Negotiating Justice:
Defendant Perspectives of Plea Bargaining In American Criminal Courts

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Dedication

This dissertation is first and foremost dedicated to those individuals whose lives have been touched by the justice system and whose voices brought this dissertation to life. This dissertation is also dedicated to all whose daily efforts serve to enrich our understanding of the justice system, the lives that are affected by this system, and whose work inspires and advocates for a system in which fairness and justice is a reality. Finally, this dissertation is dedicated to the family, friends, advisers, and mentors who have always believed that I can become more than who I am.

Abstract

This dissertation research focuses on adult, indigent defendant perceptions of plea bargaining and justice in American criminal courts. Data for this research was collected over a two year period of time in Hennepin County, Minneapolis, MN. This research relies on over 600 hours of court observations during which period of time I followed over 250 cases and interviewed forty indigent, criminal defendants. This research specifically addresses how defendants interpret their court experiences as fair—including defendant's ability to be involved in the decisions of their case, treatment by public defenders, and attitudes towards the practice of plea bargaining and the court system as a whole. Despite claims that procedural fairness matters to defendant perceptions of court, and to the extent that perceptions of outcome fairness rely in part on experiences with procedural fairness, this research shows that defendants are not overly concerned about the procedures of their case. Defendants do not expect to be involved in plea procedures and case processing, and they do not anticipate receiving outstanding representation by a public defender. Defendant perceptions of court experiences are based largely on perceptions of distributive justice and case outcomes. Perhaps most importantly, defendant decision-making rests on a limited understanding of the procedures and decisions that are involved in the criminal courts. Broadly speaking, defendants support court procedures such as plea bargaining because they feel that the procedure allows them to quickly exit an uncontrollable and confusing situation while receiving the benefit of a more lenient sentence.

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Chapter 1. Introduction

This dissertation research focuses on adult, indigent defendant perceptions of plea bargaining and justice in American criminal courts. Data for this research was collected over a two year period of time in Hennepin County, Minneapolis, MN. This research relies on over 600 hours of court observations during which period of time I followed over 250 cases and interviewed forty indigent, criminal defendants. This research specifically addresses how defendants interpret their court experiences as fair—including defendant's ability to be involved in the decisions of their case, treatment by public defenders, and attitudes towards the practice of plea bargaining and the court system as a whole.

Over the past several decades the number of individuals who pass through the American criminal court system has increased dramatically; however, changes in sentencing guidelines that set new and increasingly more severe standards for the punishment of defendants have left social scientists largely in the dark as to how court processing has been transformed on an individual level. Although prior studies of crime and justice have increased our understanding of judicial, prosecutorial, and defense decision-making, this research has not systematically analyzed the perspectives of society's most disadvantaged and arguably most important actors of the court, the defendants.

Contrary to the never-ending stream of television crime dramas, the vast majority of criminal cases are resolved by guilty pleas without any factual investigation. Since the 1970s, the rate of guilty please has increased greatly. Today, over ninety percent of cases

are settled through plea bargains (McCoy 2005; Steffensmeier and DeMuth 2000, 2001; Steffensmeier, Ulmer and Kramer 1998). Scholars and court professionals argue that organizational changes within the courts, coupled with rising arrest rates, have led to reliance on plea negotiations as an efficient method of processing defendants (Dixon 1995; Engen and Steen 2000; Nardulli, Eisenstein, and Flemming 1988; Ulmer 1997). Courtroom professionals argue that plea bargains offer fair outcomes that favor defendants who waive their rights to trial over those who do not (Albonetti 1991; Bushway and Piehl 2001; Engen and Gainey 2000; Huemann 1977; Johnson, Ulmer, and Kramer 2008; King, Soule, Steen and Weidner 2005). Others argue that plea bargaining creates a coercive atmosphere whereby defendants are enticed into admitting guilt to crimes that they may not have committed (Bibas, 2004; Bowers, 2008; McCoy 2005). Due to a lack of scholarly research on defendants, however, we have little appreciation for how defendants view the plea process. In this regard, we do not know if defendants perceive the plea bargaining system as positive, negative, fair, or just. We also do not understand how defendants make decisions, what factors they consider, or if they have the ability to influence decisions that are made in their case.

Of particular importance is the impact of defendant experiences on attitudes towards the court system and the administration of justice. After police, the courts play the most important role in forming citizen impressions of the American criminal justice system. Prior work on defendant attitudes has focused on how outcomes (what the decisions are) versus procedures (how decisions are made) impact perceptions of court justice (Tyler 2006). While this research has furthered our understanding of how citizen experiences

with the criminal justice system affect their perceptions of the police and courts, outcomes, and state legitimacy, it is limited primarily to experimental and survey data; data collected outside of the court setting. This dissertation research, therefore, considers how adult defendants interpret their experiences and decisions in court as they move through the justice system.

The intellectual merit of this research is tri-fold. First, this research explicitly tests theories of decision-making and procedural justice. In doing so, it advances theoretical discussions across disciplines, including sociology, psychology, and law. This research also provides an empirical analysis of an understudied population within the courts. Prior research on defendant experiences in court occurred over thirty years ago (See Casper 1972, 1978; Feeley 1979; Tyler 1984). Since this time the organization of American criminal justice has moved toward a new interest in crime control that regulates legislation, police, and penal practice (Garland 2001). Insomuch as the administration of justice is now carried out in an increasingly passionless, rountinized fashion, many argue that the organization of punishment has become "dehumanized" (Feeley and Simon 1992; Garland 1990). This dissertation not only provides a current analysis of defendant experiences in court, but considers how and whether the courts and, specifically, the defendants are impacted (or not) by recent trends in crime control.

The broader impact of this research is also significant. First, this research provides an empirical and theoretical frame for further studies of defendants. This dissertation focuses specifically on defendants who are processed through a large, urban court in Minneapolis, MN; however, comparative research of defendant experiences can expand from this

research in the future. A full understanding of what goes on in the criminal courts must consider all who comprise the court. The courts are forums not only for different types of cases and defendants, but also competing goals and conceptions of justice. In this regard, this dissertation informs debates over the state of our current court system in Minnesota and the practice of plea bargaining from the viewpoint of those most affected by it.

Finally, this research has implications beyond the organizational structure of the court. Most importantly, people obey the law because they believe it is proper to do so. Prior research suggests that if people have court experiences not characterized by fair procedures, their compliance with the law will be based less strongly on the legitimacy of legal authorities (Tyler 2003, 2006; Tyler and Huo 2002). Although a variety of media venues provide information pertaining to crime rates and criminal cases, these reports do not provide the reasons for non-compliance with the law. They also do not provide information on how local community members view the legitimacy of legal authorities, including court professionals. In this regard, the results of this research make an important contribution to understanding how individuals in Minnesota perceive justice in our courts and interactions with legal authorities in our community.

Dissertation Organization

Each chapter of this dissertation serves to describe how American criminal courts affect defendant experiences and attitudes. Chapter 2 provides an overview of the context in which this research was completed. The data for this dissertation was collected in partnership with the Hennepin County Public Defenders Office in Minneapolis, MN. The Hennepin County Public Defender's office provides legal representation to indigent

defendants. In 2009, over 600,000 adult criminal cases were filed in Hennepin County Courts; over three-quarters of these cases qualify for public defender services (Data obtained from Hennepin County Research Division). Data for this dissertation relies on over 600 hours of observations of defendant-attorney interactions as they move through the court system and forty defendant interviews as they exit the court system. Observations with defense attorneys and defendants occurred at each court appearance and focused on how defendants are presented with information concerning the nature of their case, options regarding their case, advice pertaining to plea negotiations and trial, and the process by which defendants decide to plead guilty

Chapter 3 focuses specifically on defendant perceptions of the procedures and outcomes of plea bargains. Most recent accounts of American courts presents an image of assembly line justice whereby defendant cases are processed as quickly and efficiently as possible through pleas of guilty (Casper 1972; Feeley 1979; Feeley and Simon 1992). The rapid increase in the numbers of individuals whose lives are affected by the courts due to mandatory sentencing laws and "tough on crime" policies (Petit and Western 2004; Western 2006) has left scholars and public practitioners questioning whether "basic constitutional rights" (Shapiro 2009: 1) are violated by "running people through the mill" in a court system that is "chronically under-funded and under-staffed" (Tabchnick 2010: 2; See also The Constitution Project 2009). This chapter relies on theories of procedural justice to analyze defendant attitudes toward their court experiences and focuses specifically on whether defendants interpret plea procedures and outcomes as fair and just. Results suggest that although the majority of defendants are satisfied with

procedures and outcomes, perceptions are not monolithic, and most court experiences are considered only "fair enough."

Chapter 4 focuses more specifically on defendant attitudes toward public defenders. Extensive research indicates that personal experiences with court authorities shape attitudes towards the procedures of the court and the legitimacy of the criminal justice system (Sunshine and Tyler 2003; Tyler 2003; Tyler and Huo 2002; Tyler and Wakslak 2004). Scholars often suggest that defendants hold negative attitudes towards publicly paid and assigned counsel who spend little time with defendants and show little concern toward their welfare (Alschuler 1975; Boruchowitz 2009; Casper 1972, 1978; Flemming 1986; Ogletree 1995; The Constitution Project 2010). Results of this research suggest, however, that while defendants are not overly satisfied with the representation they receive by public defenders, they attribute public defender behaviors to a break-down in the criminal justice system. In this regard, the legitimacy of public defenders is contextualized by defendant beliefs and attitudes of the court system.

Chapter 5 provides an analysis of defendant decisions to accept pleas of guilty. Research on plea bargaining indicates that defendants who plead guilty are more likely to receive lenient sentences compared to defendants who take their case to trial (Albonetti 1991; Dixon 1995; Johnson et al 2008; King et al 2005; Kramer and Ulmer 2002, 2009; Steffensmeier and DeMuth 2000, 2001; Steffensmeier et al 1998). Legalistic theories of defendant decision-making suggest that defendants plead guilty because they believe that they are guilty and want to take responsibility for their behavior (Dixon 1995; Engen and Steen 2000; Holmes, Daudistel, and Taggart 1992; Nardulli et al 1988). Other theories

suggest that defendants prefer the efficiency and certainty provided by plea bargains (Dixon 1995; Engen and Steen 2000; Holmes et al 1992; Nardulli et al 1988). This chapter examines the decision-making of defendants who enter pleas of guilty. Results show that defendant decision-making is influenced primarily by the efficiency offered by plea bargains; however, the process by which defendants arrive at this decision is a convoluted path that is mediated by defendants' lack of understanding of court procedures and outcomes.

Chapter 6 offers a final discussion of this research. In doing so, this chapter discusses important findings and recommendations for future research. This chapter highlights theoretical and policy implications of this dissertation research.

Chapter 2. Data and Methods

This research relies on qualitative data gathered between 2010 and 2011 in partnership with the Hennepin County Public Defenders Office in Minneapolis, MN. Data includes over 600 hours of court observations in over 250 adult criminal cases. Interviews were completed with forty defendants after case disposition.

Hennepin County, Minnesota

This research was conducted in Hennepin County, Minnesota. Minnesota is a Midwestern state with a population of over five million individuals (U.S. Census Bureau 2010). Hennepin County is the largest county in Minnesota with a population of slightly over 1,150,000, or approximately twenty-five percent of the total state population. Hennepin County's racial composition is approximately seventy percent white and ten percent black; Asians represent close to six percent of the population. Hispanics represent approximately seven percent; American Indians represent less than one percent (U.S. Census Bureau 2010). Over fifty percent of the state's minority population resides in Hennepin County (Council on Crime and Justice 2007).

