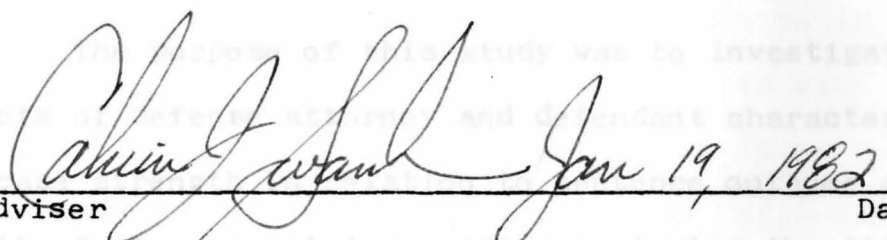


ELEMENTS THAT AFFECT PLEA BARGAINING'S
INFLUENCE UPON SENTENCE SEVERITY

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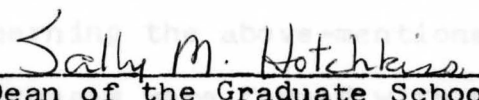
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ABSTRACT

ELEMENTS THAT AFFECT PLEA BARGAINING'S
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This study draws together the voluminous body of essays, books, and empirical research on plea bargaining and sentence severity. The vast majority of these works have dealt with prosecutorial discretion, guilty plea standards, and at best cursory looks at the role of the defense attorney.

The purpose of this study was to investigate the effects of defense attorney and defendant characteristics, and case strength in relation to sentence outcome as a result of plea bargaining. After reviewing the literature concerning the above-mentioned areas, seven major hypotheses were formed with several sub-hypotheses regarding the possible influence on the plea offer and final sentencing.

A questionnaire was devised and seventy attorneys in a four-county area were interviewed concerning their last five felony cases which have pled guilty and been sentenced in the Court of Common Pleas. After the

attorneys were interviewed, each attorney was rated by the interviewer in several areas such as: demeanor, quality of furnishings, law books, law school, and caseload. The attorneys interviewed were then rated by the county prosecutor according to the reputation of the law school, trial skills, and honesty. After this was done in each county, the data were coded and analyzed.

Basically, several of the hypotheses have been supported, while the others have been found to be not significant. Those found to be significant, dealt with the defendant's characteristics, both legal and "extra-legal," in the areas of the plea offer and sentence severity. The defense attorney characteristics were found to influence a small part of the plea offer a defendant receives from the county prosecutor. Strength of the case was not found to be significantly associated with generosity of the plea offer. This study makes recommendations concerning other possible areas of influence upon plea bargaining/sentence severity such as: the judge taking part in the plea bargaining process.

ACKNOWLEDGEMENTS

Acknowledgement is due to Doctors Richard Bennett and Ineke Marshall for their supervision and assistance. My thanks also to my graduate committee for their guidance and comments in preparation for my final research paper.

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system of the prosecution versus the defense. More recently, the increasing reliance on plea bargaining seems to be transforming our adversary system of justice into a more passive, noncombative legal system.

In the last decade crime has increased at an alarming rate producing an abundance of criminal cases of which the court system must dispose. The courts have come to rely upon the negotiated plea¹ in determining the guilt or innocence of millions of felony offenders each year.² Plea bargaining or the negotiated plea is the process by which the defendant relinquishes his right to go to trial. This right is given up in exchange for a reduction in

¹Task Force Report: The Courts, "Disposition Without Trial, U.S. President's Commission on Law Enforcement and Administration of Justice" (Washington D.C.: U.S. Government Printing Office, 1967), p. 4.

²David W. Neubacher, Criminal Justice in Middle America (Morristown, New Jersey: General Learning Press, 1974), p. 195.

CHAPTER I

STATEMENT OF THE PROBLEM

The American court system is based upon the ancient philosophical ideals of Anglo-Saxon federal law, that of trial by combat. Over the centuries, this system has gone through a metamorphosis, developing into today's adversary system of the prosecution versus the defense. More recently, the increasing reliance on plea bargaining seems to be transforming our adversary system of Justice into a more passive, noncombative legal system.

In the last decade crime has increased at an alarming rate producing an abundance of criminal cases of which the court system must dispose. The courts have come to rely upon the negotiated plea¹ in determining the guilt or innocence of millions of felony offenders each year.² Plea bargaining or the negotiated plea is the process by which the defendant relinquishes his right to go to trial. This right is given up in exchange for a reduction in

¹Task Force Report: The Courts, "Disposition Without Trial, U.S. President's Commission on Law Enforcement and Administration of Justice" (Washington D.C.: U.S. Government Printing Office, 1967), p. 4.

²David W. Neubauer, Criminal Justice in Middle America (Morristown, New Jersey: General Learning Press, 1974), p. 195.

charge or sentence.³ The guilty plea offers the court organization a substantial savings in time and money by foregoing the trial process and assures the prosecution of a conviction. The "Copping a plea" assumes that the defendant is guilty. The court personnel and defense attorneys involved in each case recognize the factual culpability of the defendant and the fruitlessness in terms of case outcome at a trial.⁴ The plea requires no presentation of evidence to determine guilt as compared to the requirement of a trial.

The criminal justice system depends upon a steady flow of guilty pleas to keep the court docket relatively uncongested. This system does not have enough legal personnel to cope with all the defendants, if each would exercise his right to a jury trial. Newman, Heumann, and Blumberg have found through research that approximately ninety percent of all felony defendants plead guilty. If misdemeanors are included in the process of guilty pleas,

³ Donald J. Newman, Conviction-The Determination of Guilt or Innocence Without Trial (Boston: Little Brown and Company, 1966), p. 60; Milton Heumann, "A Note on Plea Bargaining and Case Pressure," Law and Society Review V9N3 (Spring 1975), p. 516.

⁴ Arthur Rosett and Donald R. Cressey, Justice by Consent (New York: J.B. Lippincott Company, 1976), p. 525; Newman, Conviction-The Determination of Guilt or Innocence Without Trial, pp. 4-8; Heumann, "A Note on Plea Bargaining and Case Pressure," p. 525.

Neubauer, Criminal Justice in Middle America, p. 194; Rosett and Cressey, Justice by Consent, pp. 2-3; Heumann, "A Note on Plea Bargaining and Case Pressure," p. 515.

then roughly only two percent of the criminals arrested exercise their right to trial.⁵ This is supported by a recent study done by Heumann, concerning felony cases in Connecticut in the year 1972-1973. Heumann found that out of 3004 cases, only 114 went to trial.⁶ Today in the American court system the criminal trial is a rarity. Mass media often unrealistically depict the court and idealize the standards of justice put forth by Perry Mason, Rossetti and Ryan, or other champions of justice. This representation of the defense attorney convinces the majority of the public that the trial is a prime ingredient to the criminal court. In reality, the actual model of case disposition is more likely predicated upon the negotiated plea than adversary combat in trial.⁷

Since it is impossible to permit every defendant the right to trial, some inducements for the surrendering of one's constitutional rights to trial are necessary. This is accomplished by the use of plea bargaining. These inducements are centered around length of sentence and

⁵Neuman, "Reshape the Deal," Trial V9N3 (May/June 1973), p. 11; Abraham S. Blumberg, Criminal Justice (Chicago: Quadrangle Books, 1970), p. 28; Heumann, "A Note on Plea Bargaining and Case Pressure," pp. 515-528; Newman, Conviction-The Determination of Guilt or Innocence Without Trial, pp. 4-10.

⁶Heumann, "A Note on Plea Bargaining and Case Pressure," p. 518.

⁷Neubauer, Criminal Justice in Middle America, p. 194; Rossett and Cressey, Justice by Consent, pp. 2-5; Heumann, "A Note on Plea Bargaining and Case Pressure," p. 515.

conviction charge. From the view point of the defendant, the most important thing about his guilty plea is not the conviction, but what his sentence will be in terms of time being incarcerated.⁸

Central to all negotiations leading to a guilty plea is the question of punishment. Punishment can range from a prison term, jail, pre-trial diversion, to dismissal. The defense attorney, with his knowledge of the system, attempts to manipulate the process for his client by mitigating sentence harshness. Since the prosecutor wants a conviction, concessions between both parties are made which result in the maintenance of the guilty plea system and an individualization of justice for each defendant.⁹

In recent years, a voluminous body of essays, books, and empirical research on plea bargaining and sentence severity has been published. The vast majority

⁸Newman, Conviction-The Determination of Guilt or Innocence Without Trial, p. 29; H. J. Skin, "Do Lesser Pleas Pay-Accommodations in the Sentencing and Parole Process," Journal of Criminal Justice V1N1 (1973), p. 36; Arnold Enker, "Perspectives on Plea Bargaining," Task Force Report: The Courts (1967), pp. 108-109; Heumann, "A Note on Plea Bargaining and Case Pressure," p. 525; Newman, "Pleading Guilty for Consideration: A Study of Bargain Justice," The Journal of Criminal Law, Criminology, Police Science 46 (1956), p. 785; H. J. Folberg, "Bargained for Guilty Plea-An Evaluation," Criminal Law Bulletin V4N4 (May 1968), p. 209.

⁹Newman, Conviction-The Determination of Guilt or Innocence Without Trial, p. 77; Neubauer, Criminal Justice in Middle America, p. 194; Enker, "Perspectives on Plea Bargaining," pp. 113-116; Rosett and Cressey, Justice by Consent, p. 80.

of these works have dealt with prosecutorial discretion, guilty plea standards, and at best, a cursory look at the role of the defense attorney. The empirical research has dealt mainly with sentence severity, defendant characteristics, and the seriousness of the offense. There has been relatively little concentration on the strength of the case, to which many essays have alluded in the past. The purpose of this study is to investigate the effects of defense attorney and defendant characteristics, and case strength in relation to sentence outcome as a result of plea bargaining.

In short, it is the purpose of this study to investigate what elements in the plea bargaining process affect sentence severity. Particular attention will be paid to the defendant's choice of an attorney. Does the defense attorney mitigate the harshness of the sentence for the first-time offender or the recidivist? What type of charge reduction is granted when the case is relatively strong or weak? These elements will be examined in relation to plea bargaining in an effort to determine their relationship to final sentence disposition. Thus the following seven major hypotheses will be implemented in this study:

Hypothesis 1: The strength of the case will influence the plea offer.

Hypothesis 2: The defendant's legal characteristics will influence the plea offer.

Hypothesis 3: The defendant's social characteristics will influence the plea offer.

Hypothesis 4: The characteristics of the defense attorney will influence the plea offer.

Hypothesis 5: The defendant's legal characteristics will influence the sentence.

Hypothesis 6: The defendant's social characteristics will influence the sentence.

Hypothesis 7: The plea offer will influence the sentence severity.

Each hypothesis, along with several subhypotheses, will be discussed in the succeeding chapters indicating how each variable influences the plea bargaining and sentencing process.

In order to fill this void in the literature, this chapter will accomplish two objectives. First, a review of relevant research on the correlates of plea bargaining and sentencing is presented. An examination of the literature suggests that the determinants of plea bargaining and sentencing can be classified into at least three broad categories: defendant characteristics, the strength of case, and attorney characteristics. The second purpose of this chapter is to develop a theoretical model which identifies the determinants of the two major dependent variables of this study, plea bargaining and sentence severity, respectively. Based upon the review of the literature, a set of hypotheses will be set forth.

CHAPTER II

REVIEW OF THE LITERATURE

There is within the domain of criminal justice literature a myriad of information concerning sentencing severity and plea bargaining. Attempts to draw the two areas, plea bargaining and sentencing, together are rarely seen, however. The literature introduces one to a varied group of theoretical hypotheses regarding sentence severity and its factors. However, many of these theories have ignored the plea bargaining process and its implications for sentencing. In order to fill this void in the literature, this chapter will accomplish two objectives. First, a review of relevant research on the correlates of plea bargaining and sentencing is presented. An examination of the literature suggests that the determinations of plea bargaining and sentencing can be classified into at least three broad categories: defendant characteristics, the strength of case, and attorney characteristics. The second purpose of this chapter is to develop a theoretical model which identifies the determinants of the two major dependent variables of this study, plea bargaining and sentence severity, respectively. Based upon the review of the literature, a set of hypotheses will be set forth.

Defendant Characteristics

Both legalistic and extra-legal attributes of the defendant have been identified as being important determinants of plea/sentence disposition. Hagan referred to legalistic attributes as being variables concerned with prior record, nature and number of charges, or any official label of the criminal justice system. The "extra-legal" attributes are variables given prominence by the "sociological viewpoint" such as race and socio-economic status. These variables should be legally irrelevant to the disposition of sentence or plea bargaining, yet, sociological studies have attempted to detect their influence.¹⁰ A major legalistic variable frequently considered is the defendant's prior criminal record. Both in the plea bargaining and the sentence process, it appears that the defendant's past conduct is closely scrutinized. There is ample support for the notion that the prosecutor considers the defendant's prior convictions as an important factor in his decision to alter the charges.¹¹ The prior record

¹⁰John Hagan, "Extra Legal Attributes and Criminal Sentencing: An Assessment of the Sociological Viewpoint," Law and Society Review N8 (Spring 1974), p. 358.

¹¹Hagan, "Parameters of Criminal Prosecution: An Application of Criminal Justice," Journal of Criminal Law and Criminology V65N4 (December 1974), p. 537; Jonathan D. Casper, American Criminal Justice: The Defendant's Perspective (Englewood Cliffs, New Jersey: Prentice Hall, 1972), p. 88; H.B. Rothblatt, "Bargaining Strategy," Trial V9N3 (May/June 1973), pp. 20-21; Welsh S. Shite, "A Proposal For Reform of the Plea Bargaining Process,"

reflects officially recorded criminal involvement as determined by previous arrests and convictions. As a defendant's prior record increases in seriousness, the severity of disposition will increase accordingly.¹² Greenwood found that the less experienced defendant, regardless of the charge, received a more lenient sentence compared to the defendant with a more extensive prior record. The more extensive the defendant's prior record, the lesser the defendant's chances of an acquittal or dismissal.¹³ Cohen found that youths with extensive prior records were more likely to be detained than the first time offender. Skolneck points out that as the defendant's prior record becomes more extensive, it is hard for the

University of Pennsylvania Law Review V119 (1970), p. 447; Blumberg, Criminal Justice, p. 160; "The Influence of the Defendant's Plea on Judicial Determination of Sentence," Yale Law Journal V66 (1956), p. 216; Rosett and Cressey, Justice by Consent, p. 171; Maureen Mileski, "Courtroom Encounters: An Observation Study of Lower Criminal Court," Law and Society Review V5 (May 1977), pp. 503-505; Robert Terry, "The Screening of Juvenile Offenders," The Journal of Criminal Law and Police Science V52N2 (MARCH 1962), pp. 178-181.

¹² Carl Pope, The Judicial Processing of Assault and Burglary Offenders in Selected California Counties (Albany, New York: Criminal Justice Research Center, 1975), pp. 10-15; Lawrence Cohen, Delinquency Disposition: An Empirical Analysis of Processing Decisions in Three Juvenile Courts (Washington, D.C.: U.S. Government Printing Office, 1975), p. 31.

