these legal and extralegal variables and the final plea disposition attained. The results of the analysis support some previous research regarding plea bargaining outcomes and reveal several implications. Overall, six hypotheses were supported by the analysis, while two hypotheses could not be accepted (H1 and H7). Firstly, the analysis supports previous findings that male defendants are less likely to receive plea reductions than female defendants, specifically in misdemeanor cases. It was surprising to find that men typically fared better in felony cases than women. This is likely due to some mixture of other legal and extralegal factors which could be accounted for in a regression analysis. This study also supports the findings that Black and Hispanic defendants typically fare worse than White defendants in both felony and misdemeanor cases (Black defendants only). This supports Greenberg's assertion that plea bargaining is not practiced in a "racially neutral way," despite legislation existing to ensure this (Greenberg, 2021). This analysis also specifically supports findings that Black defendants are less likely to receive charge reductions and less likely to receive reduced sentences through accepting pleas than white defendants (Devers, 2011). Defendants with criminal histories were found to be significantly more likely to attain worse plea outcomes than defendants with no

criminal history. This relationship is the strongest relationship examined in this study, with defendants being more than 4 times more likely to plead guilty to worse outcomes in misdemeanor cases, and 1.5 times more likely to plead guilty to felonies than defendants with no criminal history. This further adds to the findings that defendants with more significant criminal histories are likely to be offered worse plea offers by prosecutors (Subramanian et al., 2020).

## **VII. Limitations & Future Study**

There are several limitations which restrict this data analysis. Firstly, the data only captures cases from the year 2018. If the same analysis was completed for a caseload spanning multiple years, it would be easier to identify trends in the data and would produce more reliable results. Another limitation of this study was the lack of availability of case-level data. Because of this, the results of this analysis are inferred from aggregates of case totals rather than being directly observed through each case. Had the independent variables been observable at the case-level, much more rigorous analyses (i.e., linear regression) could be conducted with the data to control for the presence of other variables. This points to the next limitation of the analysis. The study did not fully capture the complexity of each case. For example, when comparing the differences in plea dispositions between male and female defendants, it is *strictly* comparing that relationship without accounting for the presence of other variables which may also impact outcomes (i.e., race, criminal history). So, while the results of the analysis are still accurate, they may be slightly skewed because of this. Further examination of this relationship is required for more meaningful findings to be obtained.

## **VIII. Conclusion**

This analysis was conducted in order to determine if there is a relationship between certain legal and extralegal factors and the final guilty plea disposition obtained by defendants. By conducting chi-square tests, results which supported six of the eight final hypotheses were found. The race/ethnicity, gender, and criminal history of defendants were all found to impact final plea dispositions in either felony or misdemeanor cases. The criminal history of the defendant was especially impactful in both felony and misdemeanor cases, suggesting that legal factors provide stronger predictors for outcomes than extralegal factors, which is consistent with prior findings (Devers, 2011). Race was also found to have an impact in both felony and misdemeanor cases, however ethnicity was only shown to impact felony case outcomes. Gender impacted both types of cases, however not in a way that supports my first hypothesis. While these results show these relationships, more rigorous analyses with case-level data is necessary to build on this analysis.

## Works Cited

- Devers, L. (2011). Plea and charge bargaining - Bureau of Justice Assistance. Bureau of Justice Assistance. Retrieved December February 2, 2022, from <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>.
- Greenberg, E. E. (2021). Unshackling Plea Bargaining From Racial Bias. *Journal of Criminal Law & Criminology*, 111(1), 93-144. <https://ezproxy.rit.edu/login?url=https://www.proquest.com/scholarly-journals/unshackling-plea-bargaining-racial-bias/docview/2528247713/se-2?accountid=108>
- Johnson, B. D. (2003). Racial And Ethnic Disparities In Sentencing Departures Across Modes Of Conviction\*. *Criminology*, 41(2), 449-489. <http://dx.doi.org/10.1111/j.1745-9125.2003.tb00994.x>
- Kellough, G., & Wortley, S. (2002). Remand For Plea: Bail Decisions and Plea Bargaining as Commensurate Decisions. *The British Journal of Criminology*, 42(1), 186–210. <http://www.jstor.org/stable/23638767>
- McKenzie, R. L. (2015). Motivational factors to plea bargain in georgia: Public versus private attorneys (Order No. 3732847). Available from ProQuest Dissertations & Theses Global; Social Science Premium Collection. (1735405569). <https://ezproxy.rit.edu/login?url=https://www.proquest.com/dissertations->

[theses/motivational-factors-plea-bargain-georgia-public/docview/1735405569/section2?accountid=108](https://theses.motivational-factors-plea-bargain-georgia-public/docview/1735405569/section2?accountid=108)

Shermer, L., & Johnson, B. D. (2010). Criminal Prosecutions: Examining Prosecutorial Discretion and Charge Reductions in U.S. Federal District Courts. *Justice Quarterly*, 27(3), 394-430. Retrieved January 31, 2022, from <https://heinonline-org.ezproxy.rit.edu/HOL/Page?lname=Shermer&handle=hein.journals/jquart27&collection=&page=394&collection=journals#>

Subramanian, R., Digard, L., Washington, M., & Sorage, S. (2020, September). *In The Shadows: A Review of the Research on Plea Bargaining*. Vera Institute of Justice. Retrieved February 17, 2022, from <https://www.vera.org/downloads/publications/in-the-shadows-plea-bargaining.pdf>