Hennepin County is one of ten judicial districts in Minnesota and represents over forty percent of the total number of adult criminal cases filed in Minnesota. Compared to the state which reports a thirty-seven percent increase in felony cases between the years of 1999 and 2008 (Council on Crime and Justice 2008; Office of the Legislative Auditor 2010), Hennepin County court data reflects a national trend of decreasing rates of crime—over the past fourteen years criminal cases charged in Hennepin County have

declined by five percent.[1] This trend is explained by decreases in serious felonies, assault, and parking offenses. Cases filed for other offenses, including less serious felonies, gross misdemeanors and traffic offenses have increased by as much as forty-five percent during this period of time.[2]

In 1978, the Minnesota Legislature was the first state to create a specialized administrative body, the Minnesota Sentencing Guidelines Commission, to develop and implement a new criminal sentencing system (Frase 2005). The Commission's primary goal was to establish a system that would produce greater uniformity in sentencing, thereby assuring that similarly-situated individuals, convicted of the same crimes, would receive comparable sentences. The Minnesota Sentencing Guidelines determine whether a convicted felon should be sentenced to prison or probation, and if so, for how long. The severity of the convicted offense and the nature of the felon's prior criminal history are the two major variables that are used to derive a convicted felon's presumptive sentence. Minnesota guidelines allow judges to "depart" from the presumptive sentence if there is "substantial and compelling circumstances" (Minnesota Sentencing Guidelines 2010: 28-29). The Commission recognizes plea bargains as playing an integral part in the criminal justice system, but has declined to make any changes regarding the plea bargaining process in the guidelines, in effect deferring to the courts on the issue of whether plea agreements warrant departures from the stated guidelines.

Hennepin County, Public Defender's Office

The Hennepin County Public Defender's Office is located in Minneapolis, MN.

[1] Data obtained from Hennepin County Research Division; Increases in cases reflects a general trend in recategorizing offenses to higher levels of severity.
[2] Felony Driving While Impaired went into effect August 1, 2002 (Minn. Stat. § 169A.276).

In 1963, the U.S. Supreme Court ruled in *Gideon v. Wainright* that the assistance of counsel in criminal prosecutions was not only essential to fair trials but also a fundamental right under the Sixth Amendment of the U.S. Constitution (Spangenberg and Beeman 1995).[3] The court also held that the right to counsel was required by states by virtue of the due process of law provision in the Fourteenth Amendment. Accordingly, Minnesota state and county governments employ attorneys (called "public defenders") to represent persons unable to afford an attorney.

The Hennepin County Public Defender's Office is overseen by the Minnesota Board of Public Defense and administered by the state public defender system (American Bar Association 2006). In 1981, the Minnesota Legislature created the State Board of Public Defense to oversee the public defense system (Laws of Minnesota 1981, chapter 356, sec 360, subd. 1 and 2), which was previously managed and funded by the county. In 1989, the state assumed financial responsibility for public defense (Laws of Minnesota 1989, chapter 355, art. 1, sec. 7). In doing so, Minnesota followed a national trend, and is now one of approximately twenty states with a centrally funded and managed public defense system (American Bar Association 2006; Stevens, Sheppard, Spangenberg, Wickman and Gould 2010).[4]

Hennepin County is one of two state districts with a full-time public defenders office. It employs the largest number of public defenders in Minnesota (approximately

[3] Although *Gideon* was initially limited to felony prosecutions, the right to counsel has since been expanded. In 1967, the U.S. Supreme Court extended the right to counsel to juveniles. In 1972, the right to counsel was expanded to any case in which the defendant could be sentenced to prison. In 2002, the Court found that defendants must be provided counsel if they receive a suspended jail sentence or probation and, later, the probation is revoked and imprisonment imposed. Defendants also have a right to counsel in their first direct appeal of a verdict, and in appeals following a guilty plea.

[4] Nine states do not have statewide public defender systems. These include California, Idaho, Illinois, Indiana, Kansas, Michigan, Mississippi, Oklahoma, and South Carolina (American Bar Association 2006).

100, compared to 450 statewide) (Office of the Legislative Auditor 2010). Similar to national trends, expenditures and staffing for the Minnesota public defender system has fluctuated over the past decade (Stevens et al 2010). Between 2003 and 2005, budget deficits resulted in staff reductions. Funding was provided for additional staff in the years 2006 and 2007, but budget challenges resulted in staff reductions again between the years 2008 and 2009. Additionally, between the years of 2005 and 2009 Hennepin County public defenders experienced an increase in cases from thirty-two percent of adult criminal cases filed to thirty-seven percent, representing over half of all charged homicide cases, and almost three-quarter of the total felony cases charged in Hennepin County (see Tables 1, 2 and 3). Although state and national standards require public defenders to carry no more than 400 case units per year, Minnesota public defenders carried an average weighted caseload of 779 case units in 2009—double the number of cases carried by privately hired attorneys.[5] Comparatively, public defenders in Hennepin County carried an average weighted caseload of 900 case units (Office of the Legislative Auditor 2010).

Hennepin County, Public Defendants

Public defenders are appointed to indigent defendants by Minnesota district court judges. State law requires that judicial districts screen requests for representation.

[5] To quantify the levels of effort associated with different types of cases, Minnesota conducted a "weighted caseload study" in 1991. Minnesota adopted a system of weighting cases based on this study, and has not been updated despite significant changes that have occurred in criminal law and procedures over the past twenty years ago. In this system, one "case unit" equals the defense services that go into the average misdemeanor case. Gross misdemeanors and felonies and awarded higher number of case units (Office of the Legislative Auditor 2010).

Although application and screening procedures vary between districts and judges in each district, Minnesota requires that a defendant receive public defense if the defendant,

> is financially unable to obtain counsel if: (1) the defendant, or any dependent of the defendant who resides in the same household as the defendant, receives means-tested governmental benefits; or (2) the defendant, through any combination of liquid assets and current income, would be unable to pay the reasonable costs charged by private counsel in that judicial district for a defense of the same matter (Minnesota Statutes 2011, 611.17).

While the first category of eligibility, receipt of means-tested, government benefits sets relatively straight-forward eligibility standards, the second category allows substantial discretion in evaluating applicants' financial circumstances (Office of the Legislative Auditor 2010). The vague standard in Minnesota statute provides limited guidance to eligibility decision-makers about who should be eligible for a public defender and who should not. Defendants are instructed to apply for public defense prior to their first appearance; however those who do not are commonly determined eligible for public defense in court upon inquiry of financial circumstances by the judge. In these cases if the defendant is not employed or earns an insignificant income (at or below $10-$12/hr) the judge will assign public defense.

Tables 3 and 4 provide descriptive information for all adult criminal defendants in Hennepin County (data obtained from the Hennepin County Research Division). Over half of all defendants are under the age of thirty-five, and three-quarters are men. Public defenders represent more African-American defendants, compared to other races and ethnicities. In contrast, private attorneys represent more White defendants. Approximately half of all individuals represented by private attorneys are White and

generally older than those represented by public defenders. Almost half (forty-four percent) of all cases that private attorneys represent are alcohol offenses. Public defenders provide representation for the majority of serious cases, including assault (sixty-three percent), weapons (sixty-eight percent), sex (sixty-five percent), drug (fifty-six percent), and property (sixty-seven percent) cases.

Data and Methods

This dissertation research is the culmination of meetings that occurred between the years of 2008 and 2010 with Hennepin County court employees, including the Hennepin County Jail Program Administrator, the Fourth District Court Research Director, the Fourth District Court Managing Psychologist, Chief Judges Wernick and Barnette, and the First Assistant of the Hennepin County Public Defender's Office, Bob Sorenson. In the spring of 2010, this research was approved by Hennepin County courts and the Public Defender's Office. Data collection subsequently began in May of 2010.

Hennepin County manages five separate court calendars that begin at 8:00am and 1:30pm. The morning calendar includes three misdemeanor courts—traffic, community, and domestic—and one felony court for property and drug offenses.[6] The afternoon calendar includes only serious felony offenses (not including drug and property cases). The first two months of this research was spent observing each court and becoming familiar with "law talk" (Probert 1972).[7] During this time I became acquainted with court

[6] About six months into this research, the community calendar was moved from 8:00am to 1:30pm.

[7] The legal training of law school introduces students to a particular linguistic and textual tradition that does not parallel other disciplines. In this sense, students begin to "think like a lawyer" because they are trained to speak, write, and read like a lawyer (Mertz 2007). "Legalese" (Danet 1980) or "law talk" (Probert 1972) is often incomprehensible to the common lay person, and scholars question to what extent clients are able to understand their lawyers, and to what extent the technical language of law is necessary and functional, or dysfunctional and used as a means to maintain the court's power and status (Danet 1980; Edelman 1977;

workers, including bailiffs, prosecutors and attorneys. As this occurred, I was introduced to public defenders who became interested in my research.[8] For the next two years I followed six public defenders, four on a daily basis (two females and two males). I shadowed public defenders as they interviewed and met with defendants both in and out of custody, negotiated with judges in chambers, prosecutors in the courtroom, and advised defendants in hallways, stairwells, elevators, offices, and openly in court.

This research relies on over 600 hours of court observation, including attorney-client interviews and meetings and case discussions and negotiations between public defenders, judges, prosecutors, probation officers, and dispositional advisors[9].

See also Sarat and Felstiner (1988) for a discussion of how authority is exerted through the language of law).

[8] In his study of defendants, Feeley (1979: p. xxxii) notes the importance of gaining access to courts by gaining the trust of individuals of the court. He states, "The importance of access cannot be overemphasized. Courts are parochial institutions; each possess its own peculiar information system and shorthand language for maintaining it…it took me some time to penetrate it. I had to gain the confidence of its members, learn their language, and become a familiar face to them. A brief excursion into the courthouse simply would not have sufficed."

[9] Dispositional advisors work with public defenders, probation, and judges to seek sentencing alternatives for defendants with extenuating circumstances. Dispositional advisors are employed by the Public Defenders Office and are assigned to cases at the public defenders request. Dispositional advisors may advocate for or against prison sentences based on the circumstances of the case. Two cases that I observed illustrate the role of dispositional advisors. The first case involved a white woman in her late 50s who was charged with a felony count of harboring a felon. In this case, the defendant was romantically involved with the male felon who was convicted of sexually abusing the defendant's granddaughter in Arizona. During the time that the male spent in prison in Arizona on the offense, the defendant moved to the state of Minnesota. Upon release from prison, the male fled to Minnesota to be with the defendant and assumed the identity of the defendant's deceased husband. At pre-trial, the attorney offered a plea deal which included 90 days in prison and five years of probation. A dispositional advisor was presented in this case to counsel the judge on the defendant's situation which included an abusive relationship with the felon. The dispositional advisor worked with the defendant to obtain individual and family counseling. The judge subsequently agreed to a stayed 12 month sentence with five year of probation. In a second case a black male in his 20s was charged with a probation violation on a drinking charge. The defendant was placed on probation with an ankle bracelet to monitor his alcohol intake. The defendant violated probation by attempting to place a plastic bag under his ankle monitor during a night out drinking with his friends. Both the attorney and probation officer requested that the defendant serve the remainder of his probation period in prison. A dispositional advisor was brought to the case to counsel the defendant in his decision-making. Upon talking with the defendant and his family, the dispositional advisor advised the defendant to accept the state's offer. The dispositional advisor based her recommendation on the defendant's alcohol and drug use and potential to reoffend. The defendant accepted the state's offer and was sentenced to serve four years in prison after which time he would satisfy his probation and be "off paper."