¹³ Peter W. Greenwood, Prosecution of Adult Felony Defendants in Los Angeles County: A Policy Perspective (Santa Monica, California: Rand Corporation, 1973), pp. 39-40.

prosecutor to make an attractive offer to that defendant. Thus, available research indicates that prior record is one of the most important determinants of both plea offer and sentence outcome because it shows past behavior patterns.¹⁴

Another legalistic variable considered in the literature is that of current criminal status. Current criminal status refers to whether or not an offender was under some type of official supervision at the time of arrest. This supervision is mainly in the areas of either probation or parole. An offender's current criminal status has been shown to have a strong influence on the final sentence disposition with those individuals under some form of criminal commitment at the time of arrest receiving more severe sentences than those who are not in this category.¹⁵

¹⁴Robert L. Rabin, "Agency Criminal Referrals in the Federal System: An Empirical Study of Prosecutorial Discretion," Stanford Law Review V24N8 (June 1972), p. 1057; Douglas J. Besharov, Juvenile Justice Advocacy: Practices in a Unique Court (New York City: Practising Law Institute, 1974), p. 23; August Bequai, "Prosecutorial Decision-Making: A Comparative Study of the Prosecutor in Two Counties in Maryland," Police Law Quarterly V4N1 (October 1974), p. 38; Carl Pope, Sentencing of California Felony Offenders (Washington, D.C.: U.S. Government Printing Office, 1975), pp. 117-120; Neubauer, Criminal Justice in Middle America, p. 233; Cohen, Delinquency Disposition: An Empirical Analysis of Processing Decisions in Three Juvenile Courts, pp. 31-45; Jerome H. Skolnick, "Social Control in the Adversary System," edited by George F. Cole, Criminal Justice: Law and Politics (Belmont, California: Duxbury Press, 1972), pp. 263-267.

¹⁵Pope, The Judicial Processing of Assault and Burglary Offenders in Selected California Counties, pp. 10-29; Idem, Sentencing of California Felony Offenders, p. 17.

The next legalistic variable which appears to shape actual bargaining is the seriousness of the offense. The prosecutor will charge the offender with the highest offense possible, regardless of the difficulty in proving that the offense did actually occur. This is done to improve negotiations for a guilty plea, causing the offender to plead guilty to a lesser charge which the facts could support. The prosecutor views the defendant as a serious offender when he is charged with a felony. The felony cases most likely to be considered "very serious" by the prosecutor are those that indicate the offender is a serious and continuing threat of violence to the general public. If the prosecutor places the defendant in this category, he is treated more harshly than those charged with a lesser crime.¹⁶ The prosecutor will consider the type of crime and how it was committed as an important factor in his decision to alter the charge. The more serious the charge, the more likely a jury trial will take place. However, if a jury trial doesn't ensue, and the

¹⁶Neubauer, Criminal Justice in Middle America, pp. 218-219; Greenwood, Prosecution of Adult Felony Defendant in Los Angeles County: A Policy Perspective, p. 33; Rabin, "Agency Criminal Referrals in the Federal System: An Empirical Study of Prosecutorial Discretion," p. 1052; Mileski, "Courtroom Encounters: An Observation Study of Lower Criminal Court," pp. 492-494; Blumberg, Criminal Justice, p. 56; White, "A Proposal For Reform of the Plea Bargaining Process," pp. 442-447; Neuman, Conviction-The Determination of Guilty or Innocence Without Trial, p. 83.

offender does plead guilty to a serious charge, then a more severe disposition is accorded the client.¹⁷ Greenwood found that robbery defendants were treated much more harshly than the defendants charged with other crimes. The defendants convicted of robbery at a trial were two-and-a-half times as likely to be sent to prison than those convicted of the next serious offense. The prosecutor has his own idea regarding the seriousness of particular offenses. The defense attorney has no alternative but to accept this rank ordering of offense by the prosecutor and negotiate on the basis of what he can reasonably expect to receive in the area of charge reduction.¹⁸

Several studies have found that plea bargaining centers around the number of charges. Hagan and LaFave found that the number of charges influenced the plea bargaining process. They found that the prosecutor induces the offender to plead guilty to a single charge in exchange for other courts (charges) being dropped or not filed. The

¹⁷George F. Cole, The American System of Criminal Justice (Belmont, California: Wadsworth Publishing Company, 1975), p. 373; Neubauer, Criminal Justice in Middle America, p. 233; Bequai, "Prosecutorial Decision-Making: A Comparative Study of the Prosecutor in Two Counties in Maryland," p. 38; Hagan, "Parameters of Criminal Prosecution: An Application of Path Analysis to a Problem of Criminal Justice," pp. 537-541; Cohen, Delinquency Disposition: An Empirical Analysis of Processing Decisions in Three Juvenile Courts, p. 33.

¹⁸Raymond Moley, Politics and Criminal Prosecution (New York: Minton, Balch and Company, 1929), p. 218; Greenwood, Prosecution of Adult Felony Defendants in Los Angeles County: A Policy Perspective, pp. 25-45.

charge pled guilty to determines the maximum sentence the offender is to serve. The charge pled guilty to also determines the minimum time to be served before the defendant is eligible for parole. Thus, the number of charges affect plea/sentence outcome because if there are several charges against the defendant, he is likely to plead guilty to a concurrent sentence or one serious charge contained in the indictment or bill of information.¹⁹

The final legalistic variable discussed in available research is that of bail. Suffet found that if a defendant had a serious charge or an extensive prior record, then his chances of receiving a small bail were unfavorable compared to the first-time offender with minor charges. Blumberg and Olson point out that bail practices are usually employed for purposes other than assuring a defendant's presence at a trial. They point out that bail is used for

¹⁹Newman, Conviction-The Determination of Guilt or Innocence Without Trial, p. 81; Folbery, "Bargained for Guilty Plea-An Evaluation," pp. 202-206; Casper, The Defendant's Perspective, p. 178; Blumberg, Criminal Justice, pp. 57-59; Cole, The American System of Criminal Justice, p. 296; Rabin, "Agency Criminal Referrals in the Federal System: An Empirical Study of Prosecutorial Discretion," p. 1070; Albert W. Alschuber, "The Prosecutor's Role in Plea Bargaining," University of Chicago Law Review V36 (1968), pp. 85-89; John D. LaBelle, "Negotiated Pleas," edited by Patrick F. Healy and James P. Monak, The Prosecutor's Deskbook: Second Edition (Chicago, Ill.: National District Attorneys Association, 1977), p. 259; Hagan, "Parameters of Criminal Prosecution: An Application of Path Analysis to a Problem of Criminal Justice," pp. 537-541; Wayne R. LaFave, "The Prosecutor's Discretion in the United States," edited by John W. Silva, An Introduction to Crime and Justice (New York, New York: M55 Information Corporation, 1973), pp. 153-155.

coercion by the prosecution to soften up the defendant's reluctance to plead guilty. If the defendant cannot make bail, the prosecutor has a substantial bargaining advantage over him in that he cannot prepare for his case properly. Cole and White found that the ability to make bail or not dictates the tactics used by the prosecutor to induce a plea of guilty by granting credit for time served which results in a suspended sentence being given by the court. If a serious offense is involved than this time served is credited to the sentence length. White found that if a defendant made bail, he usually had a private attorney and Suffet determined that the average bail in terms of dollars was around \$1,800. As a result of this high bail many offenders remain in jail and have court-appointed attorneys. Blumberg observed that there was nearly a 100 percent conviction rate for those who could not make bail as compared to those that were released. The inability to make bail is seen as a sign of indigence and this hampers the defendant in several ways such as: 1) defendant remains in jail-"deadtime," 2) cannot prepare defense, 3) he enters the court in a different manner (handcuffed).²⁰

²⁰Frederic Suffet, "Bail Setting: A Study of Court-room Interaction," edited by William B. Sanders and Howard C. Daudistel, The Criminal Justice Process: A Reader (New York: Praeger Publishers, 1976), p. 212; Blumberg, Criminal Justice, pp. 59-176; "Restructuring the Plea Bargaining," Yale Law Journal V82N2 (December 1972), p. 294; Cole, The American System of Criminal Justice, pp. 284-288; Skolnick, Social Control in the Adversary System, p. 263; White, "A Proposal For Reform of the Plea Bargaining Process," pp. 443-

The offender's race, sex, socio-economic status, and demeanor are among the most prominent extra-legal variables which have been analyzed by researchers. Although these extra-legal variables are legally irrelevant, the evidence suggests that they may influence the sentencing or plea-bargaining decision. For example, there is evidence to support the notion that the offender's demeanor may influence the plea/sentence decision. Defense attorneys, either private or appointed, have found that the defendant often feels that he is an extension of an oppressive criminal justice system. The attorney finds that he has a captive clientele, who is cynical, abusive, and untrustworthy.²¹ The defense attorney finds that the majority of his clients are often very critical and hostile about the way he handles their case. This lack of cooperation often results in the defendant's receiving a more severe sentence as compared to the cooperative client.²² The defendant's demeanor also

450; Abraham S. Blumberg, "The Practice of Law as a Confidence Game: Organizational Cooperation of a Profession," edited by George F. Cole, Criminal Justice: Law and Politics (Belmont, California: Wadsworth Publishing Company, 1972), p. 218; Sheldon R. Olson, Issues in the Sociology of Criminal Justice (Indianapolis, Indiana: Bobbs-Merrill Company, 1975), pp. 32-34.

²¹Richard G. Mendes and John T. Wold, "Plea Bargaining Without Bargaining Routinization of Misdemeanor Procedures," edited by William B. Sanders and Howard C. Daudistel, The Criminal Justice Process: A Reader (New York: Praeger Publishers, 1976), p. 200.

²²Skolnick, "Social Control in the Adversary System," p. 266; "The Influence of the Defendant's Plea on Judicial Determination of Sentence," p. 221.

often influences the type of sentence that he will receive from the court. If the defendant's attitude toward members of the law enforcement community and the attorney is that of respect and cooperation, he has extra efforts put forth on his behalf.²³

Many studies have focused attention upon the offender's race, sex, and socio-economic status as being possible determinants of an accused person's disposition in the court system. Bedaw, Johnson, Wolfgang, Forslund, and Judson found that race and socio-economic status increased the severity of the final disposition. Recent studies done by Greenwood, Pope, Sone, and Mileski have found that race had very little influence upon sentence dispositions. Similarly, race and socio-economic status proved negligible in recent research done by Cohen, Hagan, and Marshall.²⁴

²³Besharov, Juvenile Justice Advocacy: Practice in a Unique Court, p. 25.

²⁴Abraham S. Blumberg, "The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession," edited by George F. Cole, Criminal Justice: Law and Politics (Belmont, California: Wadsworth Publishing Company, 1972), p. 215; Hagan, "Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint," p. 358; Hage A. Bedaw, "Death Sentences in New Jersey," Rutgers Law Review V19 (1964), pp. 1-20; Elmer H. Johnson, "Selecting Factors in Capital Punishment," Social Forces V36 (1957), p. 165; Marvin E. Wolfgang, "Comparison of Death Row," Journal of Criminal Law, Criminology, and Police Science V53 (1962), p. 301; Morris A. Forslund, "Age, Occupation, and Conviction Rates of Whites and Negro Males: A Case Study," Rocky Mountain Social Science Journal V6 (1969), p. 141; Charles J. Judson, "A Study of the California Penalty Jury in First Degree Murder Case," Stanford Law Review V21 (1969), p. 1297; Greenwood, "Prosecution of

Strength of Case

The strength of the defendant's case has been shown to influence the plea-bargaining process. The strength of the case is an important factor in the plea bargaining process. The prosecutor has to prove a case in trial beyond a reasonable doubt. Since the prosecutor has first-hand knowledge of the facts of the case, he is in a strong bargaining position. These facts may be circumstantial, yet strong enough to induce the defendant to plead guilty. If the prosecutor's case is weak, more concessions will be made to induce the defendant to plead guilty.²⁵ Alschuler

Adult Felony Defendants in Los Angeles County: A Policy Perspective," pp. 1-35; Pope, "Sentencing of California Felony Offenders," pp. 1-45; Idem, "The Judicial Processing of Assault and Burglary Offenders in Selected California Counties," pp. 1-45; Stephen M. Jones, "Individual Resources, Societal Reaction, and Sentencing Disparity: A Replication," unpublished Master's Thesis (Youngstown State University, 1977), pp. 1-50; Mileski, "Courtroom Encounters: An Observation Study of Lower Criminal Court," pp. 473-538; Cohen, "Delinquency Dispositions: An Empirical Analysis of Processing Decisions in Three Juvenile Courts," pp. 1-31; Idem, "Juvenile Dispositions: Social and Legal Factors Related to the Processing of Denver Delinquency Cases," pp. 15-30; Idem, "Who Gets Detained? An Empirical Analysis of the Pre-adjudicatory Detention of Juveniles in Denver," pp. 12-32; Hagan, "Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint," pp. 357-383; Ineke Haen Marshall, "Judicial Decision-Making in the Juvenile Court: An Empirical Test of a labeling/conflict Proposition," unpublished Ph.D. (University of Bowling Green, 1977), pp. 60-110.

²⁵ Newman, Conviction-The Determination of Guilt or Innocence Without Trial, p. 66; Newbauer, Criminal Justice in Middle America, pp. 199-218; White, "A Proposal for Reform of the Plea Bargaining Process," pp. 447-448; "Restructuring the Plea Bargaining," p. 292; Robert W. McClure, "Plea Bargaining: The Judicial Merry-Go-Round," Duquesne Law Review V10 (1971), p. 261.

found that an overwhelming majority of prosecutors view the strength or weakness of the case as an important factor in the task of plea bargaining. If the case is weak, the prosecutor's offers are usually very advantageous to the offender. For example, defendants in custody are sentenced to time already served, or defendants on bond are given probation without having to serve time in jail. Folberry and Rothblatt found that the strength of the state's case determined the type of bargain that the prosecutor would offer the defendant. Thus, the strength or weakness of the case is an important motivation in the bargaining decision.²⁶

The presence of physical evidence strengthens the prosecutor's case. Physical evidence is important in presenting a case. The evidence must be legally sufficient to establish the alleged misconduct of the defendant such as: stolen property in his possession, or scientific evidence linking the defendant to a crime. Mayer points out that physical evidence is a rarity in criminal cases, but when present, it aids in case conviction at trial. Bequai points out that the strength of the physical evidence has an influence on the prosecutor's decision regarding a plea offer. If the physical evidence is strong, the concessions made by the prosecutor are likely to be minimal. Rabin

²⁶ Cole, The American System of Criminal Justice, p. 302; "The Unconstitutionality of Plea Bargaining," Harvard Law Review V83 (1970), p. 1389; Alshuler, "The Prosecutor's Role in Plea Bargaining," pp. 50-112; Folberg, "Bargained for Guilty Plea-An Evaluation," pp. 203-212; Rothblatt, "Bargaining Strategy," pp. 20-22.

indicates that when the physical evidence was lacking or very weak, often the prosecutor would not even charge the offender.²⁷

Another variable which strengthens the prosecutor's case is the presence of witnesses. Alschuler and LaBelle found that the prosecutor considers the witness and his identification of the criminal as an important and vital link in the state's case. If the witness's testimony is weak or if the witness is not available or disappeared, the prosecutor's offers in plea negotiations will be generous. Bequai and McClure found that the prosecutor views the number of witnesses involved in the case and each one's reliability and credibility to be extremely important. The testimony of witnesses makes the prosecutor's case easier in court. If the prosecutor can produce an

²⁷Neubauer, Criminal Justice in Middle America, pp. 199-222; Irvin Owen, Defending Criminal Cases Before Juries: A Common Sense Approach (Englewood Cliffs, New Jersey: Prentice Hall, 1973), pp. 169-170; Besharov, Juvenile Justice Advocacy: Practice in a Unique Court, p. 18; Olson, Issues in the Sociology of Criminal Justice, p. 25; James E. Bond, Plea Bargaining and Guilty Pleas (New York, New York: Clark Boardman, 1975), p. 188; Rosett and Cressey, Justice By Consent, p. 109; Bequai, "Prosecutorial Decision Making: A Comparative Study of the Prosecutor in Two Counties in Maryland," pp. 34-42; Rabin, "Agency Criminal Referrals in the Federal System: An Empirical Study of Prosecutorial Discretion," pp. 1039-1091; Martin Mayer, "Hogan's Office": A Kind of Ministry of Justice," edited by William B. Sanders and Howard C. Caudistel, The Criminal Justice Process: A Reader (New York: Praeger Publishers, 1976), p. 176.

eyewitness to testify against a defendant, the case is considered very strong and few concessions will be offered in plea negotiations.²⁸

A final variable which is related to the strength of case is that of confessions. A confession can be any statement or admission to guilt at the time of the defendant's arrest. Finkelstein found that if the state's case was weak, there were inducements on the state's part to have the defendant confess. Mayer found that confessions made trial convictions easier to obtain because they strengthened the state's case. Confessions are a valuable weapon for the prosecution out of trial because they are used to convince the defendant to plead guilty.²⁹ One can deduce that the prosecution will offer little in the area of reduced charge when a confession is involved.

²⁸Owen, Defending Criminal Cases Before Juries: A Common Sense Approach, p. 191; Besharov, Juvenile Justice Advocacy: Practice in a Unique Court, p. 18; Mayer, "Hogan's Office": A Kind of Ministry of Justice," Alschuler, "The Prosecutor's Role in Plea Bargaining," pp. 50-112; LaBelle, "Negotiated Pleas," p. 261; Bequai, "Prosecutorial Decision Making: A Comparative Study of the Prosecutor in Two Counties in Maryland," pp. 34-42; McClure, "Plea Bargaining: The Judicial Merry-Go-Round," pp. 253-269.

²⁹Owen, Defending Criminal Cases Before Juries: A Common Sense Approach, pp. 174-176; Blumberg, Criminal Justice, p. 92; M. O. Finkelstein, "Statistical Analysis of Guilty Plea Practices in the Federal Courts," Harvard Law Review V89N2 (December 1975), p. 309; Mayer, "Hogan's Office": A Kind of Ministry of Justice," p. 178.

Attorney Characteristics

Little or no attention has been given to the role of the defense attorney in the common guilty plea process and little empirical understanding of his function exists.³⁰ The law recognizes the defendant's right to defend himself, yet the legal profession is unanimous in stating that it undermines the principals of justice with no professional advocates. The defense attorney explains the case to the client and reviews with him the options available and the consequences of these options. The Supreme Court regards the right to counsel as a primary safeguard of fairness in the plea-bargaining process. The defense attorney acts as an equalizer by placing the client on equal footing with the law and by being able to mitigate the punishment.³¹

The defense attorney's reputation or competency is likely to influence the plea-bargaining process. If the prosecutor estimates the defense attorney as being competent, aggressive, and as having a "good trial

³⁰Newman, Conviction-The Determination of Guilt or Innocence Without Trial, p. 6; Blumberg, "The Practice of Law as a Confidence Game: Organizational Cooperation of a Profession," p. 215.

³¹"Standards Relating to the Prosecution Function and the Defense Function," American Bar Association (Chicago, Ill.: American Bar Association, 1971), p. 145; Alschuler, "The Defense Attorney's Role in Plea Bargaining," p. 113; Bond, Plea Bargaining and Guilty Pleas, p. 176.

reputation," reductions in charges will occur in order to avoid a trial.³²

The reputation of the defense attorney is important in his relationship with the prosecutor. If the defense attorney's reputation is bad, the prosecutor will only do what the law requires and no more. The defense attorney must not be afraid of going to trial because if he is, the prosecutor's offers become worse in the plea bargaining process. Rothblatt, Olson, and Skolnick found that the more experienced attorneys were able to recognize and exploit any weakness in the prosecutor's case. Recognizing these weaknesses, the more experienced attorney would not hesitate to go to trial. Cole, in an Oregon study, found that members in the bar association rated the young, less experienced appointed lawyers as being not as competent as the retained attorney. The adversary system assumes that the lawyer is well qualified and active, which keeps the system honest by protecting the defendant and representing his best interest.³³ Skolnick found that the private

³²Newman, Conviction-The Determination of Guilt or Innocence Without Trial, pp. 67-74; Besharov, Juvenile Justice Advocacy: Practice in a Unique Court, p. 323.

³³White, "A Proposal for Reform of the Plea Bargaining Process," p. 446; Owen, Defending Criminal Cases Before Juries: A Common Sense Approach, p. 21; Skolnick, Social Control in the Adversary System, p. 255; Blumberg, "Law and Order: The Counterfeit Crusade," edited by A. S. Blumberg, The Scales of Justice (Chicago, Ill.: Aldine Publishing Company, 1970), p. 52; Mayer, "Hogan's Office": A Kind of Ministry of Justice," p. 167; Rosett and Cressey, Justice by Consent, pp. 107-130; Rothblatt, "Bargaining

attorney received better concessions than the appointed and Blumberg determined that the defense attorney's ultimate concern was with plea-bargaining strategies, irrespective of whether the attorney was court-appointed or retained.

Neubauer points out that the prosecutor knows the "track record" of each defense attorney and when he last went to trial.³⁴ Alschuler found that the defense attorney's primary interest in criminal court was moving the case through the system as fast as he could and that the attorney never took a case intending to go to trial. If an attorney lacks confidence in himself and doesn't go to trial or does not appeal unfavorable verdicts, this timidity influences the concessions that his client will receive from the prosecutor. Alschuler also noted that attorneys who had practiced longer were more likely to go to trial.³⁵

Lynn Mather interviewed several prosecutors and learned that the defense attorney is rated as being either a respected, capable trial lawyer or an an incompetent obstruction in the court system. Similarly, Bequai's study in 1974, showed that the prosecution evaluates the

Strategy," pp. 20-22; Olson, Issues in the Sociology of Criminal Justice, pp. 15-45; Cole, The American System of Criminal Justice, pp. 210-260.

³⁴Skolnick, Social Control in the Adversary System, pp. 248-259; Blumberg, The Practice of Law as a Confidence Game: Organizational Cooperation of a Profession, pp. 222-225; Neubauer, Criminal Justice in Middle America, pp. 25-100.

³⁵Alschuler, "The Defense Attorney's Role in Plea Bargaining," pp. 1179-1208.

defense attorney in several ways: private or appointed, past record, his tenacity or being a pushover. The prosecution will not plea bargain away easy victories. Neubauer learned that prosecutors divide the defense attorneys into three categories: 1) good trial lawyers, 2) lawyers that go to trial with varying degrees of success, 3) lawyers that would not try a case. The prosecutor's assessment of the attorney's competence influences the concessions his client will receive in plea negotiations.³⁶

Private and appointed attorneys seem to have relatively similar rates of guilty pleas. The Report of the San Francisco Public Defender's Office and the Report of the Legal Aid Society of New York substantiate that ninety-six percent of all convictions, by either private or appointed attorneys, are by plea bargaining.³⁷

The attorney's caseload is another factor which may influence the plea-bargaining process. The defense attorney and the prosecutor are conscious of the court's calendar and the congestion of many trial courts. This congestion becomes an important factor in inducing plea negotiations. The routine cases are easily disposed of by this method.

³⁶Lynn M. Mather, "The Outsider in the Courtroom: An Alternative Role for Defense," edited by Herbert Jacob, The Potential for Reform of Criminal Justice (Beverly Hills, California: Sage Publications, 1974), pp. 263-289; Bequai, "Prosecutorial Decision-Making: A Comparative Study of the Prosecutor in Two Counties in Maryland," pp. 34-42; Neubauer, Criminal Justice in Middle America, pp. 215-220.

³⁷Alschuler, "The Defense Attorney's Role in Plea Bargaining," p. 1206.

However, the more complex cases of rape, murder, and drugs are more involved in terms of charge reduction and sentencing. Plea bargaining allows the prosecution and defense attorney to process large caseloads efficiently and to keep the system moving. Krantz stated that the defense attorney's caseload limited the amount of time that was devoted to each client.³⁸ The caseload determines the amount of time available to develop a complete defense and give proper attention to dispositional alternatives. The defense attorney is forced to negotiate and avoid trial because of his caseload which influences his ability to be effective. Bond, Rosett and Cressey learned that the defense attorney, either private or appointed, with enormous caseloads, justified sacrificing the interest of a particular client for the good of the next client. This justification was only in terms of having more time to prepare the case for court.³⁹ Neubauer learned that some

³⁸Olson, Issues in the Sociology of Criminal Justice, pp. 25-29; Cole, The American System of Criminal Justice, p. 267; Blumberg, "The Practice of Law as a Confidence Game: Organization Cooperation of a Profession," p. 261; Mendes and Wold, "Plea Bargains Without Bargaining Routinization of Misdemeanor Procedures," pp. 199-200; "The Unconstitutionality of Plea Bargaining," p. 1390; Rabin, "Agency Criminal Referrals in the Federal System: An Empirical Study of Prosecutorial Discretion," p. 1047; Finkelstein, "Statistical Analysis of Guilty Plea Practices in the Federal Courts," p. 307; Sheldon Krantz, Paul Froyd and Janis Hoffman, "The Right to Counsel In Criminal Cases: The Mandate of Argersinger vs. Hamlin," U.S. Government Printing Office (1976), p. 1-75.

³⁹Rosett and Cressey, Justice by Consent, pp. 104-117; Bond, Plea Bargaining and Guilty Pleas, pp. 170-179.

defense attorneys believed that the pressure from the courts to dispose of cases was too intense and that this resulted in too short a period of time for proper case preparation. Alschuler found that the caseload of the defense attorney was both a burden and an asset in plea negotiations.

Alschuler looked at the public defender's office in New York City and Philadelphia and noted that each attorney in these offices handled approximately 800 cases per year. These large caseloads proved to be an advantage for the defense attorney by forcing the prosecutor to negotiate. When the prosecutor's offer would become extremely unacceptable, the defense attorney would demand a jury trial for all his clients. This practice would cause the prosecutor's and the court's docket to become backlogged and congested, which pressured the prosecutor into making suitable offers.⁴⁰

Mather found that financial considerations entered into the negotiation process. The private attorney viewed trials as being detrimental to his income because of the length of time involved. Mather determined that financial incentives dictate the role of the private attorney and that the public defender was not motivated by economics. Alschuler noted that the plea-bargaining system subjected the defense attorney to serious temptations to disregard

⁴⁰Neubauer, Criminal Justice in Middle America, pp. 108-110; Alschuler, "The Defense Attorney's Role in Plea Bargaining," pp. 1206-1248; Blumberg, "The Practice of Law as a Confidence Game: Organization Cooperation of a Profession," pp. 260-262.

the client's interest. Economics leads the able and highly motivated attorney to make decisions that are not really in the client's behalf. Alschuler learned that the defense attorney, when appointed, was not willing to put forth \$10,000 worth of time and effort for only a \$500.00 fee. When the client can afford to pay for an attorney's services, extra efforts for charge reduction and sentence leniency are put forth by the attorney.⁴¹

Finally, the attorney's demeanor appears to have an impact on the plea-bargaining process. Olsen noted that the competency of an attorney was reflected by his posture. The attorneys that seemed to be more competent exhibited better posture during interviews. Cole saw that the successful and competent criminal lawyers had furnishings which resembled the mahogany paneling, plush carpets of upper-status law firms.⁴² Thus, research suggests that the physical appearance of the attorney and his office may be reflections of his competency.

⁴¹Mather, "The Outsider in the Courtroom: An Alternative Role for Defense," pp. 277-286; Alschuler, "The Defense Attorney's Role in Plea Bargaining," pp. 1180-1203.

⁴²Olsen, Issues in the Sociology of Criminal Justice, p. 263; Cole, The American System of Criminal Justice, p. 263.

Plea Offer

Neubauer points out that the plea offer is the most critical stage in the criminal justice process. Newman points out that plea bargaining, which results in a charge reduction or a promise of a light sentence, presents problems of accurate, fair, and truthful pleas. The plea offer consists of an agreement between the prosecutor and the defense attorney or the defendant in regard to an equitable charge that fits the particular crime in question.⁴³ Skin and Cole found that the negotiation discussions were usually limited to avoiding mandatory sentences or trying to limit the maximum time of possible confinement. Newman noted that the defendant enters a plea of guilty only to the single highest charge supported by the evidence. Newman further noted that overcharging was used to force a plea and that these charges were routinely reduced after only token bargaining by the defense attorney, regardless of the traits of a particular defendant. These reductions took place in many instances because the bargains were so common that a defense attorney's strongest argument for a reduction in charges was precedent. Newman noted that

⁴³Newman, Conviction-The Determination of Guilt or Innocence Without Trial, p. 51; Neubauer, Criminal Justice in Middle America, pp. 190-200; Enker, "Perspectives on Plea Bargaining," p. 108.

plea bargaining (offers) for metropolitan and rural areas remain the same across similar type offenses.⁴⁴

Sentencing

The final dependent variable is that of sentencing. The plea-bargaining process performs the sentencing function by setting the boundaries for the maximum time of incarceration. The threat of severe punishment is often implied by the courts or the prosecution if a defendant demands a jury trial. If the defendant does exercise his right to a trial and loses, his sentence could cost him several years of his life and liberty as compared to the sentence in a plea offer.⁴⁵

Skin noted that there were considerable differences in sentencing of those who pled guilty (3.2 years) compared to those who pled not guilty (6.0 years). Skin's data support the fact that the average sentence length for the not guilty plea was considerably higher than the guilty

⁴⁴Newman, Conviction-The Determination of Guilt or Innocence Without Trial, p. 79; Task Force Report: The Courts, "Disposition Without Trial," p. 10; Skin, "Do Lesser Pleas Pay-Accommodations in the Sentencing and Parole Processes," pp. 27-42; Cole, The American System of Criminal Justice, pp. 275-303.