Observations occurred in and out of court with over 250 defendants. While this dissertation research was approached as an interview study of indigent defendants it became necessary to spend a large amount of time in court to understand how the court works and the context in which defendants are charged, make decisions, and are sentenced. I spent the first several months of this dissertation research sitting in different courts without following cases or public defenders to understand the flow of cases, the hierarchy of court members, and how court members talk both amongst themselves and 'on the record.' After I began following cases and interviewing defendants, it was necessary to spend many hours in the courts due to court worker and defendant tardiness, no-shows, and the sheer amount of time it takes for a case to be called (up to four hours). Truly, on many days, I felt like a defendant as I sat in the hallways and the court rooms with others waiting for the court process to slowly move along. This is all to say that although I learned much about how court workers interact and the context in which defendants come to make decisions and understand courts, it is outside of the scope of this research that is focused on defendant experiences and perceptions to fully address an ethnographic account of criminal courts and their workgroup. The following chapters do include observational explanations of court work and procedures, and stories of the cases that I observed in order to add context to the findings of this research.

The cases that I did follow were not selected into this research, but dependent on the public defender's calendar and the defendants that were assigned to him or her on a particular day. I met all defendants at their first appearance with the public defender and tracked their dates and progress through court. Court dates were followed to the best of

my ability; however, all 250 cases were not followed through disposition due to a variety of circumstances that include conflict in public defender schedules, cases being dismissed or rescheduled, defendants picking up new charges between court dates, revocation, defendants failing to appear to court dates, and defendants who were transferred to specialty courts.[10] In sum, approximately 120 cases (approximately 50 percent) were followed from arraignment to disposition.

All defendants verbally agreed to my observation of their case. The public defender initially introduced me to defendants as a graduate student at the University of Minnesota. At this point, I summarized my research and requested to observe the defendant's case, including their interactions with their public defender. During the course of my research, I was asked to leave the room by two defendants, both of whom eventually hired private counsel.

I gathered much of my information about defendants and their cases during the initial interview with their public defender. Depending on the nature of the case, in-custody meetings lasted from two to thirty minutes. For misdemeanor cases, charges, initial plea offers, and conditions of release are covered very quickly and particularly if the defendant is a repeat offender and understands the process. For felony cases, these discussions take more time, but still move surprisingly fast.[11]

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[10] Over the past several decades specialty courts have become more prominent. Specialty courts include drug court, veteran's court, and mental health court. Although I observed these courts, I did not follow the defendants who were referred to these courts due to differences of procedure in specialty courts.

[11] There are many procedural differences between felony and misdemeanor cases. One of the primary differences concerns the events that occur at the first appearance. Whereas defendants charged with misdemeanors are allowed to plead guilty and settle their case at the first appearance, defendants charged with felonies are not allowed to enter a plea until the omnibus hearing—the first court appearance that establishes probable cause. The first appearance for defendants charged with felonies serves primarily to identify the defendant and set bail. For this reason, initial interviews with defendants charged with felonies

As cases progressed and my interactions with defendants increased, I further discussed my research with defendants and requested that they participate in an interview with me after case disposition.[12] Only two defendants declined my invitation to be interviewed about their court experience, citing that they "just want the whole thing to be over with." I exchanged telephone numbers or email addresses with defendants who agreed to participate in an interview. For defendants who were homeless and without a phone, meeting dates and times were set at court.[13] Defendant interviews were completed within a week of disposition at parks, coffee shops, restaurants, libraries, and homes. If the defendant was incarcerated, the interview took place at their correctional facility.

Arranging interviews with defendants proved to be a challenging task that resulted in significant sample attrition. After completing one month of interviews ($N = 3$) I began to offer a fifty dollar gift card to defendants who completed the interview. This

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can be rather short if their charges are severe enough to discourage the public defender from believing they will be released from custody. Additionally, the felony calendar is assigned to only one public defender per day. The public defender typically arrives to custody around 10-10:30am to begin interviewing defendants in order to be prepared for court at 1:30pm. More than one public defender is assigned to misdemeanor courts. Typically, two public defenders will be assigned each to community court and traffic court. One public defender will be assigned to domestic court. One public defender will float between the three courts. Public defenders arrive to court around 8:30-9am to begin meeting their clients. In order to make sure their cases are called they move rapidly through defendants. Until recently, defendants charged with property or drug crimes would not meet their lawyer until their case was called in court.

[12] Due to the rapid pace by which cases are called when court is in session, I was not able to ask all defendants to participate in the interview portion of this research.

[13] Although it would have been ideal to set-up interview times with defendants while they were in court, this proved to be a very difficult task for many reasons. First, on most days, I was not only following several cases on the calendar, but also cases in different court rooms. The speediness of cases being called combined with dashing off to other courtrooms in between cases made it very difficult to connect with defendants after their case was completed. Second, most defendants that I did approach about setting a meeting time were unable to state their schedule, including where they would be sleeping on a daily basis. Most defendants requested that I call them to set-up a time. Finally, court is a scary experience. Defendants are required to wait sometimes for several hours for their case to be heard and their outcome received. During this time, they are approached by a public defender who very quickly states their options and then requests a decision from them. This is all to say, that I did not feel comfortable requesting time and date commitments. The individuals who I did solicit a meeting time from were homeless and unreachable by phone, or individuals who preferred to set the time with me in court.

incentive decreased the number of no-shows to interviews (about one dozen), but it did not make locating defendants any less challenging. It is therefore important to note that the defendants interviewed for this research may not represent the total indigent defendant population. These defendants were not selected into the interview sample, but represent those individuals whom I was able to locate, schedule, and complete an interview with.[14] Over half of the defendants that originally agreed to participate in this research either lost motivation to complete the interview, lost phone service, or were dealing with significant personal circumstances that made committing to and completing an interview challenging.

In sum, forty defendants were interviewed for this research. All interviews were tape-recorded and lasted from one half-hour to three hours. Interviews focused on defendant decision-making and perceptions of court procedures and workers (See Appendix A). Questions were taken from prior research with defendants by Tyler (2006) and Casper (1972). Topics included how and why defendants make decisions to plead guilty and attitudes towards members of the court, including public defenders, prosecutors, and judges. We discussed procedures and outcomes of cases, including their perceptions of procedural and outcome fairness. Additionally, we discussed issues pertaining to past cases, cases that occurred in other states, and impressions of how race and gender influence defendant court experiences.

Interviews were semi-structured. Prior to the beginning of each interview I obtained written informed consent (See Appendix B) and collected demographic

[14] Approximately ninety defendants agreed to participate in the interview; approximately forty-five percent of this sample completed an interview.

information about the defendant, including educational, employment, family information, and criminal history. Interview topics moved naturally with the defendant—most defendants have something to say about their case outcome, and many have a lot to say about criminal justice workers. Each interview began by the defendant summarizing the activities that led to their case (i.e., the crime, arrest, custody, etc.) and interviews progressed easily from here. Interviews were transcribed verbatim and analyzed using Atlas-Ti software. Analyses focused on information pertaining to the theoretical interests of this dissertation research. Therefore, I coded discussions of decision-making into a primary category. Discussions relevant to issues of fairness were coded into a primary category. Also, topics including discussions of public defenders, cases, and outcomes were all coded separately.

While my interview sample may only represent forty defendants, this number does allow me to make comparisons between cases, and defendant characteristics. Table 5 provides demographic information for my interview sample. The demographics of this sample are comparable to the demographics of public defender clients (Data obtained from Hennepin County Research Division). Approximately one quarter of the sample is female and sixty percent are African-American. The majority of defendants represented by public defenders are minorities. Less than one quarter is White. Also, almost sixty percent of the sample is under the age of thirty-five. The largest proportion of defendants are between the ages of eighteen and twenty-five. Finally, I interviewed more defendants charged with felonies than gross misdemeanors or misdemeanors. Defendants charged with gross misdemeanors and misdemeanors are underrepresented in this sample

compared to the total number of gross misdemeanor and misdemeanor clients that public defenders represent. This difference is due to the high number of gross misdemeanor and misdemeanor cases that are either settled at the first appearance or dismissed. Table 2 indicates that between three-quarters and one half of gross misdemeanor and misdemeanor cases are dismissed. My sample includes six defendants whose cases were dismissed; however, this research focuses primarily on defendants who plead guilty.

Chapter 3. Defendant Perceptions of Fairness

For at least one century scholars and legal practitioners have questioned the consequences and implications of plea bargaining for legal theory, due process, and the quality of defendant representation in courtroom deliberations (Blumberg 1967; Feeley 1979; Fisher 2003; Friedman 1979; Pound and Frankfurter 1922; Subin 1966; Vogel 2007). Most recent accounts of American courts present a startling image of an assembly line—a system of justice that is primarily concerned with processing citizens as quickly and efficiently as possible through pleas of guilty (Casper 1972; Feeley 1979; Feeley and Simon 1992). Numerous reports question whether "basic constitutional rights" (Shapiro 2009: 1) are violated by "running people through the mill" in a court system that is "chronically under-funded and under-staffed" (Tabchnick 2010: 2; See also Boruchowitz 2009; The Constitution Project 2009). A relatively small body of research, however, considers the implications of plea bargaining on defendant experiences and perspectives of justice. This research is more than thirty years old and relies on data collected in a very different court setting than defendants encounter today.

Influential work by Casper (1972, 1978), Tyler (1984), and Feeley (1979) in the 1970s and 1980s predates mandatory sentencing laws and "tough on crime" policies that reshape courtroom justice and increase the stakes for defendants. The effect of these laws can be seen most directly in today's record high jail and prison populations (Pettit and Western 2004; Western 2006); however, "tough on crime" policies have also increased both the number of low-level, petty offenders charged in misdemeanor courts and increased the amount of time and cost necessary to defend criminal cases charged in

felony courts (Boruchowitz 2009). In addition, defendants today face more civil sanctions as a result of criminal convictions, including the loss of legal immigration status, public benefits, housing, driver's license, and employment (Olivares, Burton and Cullen 1996).

The goal of this chapter is to update the scholarship on defendant experiences by analyzing interviews with indigent criminal defendants in a Midwestern urban court. This research focuses specifically on how the plea process influences defendant attitudes about the procedures and outcomes of their case. Do defendants express positive or negative attitudes toward their court experience as a result of plea bargaining? Do they view the procedures and outcomes of their case as fair? Do defendant characteristics, case severity, or case disposition influence variations in defendant attitudes? Theories of procedural justice consider how court decisions and procedures influence defendant attitudes toward the treatment and outcomes of their case and, therefore, offer a theoretical springboard for examining defendant perceptions of the plea process.

The Plea Process

It is well-documented that the plea process has flourished since its discovery over ninety years ago. The first wave of research on plea bargaining dates back to the 1920s and 1930s with the publication of the 1922 Cleveland study edited by Pound and Frankfurter, and the 1931 Wickersham Commission report on the criminal justice system. These reports along with the early work of Miller (1927) and Moley (1928) have grown famous in their own right for their consideration of plea bargaining. In the first issue of the *Southern California Law Review* Miller (1927: 1) opens his article on "The Compromise of Criminal Cases" with the declaration that "In theory there should be no

compromises of criminal cases," but in practice, "the condonation and compromise of criminal cases is frequent and the methods of evading the clear purpose of the written law are varied." Moley (1928) leads with the striking finding that of 13,117 felony prosecutions begun in Chicago in 1926, only 209 ended in convictions by a jury. He declares that the worst aspect of the already dominant plea-bargaining regime is its invisibility.