⁴⁵"Restructuring the Plea Bargain," p. 289; Alschuler, "The Defense Attorney's Role in Plea Bargaining," p. 1205; Heumann, "A Note on Plea Bargaining and Case Pressure," p. 527; Newman, Conviction-The Determination of Guilt or Innocence Without Trial, p. 89; Finkelstein, "Statistical Analysis of Guilty Plea Practices in the Federal Courts," p. 296; Rosett and Cressey, Justice by Consent, p. 145.

plea when the offense remained constant. Skin points out that the average sentence length for all types of robbery cases that pled guilty was 3.78 years compared to 7.3 years for the group that went to trial. This disparity in sentence length continued for the assault group with the defendants who pled guilty receiving 1.3 years compared to 3.27 years for the group that went to trial. The Yale Law Review sent out a questionnaire to 240 federal judges concerning plea bargaining with sixty-six percent of the respondents considering the defendant's plea as being a relevant factor in local sentencing procedures. The majority of the judges rewarded the defendant pleading guilty with a less severe sentence than if he went to trial.⁴⁶

Cole noted that the court can impose several different types of sentence. The sentence a defendant receives can be a variation of several forms such as: fines, probation, dismissal, pretrial diversion, or imprisonment. LaBelle found that plea negotiations involved discussions between the prosecutor and defense attorney looking toward an agreement whereby the accused would plead guilty in exchange for a reduction or different charge. LaBelle also found that these discussions would involve particular sentence recommendations in exchange for

⁴⁶Newman, Conviction-The Determination of Guilt or Innocence Without Trial, pp. 62-63; "Do Lesser Pleas Pay-Accommodations in the Sentencing and Parole Processes," pp. 30-33.

a guilty plea. Newman, Rothblatt, Neubauer, White, LaFave, and Bond found that plea discussions centered around sentence leniency. The defense attorney's objective in plea negotiations is to obtain a sentence that is better than average for his client.⁴⁷

Skolnick points out that the sentence is often worked out prior to the defendant's plea of guilty, as is the charge. The prosecutor's recommendation for probation is ordinarily the major sentencing issue in exchange for the guilty plea.⁴⁸ The results of this bargaining sets the parameter of operation for the judge in sentencing.⁴⁹

The defendant's sentence may be seen as a combination of the following influences: defendant characteristics,

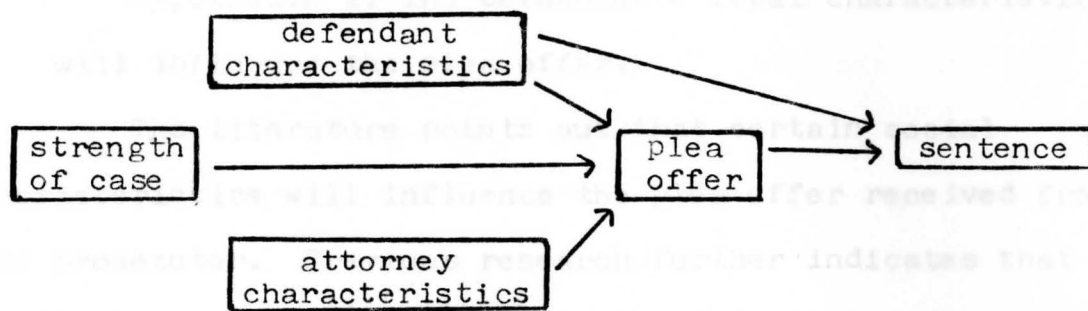
⁴⁷Owen, Defending Criminal Cases Before Juries: A Common Sense Approach, p. 18; Cole, The American System of Criminal Justice, p. 361; LaBelle, "Negotiated Pleas," p. 258; Newman, "Pleading Guilty for Consideration: A Study of Bargain Justice," pp. 786-788; Rothblatt, "Bargaining Strategy," pp. 20-22; Neubauer, Criminal Justice in Middle America, pp. 219-222; White, "A Proposal For Reform of the Plea Bargaining Process," pp. 439-445; LaFave, "The Prosecutor's Discretion in the United States," pp. 152-155; Bond, Plea Bargaining and Guilty Pleas, pp. 185-190.

⁴⁸Newman, Conviction-The Determination of Guilt or Innocence Without Trial, pp. 79-119; Idem, "Pleading Guilty for Consideration: A Study of Bargain Justice," Journal of Criminal Law, Criminology, Police Science V46 (1956), p. 789; Idem, "Reshape the Deal," p. 12; "The Influence of the Defendant's Plea on Judicial Determination of Sentence," p. 204; White, "A Proposal for Reform of the Plea Bargaining Process," p. 443; Skolnick, "Social Control in the Adversary System," p. 260.

⁴⁹Bond, Plea Bargaining and Guilty Pleas, p. 210; "Restructuring the Plea Bargain," p. 289.

strength of case, attorney characteristics, and the plea offer. The plea offer is based upon the defendant's and attorney's characteristics, and the strength of the case. The plea offer and the defendant's characteristics, in turn, will have a direct impact on the final disposition on sentencing.

From the preceding review of the literature the following theoretical model may be graphically presented:



Delineation of Hypothesis

In accordance with the literature and constructed model, seven major hypotheses are presented, with several sub-hypotheses regarding the possible influences on plea offer and final sentencing.

It was stated previously that the prosecutor and the defense attorney review the strength of the case in making a final determination on what reduced charge will be offered and accepted. The stronger the case the less generous the plea offer:

Hypothesis 1: The strength of the case will influence the plea offer.

The literature points out that a defendant's legal characteristics will influence the plea offer received from the prosecutor. Also previous research suggests that defendants with serious legal involvement tend to receive a less generous plea offer than those with minor legal problems:

Hypothesis 2: The defendant's legal characteristics will influence the plea offer.

The literature points out that certain social characteristics will influence the plea offer received from the prosecutor. Previous research further indicates that particular social characteristics may adversely affect the plea offer the defendant will receive. As these characteristics become more adverse, the less generous the plea:

Hypothesis 3: The defendant's social characteristics will influence the plea offer.

Although there is little research on the defense attorney's characteristics, the literature indicates that these qualities such as: reputation as a trial lawyer, influence the prosecutor's plea offer:

Hypothesis 4: The characteristics of the defense attorney will influence the plea offer.

The literature and previous research points out that a person's legal characteristics will affect the

process of sentencing. As the defendant's legal involvement becomes more serious, the sentence severity will increase:

Hypothesis 5: The defendant's legal characteristics will influence the sentence.

The social characteristics of the defendant will influence the sentence. Research indicates that members of a racial minority or a lower socio-economic status will receive a more severe sentence than members of the racial majority or higher economic status. Also defendants that are uncooperative receive more severe sentences than the cooperative defendant:

Hypothesis 6: The defendant's social characteristics will influence the sentence.

Previous research has shown that concessions in sentencing severity are granted to those defendants who plead guilty to the original charge or charge reduction. The sentence which resulted from these negotiations could be in the form of: probation, fine, prison, jail, diversion, or in having the charges dismissed. Also, plea bargaining sets the parameters of sentencing by the concessions made in offense (charge) reduction:

Hypothesis 7: The plea offer will influence the sentence severity.

Summary

The hypotheses presented above, form the questions which this research study will empirically investigate. The preceding chapter has reviewed relevant literature concerning plea bargaining. The following chapter will elucidate the research methodology used to evaluate the above hypotheses.

Research Design

There are three major classes of research designs: true experimental, quasi-experimental, and nonexperimental. To properly analyze the data collected on the relevant variables, the researcher must select an appropriate design. The research design performs a major function in the testing of the causal hypothesis by reducing the likelihood of a rival hypothesis. That is, in a particular study there may be one or more extraneous (alternate) variables which might account for the obtained results. In a true experimental design, which is laboratory controlled, the threat of extraneous variables confounding the results is avoided.

The research design employed in this study will be the nonexperimental design. Inferences regarding relationships are drawn from nonexperimental data. There is no

CHAPTER III

METHODS

This chapter focuses on the methodological considerations necessary to explore the hypotheses in this research study. The design, sample, instrumentation, and procedures are discussed and the methodological limitation of the study are pointed out.

Research Design

There are three major classes of research designs: true experimental, quasi-experimental, and nonexperimental. To properly analyze the data collected on the relevant variables, the researcher must select an appropriate design. The research design performs a major function in the testing of the causal hypothesis by reducing the likelihood of a rival hypothesis. That is, in a particular study there may be one or more extraneous (alternate) variables which might account for the obtained results. In a true experimental design, which is laboratory controlled, the threat of extraneous variables confounding the results is avoided.

The research design employed in this study will be the nonexperimental design. Inferences regarding relationships are drawn from nonexperimental data. There is no

manipulation of the independent variable or control over the assignment of subjects, nor is there a control group.⁵⁰

There are many types of studies that examine hypotheses employing a nonexperimental design. These studies focus on characteristics or beliefs of people and often lack clarity as to who has been exposed to the factor under study.⁵¹ Such studies have been termed "ex post facto" because they are dealing with post characteristics or experiences. Campbell and Stanley point out that many "ex post facto" experiments can be judged to be unsatisfactory at their very best because all the threats to internal and external validity are operative. Yet, these researchers point out that such designs are appropriate and represent extended efforts toward a quasi-experimental design.⁵² The nature of our research problem suggests that this nonexperimental, "ex post facto" design is appropriate.

Sample

The sample used in this research is comprised of 350 adult felony cases processed in the county Court of Common Pleas in four (4) counties during the year of 1979.

⁵⁰Claire Selltiz, Lawrence S. Wrightsman and Stuart Cook: Research Methods in Social Methods in Social Relations (New York: Holt, Rinehart and Winston, 1976), pp. 127-157.

⁵¹Ibid, pp. 127-157.

⁵²D. T. Campbell and J. C. Stanley, Experimental and Quasi-Experimental Designs for Research (Chicago: Rand McNally, 1966), pp. 64-71.

The sample is restricted to those felony cases in which the defendant has pled guilty and has been sentenced by the court of common pleas.

Sampled in a purposive fashion, four bordering counties were selected: 1) Mahoning, 2) Columbiana, 3) Portage, and 4) Summit. The bar associations in each county were contacted and asked to provide a list of all attorneys who practiced criminal law in that county's court system. The four county bar associations provided a total list of 112 lawyers: 1) Mahoning-31, 2) Portage-34, 3) Summit-32, and 4) Columbiana-15. Because of practicality, 70 attorneys were selected to be interviewed concerning their last five (5) felony cases which pled guilty and had been sentenced. The total sample of 70 attorneys was formed by alphabetically selecting 62.5 percent $\frac{(70 \text{ sample size})}{(112 \text{ total sample})}$ of the attorneys in each county: 1) Mahoning-19, 2) Portage-21, 3) Summit-20, 4) Columbiana-10. This process resulted in a stratified sample of attorneys who practiced criminal law in the four counties. Each was asked to provide information on the last five (5) felony cases sentenced after plea bargaining.

This presents limitations since systematic biases may have been introduced because of differential selection of subjects. Nonrandom selection of subjects can contribute to spurious interpretations of findings. For instance, when given the choice of selecting subjects for a study, the researcher may select only the best possible subjects or the

interviewer may select only the best cases.⁵³ This threat is operative in this research study because there was a reliance upon the attorney's integrity and memory in the felony case selection process.

Instrumentation

Instrumentation refers to the process by which reliable, valid data are collected for analysis. There are many different forms of instrumentation used in research. One must choose the most appropriate method for the type of research being done. In this instance, a combination of the questionnaire-observation method was used to gather the data required. Necessary data about the defendants were gathered by interviewing attorneys. These interviews were structured in closed-end questionnaire form. After the interviews, each attorney was rated by the interviewer in several areas. These areas will be discussed later. (See Appendix A for questionnaire.)

Prior to the interviewing of the attorneys, a questionnaire was developed to tap the relevant variable dimensions. The researcher must be sure that the questions used in the study are actually measuring what they attempted to measure on a particular variable. In developing a questionnaire, it is crucial that each question be worded properly. Proper wording and format are necessary to insure

⁵³Smith, Strategies of Social Research: The Methodological Imagination, pp. 62-63.

that one is measuring what he intended to measure. Thus, the researcher must take time to pretest each question to see if the researcher and the respondent correspond to the same reference. This pretesting of the questions was accomplished by asking a panel of prosecutors to respond on each question. After listening to the feedback from the panel, several adjustments were made concerning questions which needed rewording.

The questionnaire (Appendix A) began with an explanation of how the attorneys were selected and that the researcher was concerned with the attorney's last five (5) felony cases which had been disposed of through plea bargaining. This was then followed by several questions concerning the attorney's background such as: years of experience, law school, and caseload. Each question was given a variable name and placed in a "codebook" (see Appendix B) for analytical purposes. In accordance with the literature, all variables (defendant characteristics, attorney characteristics, strength of case, plea offer, and severity of sentence) were measured in several different areas.

Operationalization of Instrumentation

The theoretical model was presented in the preceding chapter which emphasized several variables. These variables may influence the dependent variables of plea offer and sentencing in several ways. The

operational measures used to determine these inferences are briefly discussed in the following paragraphs.

Strength of Case

This variable was shown to be a rather consistent influence on the plea offer of the prosecution. In order to determine the strength of the case, four measures were employed.

The first measure was concerned with the physical evidence present in each defendant's case. The defense attorney was asked to determine how incriminating the physical evidence was in each of his five (5) cases by rating the evidence. This rating, done by the attorney was measured in terms of: 1) extremely, 2) moderately, 3) average, 4) of little consequence, and 5) no consequence.

The number of witnesses was used as the second indicator of perceived strength of case. This was measured in terms of actual total number of witnesses that the prosecution could present at a trial. This number was taken from the prosecutor's list of witnesses which was presented to the defense attorney at the time of motion for discovery.

A variation of number of witnesses, number of identification witnesses, was used as the third indicator of this variable. This again was measured in terms of actual number determined from the prosecutor's witnesses list. This indicator was only concerned with the witnesses who

could actually identify (eyewitness) the defendant as the person who committed the crime.

The fourth area measured concerning the strength of the case was confessions or admissions. The defense attorney was asked to determine how incriminating a confession/admission was in each of his five (5) cases. This was accomplished by the attorney's rating the confession/admission based upon the following: 1) extremely, 2) moderately, 3) average, 4) little consequence, 5) no consequence, and 6) no confession.

Defendant's Legal Characteristics

The defendant's legal characteristics are a rather important area of concern for the prosecutor in his final determination of a plea offer. This variable used five measures.

The first measure was concerned with each defendant's prior criminal record. This information was obtained from the defense attorney and was only recorded when there was a felony conviction. The defendant's prior criminal records were classified into the following categories: 0) zero, 1) one, 2) two, 3) three, 4) four and over, for felony convictions.

The defendant's current criminal status was the second indicator used to measure legal characteristics. This status was based upon the defendant's involvement with the criminal justice system at the time of his indictment.

The defendants were placed into one of the following categories by the attorney: 1) none, 2) probation, 3) parole, 4) jail, 5) prison.

The third indicator used to measure legal characteristics is seriousness of the offense. This was determined by the offense (crime) charged with by the grand jury indictment. The seriousness of the offense was based upon a rating from one (most serious) to sixty-six (least serious) based upon the Ohio Revised Criminal Code (see Appendix C).

A fourth indicator, number of charges, was used to measure legal characteristics. This measure was concerned with the number of charges on the indictments for each defendant and were classified into the following categories: 1) one, 2) two, 3) three, 4) four and over.

The final indicator employed to measure legal characteristics is bail. This measure is concerned with the influence bail has upon the plea offer and was classified into the following categories: 1) yes, 2) no.

Defendant's Social Characteristics

The literature has shown that the defendant's social characteristics will influence the plea offer. In order to determine the influence this variable has upon the plea offer, five measures were used.

The first measure employed was based upon the attorney's perception of his client's cooperation or respect.

The defense attorney placed each defendant into one of the following categories: 1) extremely cooperative, 2) moderately cooperative, 3) average, 4) moderately uncooperative, and 5) extremely uncooperative.

The second indicator used to measure social characteristics is race. This measure is concerned with the effect race has upon the plea offer with members of the racial majority receiving better offers. Each defendant was placed into one of the following categories: 1) black, 2) white, and 3) other.

The third measure employed was concerned with the influence of each defendant's socio-economic status upon the plea offer. The literature is undecided as to the influence which one's socio-economic status has upon the plea offer, yet it was decided that such an important area as this be used. Each defendant was placed in the following category by his attorney: 1) upper middle class, 2) middle class, 3) lower middle, and 4) poor.

The fourth indicator employed to measure social characteristics is that of sex. This measure is concerned with the influence sex has upon the plea offer with males receiving a less generous offer. Each defendant was placed into one of the following categories: 1) male, 2) female.

The final indicator employed to measure a defendant's social characteristics upon the plea offer is the number of meetings between the attorney and defendant. The meetings were measured by the actual number of contacts

recorded in the attorney's case notes.

Defense Attorney Characteristics

This variable was shown to have a influence upon the prosecutor's decision concerning a plea offer. In order to determine the degree of involvement of the attorney's characteristics in the plea bargaining process, five measures were employed.

The first indicator used to measure the characteristics of the defense attorney was concerned with reputation, skills and competency. These areas were rated by the prosecutor and each defense attorney was placed into one of the following categories: 1) upper third, 2) middle third, and 3) lower third.

The second indicator measured economic rewards. Each defense attorney was asked if he was privately retained or court appointed. Research indicates that defendant's who privately retain an attorney often receive better "deals" from the prosecutor.

The third indicator used to measure attorney characteristics was concerned with the attorney's caseload. Caseload was measured in actual number of felony cases handled in a year's time. This number was given to the interviewer by the lawyer. The literature indicates that smaller caseloads allow the attorney to devote more time to each client which would result in better plea offers.

The fourth indicator employed measured the appearance and demeanor of each attorney. Initially twenty-two (22) different variables were used to measure this area. After recoding several variables to obtain a point value, all variables were added together to form a scale with the lowest total value being the best. This formed a new variable. After forming this new variable, a Pearson Correlation was run with the twenty-two (22) original variables by the new variable. A significance level of .05 or less was set and the strength level was set at .5 or greater. If variables met these criteria, they were added together to form another new scale and variable.

This new variable was composed by adding the following eight (8) variables. The first variable was concerned with the quality of furnishings in the attorney's office. Each attorney's furnishings were rated on the following basis: 1) excellent, 2) average, and 3) poor, by the interviewer.

The second variable used to form the new variable dealt with the number of chairs in the attorney's office waiting room. These were recorded in terms of actual numbers of chairs present.

The third variable employed was concerned with the organization of the attorney's desk. Each attorney was rated upon the following categories: 1) excellent, 2) neat, 3) average, 4) untidy, and 5) unorganized by the interviewer.

The fourth variable dealt with the personal appearance of the attorney. Each attorney was interviewed during regular office hours and placed into one of the following categories: 1) well dressed, 2) neat, 3) average, 4) untidy, and 5) unkept.

The fifth variable employed was concerned with the cleanliness of the attorney interviewed. Each attorney was rated upon the following criteria: 1) excellent, 2) average, and 3) poor.

The sixth variable dealt with the attorney's grooming during the interview. The attorney was rated by the interviewer according to the following criteria: 1) excellent, 2) average, and 3) poor.

The seventh variable dealt with the quality of eye contact between the interviewer and the interviewee. The interviewer rated each attorney based upon the following criteria: 1) excellent, 2) average, and 3) poor.

The final variable dealt with the posture of each attorney during the interview. The interviewer classified each attorney according to the following criteria: 1) excellent, 2) average, and 3) poor.

Each attorney was rated in all the above eight variables by the interviewer. This was accomplished by the interviewer's filling out a form (Appendix A1) no more than one (1) minute after each interview was completed.

After this new variable was formed, the defense attorney's appearance and demeanor involving the plea offer were measured.

The fifth indicator used to measure attorney characteristics was concerned with the law school attended by the lawyer. After all the attorneys were interviewed in a county, the researcher then went to the county prosecutor and asked him to rate the law schools. The prosecutor rated the law school based upon the following criteria: 1) upper third, 2) middle third, 3) lower third.

The following variables may influence the dependent variable of sentencing. The operational measures used to determine this influence are briefly discussed in the following paragraphs.

Defendant's Legal Characteristics

The defendant's legal characteristics will affect the process of sentencing. In order to determine this influence, the same five indicators used to measure the legal characteristics upon the plea offer were employed. These indicators have been previously elaborated upon in this chapter.

Defendant's Social Characteristics

The literature has shown that the defendant's social characteristics will influence the sentence. In order to determine the influence this variable has upon the sentence, five measures were used. These measures have been previously elaborated upon in this chapter in the section concerning social characteristics and the plea offer.

Plea Offer

The literature has shown that concessions in sentencing are granted to those defendants who plead guilty. The indicator used to measure the plea offer upon sentence was created by forming two new variables and then combining them.

The first new variable was created by taking the number of indicted charges minus the number of counts pled guilty to. These were obtained from the defense attorney's records. Both of the above areas were classified into the following categories: 1) one, 2) two, 3) three, and 4) four and over.

The second variable was created by taking the charge pled guilty to minus the indicted charge. This was accomplished by creating an offense sheet (Appendix C) with the most serious offense, murder, receiving a numerical value of one (1) and the least serious offense, driving while

under suspension, receiving a numerical value of sixty-five (65). A numerical value of sixty-six (66) was given to dismissed charges. The offense sheet was created by going to the Ohio Revised Criminal Code, which lists the most serious offense to the least serious offense by different criminal chapters.

After these two new variables were formed, they were added together to form another indicator which measured the plea offer. This was used to determine the numerical value for concessions granted in plea bargaining. The smaller the numerical value, the fewer the concessions offered, conversely, the larger the numerical value, the greater the number of concessions.

Hypotheses

The following operational hypotheses may be derived from the previously stated indicators:

1. The strength of the case will influence the plea offer.
 - 1A. The more incriminating the physical evidence becomes, the less generous the plea offer.
 - 1B. The greater the number of witnesses, the less generous the plea offer.
 - 1C. The greater the number of identification witnesses, the less generous the plea offer.
 - 1D. The more incriminating the confession/admissions, the less generous the plea offer.

2. The defendant's legal characteristics will influence the plea offer.

2A. The more serious the prior criminal record, the less generous the plea offer.

2B. The more serious the defendant's current criminal status, the less generous the plea offer.

2C. The more serious the offense, the less generous the plea offer.

2D. The greater the number of charges, the less generous the plea offer.

2E. Defendants who do not make bail will get a less generous plea offer than those who make bail.

3. The defendant's social characteristics will influence the plea offer.

3A. The less respectful the defendant's demeanor, the less generous the plea offer.

3B. Defendants who belong to a racial minority will get a less generous plea offer.

3C. The lower the defendant's socio-economic status, the less generous the plea offer.

3D. Defendants who are male will get a less generous plea offer than those who are female.

3E. Defendants who have minimal contact with the defense attorney will get a less generous plea offer.

4. The characteristics of the defense attorney will influence the plea offer.

4A. The greater the reputation, skills, and competency of the defendant's attorney, the more generous the plea offer.

4B. The higher the economic rewards of the defendant's attorney, the more generous the plea offer.

4C. The smaller the caseload of the defendant's attorney, the more generous the plea offer.

4D. The better the appearance and demeanor of the defendant's attorney, the more generous the plea offer.

4E. The better the law school the attorney attends, the more generous the plea offer.

5. The defendant's legal characteristics will influence the sentence.

5A. The more serious the prior criminal record, the more severe the sentence.

5B. The more serious the defendant's current criminal status, the more severe the sentence.

5C. The more serious the offense, the more severe the sentence.

5D. The greater the number of charges, the more severe the sentence.

5E. Defendants who do not make bail will get a more severe sentence than those who make bail.

6. The defendant's social characteristics will influence the sentence.

6A. The less respectful the defendant's demeanor, the more severe the sentence.

6B. Defendants who belong to a racial minority will get a more severe sentence than those who belong to the racial majority.

6C. The lower the defendant's socio-economic status, the more severe the sentence.

6D. Defendants who are male will get a more severe sentence than those who are female.

6E. Defendants who meet frequently with the attorney will get a more severe sentence.

7. The plea offer will influence the sentence severity.

7A. The more generous the plea offer, the less severe the sentence, holding the offense constant.

Missing Data

Before proceeding with a description of the procedure used to gather the data, one needs to pay attention to the problem of missing data. There is a total of twenty-seven missing cases among the four counties selected: Mahoning County-seven missing cases, Portage County-seven missing cases, Columbiana County-eight missing cases, Summit County-five missing cases. Assuming that the missing information is randomly distributed throughout the sample, the missing cases can be simply ignored. The missing cases were coded with a numerical value of nine, thus accounting for all data in the study. There are several reasons for these missing data. The first reason is

that some of the attorney's criminal cases did not meet the criteria of felony cases that have pled guilty and been sentenced in common pleas court. The second reason being that the final disposition of sentencing had not occurred at the time of the study. The final reason for the missing data lies in the area of attorney practice. Several of the attorneys had just started a criminal law practice, thus not having the required number of cases. Or, a few of the attorneys who had practiced for several years were now trying to limit their criminal law practices and emphasize other areas of law.

Procedure

In order to increase subject response, a form letter (see Appendix D) was sent to each attorney in the sample. This letter stated the purpose of the research and selection procedures, requesting time for an interview. The attorney was then contacted via telephone for an appointment. If an attorney could not be contacted or refused to be interviewed, the next attorney on the alphabetical list for that county was selected. This occurred on three occasions, twice in Portage County with the attorneys stating that it was a breach of confidentiality. The third attorney who could not be interviewed was in the hospital and this occurred in Mahoning County. During the telephone conversation to set up an appointment, the attorney was reminded about the purpose of the study.

It was suggested that the case files of the attorney's last five felony cases be available to the attorney in order that certain questions could be answered from facts and not memory.

After the appointments were made, each attorney was interviewed at his office. The questionnaire was administered by the same researcher to the total sample of seventy attorneys in the same fashion. The interviews lasted from five minutes to a half hour, with the average interview lasting twenty minutes. After the interview was completed, the researcher immediately rated the attorney in certain areas such as: degree of cooperation, grooming, quality of furnishings, law book presence, and other areas (see Appendix E).

After all the attorneys in a particular county were interviewed, the researcher went to the county prosecutor. The researcher explained the study to the prosecutor and stated that his ratings of the attorneys involved would be strictly confidential. The prosecutor was then asked to rate each attorney involved from that particular county. The prosecutor rated each attorney as to: reputation, trial ability, honesty, and law school. These ratings were done by classifying the attorneys in the following manner: 1) upper third, 2) middle third, 3) lower third (see Appendix F).

In the administration of the questionnaire there exists limitations about which the researcher must be concerned. These limitations are concerned mainly with experimental characteristics biasing subject response. In order to avoid this, the researcher was careful to dress properly, be punctual, and be courteous at all times during the interviews.

Summary

This chapter has dealt with the methodological aspects of the present study. Discussed were the research design, sample, instrumentation, and procedure with the limitations to each presented in the appropriate section. It cannot be emphasized enough that one must be cognizant of these limitations. The effects of these limitations and data collection cannot be totally counted or discounted, yet, they should be kept in mind to appropriately interpret the findings.

Hypothesis 2: The defendant's legal characteristics will influence the plea offer.

Hypothesis 3: The defendant's social characteristics will influence the plea offer.

Hypothesis 4: The characteristics of the defense attorney will influence the plea offer.

Hypothesis 5: The defendant's legal characteristics will influence the sentence.

CHAPTER IV

FINDINGS

Resulting from the review of the literature in Chapter II, a model was developed concerning the causation of sentence severity in plea bargaining. The basic tenants are that through the elements of strength of case, defendant's legal and social characteristics, and the defense attorney's characteristics, the plea offer is affected which consequently influences the sentence. Further, that the plea offer, and the defendant's legal and social characteristics, will influence the severity of the sentence. Seven hypotheses regarding the model were generated from the literature and are listed below:

Hypothesis 1: The strength of the case will influence the plea offer.

Hypothesis 2: The defendant's legal characteristics will influence the plea offer.

Hypothesis 3: The defendant's social characteristics will influence the plea offer.

Hypothesis 4: The characteristics of the defense attorney will influence the plea offer.

Hypothesis 5: The defendant's legal characteristics will influence the sentence.

Hypothesis 6: The defendant's social characteristics will influence the sentence.

Hypothesis 7: The plea offer will influence the sentence severity.

In order to present the findings in a systematic fashion, this chapter will be presented in seven parts, one for each hypothesis. Each part will begin with a restatement of the respective hypothesis along with the sub-hypothesis, followed by a description of the analysis used to evaluate that hypothesis and the findings.

Hypothesis 1

The strength of the case will influence the plea offer.

There are several sub-hypotheses derived from the theoretical model concerning the relationship between the strength of the case and the plea offer. In order to measure the relationships stated in Chapter III, it was necessary to correlate the different variables. The correlation method used was the product-moment correlation coefficient by Pearson. The purpose in using this analysis is to determine the degree of association indicating the strength of the linear relationships between the variables to the plea offer variable. This bivariate correlation technique provides a single number which summarizes the relationship between two variables. This number is called the correlation coefficient and is symbolized by the letter r .

The correlation coefficient (r) ranges between +1.00 and -1.00 with a perfect positive relationship reflected by an r of 1.00 and a perfect negative relationship reflected by an r of -1.00, and a lack of any relationship reflected by an r of zero.

When the Pearson r is squared, another statistic is formed (r^2). This symbol means "variance explained" and refers to a measure of the proportion of variance in one variable "explained" by the other. Thus, r^2 may be viewed as a summarizing measure weighing the influence by one variable upon another. In mathematical terms, r^2 is expressed as the ratio between "variance explained" by total variance by means of a percentage. In determining the amount of variance explained as being significant enough to be considered worthwhile, studies in the social sciences have considered five (5) percent of the explained variance high enough to justify further investigation of the hypothesis.

However, before using the product-moment correlation by Pearson, certain criteria must be met. First, the data must be interval level data. This means that the level of measurement between categories must be defined in terms of fixed or equal units. The second criteria is concerned with the data being "homoscedastic." Homoscedasticity refers to the existence of normal distributions between two variables across a regression line. The final criteria is that the data must be linear, that is, the relationship holds throughout the spectrum of values. With these

conditions being met, the Pearson product-moment correlation was used to evaluate the first hypothesis.

H1A: The more incriminating the physical evidence becomes, the less generous the plea offer.

The predicted relationship is that the more incriminating the physical evidence, the less generous the plea offer will be to the defendant. (By implementing the Pearson product-moment correlation it was found that sub-hypothesis 1A was not confirmed.