In many regards, plea bargaining has evolved into a system that court professionals rely on mostly in self-interest (Nardulli 1978). Court professionals argue that plea bargains have become necessary in an overwhelmed system. In this respect, prosecutors, defense attorneys, and judges who face unmanageably large caseloads and inadequate funding to hire additional help willingly participate in the plea process to move cases through the courts as quickly as possible. Feeley (1979: 27) argues that in this sense the plea process is "a mixed-strategy game" in which prosecution and defense share in gains and losses: prosecutors gain by securing convictions, defense gain by securing outcomes and reduction in sentences, and the state gains by securing admissions of guilt, punishing the guilty, and saving the expense of a trial." Perhaps most importantly, the plea process saves time for all, which is why despite differences of position, prosecutors, defense attorneys, and judges share a common administrative interest in the plea process. As Fisher (2003: 2) states, the "triumph" of plea bargaining is "manifestly the work of those courtroom actors who [stand] to gain from it."

Despite the court's support, the plea process is often criticized when considered in light of the implications for defendants. Scholars argue that plea bargaining shifts the

locus of control over sentencing from the judge to the prosecution (Bibas 2004; Tonry 1998) and suppresses legal issues by "sacrific[ing] concern for truth and accuracy for expediency" (Feeley 1979: 28). In this regard, as court professionals increasingly "treat like cases alike" (Massaro 1989: 2101; See also Alschuler 1991), empathy, advocacy, and counseling are eliminated. Plea bargaining is also believed to encourage a coercive environment in which defendants are pressured into admitting guilt for fear that if they go to trial and are convicted, they will receive a harsher sentence than if they plead guilty to the same offense. In 1978, Langbein went so far as to compare the coercive nature of plea bargaining to the effects of torture for securing confessions. He argued that while our means may be politer—"we use no rack, no thumbscrew, no Spanish boot to mash his legs" (12)—we still make it costly for the accused to claim their constitutional right to trial.

Perceiving Fairness

The most common criticism and the focus of this research, is the claim that plea bargaining limits defendant involvement in the procedures and decisions of their case, and diminishes opportunities for self-expression. Research on procedural fairness asserts that trials are preferable to pleas bargains because they provide defendants with an increased sense of participation in their court procedures. The ability to state their case and have a "voice" is associated with positive perceptions of the court process and the outcome of their case (Tyler 1987, 1988). Increased participation in their case allows defendants to feel that they have more control. Experimental studies in particular have

found control to be an important factor in evaluating court experiences as fair (Thibaut and Walker 1975, 1978).

Scholarly research on distributive justice examines relationships between perceived fairness of case procedures, outcomes, and defendant attitudes. Theories of distributive justice extend early formulations of Adam's (1965) equity theory which assumes that people assess outcomes in comparison to others. Theories of distributive justice argue that individuals more commonly report satisfaction with their outcomes when they are perceived as comparable to the outcomes incurred by others. Research in a variety of contexts, including the courts, shows that distributive justice is an influential factor in determining individuals' perception of outcome fairness (Folger and Konovsky 1989; Greenberg 1990; Lind and Tyler 1988; McFarlin and Sweeney 1992). For example, Casper's (1972: 89) research in the 1970s shows that male defendants who consider their outcome to be fair are most likely to indicate that they perceive their sentence as a "good break," or a reasonable sentence relative to the going rate for the offense.

In 1975, Thibaut and Walker moved beyond the basic assumptions of distributive justice by hypothesizing that satisfaction with courts outcomes is independently influenced by perceptions of procedural justice—judgments about the fairness of the resolution process. This hypothesis has been strongly supported by their data and subsequent research (see Casper, Tyler and Fisher 1988; Lind and Tyler 1988; Tyler 1987). They also hypothesized that evaluations of fairness are influenced by the opportunities that defendants have to be involved in the decisions made in their case (decision control) and the opportunities that defendants have to participate in the

proceedings of their case by expressing their side of the story and presenting personal information and evidence that is relevant to their case (process control). Thibaut and Walker (1975, 1978) argue that both types of control are important; however, subsequent research argues that process control is more important than decision control (Tyler, Rasinski, and Spodick 1985; Tyler 1987). Thibaut and Walker's (1975, 1978) work is limited both by their focus on the idealized version of adversarial procedures—the American trial—and their reliance on laboratory experiments with college students who may live much different lives than defendants; yet, one of the of the most striking discoveries of their research is the finding that satisfaction and perceived fairness are affected by factors other than whether the defendant "won" or "lost" their case. Thibaut and Walker's (1975, 1978) research is the first to suggest that it is possible to enhance defendant's perceptions of fair treatment without focusing explicitly on distributive fairness.

Early interpretations of Thibaut and Walker's (1975, 1978) research focused on instrumental models of procedural justice which emphasize people's desire to control the decisions of procedure that affect outcomes. Studies focused particularly on Thibaut and Walker's proposed link between defendant participation and perceptions of control; that is, when defendants are allowed opportunities to express themselves they are more likely to perceive greater influence over the decisions made in their case. In studies of dispute resolution, personal expression has been shown to be the most important issue leading to procedural and outcome satisfaction (Tyler 1988: Table 6). Scholars argue that people should respond favorably when procedures are perceived as fair—when defendants are

allowed to participate in their case—regardless of outcomes. For example, Folger and colleagues (1989) argue that when we have input into decisions and processes it is difficult to imagine alternative outcomes because outcomes resulting from fair procedures are more likely to be considered justified. Similarly, unfair procedures—procedures that do not provide an opportunity for defendant input—result in outcomes that are considered unjustified (Lind and Tyler 1988; See also Bies and Shapiro 1987). Because the instrumental hypothesis asserts that most people presuppose that procedures used to make decisions are stable, unfair procedures may lead people to infer that outcome decisions are made on an arbitrary or capricious basis.

In comparison to the instrumental perspective, Lind and Tyler (1988) have proposed a "group value" theory of procedural justice that emphasizes the symbolic and psychological implications of procedures. Group value theories argue that people value relationships with other individuals, groups, organizations and institutions because the interactions that emerge through these relationships help satisfy a fundamental desire for self-identity and self-validation. Perceptions of individual social status are directly related to how people judge their interpersonal treatment in groups. Therefore, when one is treated politely, with dignity, and when respect is shown for one's rights and opinions, feelings of positive standing are enhanced (Tyler and Bies 1990). On the other hand, undignified, disrespectful, impolite, or unfair treatment carries the implication that one is not a full or respected member of the group. As articulated by Mead (1934), it is through the process of reflected appraisal in these group situations that individuals' self-value can be affirmed or reduced. Thus, in comparison to the Thibaut and Walker's (1975, 1978)

instrumental model, which asserts that people care about procedural fairness as a means to an end (a fair outcome), the group value model posits that procedural fairness is an end in its own right.

In the following analyses, I extend research on theories of fairness to the study of the plea process. Thibaut and Walker (1975, 1978) examined formal courtroom settings; subsequent research has employed a wide range of methodologies (including panel surveys and experimentation) and settings (including tort litigation, policing, and traffic violators). I examine the degree to which these findings are generalizeable to adult criminal defendants' experiences in the courts. In particular, I focus on the segment of society that is most representative of the criminal justice population—the poor. The vast majority of individuals who are in contact with American law enforcement, courts, and prison are poor. At least forty percent of individuals we imprison cannot read, over two-thirds are either unemployed or underemployed when arrested, and a disproportionate number are African-American (Cole 1999; Jackson 1997; Leven 1992; Tonry 2012, 1996; Western 2006). Crime policies in the 1980s and 1990s increased the presence of the criminal justice system in the lives of poor communities; the war on drugs in particular increased the frequency and type of police-citizen encounters in urban city areas. As a result, the criminal justice system has not only become a primary source of civic education for the poor, but has led to distrust and disillusionment with the "system," which is defined by many scholars as the police. Previous research shows that attitudes toward law enforcement vary by race and income level—low-income minorities in particular are more likely to express cynicism towards law enforcement (Bobo and

Johnson 2004; Hurwitz and Peffley 2005; Johnson 2006; Scaglion and Condon 1980; Weitzer and Tuch 1999, 2002). Zero-tolerance policing and the use of aggressive police tactics have prompted accusations of racial profiling and contributed to tense relationships between law enforcement and residents of high-crime areas. Yet, the extent to which class and race are associated with negative attitudes towards our courts remains the subject of debate. It seems probable that negative perceptions of law enforcement in poor communities would extend to the entire legal system. Bobo and Johnson (2004) argue that African-Americans are far more likely to believe that the administration of criminal justice is riddled with systematic bias based on negative encounters with law enforcement. Hurwitz and Peffley (2005) argue that because our legal perspectives are based predominantly on personal experiences with criminal justice personnel in our communities, negative interactions with law enforcement heavily contributes to an overall perception that the justice system in inherently unfair. Lind and Tyler (1988) assert that people who believe the justice system to be unfair tend to evaluate the entire political system as less legitimate—for much of the poor, the justice system is as close as individuals come to the government. Thus, low levels of support for police can bridge across institutions and undermine support for the broader system.

This research amplifies and extends legal perspectives of the poor. In doing so, this research shifts the focus from the police to the courts. It examines whether indigent defendants differentiate between experiences with law enforcement and the criminal court process, and to what extent one may influence the other. For the purposes of this paper, attitudes towards American courts is measured by perceptions of procedural and

outcome fairness in their plea process, and how participation in decisions and procedures influence perceptions of fairness. As previously stated, theories of procedural fairness argue that defendants should feel more or less satisfied with their court experiences and outcomes depending on their participation in the procedures of their case.

Data and Methods

This research relies on one and a half years of criminal court observation and forty defendant interviews completed between 2010 and 2011 in Hennepin County, MN. Approximately twenty-five percent of the total population of Minnesota resides in Hennepin County, as does over fifty percent of the state's minority population (U.S. Census Bureau, 2010). The Hennepin County District Court processes over forty percent of criminal cases filed in Minnesota. The majority of these defendants are represented by the Hennepin County Public Defender's Office. Over the past five years, the Public Defender's Office has represented the vast majority of violent and drug cases; over half of all charged homicide cases, and almost three-quarter of all felony cases are handled by public defenders (Data obtained from Hennepin County Research Division).

Table 6 provides a breakdown of the characteristics of defendants for the year prior to data collection for this research. This data indicates that criminal defendants in Hennepin County are similar to those defendants who comprise urban courts throughout the country. Most are poor, and disproportionately young, African-American and male; most are arrested for misdemeanors, which carry a sentence of up to a maximum of ninety days in jail and/or a $1000 fine. Thirty-one percent are under twenty-five years of age, and all but forty percent are under the age of thirty. African-American defendants

represent thirty percent of the total population of defendants charged in 2009, but fifty percent of defendants represented by public defenders. Most cases, including the total sample and the Public Defender's sample, are disposed of by having their case dismissed. Conduct charges—including, trespassing, disorderly conduct, loitering, and traffic offenses, including driving without a license or insurance—represent the majority of cases filed in Hennepin County.

Table 6 also provides a description of the defendants interviewed for this study. All defendants in the interview sample participated in the plea process, except six whose cases were dismissed. Still, five of these individuals attended several court dates and entertained plea offers until their cases were dismissed. The majority of defendants in this sample are also young, African-American, and male. Defendants include individuals who were charged with both misdemeanor (thirty-five percent) and felony (sixty percent) offenses. Five percent were charged with a gross misdemeanor which carries a maximum sentence of up to one year in jail and/or a $3000 fine. In most cases (approximately fifty percent of the total population), gross misdemeanor charges resulted from DUI convictions. Defendants charged with a felony are overrepresented in the interview sample compared to the number of felony cases represented by public defenders (sixty percent and seventeen percent, respectively). This difference is a result of the large number of property and drug cases that I observed. Property and drug cases represent half of the total felony cases charged and handled by the Hennepin County Public Defender's office; property and drug cases represent half of my interview sample and the majority of felon's that were interviewed.