H1B: The greater the number of witnesses, the less generous the plea offer.

The predicted relationship is that the more witnesses for the prosecution in a trial, the less generous the plea offer. By implementing the product-moment correlation it was found that sub-hypothesis 1B was not confirmed.

H1C: The greater the number of identification witnesses, the less generous the plea offer.

The predicted relationship is that the greater the number of eyewitnesses the less generous the plea offer to the defendant. By implementing the product-moment correlation it was found that sub-hypothesis H1C was not confirmed.

H1D: The more incriminating the confession/admission, the less generous the plea offer.

The predicted relationship is that an incriminating confession/admission will reduce the generosity of the plea offer. By implementing the product-moment correlation it was found that sub-hypothesis H1D was not confirmed.

With these findings in mind, Hypothesis 1 (strength of case) doesn't seem to influence the plea offer.

Hypothesis 2

The defendant's legal characteristics will influence the plea offer.

There are several sub-hypotheses derived from the relationship concerning a defendant's legal characteristics and plea offer. It is hypothesized that as these legal characteristics become disadvantageous, the plea offer will become minimal.

H2A: The more serious the prior criminal record, the less generous the plea offer.

The predicted relationship is that the more serious the prior criminal record (previous felony convictions), the less generous the plea offer. This hypothesis was evaluated by the use of the product-moment correlation. A correlation coefficient of ($r = .1313$) was found. This relationship, while not being strong, does denote some significance. The defendant's prior criminal record was shown to explain 1.7% ($r^2 = .0172$) of the variance in the plea offer by prior criminal record.

H2B: The more serious the defendant's current criminal status, the less generous the plea offer.

The predicted relationship is that the more serious the defendant's current criminal status, the less generous the plea offer. This hypothesis was evaluated by the use of the product-moment correlation, which was found not to be statistically significant.

H2C: The more serious the offense, the less generous the plea offer.

The predicted relationship is that the more serious the crime committed, the less generous the plea offer. This hypothesis was evaluated by the use of the product-moment correlation. A correlation coefficient of ($r = .0763$) was found. This relationship, while not being that strong, does denote a relationship and some significance. The seriousness of the offense was shown to explain 3.1% ($r^2 = .0310$) of the variance in the plea offer by seriousness of offense.

H2D: The greater the number of charges, the less generous the plea offer.

The predicted relationship is that the more criminal charges a defendant has filed against him, the less generous the plea offer. This hypothesis was evaluated by the use of the product-moment correlation. A correlation coefficient of ($r = .2790$) was found. This relationship, while being somewhat stronger than the previous one, is shown to explain 7.7% ($r^2 = .0778$) of the variance in the plea offer by the number of charges.

H2E: Defendants who do not make bail will get a less generous plea offer than those who make bail.

The predicted relationship is that defendants who cannot make bail will receive minimal plea offers compared to the defendants who make bail. This hypothesis was evaluated by the use of the product-moment correlation and was found to be not confirmed.

Based on the preceding calculations: a defendant's prior criminal record ($r^2 = .0712$), seriousness of the offense ($r^2 = .0310$), and the number of charges ($r^2 = .2790$) affect the plea offer. Thus these three (3) sub-hypotheses concerning a defendant's legal characteristics are tentatively supported.

Hypothesis 3

The defendant's social characteristics will influence the plea offer.

There are several sub-hypotheses derived from the relationship concerning a defendant's social characteristics and plea offer. It is hypothesized that as these legal characteristics become disadvantageous, the plea offer will become minimal.

H3A: The less respectful the defendant's demeanor, the less generous the plea offer.

The predicted relationship is that defendants who show open, outward hostility or a lackadaisical attitude will receive a less generous plea offer compared to a defendant who is cooperative and concerned over his involvement with the legal system. This hypothesis was evaluated by the use of the product-moment correlation and was found to be unsupported.

H3B: Defendants who belong to a racial minority will get a less generous plea offer than those who belong to the racial majority.

The predicted relationship is that a defendant's race would influence the plea offer by the prosecutor.

Those defendants belonging to a racial minority would receive a less generous plea offer than the racial majority. This hypothesis was evaluated by the use of the product-moment correlation and was found to be not confirmed.

H3C: The lower the defendant's socio-economic status, the less generous the plea offer.

The predicted relationship is that a defendant's socio-economic status in the community would affect the plea offer. It was hypothesized that defendants in low socio-economic status would receive a less generous plea offer compared to defendants in a higher socio-economic class. This hypothesis was evaluated by the product-moment correlation. A correlation coefficient of ($r = .100$) was found. This relationship, while not being that strong, does explain 1% ($r^2 = .0100$) of the variance in the plea offer by socio-economic status.

H3D: Defendants who are male will get a less generous plea offer than those who are female.

The predicted relationship is that male defendants would be penalized because of their sex and would receive a less generous plea offer compared to the female defendants. This hypothesis was evaluated by the Pearson product-moment correlation and was not confirmed.

Based upon the preceding calculations, a defendant's socio-economic status ($r^2 = .0100$) explains a portion of variance in the plea offer and Hypothesis H3C is supported.

Hypothesis 4

The characteristics of the defense attorney will influence the plea offer.

There are several sub-hypotheses derived from the relationship of a defense attorney's characteristics to the plea offer. It was hypothesized that as the defense attorney's characteristics became more advantageous, the plea offer would be more generous.

H4A: The greater the reputation, skills, and competency of the defendant's attorney, the more generous the plea offer.

The predicted relationship is that defense attorneys noted for their skills, reputation, and competency in the courtroom during trials would receive more attractive plea offers compared to the attorney whose qualities are somewhat lacking as a trial advocate. This hypothesis was evaluated by the Pearson product-moment correlation and the relationship was found not to be statistically significant.

H4B: The higher the economic rewards of the defendant's attorney, the more generous the plea offer.

The predicted relationship is that the defense attorneys retained by the defendant would receive a more generous plea offer than the defendant who has to rely upon a court appointed attorney. This hypothesis was evaluated by the product-moment correlation. A correlation coefficient of ($r = .1170$) was found. This relationship, while not very strong, does explain 1.4% ($r^2 = .01368$) of the variance in the plea offer by economic rewards.

H4C: The smaller the caseload of the defendant's attorney, the more generous the plea offer.

The predicted relationship is that attorney's with a small criminal caseload would have more time to devote to a defendant's case and obtain a more generous plea offer compared to attorneys with a high volume of criminal cases. This hypothesis was evaluated by the product-moment correlation and was not confirmed.

H4D: The better the appearance and demeanor of the defendant's attorney, the more generous the plea offer.

The predicted relationship is that the attorney's appearance and demeanor would affect the plea offer. The more successful attorney would be better dressed, occupy a larger office with quality furniture, and have a degree of confidence about him compared to the less successful attorney. This hypothesis was evaluated by the product-moment correlation and was not confirmed.

H4E: The better the law school attended, the more generous the plea offer.

The predicted relationship is that the attorneys who attended highly rated law schools would be able to negotiate a much better plea offer compared to the attorneys who attended law schools that aren't rated as high. This hypothesis was evaluated by the product-moment correlation. A correlation coefficient of ($r = .0928$) was found. This relationship, while not very strong, explains 1% ($r^2 = .0086$) of the variance in the plea offer by the law school.

Based on the preceding calculations: Hypothesis H4B, concerning economic rewards ($r^2 = .01368$), and H4E concerning the law school attended ($r^2 = .0086$), explains a portion of the variance in the plea offer in Hypothesis 4 concerning defense attorney's characteristics.

Sentence

In this section, three hypotheses are evaluated concerning each one's influence upon final disposition (sentencing) in the court of common pleas. These hypotheses are concerned with: the defendant's legal characteristics, social characteristics, and the plea offer.

Hypothesis 5

The defendant's legal characteristics will influence the sentence.

There are several sub-hypotheses derived from the relationship concerning a defendant's legal characteristics to the final sentence. It was hypothesized that as the defendant's legal characteristics become more disadvantageous, the final sentencing would be more severe compared to defendants who do not possess similar qualities.

H5A: The more serious the prior criminal record, the more severe the sentence.

The predicted relationship is that as a defendant's prior criminal record (felony record) increases, the courts will impose a more severe sentence. This hypothesis was evaluated by the product-moment correlation. A

correlation coefficient of ($r = .2723$) was found. This relationship, being somewhat strong, explains 7.4% ($r^2 = .0741$) of the variance in sentencing by a defendant's prior criminal record.

H5B: The more serious the defendant's current criminal status, the more severe the sentence.

The predicted relationship is that a defendant's current criminal status (probation, parole, jail, prison) will affect the final sentencing. As a defendant acquires a label, the sentence severity will be reflected. This hypothesis was evaluated by the product-moment correlation. A correlation coefficient of ($r = .1910$) was found. This relationship accounts for 3.6% ($r^2 = .0364$) of the variance in sentencing by a defendant's current criminal status.

H5C: The more serious the offense, the more severe the sentence.

The predicted relationship is that the more serious the charge the defendant is indicted upon, the more severe the sentence received from the Court of Common Pleas. This hypothesis was evaluated by the Pearson's product-moment correlation. A correlation coefficient of ($r = .3289$) was found. This relationship, while being somewhat stronger than those reported above, accounts for 10.8% ($r^2 = .1081$) of the variance in sentencing by the seriousness of the offense.

H5D: The greater the number of charges, the more severe the sentence.

The predicted relationship is that a defendant who is charged in a multi-count felony indictment will receive a more severe sentence compared to defendants who are charged with only one felony or a lesser number of felonies. This hypothesis was evaluated by the product-moment correlation. A correlation coefficient of ($r = .2210$) was found. This relationship accounts for 4.9% ($r^2 = .0488$) of the variance in sentencing by the number of felony charges.

H5E: Defendants who do not make bail will get a more severe sentence than those who make bail.

The predicted relationship being that a defendant who cannot make bail is penalized by a more severe sentence than the defendant who has the economic resources to post bail. This hypothesis was evaluated by the product-moment correlation. A correlation coefficient of ($r = .4743$) was found. This relationship was the strongest found in the present study; it accounts for 22.5% ($r^2 = .2249$) of the variance in sentencing by bail.

Based on the preceding calculations: prior criminal record ($r^2 = .074$), current criminal status ($r^2 = .0364$), seriousness of the offense ($r^2 = .1081$), number of charges ($r^2 = .0488$), and bail ($r^2 = .2249$), Hypothesis 5 concerning the defendant's legal characteristics influencing the sentence is supported.

Hypothesis 6

The defendant's social characteristics will influence the sentence.

There are several sub-hypotheses derived from the relationship concerning a defendant's social characteristics to the final sentence. These characteristics are often called "extra-legal" and should have no direct bearing upon a defendant's sentence given by the courts. However, it was hypothesized that these social characteristics would influence the final sentence.

H6A: The less respectful the defendant's demeanor, the more severe the sentence.

The predicted relationship is that a defendant who was not respectful or cooperative with the defense attorney would receive a more severe sentence compared to the defendant who showed respect and cooperation toward the attorney and the legal system. This hypothesis was evaluated by the product-moment correlation. A correlation-ship coefficient of ($r = .2457$) was found. This relationship accounts for 6% ($r^2 = .0603$) of the variance in sentencing by the defendant's demeanor.

H6B: Defendants who belong to a racial minority will get a more severe sentence than those who belong to the racial majority.

The predicted relationship is that a defendant who was not a member of the racial majority would be penalized by a more severe sentence than a defendant who was a member of the racial majority. This hypothesis was

evaluated by the product-moment correlation and was not confirmed.

H6C: The lower the defendant's socio-economic status, the more severe the sentence.

The predicted relationship is that a defendant who was a member of a low socio-economic class would receive a more severe sentence compared to defendants who were more affluent. This hypothesis was evaluated by the product-moment correlation. A correlation coefficient of ($r = .2036$) was found. This relationship accounts for 4.1% ($r^2 = .0414$) of the variance in sentencing by the defendant's socio-economic status.

H6D: Defendants who are male will get more severe sentences than those who are female.

The predicted relationship is that a defendant is penalized at the time of sentencing because of sex. This hypothesis was evaluated by the product-moment correlation. A correlation coefficient of ($r = .1342$) was found. This relationship, although weak, accounts for 1.8% ($r^2 = .0180$) of the variance in sentencing by sex.

H6E: The more meetings with the attorney, the more severe the sentence.

The predicted relationship is that a defendant would have more visits with his attorney based upon the severity of the charges. As a result the greater the number of meetings, the more severe the sentence. This hypothesis was evaluated by the product-moment correlation.

A correlation coefficient of ($r = .2655$) was found. This relationship, the strongest obtained in conjunction with this hypothesis, accounts for 7% ($r^2 = .0704$) of the variance in sentencing by the number of meetings.

Based on the preceding calculations: defendant's demeanor ($r^2 = .0603$), socio-economic status ($r^2 = .1414$), sex ($r^2 = .0180$), and the number of meetings ($r^2 = .0704$), these sub-hypotheses of Hypothesis 6 are supported.

Hypothesis 7

The plea offer will influence the sentence severity.

There is one sub-hypothesis derived from the relationship concerning the plea offer to the final sentence. It was hypothesized that the plea offer will influence the severity of the sentence received in the Court of Common Pleas.

H7A: The more generous the plea offer, the less severe the sentence, holding the offense constant.

The predicted relationship being that a plea offer which offered a reduction in the original offense, would receive a less severe sentence. This hypothesis was evaluated by the product-moment correlation. A correlation coefficient of ($r = .1663$) was found. This relationship accounts for 2.8% ($r^2 = .0276$) of the variance in sentencing by the plea offer. Based on these calculations Hypothesis 7 is supported.

Summary

This chapter has presented the findings on the seven hypotheses presented in this study. Basically, several of these hypotheses have been supported, while the others have been found to be not confirmed. I will reiterate the seven major hypotheses, and the sub-hypotheses.

1. The strength of the case will influence the plea offer.

1A. The more incriminating the physical evidence becomes, the less generous the plea offer.

1B. The greater the number of witnesses, the less generous the plea offer.

1C. The greater the number of identification witnesses, the less generous the plea offer.

1D. The more incriminating the confession/admission, the less generous the plea offer.

2. The defendant's legal characteristics will influence the plea offer.

2A. The more serious the prior criminal record, the less generous the plea offer. Significant.

2B. The more serious the defendant's current criminal status, the less generous the plea offer. Significant.

2C. The more serious the offense, the less generous the plea offer. Significant.

2D. The more serious the offense, the less generous the plea offer. Significant.

2E. Defendants who do not make bail will get a less generous plea offer than those who make bail. Not significant.

3. The defendant's social characteristics will influence the plea offer.

3A. The less respectful the defendant's demeanor, the less generous the plea offer. Not significant.

3B. Defendants who belong to a racial minority will get a less generous plea offer than those who belong to the racial majority. Not significant.

3C. The lower the defendant's socio-economic status, the less generous the plea offer. Significant.

3D. Defendants who are male will get a less generous plea offer than those who are female. Not significant.

4. The characteristics of the defense attorney will influence the plea offer.

4A. The greater the reputation, skills, and competency of the defendant's attorney, the more generous the plea offer. Not significant.

4B. The higher the economic rewards of the defendant's attorney, the more generous the plea offer. Significant.