Defendant interviews were tape-recorded and lasted from one to three hours; transcription was completed verbatim. The formal interviews focused on the theoretical interests of this research, including the defendant's involvement in the plea process and attitudes towards the procedures, the outcomes, and the individuals involved in their case. Questions were taken from prior research with defendants by Tyler (2006) and Casper (1972). All cases were followed through their natural progression in court, and interviews were conducted after case disposition or sentencing. Initial introductions occurred at arraignment with the public defender who was assigned to the defendant's case. These introductions took place in and out of custody depending on the severity of the charges against the defendant. Public defenders provided initial introductions which included explaining the nature of my research. Verbal consent to observe the defendant's case—including interactions between the defendant and the public defender, and the public defender and other members of the court—was obtained at the first meeting. Written consent was obtained prior to the formal interview.

In addition to those defendants that I formally interviewed, over 250 defendants consented to my request to observe their case (two defendants refused). Thus, my interviews are supported by over 600 hours of observations that served to enrich my understanding of court procedures, attorney-client interactions, and decision-making. I spent the first several months of this research sitting in courts without following cases or public defenders to understand the flow of cases, the hierarchy of court workers, and how court workers talk both amongst themselves and 'on the record.' After I began following cases and interviewing defendants, it was necessary to spend many hours in the courts

due to court worker and defendant tardiness, no-shows, and the sheer amount of time it takes for a case to be called (up to four hours). This research incorporates observations and stories to add context to the analysis and findings.

Analytic Strategy

The key variables for this analysis are defendant perceptions of outcome fairness, procedural fairness, and case participation. All three theoretical measures are coded based on responses to several lines of questioning. Respondents were asked how fair the outcome of their case was, and if they believed their outcome was fair compared to other outcomes of similar cases. I also asked respondents how fair the procedures of their case were, and how fairly they were treated by the authorities in their case. I asked all respondents how satisfied they were with the plea procedures used in their case. Finally, I asked respondents if they felt they were able to express their side of the story and if they felt as if court authorities listened to their story. I also asked respondents how involved they felt in the plea process and the decisions that were made in their case.

In the following analyses I first present information pertaining to the relationship between characteristics of defendants and their perceptions of procedural fairness, outcome fairness, and case participation. Second, I focus on defendants' characterization of each of these factors and how they influence defendant attitudes toward courts and, specifically, the plea process. Also, because this sample consists of varying levels of case severity, I examine how perceptions differ among those charged with felonies and less serious charges. Past research has not considered how both defendant characteristics and case severity interact and influence differences in court experiences; however, it is

possible that defendants who face more severe sanctions, including imprisonment, loss of employment, and housing may be more concerned with the outcomes of their case and inclined to more actively participate in the procedures and decisions made in their case. In contrast, defendants who are confronted with less severe sanctions may articulate less concern with the procedures and outcomes of their case and, therefore, be less inclined to participate in their case. It is also likely that defendants who are not charged with a felony have less opportunity to participate in the procedures of their case. Because misdemeanor courtrooms often have many cases to consider in a relatively short amount of time, attorney-client interactions are quick and succinct. For example, I observed many cases that lasted less than two minutes. In the following analyses, the charge level is measured as a dichotomous variable in which misdemeanor and gross misdemeanor cases are combined to compare to felony cases. Although gross misdemeanor cases can carry more severe consequences than misdemeanor cases, sanctions do not resemble the severe implications of being charged with a felony offense.

Results

Table 7 provides information on the association between defendant characteristics and the indicators of procedural fairness, outcome fairness, and case participation. Overall, the majority of defendants expressed positive attitudes towards the procedures and outcomes of their case, and negative attitudes towards their ability to participate in their case. Over seventy percent of men in all ethnic categories perceived their processing and outcome as fair; women, on the other hand, were less likely to express positive attitudes towards the procedures of their case and outcome—only forty-four percent of

women expressed positive attitudes of procedures and outcomes. They were also more likely to feel that they were not provided with adequate opportunities to participate in the plea process; all women indicated negative attitudes about their level of case involvement, compared to sixty-four percent of men. Defendants charged with both felony and lesser charges articulated positive attitudes about the plea procedure and outcome, although slightly more defendants charged with misdemeanor and gross misdemeanors, compared to defendants charged with felonies, agreed that their outcome was fair and that they participated in their case (eighty-one percent compared to sixty-two percent, respectively). Unsurprisingly, those individuals whose cases were dismissed overwhelmingly agreed that the court process and outcome was fair; only one defendant whose case was dismissed felt they did not have input in the process. Defendants who received a disposition other than dismissal were still most likely to express positive attitudes towards the plea process, but overwhelmingly expressed concern about their ability to participate in the procedures and outcomes of their case.

Outcome Fairness

Over seventy percent of defendants (See Table 8) view the outcome of their case as fair. The two factors that are most strongly associated with defendant perceptions of outcome fairness are the belief that the outcome received was a "good break" or that the outcome was "deserved." This finding supports theories of distributive justice and prior research on outcome satisfaction. For example, Casper (1972) also found that the majority of male defendants describe their sentence as fair. Casper argues that defendants consider outcome fairness in light of whether they believed the sentence is less severe

than they anticipated—or at least the "going rate" (89)—and, whether the sentence is appropriate to the crime (Casper 1978). For example, one White woman charged with felony theft in three counties told me that was she was happy with her outcome: "Yeah, I'm happy with the outcome. I was really happy. I was hoping for what I was offered, so I pretty much got what I was expecting." An African-American male charged with a misdemeanor for not complying with a police officer stated,

> *I thought that that they were going to put me on some type of probation for a certain amount of time where I would have to keep coming back to my probation officer. A lot of other things like that, you know, for like six months or something, and I won't be able to get my drivers' license until I'm 21 or something, that's what I thought was going to happen. You know, so it was much of a relief when they said, when she said she might be able to switch it over to a disorderly conduct. Since I had already been in jail for two days and the police officer maced me, I have had enough punishment I guess. So I was really relieved when that happened. I'm glad I didn't have to pay no ticket. That would have been even worse…At the end of the day I'm happy with my outcome, yeah.*

These passages show that defendants expressed relief in the sentence they received and particularly those defendants who openly admitted their guilt. Most defendants—both those who were interviewed, and those whose cases I observed—openly discussed their guilt and perceived the plea process as a means to obtain an outcome that they felt they deserved. In this sense, defendants who indicated satisfaction with their outcome adopted a just desert approach to their outcome (von Hirsch 1976, 1985, 1993). As defendants put it, "you do the crime, you do the time." A White male charged with three felony counts of theft stated that he was "happy" with his court experience,

> *Because of the outcomes that I received…I face consequences for what I did and if I wouldn't have faced anything, if they had just said, "Okay you can go on with your business. Don't ever do that again," I never would have learned from my mistakes. So I believe that justice was served in my case. I deserved my consequences. I have to take part in what I did, pay for what I did.*

Particularly in DWI and property cases where evidence is easily obtained through breathalyzers, blood tests, video surveillance, and fingerprinting, the question that looms over defendants is not whether they will take their case to trial to dispute guilt, but what plea offer they will receive from the prosecutor. As one White male charged with two counts of felony check fraud recounts, "Basically the deal that I got, there's no other better way that you could have ever put it, you know what I mean? I didn't have to go to jail and got the same probation officer. To be honest with you, I probably should have gotten a little bit worse punishment than I did considering the fact of what I did."

Procedural Fairness

In most cases, defendants who perceived their outcome as fair also perceived the court process leading to their outcome as fair. Table 8 indicates that approximately ninety percent of the defendants who expressed positive attitudes towards their outcome also expressed positive attitudes toward the procedures of their case. Although defendants who perceived their procedures as fair did not always articulate support for the plea process, they felt as if their treatment was comparable to other defendants—a defining measure of procedural fairness for the defendants in this study. In this sense, although defendants felt that they could have been treated better by members of the court, their perception of whether they were treated well or not relied on observations and perceptions of the level of treatment other defendants received. In most cases the

considerable amount of waiting time required for a defendant's case to be called allows plenty of opportunities to talk and mingle with other defendants in hallways, elevators, and smoking areas. Over the course of this research, I observed that the majority of this waiting time is spent complaining about charges, prosecutors, public defenders, law enforcement, and other members of the court. These interactions offer defendants a way to 'blow off steam' and 'kill time,' but it also provides them with information about others' experiences which they use to assess their own situation. As one defendant told me after he stepped out of court, "They treat everyone the same, so yeah, I would consider it fair, or fair enough."

For this same reason, however, some defendants perceive their treatment as unfair. In these cases defendants articulated concern that their case was being handled the same as all other cases and not given individual consideration. Defendants expressed concern that they never had a conversation with their public defender before pleading guilty and did not understand the plea process that resulted in their outcome. One White male defendant who was charged with a felony count of property theft told me that he was satisfied with his outcome but also,

> *No, I don't feel that I was treated fairly going through the process, but, I mean, what choice did I have?...He [the public defender] never communicated with me. Maybe he did do something but I don't know what he did. He never told me anything. I was on my own. He said, 'here is what's going to happen. This is your case so you go over here, go over there. Now you just come back and go see the judge and you're on your way.' You know, and I'm like 'okay.' But, I mean, yes I am happy with the outcome.*

This account of the plea process parallels criticisms among scholars who argue that the criminal process has evolved into a system of assembly line justice which is most concerned with processing cases as quickly and efficiently as possible. Remarkably, many defendants are not provided with contact information for their public defenders and, if they are, are not able to reach the public defender or receive a return phone call. Throughout this research, I observed defendants who were not allowed an opportunity to speak with their public defenders prior to, during, or after court. On several occasions I witnessed the mass processing of cases, in which defendants with common charges were grouped together to receive plea offers by their public defenders and sentences by their judge. An African-American male defendant who was charged with driving with a cancelled license for the fifth time explains this experience,

> *Yeah, you know, it's just like a process, like a processing plant. They just process you, like they processing cattle. They say,'okay this is what they gonna do for you: so, so, so, so. Now if you don't do this here, now the charge carries: so, so, so, so. Now I can get you this here. Right now, today, I can get you so, so, so, and then you go to jail.' You know, it's just a process. You know, they don't have time to deal with no one individual, 'cause they can't put too much time in 'cause they got so many. Like I say, it's like, 'come on down, you're the first contestant in the Price is Right!' It's like Monty Hall in 'Let's Make a Deal.'*

As this defendant articulates, the plea process can move very quickly. On days in which the court calendar is full—such as after the weekend or a holiday—or, in courts that see a particularly high volume of cases—such as property and drug courts—cases can move so quickly that there is not time for the defendant to meet or talk to his or her public defender. In conversations with defendants after their first appearance, defendants were unable to state the name or their public defender, or how they may be able to reach

him or her. As one African-American male defendant charged with 5th degree drug possession articulates,

> *The first time I went through it I was terrified. I didn't know what was going on. I felt like I was from Asia and it's my third day here in America and I didn't have no English classes or whatever, so I'm speaking a whole different language. And they're just like talking a foreign language and I'm like, "What's going on? I need to talk to my lawyer." I'm like, "but look I don't understand like, you know, hold up." I just felt ignorant, you know what I mean. The first time, I'm like "oh my." I learned everything I know about the court system being inside the jail and not from being in court, not from my lawyer, but by sitting there listening and watching other cases.*

Participation and Self-Expression

Despite the finding that most defendants perceive the outcomes and procedures of their case as fair, the majority did not feel like that they had adequately participated in their case. Table 8 indicates that over half of all defendants who reported that the process and outcome of their case was fair also indicate that they did not have enough input in their case. This finding is somewhat surprising. As cited previously, the extant literature on perceptions of fairness argues that when defendants feel as if they are a part of the procedures of their case and have adequate opportunities to voice their side of the story, positive attitudes toward the fairness of the outcome and procedures of their case increase (Lind and Tyler 1988; Thibaut and Walker 1975). Empirical studies that consider the plea process, however, provide contradictory accounts of the effect of participation in plea bargaining on perceptions of fairness. For example, some scholars argue that plea bargaining provides more control and a heightened sense of efficacy because defendants are actively participating in their case by pleading guilty in return for an agreed upon

sentence (Heinz 1985). In this regard, the process of plea bargaining can provide defendants with greater certainty over their outcome, leading to more positive evaluations of their process. Casper (1972) argues that in cases when defendants receive an outcome that is not expected they are more likely to articulate limited participation in their case and perceive the process as less fair. This research also found that defendants who were caught off-guard by the decisions of the court were more likely to express negative attitudes. One African-American female charged with 2nd degree assault described her experience of receiving a more severe sentence than she anticipated:

> *No, we didn't talk a lot. I left him [public defender] a few messages, spoke to him on the phone and asked him, you know different questions about where I was going. He said jail time was out of the picture. I knew for a fact that jail time wasn't going to happen. I just knew that for a fact that it was no jail time. And then on the last day it's jail time…it wasn't an honest way to come and tell me I was doing jail time, to find out on the very last day when I go to court that I'm going to get sentenced to jail, and never heard it. Before any conversation that we had, any paperwork that I signed, he never said anything. So then I come to court and expect probation, monetary probation, strict probation or whatever and then have to get locked up. I thought that was very unfair because that was the first time I heard of it before going into court. I just wished he would have talked to me more and prepared me a little bit more. When I expected no jail time and then when I got jail time it was like, "oh well, you got jail time." It was like "case closed" for him. Like I know he had to know ahead of time before five minutes before court. So, oh well, I just got to live with it and do my time I guess. I would have felt good if I would have had a chance to speak more and explain myself. Then I would have been prepared for this, but like I said, it all hit me like five minutes before we went to court, so I wasn't really expecting that. And the Judge, the Judge just agreed to everything that was going on and did not take time to listen to my side. So, I guess I get the shit end of the stick.*

In more serious felony cases, such as this one, defendants are less likely to be certain of the outcome of their plea agreement when they sign it. Unlike misdemeanor cases, in which most cases are settled on the first or second day in court, felony cases can be extended for over a year (as in this case), and often involve pre-plea agreements. In cases in which pre-pleas are signed, the defendant admits their guilt and consents to an interview and evaluation by probation that presumably guides the decision of the judge. In most cases, public defenders promote pre-plea evaluations as an opportunity to decrease defendant sentences because they offer the judge and other court members with a more thorough understanding of the defendant's history and the situation surrounding the case; however, defendants often become frustrated after reading these reports because they do not feel as if the probation officer adequately represents them—most articulated concern that the report contained negative information that was not reported by the defendant, such as drug and alcohol use.

Differences in procedures between felony and misdemeanor cases may understandably influence the experience of defendants. Table 9 reports defendant perceptions of procedures, outcomes, and case participation by case severity. These results indicate that the most prevalent difference between individuals charged with felonies and less severe charges is the association that defendants draw between having a voice and fair procedures and outcomes. Individuals who are charged with felonies, compared to those who are charged with less severe offenses, are less likely to indicate that they adequately participated in their case (16.7 percent compared to 43.7) and less likely to associate their participation with procedural and outcome fairness. Only twenty-

three percent of felony defendants agreed that they participated in procedures that they experienced as fair (compared to 70 percent of misdemeanor/gross misdemeanor defendants); twenty-six percent agreed that they had participated in outcomes they perceived as fair (compared to fifty-three percent of misdemeanor/gross misdemeanor defendants). Prior examinations of the relationship between case severity and court experiences suggests that case severity can influence defendant interest in their case, particularly when the outcomes are more severe (Heinz 1985). This research provides support for such claims. Defendants in this study who were charged with lower-level offenses were more likely to express apathy towards the procedures and outcome of their case. For example, when asked whether defendants would prefer more opportunities to be involved in their case, one Hispanic male charged with a misdemeanor count of contempt of court responded that the courts can "do what they want." When I subsequently asked if he felt that he was treated with respect, he told me that he "has never really thought about it." Statements such as these by defendants support observed difference in misdemeanor and felony courts. Defendants in misdemeanor courts more frequently 'blow-off' court dates. They plead guilty without talking with their public defender about options other than the original plea offered by the state. Defendants charged with misdemeanors are also more likely to arrive to court alone without family or friends, whereas in felony courtrooms, family members, friends, and caseworkers provide a regular show of support, concern, and input into defendant decision-making.

Discussion

This research examines defendant's perceptions of the plea process and their attitudes toward the fairness of the procedures and outcomes of their case. Prior research argues that individuals who perceive case proceedings as fair are more likely to view outcomes as fair and report overall satisfaction with their court experience. Also, procedures that provide defendants with the opportunity to take part in decision-making processes—such as plea bargaining—are more likely to feel fairly treated, respected, and valued by decision-makers. In this study, however, most defendants did not report a sense of participation in their case; yet, over two-thirds of defendants perceived both the plea procedures and outcome of their case as fair. In fact, most defendants spoke positively about the outcomes of their case and believed that they received sanctions that were deserved and less severe than they had anticipated. Most all defendants perceived their court experience as fair because it mirrored other defendants' experiences; for the most part, defendants felt that they were all treated the same.

The implications of these findings are important for both academics and criminal justice professionals. First, the data suggest that fairness is not monolithic and can take on different meanings for different people. For example, defendants in this study were most likely to associate the even distribution of justice—outcomes and procedures—with fairness. This finding is contrary to research by Tyler and colleagues (Lind and Tyler 1988; Tyler and Bies 1990); defendants did not define their experience on their ability to participate and have input in the procedures of their case. Most frequently, defendants relied on the fair application of the law in their case. This result is interesting when considered in light of research showing disparity in arrests and sentencing severity

between African-American and White individuals (Western 2006) and, particularly, those charged with drug and property offenses (Provine 2007). This finding may be less surprising, however, when we consider that the poor are far more likely to be the subject of unfair and discriminatory treatment on a daily basis and in their own communities. As Merry (1985: 69) argues, most lower-class Americans believe that society is unfair, unjust, and that everyone's rights are not equally protected. Therefore, when poor defendants receive unsatisfactory treatment from the courts, they are not alienated—they are perhaps not even aware of being treated unfairly—because the experience is similar to experiences with other experiences with state actors and institutions (Cole 1999; Sarat 1990; Soss, Fording, and Schram 2011). As some of the most socially marginalized individuals in our society, poor defendants do not expect to have a voice or to receive the same treatment as individuals with more social status. They do not have the expectation that law officials will give them and their story adequate consideration, and they do not consider criminal courts and their workgroup as a space in which their self-value and identity is defined.

The caveat of this finding, however, is that perceptions of case involvement vary by gender. Female defendants in this research were more likely to express concern about their limited involvement in the plea process than were their male counterparts. They were also more likely than male defendants to perceive the procedures and outcomes of their case as unfair. These differences may suggest that female defendants are more likely to associate their court treatment and the perceptions of court professions with their own sense of self-identity. For example, when I asked an African-American woman charged

with felony credit fraud whether she felt that she should have had more input in her case, she told me,

> *Yes, very much so. Very much so because now it's like my name is that piece of paper. It's like oh, she's a criminal. I was like that's totally not who I am. When something like that is on paper, you can be described in any way that someone wants to take it. They see that and they automatically think something about you, when you know yourself that you're not that person that they are thinking of. So, that's kind of how I am feeling right now. But the criminal is not who I am…I have a saying that every smart person has a dumb moment.*

Research on gender and self-value argues that women are more likely than men to be concerned with the evaluations of others (Josephs, Markus and Tafarodi 1992: 391). On the other hand, this finding may suggest that female defendants are presented with fewer opportunities to participate in the procedures of their case than are male defendants, a consideration for future research.

This study also finds that defendant evaluations of the courts are not necessarily contingent on their experiences and evaluations of law enforcement. Research consistently finds that poor populations, especially minorities, embrace negative attitudes about police, which is based on personal experiences and the experiences of others in their community (Hurwitz and Peffley 2005; Johnson 2006; Scaglion and Condon 1980; Weitzer and Tuch; 1999, 2002). Many scholars argue that legal perspectives are created through interactions with law enforcement; negative perceptions of police practices spill over to other areas of the criminal justice and political systems (see Bobo and and Johnson 2004; Thompson 2006; Tyler 2006). Yet, this may not always be the case. During the course of this research, I heard many more stories of police misconduct than I anticipated. Defendants complained first and foremost about their treatment by police and

the fairness of the charges against them. This is to say that, for the most part, defendants blamed law enforcement for their status as a defendant in a criminal case and subsequently viewed the courts as "just doing their job." This finding may be negative or positive depending on how it is interpreted. On the one hand, defendants can differentiate between criminal justice institutions, their role in their criminal process, and their treatment by criminal justice personnel, indicating that the legitimacy of our criminal justice and political systems are not necessarily always overshadowed by the actions of law enforcement. On the other hand, this finding may indicate that the poor may be so disillusioned by police practices that they can only interpret court experiences as more positive than their experiences with the police.

Finally, this research speaks to the current state of our criminal courts and their reliance on the plea process. Over the past few decades, scholars have focused on sentencing, incarceration, and the reentry of prisoners, to the neglect of investigations of American courts. This is surprising considering the legal changes that have occurred within our courts over the past few decades, combined with the staggering number of individuals' lives that courts affect. Yet, and in despite of these changes, this research offers evidence that indicates that defendant attitudes have remained relatively stable over time. In particular, the results of this research compliment early studies of defendants. In the 1970s, Casper (1972: 85) noted that not only did defendants speak positively about the plea process, but that most defendants preferred to 'cop out' and accept a plea: "the defendant doesn't see himself as giving up anything of great value: he is simply speaking words, and they don't seem to mean very much." The rhetoric of

'assembly line justice' has been around for decades (see Alschuler 1983; Casper 1972; Feeley 1979; Fisher 2003). Although interactions with the criminal justice system and the severity of sanctions have increased, it does not appear to be the case that defendant experiences or expectations of what our courts can offer has changed much at all.

Of course, the findings of this research may be contingent on the sample. This research reflects the attitudes of defendants in a single jurisdiction. It is possible that defendants of larger urban courts, smaller rural courts, courts of indeterminate sentencing, or courts outside the Midwest may experience plea bargaining and the procedures and outcomes of cases differently than do the defendants in this study. To generalize the attitudes of this group of indigent defendants may be risky, but I also suspect that the patterns and attitudes found in this research have relevance to defendants throughout much of the nation. Rates of plea bargaining vary only slightly between states and jurisdictions; research shows that we have become a nation that overwhelmingly relies on plea procedures to dispose of criminal cases. Yet, future research should investigate when and how differences between jurisdictions influence variation in defendant experiences. For example, during this research, both defendants and court workers told me that Minnesota is unique in its approach to indigent defense. Public defenders argued that defendants are treated better in Minnesota than in other parts of the country, although, when pressed, they were never able to articulate why this was the case. Defendants—many who were from other large cities such as Chicago—also indicated that they received better legal representation services in Minnesota compared to other states. Defendants argued that there were more resources available to aid them through

the court process (e.g., Office of Legal Aid). Defendants did not seem to take advantage of these services—I met only one defendant who visited the Legal Aid office; however, defendants were aware that services existed which influence positive perceptions of the criminal court system in Minneapolis.[15]

In addition to considering how experiences may differ across regions, we should also consider how defendant attitudes towards the fairness of their procedures and outcomes vary over time. As time unfolds, defendants are likely to learn things that they did know previously and experience the ramifications of their disposition in different ways. Consequences of criminal cases that have additional impact over time may lead people to reconsider their fairness evaluations. As one defendant indicated, "At the time it was really about being fair. I mean, I don't really know looking back on it if I consider it to be a fair deal. But at the time, it was just kinda like…what I get is what I get type of thing."