4C. The smaller the caseload of the defendant's attorney, the more generous the plea offer. Not significant.

4D. The better the appearance and demeanor of the defendant's attorney, the more generous the plea offer. Not significant.

4E. The better the law school attended, the more generous the plea offer. Significant.

5. The defendant's legal characteristics will influence the sentence.

5A. The more serious the prior criminal record, the more severe the sentence. Significant.

5B. The more serious the defendant's current criminal status, the more severe the sentence. Significant.

5C. The more serious the offense, the more severe the sentence. Significant.

5D. The greater the number of charges, the more severe the sentence. Significant.

5E. Defendants who do not make bail will get a more severe sentence than those who make bail. Significant.

6. The defendant's social characteristics will influence the sentence.

6A. The less respectful the defendant's demeanor, the more severe the sentence. Significant.

6B. Defendants who belong to a racial minority will get a more severe sentence than those who belong to the racial majority. Not significant.

6C. The lower the defendant's socio-economic status, the more severe the sentence. Significant.

6D. Defendants who are male will get a more severe sentence than those who are female. Significant.

6E. The more meetings with the attorney the more severe the sentence. Significant.

7. The plea offer will influence the sentence severity.

7A. The more generous the plea offer, the less severe the sentence, holding the offense constant. Significant.

Correlation coefficients for each variable were determined in all the hypotheses. Furthermore, the proportion of the variance explained in each significant variable was considered high by social science standards, which is enough to justify further investigation. Upon examination of the independent variable, strength of case, a change in the theoretical model would seem to be possible. This change would be based upon the independent variable, strength of case, being eliminated from the theoretical model.

As discussed earlier, statistical associations do not assume causation; however, the researcher's logic may lead him to postulate cause-effect relationships. Some of the variables in the theoretical model were empirically shown to be significantly correlated and the proportion of explained variance suggested causation as hypothesized.

It cannot be assumed that studies of other counties would reveal the same results, thus generalizations should not be made to other judicial areas concerning plea bargaining/sentence severity.

SUMMARY AND DISCUSSION

This research study has explored the causal factors related to plea bargaining. The model was based upon a model discussed in Chapter 11. Initially, the model contains that the strength of case, defendant characteristics, and attorney characteristics influence the plea offer. In turn, the strength of the defendant's characteristics, and the plea offer, influence sentencing. Seven hypotheses were generated from this model and are as follows:

Hypothesis 1: The strength of the case will influence the plea offer.

Hypothesis 2: The defendant's legal characteristics will influence the plea offer.

Hypothesis 3: The defendant's social characteristics will influence the plea offer.

Hypothesis 4: The characteristics of the defense attorney will influence the plea offer.

Hypothesis 5: The defendant's legal characteristics will influence the sentence.

Hypothesis 6: The defendant's social characteristics will influence the sentence.

CHAPTER V

SUMMARY AND DISCUSSION

This research study has explored the causal factors related to sentencing involving plea bargaining. The investigation was based upon a model discussed in Chapter II. Basically, the model maintains that the elements strength of case, defendant characteristics, and attorney characteristics influence the plea offer. In turn the elements of the defendant's characteristics, and the plea offer, influence sentencing. Seven hypotheses were generated from this model and are as follows:

Hypothesis 1: The strength of the case will influence the plea offer.

Hypothesis 2: The defendant's legal characteristics will influence the plea offer.

Hypothesis 3: The defendant's social characteristics will influence the plea offer.

Hypothesis 4: The characteristics of the defense attorney will influence the plea offer.

Hypothesis 5: The defendant's legal characteristics will influence the sentence.

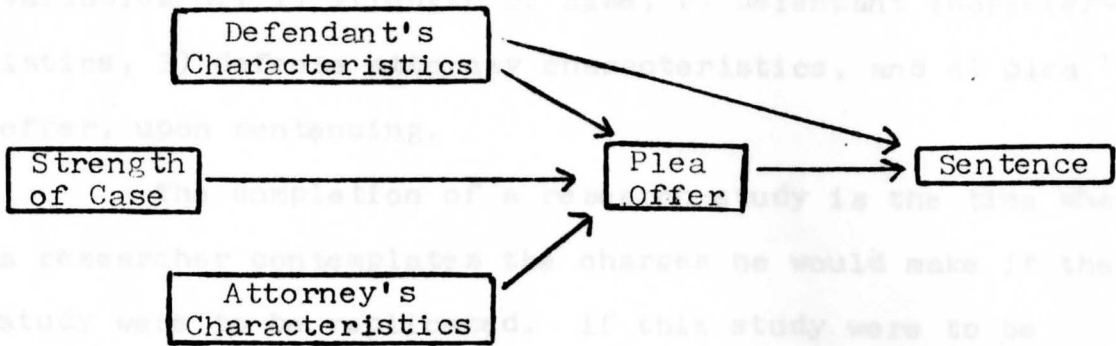
Hypothesis 6: The defendant's social characteristics will influence the sentence.

Hypothesis 7: The plea offer will influence the sentence severity.

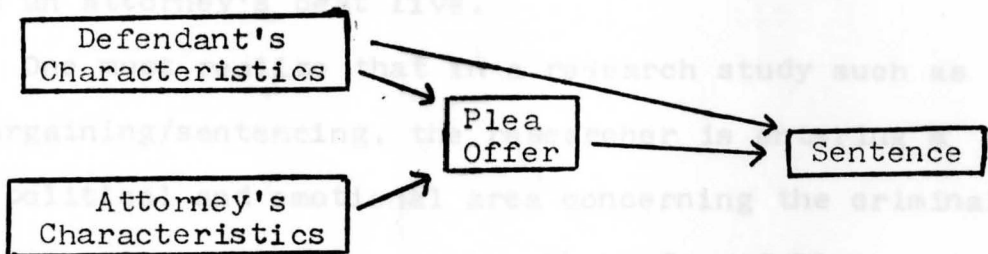
In an attempt to empirically evaluate these hypotheses, four county's were selected: 1) Mahoning, 2) Portage, 3) Columbiana, and 4) Summit. Each counties local bar association was contacted and asked to provide a list of all attorneys who practiced criminal law. From these four lists of attorney names, 70 lawyers were selected. The selection process was done alphabetically with each attorney then selecting his last five felony cases, which have pled guilty and been sentenced in the county Court of Common Pleas. Each attorney was interviewed by the use of a questionnaire pertaining to the four variables in the theoretical model (strength of case, attorney characteristics, defendant characteristics, and plea offer). Attorney cooperation was excellent, with only 27 cases missing out of 350. The reasons for these missing cases are: 1) limited law practice in terms of time as an attorney, 2) attorney doesn't practice criminal law-limited only to special cases such as murder or rapes.

Evaluation of the hypotheses stated above produced some interesting results. Hypothesis 1 was not supported, thus causing one to believe that physical evidence, identification witnesses, confessions/admissions, and crime scene protection of evidence, have little or no influence in the Judicial system when considering the plea offer.

Investigation of Hypothesis 2 showed that certain legal characteristics of the defendant: 1) prior criminal record, 2) number of charges, and 3) indicated charge, tentatively supported a correlation between the defendant's legal characteristics and the plea offer. Analysis of Hypothesis 3 concerning the defendant's social characteristics revealed that: 1) a defendant's socio-economic status, and 2) the number of conversations between the attorney and the defendant, are correlated to the plea offer. Hypothesis 4 dealt with defense attorney's characteristics and revealed that: 1) type of attorney (appointed or retained) and 2) law school rating are correlated to the plea offer. Hypothesis 5 investigated the defendant's legal characteristics upon sentencing. Data analysis showed that this hypothesis was tentatively supported and that there was a correlation between the independent and dependent variables. Analysis of Hypothesis 6, defendant's social characteristics, revealed that: 1) defendant's degree of cooperation, 2) number of meetings between the attorney and defendant, and 3) the defendant's socio-economic status, were correlated to sentence severity. Hypothesis 7, plea offer, was tentatively supported and was shown to be correlated with sentence severity holding the offense constant. The model as specified in Chapter II was graphically represented as:



The variable, strength of the case, was hypothesized to create a smaller reduction (less generous) in the plea offer. However, the data analyzed revealed that the strength of the case, as perceived by the attorney, was not considered to be an influencing factor in the prosecutor's decision concerning a plea offer. If this is true, the above model could be graphically represented as:



However, one must keep in mind that the strength of the case was based upon the defense attorney's perception and not the prosecution's. The researcher believes the initial model to be true and that there is a correlation between the strength of the case and the plea offer. In order to show such a relationship, another research study would have to be undertaken; which would look at the prosecution's perspective of each case concerning the

variables of: 1) strength of case, 2) defendant characteristics, 3) defense attorney characteristics, and 4) plea offer, upon sentencing.

The completion of a research study is the time when a researcher contemplates the charges he would make if the study were to be replicated. If this study were to be repeated, several changes should be introduced. The first adjustment would involve exploring the pressures or influences of the judges upon plea bargaining in regard to sentencing. Another adjustment would involve measuring the strength of the case upon the plea offer as perceived by the prosecutor. Changes in the sample measured would involve random assignments, if possible, and looking at the court's docket to insure that the cases discussed are the last five and not an attorney's best five.

One must realize that in a research study such as plea bargaining/sentencing, the researcher is entering a highly political and emotional area concerning the criminal justice system. There is a vast number of variables (biases) that can not be controlled. These variables can cause errors in measurement and design. In replicating a study such as this one, the researcher should try to control as many extraneous variables as possible in order to increase the study's validity.

APPENDIX A

Questionnaires

What was the original charge and delay between the time of arrest of

1	2	3	4	5
_____	_____	_____	_____	_____

What was the charge and delay between the time of arrest or bill of

1	2	3	4	5
_____	_____	_____	_____	_____

Where were you charged?

1	2	3	4	5
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Good day, I am Kenneth Hovanic, a graduate student at Youngstown State University, presently working on my thesis concerning plea bargaining. You have been selected at random from a list of criminal lawyers supplied by the county bar association. I would like to ask you a few questions concerning your last five (5) criminal felony cases which have plead guilty in the court of common pleas, and have been sentenced in order to gain a better understanding of the prosecutor and his function in plea bargaining. No data identifying the client will be asked and, of course, all your responses will be strictly confidential. The questions will be repeated for each of the five cases.

1. What was the original charge and felony degree at the time of arrest of each defendant?

1 2 3 4 5

2. What was the charge and felony degree on the indictment or bill of information?

1 2 3 4 5

3. Where there multiple charges?

1 2 3 4 5

Yes

No

How many charges?

1	2	3	4	5
_____	_____	_____	_____	_____

How many counts did the defendant plead guilty to?

1	2	3	4	5
_____	_____	_____	_____	_____

What was the most serious charge and the felony degree that the client plead guilty to?

1	2	3	4	5
_____	_____	_____	_____	_____

How many prior convictions did each defendant have?

1	2	3	4	5
_____	_____	_____	_____	_____

What was each client's current criminal status?

1	2	3	4	5
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

ne
 obation
 role
 il
 ison

9. Did each client make bail?

1 2 3 4 5

Yes

No

10. How incriminating was the physical evidence in each case?

1) extremely 2) moderately 3) average 4) of little consequence
5) no consequence

1 2 3 4 5

11. How many witnesses would the prosecution have been able to present in an eventual trial relative to the case?

1 2 3 4 5

12. In relation to each case, how many identification witnesses could the prosecution present?

1 2 3 4 5

13. Did the client confess or make any admissions to his guilt?

1 2 3 4 5

18. If the client did confess or make any admissions, how incriminating was the confession or admission? 1) extremely incriminating 2) moderately incriminating 3) average 4) of little consequence 5) no consequence

1 2 3 4 5

15. Indicate in each case if you were court appointed or privately retained.

1 2 3 4 5

Court

Private

16. Based upon your past experiences with other clients, how would you rate this client's degree of cooperation with you? 1) extremely cooperative 2) moderately cooperative 3) average 4) moderately uncooperative 5) extremely uncooperative

1 2 3 4 5

17. On an average, how punctual was the client for your meetings?
1) on time 2) few minutes late 3) over 1/2 late 4) never showed

1 2 3 4 5

18. How many meetings did you have with each client?

1 2 3 4 5

19. How many conversations did you have with each client?

1 2 3 4 5

20. What was the race of your client?

1 2 3 4 5

Black

White

Other

21. Economically speaking, how well off was the client? 1) upper middle class 2) middle class 3) lower middle or working class 4) poor or lower class

1 2 3 4 5

22. What was the sentence of each client?

1 2 3 4 5

Probation/yrs

Prison/yrs

Mail

Fine

23. What would the minimum actual sentence have been based on the indictment or bill of information?

1 2 3 4 5

24. Given your knowledge of the client, how do you rate the appropriateness of the sentence? 1) extremely harsh 2) moderately harsh 3) appropriate 4) moderately lenient 5) extremely lenient

1

2

3

4

5

25. On an average how many criminal felony cases do you handle?

26. In the past year, how many criminal felony cases went to trial?

27. How many years have you practiced criminal law?

28. From what law school did you receive your juris doctorate?

APPENDIX A1

Questionnaire-Attorney

29. Knowing that all these attorneys are competent, based on your experience with Mr. _____ and other attorneys in the county, how would you rate this attorney as a trial lawyer?

1) upper 1/3

2) middle 1/3

3) lower 1/3

30. Knowing that all these attorneys are competent and adhere to ethical standards, based upon your experiences with all of these attorneys, how would you rate Mr. _____ in comparison to other attorneys in this area in regard to reliability, dependability and integrity?