Despite limitations, this research offers a unique and important perspective on our courts. In doing so, it begs to question whether we should be expecting more from our courts, or be satisfied to know that most defendants perceive their treatment as "fair enough?" In many regards, it is possible that poor defendants do not realize what they may be missing out on. After all, the vast majority of defendants in this study have never had enough money to pay for a private attorney who may take more time and consideration of their case, listen to their side of the story, and respect the circumstances of their life. Also, perhaps if defendants had previous experience with trials they would

[15] Defendants were aware of free legal services by talking with their peers in and out of custody—court workers themselves never seemed to talk about free resources that were available to help defendants.

be less likely to express positive attitudes towards the plea process. This is difficult to assess, of course, since only a small number of defendants actually go to trial. But, it is conceivable that if we were to begin increasing our standards and expectations of fair treatment by law enforcement and other institutional actors, the standards of court experiences would not be set so low. This research asserts that most defendants are satisfied with the procedures and outcomes of their case, but it does not imply that defendants feel as if the courts care about them or the implications of court sanctions on their lives.

Chapter 4. Defendant Perceptions of Public Defenders

Public defenders provide legal aid to the vast majority of criminal defendants in the United States but are often criticized for providing poor, inadequate representation and for relying on pleas of guilty to dispose of cases in the most rapid manner possible (Alschuler 1975; Boruchowitz 2009; Casper 1972, 1978; Flemming 1986; Ogletree 1995; The Constitution Project 2009). Extensive research indicates that personal experiences with authorities of criminal justice shape attitudes towards the procedures of criminal justice (Tyler 1984; 1998; 2006). For example, research on police-citizen interactions demonstrates that even mundane experiences influence support for police work and attitudes toward the legitimacy of police officers (Bobo and Thompson 2006; Sunshine and Tyler 2003; Tyler and Fagan 2008; Tyler and Wakslak 2004; Tyler, Casper, and Fisher 1989). This research focuses on public defender-defendant interactions by examining defendant attitudes about public defenders. Specifically, it examines whether defendants feel fairly treated by public defenders and whether public defender legal representation influences overall attitudes of court procedures and outcomes.

Literature Review

In recent years, scholars and practitioners have expressed concern for increasingly strained relationships between the public and legal authorities. For example, relationships between the public and the police have become a salient civic issue, evidenced by high-profile media coverage of incidents involving police abuse of power. The procedures of courts in the U.S. have also been the target of public attention. Recent cutbacks in criminal justice expenditures have exasperated court workers by increasing caseloads and

subsequently decreasing the amount of time and consideration that defendants and their cases receive (Boruchowitz 2009; Tabchnick 2010; The Constitution Project 2009). Public defenders often spend less than half an hour conferring with their client prior to arraignment (The Constitutional Project 2009); defendants then struggle to communicate with their public defender through the remainder of their case. Legal scholars argue that indigent defense has deteriorated to the point that lawyers are tempted to disregard client interests and dispose of cases as quickly as possible by way of pleas of guilty (Boruchowitz 2009; Ogletree 1995).

Process-Based Regulation

Process-based regulation models argue that defendant attitudes towards the procedures of legal institutions are motivated by respect for legal authorities (Sunshine and Tyler 2003; Tyler 2003; Tyler and Huo 2002; Tyler and Wakslak 2004). Respect for court authorities, including lawyers, prosecutors, and judges, is influenced by the perception that actions, behaviors, and decisions are fair. If the public perceives that court authorities exercise fairness, process-based models argue that individuals will be more likely to view courts as legitimate and cooperate with their efforts and decisions; however, if the public perceives that court authorities participate in unfair decisions and procedures, individuals will be less likely to view courts as legitimate and less likely to cooperate with their efforts and decisions.

Research shows that two interrelated factors influence perceptions of authorities (Casper, Tyler and Fisher 1988; Lind and Tyler 1988; Tyler 1987, 2006). First, evaluations of *fairness* influence positive and negative attitudes of legal authorities—

defendants are more likely to be satisfied with the procedures and outcome of their case if they are regarded as 'fair' by the defendant. Second, evaluations of *trust* in the motives, behaviors, and intentions of court authorities' influences attitudes—defendants are more likely to be satisfied with the procedures and outcome of their case if they trust the behaviors of court authorities. Perceptions of fairness and trust may also be connected—individuals who perceive procedures and decisions to be fair are encouraged to trust court authorities; likewise, individuals who trust court authorities are encouraged to perceive decisions and procedures as fair. If individuals feel like they are treated fairly *and* trust the motives and intentions of authority figures, they are most likely to be satisfied with their experience and view the court as a legitimate institution of control (Sunshine and Tyler 2003; Tyler and Huo 2002; Tyler and Wakslak 2004).

Process-based models of regulation have been applied most frequently to policing practices. For example, research by Tyler and colleagues (Sunshine and Tyler 2003; Tyler and Fagan 2008; Tyler and Wakslak 2004; Tyler, Casper, and Fisher 1989) shows that when police treat citizens fairly and with respect, police legitimacy is enhanced, as well as citizen cooperation and support of police officers. Process-based models also provide a framework for understanding interactions between defendants and court authorities. Public defender-defendant relations, in particular, substantially define the reality of law in society. What defendants learn of the reality of their rights, the operation of courts, and the inner workings of the law; and, whether they feel that they are treated fairly or justly is colored by experiences with their lawyer.

Defendants view publicly paid and assigned counsel as individuals with little concern about their welfare (Alschuler 1975; Boruchowitz 2009; Casper 1972, 1978; Flemming 1986; Ogletree 1995; The Constitution Project 2009); however, little attention has been given to the subjective experiences of defendants, let alone defendants represented by public defenders. Because public defenders represent the largest proportion of criminal defendants in the United States, examinations of public defender-defendant relationships are essential to a comprehensive understanding of our courts and the attitudes and behaviors of defendants who pass through the court system. This study, therefore, examines defendant experiences with public defenders and the connection between perceptions of public defenders and defendant attitudes of court by focusing on the following hypotheses derived from process-based regulation theory:

H1: Defendants who perceive public defender behavior to be fair are more likely to view the courts as legitimate and express positive attitudes towards the procedures and outcomes.

H2: Defendants who trust public defenders are more likely to view the courts as legitimate and express positive attitudes towards the procedures and outcomes.

Data and Methods

This research relies on one and a half years of criminal court observation and forty defendant interviews completed between 2010 and 2011 in Hennepin County, MN. All defendants were represented by an attorney of Hennepin County Public Defenders Office.

Hennepin County, Public Defender's Office

Hennepin County is the largest county in Minnesota with a population of slightly over 1,150,000, or approximately twenty-five percent of state population. Hennepin County's racial composition is approximately seventy percent white and ten percent black; Asians represent close to six percent of the population. Hispanics represent approximately seven percent; American Indians represent less than one percent (U.S. Census Bureau 2010). Over fifty percent of the state's minority population resides in Hennepin County (Council on Crime and Justice 2007).

Hennepin County is one of ten judicial districts in Minnesota and represents over forty percent of the total number of adult criminal cases filed in Minnesota. The Hennepin County Public Defender's Office is located in Minneapolis, MN. It is overseen by the Minnesota Board of Public Defense and administered by the state public defender system (American Bar Association 2006). Minnesota is one of approximately twenty states with a centrally funded and managed public defense system (American Bar Association 2006; Stevens, Sheppard, Spangenberg, Wickman and Gould 2010).[16]

Hennepin County is one of two state districts with a full-time public defender's office. It employs the largest number of public defenders in Minnesota (approximately 100, compared to 450 statewide) (Office of the Legislative Auditor 2010). Expenditures and staffing for the Minnesota public defender system has fluctuated over the past decade (Stevens et al 2010). Between 2003 and 2005, budget deficits resulted in staff reductions. Funding was provided for additional staff in the years 2006 and 2007, but budget challenges resulted in staff reductions again between the years 2008 and 2009.

[16] Nine states do not have statewide public defender systems. These include California, Idaho, Illinois, Indiana, Kansas, Michigan, Mississippi, Oklahoma, and South Carolina (American Bar Association 2006).

Additionally, between the years of 2005 and 2009 Hennepin County public defenders experienced an increase in cases from thirty-two percent of adult criminal cases filed to thirty-seven percent, representing over half of all charged homicide cases, and almost three-quarter of the total felony cases charged in Hennepin County (see Tables 1, 2 and 3). Although state and national standards require public defenders to carry no more than 400 case units per year, Minnesota public defenders carried an average weighted caseload of 779 case units in 2009—double the number of cases carried by privately hired attorneys.[17] Public defenders in Hennepin County carried an average weighted caseload of 900 case units (Office of the Legislative Auditor 2010).

Hennepin County, Public Defendants

Public defenders are appointed to indigent defendants by Minnesota district court judges. State law requires that judicial districts screen requests for representation. Although application and screening procedures vary between districts and judges in each district, Minnesota requires that a defendant receive public defense if the defendant,

> is financially unable to obtain counsel if: (1) the defendant, or any dependent of the defendant who resides in the same household as the defendant, receives means-tested governmental benefits; or (2) the defendant, through any combination of liquid assets an current income, would be unable to pay the reasonable costs charged by private counsel in that judicial district for a defense of the same matter (Minnesota Statutes 2011, 611.17).

[17] To quantify the levels of effort associated with different types of cases, Minnesota conducted a "weighted caseload study" in 1991. Minnesota adopted a system of weighting cases based on this study, and has not been update despite significant changes that have occurred in criminal law and procedures over the past twenty years ago. In this system, one "case unit" equals the defense services that go into the average misdemeanor case. Gross misdemeanors and felonies and awarded higher number of case units (Office of the Legislative Auditor 2010).

While the first category of eligibility, receipt of means-tested, government benefits sets relatively straight-forward eligibility standards, the second category allows substantial discretion in evaluating applicants' financial circumstances (Office of the Legislative Auditor 2010). The vague standard in Minnesota statute provides limited guidance to eligibility decision-makers about who should be eligible for a public defender and who should not. Defendants are instructed to apply for public defense prior to their first appearance; however those who do not are commonly determined eligible for public defense in court upon inquiry of financial circumstances by the judge. In these cases if the defendant is not employed or earns an insignificant income (at or below $10-$12/hr) the judge will assign public defense.

Tables 3 and 4 provide descriptive information for all adult criminal defendants in Hennepin County (data obtained from the Hennepin County Research Division). Over half of all defendants are under the age of thirty-five, and three-quarters are men. Public defenders represent more African-American defendants, compared to other races and ethnicities. In contrast, private attorneys represent more White defendants. Approximately half of all individuals represented by private attorneys are White and generally older than those represented by public defenders. Almost half (forty-four percent) of all cases that private attorneys represent are alcohol related. Public defenders provide representation for the majority of serious cases, including assault (sixty-three percent), weapons (sixty-eight percent), sex (sixty-five percent), drug (fifty-six percent), and property (sixty-seven percent) cases.