1) upper 1/3

2) middle 1/3

3) lower 1/3

31. Would you please rate _____ as a law school?

1) upper 1/3

2) middle 1/3

3) lower 1/3

Demeanor of Defense Attorney

32. Office Appearance

A. Presence of Secretary Yes _____ No _____

B. Number of secretaries _____

C. Receptionist Yes _____ No _____

D. Size of office compared to 15 x 20 _____

E. Quality of furnishings

1. Desk size _____

2. Quality of furnishings _____

3. Number of chairs _____

F. Organization of desk

1) excellent 2) neat 3) average 4) untidy

5) unorganized _____

G. Number of law books compared to 1 wall 4" high

of 3 or 4 shelves 20" long _____

H. Physical appearance of building

1) excellent 2) average 3) poor _____

33. Personal Appearance

A. Personal attire

1) well dressed 2) neat 3) average 4) untidy

5) unkempt _____

B. Cleanliness

1) excellent 2) average 3) poor _____

C. Grooming

1) excellent 2) average 3) poor _____

34. Demeanor

A. Quality of eye contact

1) excellent 2) average 3) poor _____

B. Posture

1) excellent 2) average 3) poor _____

C. Speaking voice quality

1) assertive 2) average 3) poor _____

D. Level of vocabulary

1) excellent 2) average 3) poor _____

E. Hand Shake

1) assertive 2) average 3) poor
4) no hand shake _____

F. Willingness to discuss cases

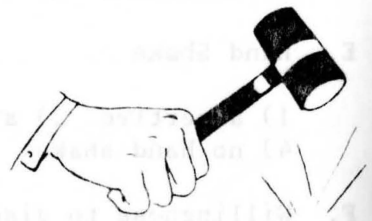
1) excellent 2) average 3) poor _____

35. How many times was the interview interrupted? _____

36. How punctual was the attorney for the interview? _____

1) on time 2) few minutes late 3) over 1/2 hour
late 4) never showed _____

Youngstown State
University
Survey of
Plea Bargaining



APPENDIX B

Coding Book

1-3	Defendant Characteristic	Original Charge on subject (See Offense Indicted on subject)
4-7		Multiple Charges on Subject
8-9		1. Yes
10-11	Inf. Ctg.	2. No
12	M.C.	9. Missing data
13	No Ctg.	Number of Charges on Subject
		1 - 1
		2 - 2
		3 - 3
		4 - 4 and over
		9 - missing data
14	Ch. Pld to	# Counts Pleaded by subjects
		0 - 0
		1 - 1
		2 - 2
		3 - 3
		4 - 4 or lower
		9 - missing data
15-16	Chg Pld Guilty to	Charges Pleaded Guilty to (See Offense Sheet)
17	Pv Conv	Prior Convictions on Subject
		0 - 0
		1 - 1

Coding Book

Plea Bargaining on Sentence Outcome

1978

Access Code
Columns

1-3.		subject number
4.		card number
5.		County
		1. Mahoning
		2. Portage
		3. Columbiana
		4. Summit
		9. missing data
6-7.		Attorney number
		99. missing data
8-9.	Defendant Characteristics	
	Ori	Original charge
		on subject
		(See Offense Sheet)
10-11.	Ind. Chg.	Indicted charge on
		subject
		(See Offense Sheet)
12.	M.C.	Multiple Charges
		on Subject
		1. Yes
		2. No
		9. Missing data
13.	No Chg.	Number of Charges
		on Subject
		1 - 1
		2 - 2
		3 - 3
		4 - 4 and over
		9 - missing data
14.	Co. Pld to	# Counts Plead to
		by subjects
		0 - 0
		1 - 1
		2 - 2
		3 - 3
		4 - 4 and over
		9 - missing data
15-16.	Chg Pld Guilty to	Charges Plead
		Guilty to
		(See Offense Sheet)
17.	Pr Conv	Prior Convictions
		on Subject
		0 - 0
		1 - 1

Coding Book (Cont.)

		2 - 2
		3 - 3
		4 - 4 and over
18.	CCS	9 - missing data Current Criminal Status of Subject
		1. None
		2. Probation
		3. Parole
		4. Jail
		5. Prison
19.	B1	9. Missing data Subject makes Bail
		1. Yes
		2. No
		3. Missing data
20.	Physical Evidence Phy Ev	Physical Evidence in case of subject
		1. Extremely
		2. Moderately
		3. Average
		4. Little conseq
		5. No conseq
		6. No confession
		9. Missing data
21-22.	Wit	# of witness in case of each subj: actual #
		99. Missing data
23-24.	Id Wit	Actual # of iden- tification witness in each case
		99. Missing data
25.	Conf.	Subject confess to guilt
		1. Yes
		2. No
		9. Missing data
26.	Incr conf.	Incriminating was confession in each subject case
		1. extremely
		2. moderately
		3. average
		4. little conseq
		5. no conseq
		6. no confession
		9. missing data

Coding Book (Cont.)

27.	Attorney Characteristics Type Att	Type of attorney in each subject case 1. Court 2. Private 9. Missing data
28.	Defendant Characteristics DOC	Degree of Cooper- ation of Subjects 1. Extremely Coop 2. Moderately 3. Average 4. Moderately uncooperative 5. Extremely uncooperative 9. Missing data
29.	Pun	Punctual subject in each case 1. On time 2. Few minutes late 3. Over ½ hour late 4. Never showed 9. Missing data
30-31.	Attorney Characteristics ME	Actual # of meetings with Subject 99. Missing data
32-33.	Conv	Actual # of con- versations with subject 99. Missing data
34.	Defendant Characteristics Ra	Race of Subject 1. Black 2. White 3. Other 9. Missing data
35.	Sex	Sex of Subject 1. Male 2. Female 9. Missing data
36.	Econ	Economics of each subject 1. Upper middle class 2. Middle class

Coding Book (Cont.)

		3. Lower middle class
		4. Poor
		9. Missing data
37.	Sentence Pro	Probation
		1. Yes
		2. No
		9. Missing data
38.	Pri	Prison
		1. Yes
		2. No
		9. Missing data
39.	Ja	Jail
		1. Yes
		2. No
		9. Missing data
40.	Fi	Fine
		1. Yes
		2. No
		9. Missing data
41.	Sus	Suspended
		1. Yes
		2. No
		9. Missing data
42.	Dism	Dismissed
		1. Yes
		2. No
		9. Missing data
43-44.	Mon Prob	# of months probation for subject
		99. Missing data
45-46-47.	Mon Pri	# of months prison for subject
		888. Life
		999. Missing data
48-49.	Mon Ja	# of months in jail for subject (treat in terms of 30 periods)
		99. Missing data
50-51-52.	Min Act Sent	# of months minimum actual sentence for subject
		888. Life
		898. Death
		999. Missing data

Coding Book (Cont.)

53. App Sen Appropriateness of sentence for subject
1. Extremely harsh
 2. Moderately harsh
 3. Appropriate
 4. Moderately lenient
 5. Extremely lenient
 9. Missing data
- 54-55. Fel Ca # Criminal felony cases
- 56-57. Fel Ca Tr # felony cases went to trial
- 58-59-60. Mon Prac # of months practiced criminal law
- 61-62. L.S.
999. Missing data
 - Law School
 1. Ygst. Univ.
 2. U. Texas Law
 3. Case Western
 4. South Texas
 5. Capital
 6. Ohio Northern
 7. Boston Univ.
 8. Notre Dame
 9. St. Marys, Tex
 10. George Wash.
 11. Cleve. State
 12. Akron
 13. Ohio Northern
 14. Ohio State
 15. Chase
 16. Toledo
 17. Univ. of Cinci.
 99. Missing data
63. R as Tr Lawyer Rated as trial lawyer
1. upper 1/3
 2. middle 1/3
 3. lower 1/3
 9. Missing data

Coding Book (Cont.)

- | | | |
|--------|-------------|----------------------------------------------------------------------------------------------------------------------------------|
| 64. | Rel Dep Int | Rate Reliability,
dependability and
integrity of atty.
1. upper 1/3
2. middle 1/3
3. lower 1/3
9. Missing data |
| 65. | R Law Sch | Rate Law School
1. upper 1/3
2. middle 1/3
3. lower 1/3
9. Missing data |
| 66. | Pres Sec | Presence of
secretary
1. Yes
2. No
9. Missing data |
| 67. | No Sec | # of Secretaries |
| 68. | Recep | Receptionist
1. Yes
2. No
9. Missing data |
| 69. | Si Office | Size office
1. large
2. average
3. small
9. Missing data |
| 70. | D.S. | Desk size
1. large
2. average
3. small
9. Missing data |
| 71. | Q Furn | Quality of Furniture
1. excellent
2. average
3. poor
9. Missing data |
| 72-73. | No Ch | Actual number of
chairs
99. Missing data |
| 74. | Org D | Organization of
Desk
1. excellent
2. neat
3. average
4. untidy
5. unorganized
9. missing data |

Coding Book (Cont.)

75.	No Law Books	Number of Law B
		1. excellent
		2. average
		3. poor
		4. none
		9. Missing data
76.	Phy app bldg	Physical appearance of building
		1. excellent
		2. average
		3. poor
		9. Missing data
77.	Per app	Personal appearance
		1. well dressed
		2. neat
		3. average
		4. untidy
		5. unkept
		9. Missing data
78.	Clea	Cleanliness
		1. excellent
		2. average
		3. poor
		9. Missing data
79.	Grm	Grooming
		1. excellent
		2. average
		3. poor
		9. Missing data
10.	Hand Sha	Handshake
		1. excellent
		2. average
		3. poor
		9. Missing data
11.	Willingness Disc	Willingness to discuss case
		1. excellent
		2. average
		3. poor
		9. Missing data
11-12.	Interview	Interview
		Interrupted act number
		99. Missing data
12.	Att Pun	Attorney punctuality
		1. on time
		2. few minutes
		3. over 1/2 hour
		4. never showed
		9. Missing data
13.	Actual % of lawy	Actual % of lawyer in fire
		99. Missing data

Coding Book (Cont.)

Access Code	Columns		
1-3.			Subject number
4.			Card number 2
5.	Q E Con		Quality Eye Contact
			1. excellent
			2. average
			3. poor
			9. Missing data
6.	Pos		Posture
			1. excellent
			2. average
			3. poor
			9. Missing data
7.	Sp Voi Q		Speaking Voice Quality
			1. assertive
			2. average
			3. poor
			9. Missing data
8.	L Voc		Level of Vocabulary
			1. excellent
			2. average
			3. poor
			9. Missing data
9.	Han Sha		Hand Shake
			1. assertive
			2. average
			3. poor
			4. no hand shake
			9. Missing data
10.	Wil Dis Ca		Willingness Discuss Case
			1. excellent
			2. average
			3. poor
			9. Missing data
11-12.	Interv Interr		Interview Interrupted actual number
			99. Missing data
13.	Att Pun		Attorney punctual
			1. on time
			2. few minutes late
			3. over ½ hour late
			4. never showed
			9. Missing data
14.	ALF		Actual # of lawyers in firm
			99. Missing data

APPENDIX C

Offense Sheet

- | | |
|---------------------------------------|---------------------------------------------|
| 1. Attempted Murder | 25. Disruption of Public Services |
| 2. Murder | 26. Vandalism |
| 3. Attempted Murder | 27. Criminal Mischief |
| 4. Voluntary Manslaughter | 28. Aggravated Assault |
| 5. Involuntary Manslaughter | 29. Robbery |
| 6. Negligent Homicide | 30. Aggravated Battery |
| 7. Felonious Assault | 31. Burglary |
| 8. Aggravated Assault | 32. Conspiracy to Commit Burglary |
| 9. Assault | 33. Attempted Burglary |
| 10. Negligent Assault | 34. Breaking & Entering |
| 11. Aggravating Penetration | 35. Possession of Dangerous Tools |
| 12. Harassment | 36. Trafficking in Persons |
| 13. Kidnapping | 37. Possession of Dangerous Weapons |
| 14. Rape | 38. Possession of Dangerous Weapons |
| 15. Attempted Rape | 39. Trafficking in Marijuana |
| 16. Sexual Battery | 40. Cultivation of Marijuana |
| 17. Corruption of Minor (Sex) | 41. Drug Abuse |
| 18. Gross Sexual Imposition | 42. Corruption of Minor with Drugs |
| 19. Attempted Gross Sexual Imposition | 43. Illegal Possession of Dangerous Weapons |
| 20. Incest | 44. Child Abuse |
| 21. Voyeurism | 45. Child Sexual Abuse |
| 22. Public Indecency | |
| 23. Aggravated Abuse | |
| 24. Abuse | |

OFFENSE SHEET

1. Aggravated Murder
2. Murder
3. Attempted Murder
4. Voluntary Manslaughter
5. Involuntary Manslaughter
6. Negligent Homicide
7. Felonious Assault
8. Aggravated Assault
9. Assault
10. Negligent Assault
11. Aggravating Menacing
12. Menacing
13. Kidnapping
14. Rape
15. Attempted Rape
16. Sexual Battery
17. Corruption of Minor (Sex)
18. Gross Sexual Imposition
19. Attempted Gross Sexual Imposition
20. Importuning
21. Voyeurism
22. Public Indecency
23. Aggravated Arson
24. Arson
25. Disruption of Public Services
26. Vandalism
27. Criminal Damaging
28. Aggravated Robbery
29. Robbery
30. Aggravated Burglary
31. Burglary
32. Conspiracy to Commit Burglary
33. Attempted Burglary
34. Breaking & Entering
35. Possession of Burglary Tools
36. Trafficking in Drugs
37. Possession of Heroin
38. Possession of Cocaine
39. Trafficking in Marijuana
40. Cultivation of Marijuana
41. Drug Abuse
42. Corrupting Minor with Drugs
43. Illegal Possession of Drug Documents
44. Grand Theft
45. Attempted Grand Theft

OFFENSE SHEET

46. Grand Theft Auto
47. Grand Larceny
48. Theft by Deception
49. Unauthorized Use of Motor Vehicle
50. Petty Theft
51. Passing Bad Checks
52. Forgery
53. Attempted Forgery
54. Misuse of Credit Cards
55. Receiving Stolen Property
56. Possession of Stolen Property
57. Perjury
58. Obstruction of Justice
59. Resisting Arrest
60. Escape
61. Carrying Concealed Weapon F4
62. Carrying Concealed Weapon Under Disability
63. Carrying Concealed Weapon Intoxicated
64. Carrying Concealed Weapon M1
65. Driving Under Suspension
00. Dismissed

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APPENDIX D

Letters

I am pleased to bring research for a thesis concerning pipe handling and the functions of the pipe in this process. In order to obtain reliable information on this issue, I need to talk to you. Specifically, I would like to ask you some questions concerning your last five (5) to ten cases which have pipe failures and been mentioned in the Court of Common Pleas. Of course, we will identify the piping which is asked and your responses will be strictly confidential.

Your cooperation in this matter will be greatly appreciated. The interview will last no longer than twenty (20) minutes. I will contact you at the office within the next few days for an appointment at your convenience. If there are any questions, please feel free to contact me at (216) 328-1111, ext. 212 or ask for Mr. Marshall.

Thank you very much for your help.

Sincerely,



YOUNGSTOWN STATE UNIVERSITY

YOUNGSTOWN, OHIO 44555

Criminal Justice Department

... Justice Advocacy: A Study ...
 ... Practicing Law ...
 ... Chicago ...
 ... Guilty Pleas ...
 ... Clark Boardman Company, Ltd., 1975 ...

I am presently doing research for my thesis concerning plea bargaining and the functions of the prosecutor in this process. In order to obtain reliable information on this issue, I need to talk to you. Specifically, I would like to ask you some questions concerning your last five (5) felony cases which have plead guilty and been sentenced in the Court of Common Pleas. Of course, no data identifying the client will be asked and your responses will be strictly confidential.

Your cooperation in this matter will be greatly appreciated. The interview will last no longer than twenty (20) minutes. I will contact your office within the next five (5) days for an appointment at your convenience. If there are any questions, please feel free to contact me at (216) 746-1851, ext. 252 (ask for Dr. Marshall).

Thank you very much for your help.

Sincerely yours,

Kenneth J. Hovanic
 Graduate Student

... Commission on Criminal Justice Standards ...
 ... Washington, D.C.: U.S. Government Printing Office, 1973 ...
 ... in Middle America ...
 ... General Learning Press, 1974 ...
 ... Conviction: The Determination of Guilt or Innocence Without Trial ...
 ... Boston, Massachusetts: Little Brown and Company, 1966 ...
 ... Issues in the Sociology of Criminal Justice ...
 ... Indianapolis, Indiana: Bobbs-Merrill Company, 1974 ...
 ... Defending Criminals: A Study of the Criminal Defense Process ...
 ... Englewood Cliffs, New Jersey: Prentice Hall, Incorporated, 1963 ...

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