Data and Methods

This research relies on over 600 hours of court observation, including attorney-client interviews and meetings, discussions held in judges' chambers, and case discussions and negotiations between public defenders, prosecutors, probation officers, and dispositional advisors. I followed six public defenders, four on a daily basis (two females and two males). I shadowed public defenders as they interviewed and met with defendants both in and out of custody, negotiated with judges in chambers, prosecutors in the courtroom, and advised defendants in hallways, stairwells, elevators, offices, and openly in court. Observations occurred in and out of court with over 250 defendants. These observations are incorporated in to this research to add context to the analysis and findings.

Cases were not selected into this research; they are dependent on the public defender's calendar and the defendants that were assigned to him/her on a particular day. I met all defendants at their first appearance with the public defender and tracked their dates and progress through court. Court dates were followed to the best of my ability; however, all 250 cases were not followed through disposition due to a variety of circumstances that include conflict in public defender schedules, cases being dismissed or rescheduled, defendants picking-up new charges between court dates, revocation, defendants failing to appear to court dates, and defendants who are transferred to specialty courts. In sum, approximately 120 cases (approximately fifty percent) were followed from arraignment to disposition.

As cases progressed and my interactions with defendants increased, I further discussed my research with defendants and requested that they participate in an interview

with me after case disposition. [18] Only two defendants declined my invitation to be interviewed about their court experience, citing that they "just want the whole thing to be over with." I exchanged telephone numbers or email address with defendants who agreed to participate in an interview. For defendants who were homeless and without a phone, meeting dates and times were set at court. Defendant interviews were completed within a week of disposition at parks, coffee shops, restaurants, libraries, and homes. If the defendant was incarcerated, their interview took place at their correctional facility.

Defendants interviewed for this research may not represent the total indigent defendant population. These defendants were not selected into the interview sample, but represent those individuals whom I was able to locate, schedule, and complete an interview with.[19] Over half of the defendants that originally agreed to participate in this research either lost motivation to complete the interview, lost phone service, or were dealing with significant personal circumstances that made committing to and completing an interview challenging.

In sum, forty defendants were interviewed for this research. All interviews were tape-recorded and lasted from one half-hour to three hours. Interviews focused on defendant decision-making and perceptions of court procedures and workers. Questions were taken from prior research with defendants by Tyler (2006) and Casper (1972). Interviews were semi-structured. Prior to the beginning of each interview I obtained written informed consent (See Appendix B) and collected demographic information about

[18] Due to the rapid pace by which cases are called when court is in session, I was not able to ask all defendants to participate in the interview portion of this research.
[19] Approximately ninety defendants agreed to participate in the interview; approximately forty-five percent of this sample completed an interview.

the defendant, including educational, employment, family information, and criminal history. Interview topics moved naturally with the defendant—most defendants have something to say about their case outcome, and many have a lot to say about criminal justice workers. Each interview began by the defendant summarizing the activities that led to their case (i.e., the crime, arrest, custody, etc.) and interviews progressed easily from here. Interviews were transcribed verbatim and analyzed using Atlas-Ti software.

While my interview sample may only represent forty defendants, this number does allow me to make comparisons between cases, and defendant characteristics. Table 5 provides demographic information for my interview sample. The demographics of this sample are comparable to the demographics of public defender clients (Data obtained from Hennepin County Research Division). Approximately one quarter of the sample is female and sixty percent are African-American. The majority of defendants represented by public defenders are minorities. Less than one quarter is White. Also, almost sixty percent of the sample is under the age of thirty-five. The largest proportions of defendants are between the ages of eighteen and twenty-five. Finally, I interviewed more defendants charged with felonies than gross misdemeanors or misdemeanors. Defendants charged with gross misdemeanors and misdemeanors are underrepresented in this sample compared to the total number of gross misdemeanor and misdemeanor clients that public defenders represent. This difference is due to the high number of gross misdemeanor and misdemeanor cases that are either settled at the first appearance or dismissed. Table 2 indicates that between three-quarters and one half of gross misdemeanor and misdemeanor cases are dismissed. My sample includes six defendants whose cases were

dismissed; however, this research focuses primarily on defendants who plead guilty and were convicted of a crime.

Measuring Perceptions of Public Defenders

Each defendant was asked to assess their experiences and interactions with their public defender. This included how satisfied defendants were with the behavior and legal representation of the public defender, and whether defendants felt as if the public defender treated them fairly. Defendants were also asked whether they felt as if the public defender was "on their side" and if they felt as if they could trust the motives and decisions of their public defender.

Results

Fairness

Process based models of regulation argue that two factors influence defendant attitudes of court authorities; these attitudes in turn influence perceptions of legitimacy and support for court procedures. The first factor that is associated with defendant perceptions of court authorities is *fairness*. Defendants who feel fairly treated by criminal justice authorities are more likely to report positive attitudes towards the justice system (Tyler 2003; Tyler and Huo 2002; Tyler and Waslak 2004). The findings of this research show that defendants do not feel fairly treated by public defenders. Over half of the defendants interviewed for this research indicated that they were disappointed in the legal representation provided by public defenders.

Fairness may be defined differently depending on variations in population and context; however, defendants in this study defined fairness in terms of the quality and

consistency of legal representation provided by public defenders. Legal scholars identify different and often competing conceptions of the role of criminal defense lawyers; however, most agree that zealous advocacy of defendants is necessary and justified (Etienne 2003; Ogletree 1992; Smith 2004; The Constitutional Project 2009). The American Bar Association Model Code of Professional Responsibility states that it is a lawyer's responsibility to "represent a client zealously within the bounds of the law" (ABA Model R. Prof. Conduct 1998 Canon 7). For indigent defendants, perceptions of enthusiastic and effective representation influence positive and negative judgments of public defenders. Those who perceived their public defender as an individual who is willing to fight for their case—i.e., put time and effort into the case—were most likely to talk positively about public defenders and feel as if they were fairly treated, independent of case outcome. As one incarcerated, African-American, male stated, "I felt like she was great. She did everything in her power, everything that she could possibly do to give me the lesser charge possible or try to get me out of it. She did everything that she could do. So I felt she did her job really well." Another, White male charged with felony theft stated,

> *Oh, I liked my public defender, she's a great attorney and I really appreciated her help. I feel like she did a better job than other public defenders I've ever had. It just seemed like she had an actual knowledge of the case, like she actually paid attention to it. Most public defenders don't even know who you are until they look in your file when they see you. She seemed like she actually, you know, took the time and tried to find out the best results and get information. So, yeah, I was real appreciative. I liked her, she was a good person (White, Male, Felony, Stayed Sentence).*

Defendants who perceived their public defender as an individual who was not willing to fight for their case were less likely to speak positively about their experience with their public defender; these individuals represented the greatest proportion of defendants.

> *Personally, to me, I want to have my own lawyer next time. Pay my own lawyer, 'cause I know if I got my own lawyer that he's gonna fight for me. The public defender is not gonna fight for you. (African-American, Male, Felony, Dismissed)*

> *I think it's just not fair, like the public defenders are bullshit. Like you can call a real lawyer and he can get you less time, but call a public defender and he can get you the most time, you know what I'm saying? Like if a public defender is supposed to be a lawyer, right? So how come they can't act like the lawyer? It's like bullshit, you know. They're supposed to try their hardest. I bet you if somebody was paying them, then they will try to go harder, know what I mean? A lot of them don't care. They don't care because they got so many cases. They get paid for so many cases so they pretty much want to get you in and get you out of their face. (African-American, Male, Felony, Stayed Sentence)*

> *You expect a public defender to defend you, and in this case I felt like she was defending me. I'm not going to lie. In this case I felt like she was defending my. But that's in this case, right? Usually, they want you to cop out to some community service or probation or something. (African-American, Female, Felony, Stayed Sentence).*

> *Yes, she was fair to me. She did her job. She was on our side. I felt that she would have worked 100% if she could have, but like I said her case load is big you know. So I got to respect her for doing her job, you know. That's the difference between a paid lawyer who can say, '"Oh, you're going to pay me to help? Okay, I am going to talk to everyone and check out all of the cracks in this case." She could not check the cracks, you know what I am saying because she's a public defender…I feel like public defenders don't want to spend more time than what they have to on a case because they can be spending it on another case and they don't want to fall behind. (African-American, Male, Felony, Stayed Sentence)*

Defendants also expressed concern about the expectation that they would be involved in the procedures and decisions of their case. The most common complaint received by lawyers concerns the lack of time and attention they give to defendants (Flemming 1986; The Constitutional Project 2009). Professional conduct rules require that attorneys keep clients informed of the status of their case and promptly respond to client requests for information (ABA Model R. Prof. Conduct 1998). The reality, however, is that public defenders are often unable to comply with professional duties because of circumstances that include excessive caseloads and a failure to be appointed to a case in a timely manner (Boruchowitz 2009; The Constitutional Project 2009). When attorneys have too many cases, client contact suffers and sometimes becomes virtually non-existent. Lawyers become unavailable to defendants because they are constantly in court, which forces initial defender-defendant meetings to take place in the courtroom. This was especially the case for individuals charged with felony drug or theft charges. In cases in which defendants were arrested and detained for felony drug or theft charges, defendants had no contact with their public defender until they stepped into the courtroom—into the "box"—at which time their case would be called and the judge would assign the public defender to the case. If the public defender remembered their business card that day, they would slip it to the defendant in the box. On those days in which the public defender forgot their cards or ran out, the defendant was sent back to jail with no information on who their public defender was or how they might contact him or her. For those defendants who were charged with a drug or theft charge, but not detained, they did not fare much better. Public defenders did not arrive to court early enough to

meet with each defendant individually. In most cases, public defenders dealt with this by not attempting to talk with each defendant before their case was called, or by grouping defendants together in hallways to speak with them about charging, processing, and next steps.[20]

> *Yeah, like the only reason that I would not have him to be my lawyer again is basically because of the miscommunication that we had. It's not something that he did with my case wrong or anything. It's just that I feel like if I call, if I call you two or three times a week and you don't return any of my calls or give me any type of response something's wrong with that. Either you're just ignoring me or you don't really care about what's going on with my case. You just want to get it over with. And, you know, he has a lot of other clients too, but that's no reason. With Monday through Friday, there's no reason that out of those days that I can't get a response from you from calling you two or three times a week. (White, Male, Felony, Incarcerated)*

> *The hardest part is getting a hold of the public defender. I was trying to get a hold of the public defender but they never call you back or talk with you or anything like that. So until your date, your next court date; that's the first time I talked with my public defender. And all they do is come out and ask for a new court date because they haven't had a chance to look over the case at all. (White, Male, Felony, Stayed Sentence)*

> *He talked with me one time and he told me the offer, that's it. (African-American, Male, Felony, Stayed Sentence)*

> *I wasn't treated fairly because being treated fairly is when you're honest with your client and you put everything on the table and let them know what's going on. (African-American, Female, Felony, Incarcerated)*

[20] Defendants charged with drug and theft charges received the least amount of public defender time prior to court, compared to defendants charged with misdemeanors in community and traffic court, and defendants charged with personal felonies. Over the course of this research I attempted to understand why the largest growing defendant population received the least amount of resources. To my disappointment, nobody was able to adequately answer this question; however, as my research was ending scheduling changes were made to court calendars which included moving drug and property court to the afternoon session which would allow public defenders to meet with defendants in the morning before their case was called in the afternoon.

Trust

The second factor that influences defendant attitudes is the perception that they can *trust* public defenders. Tyler and colleagues (Casper, Tyler and Fisher 1988; Lind and Tyler 1988; Tyler 1987, 2006) suggest that defendants are most likely to trust a court authority if they understand what motivates their behavior and decision-making. Authorities who act unexpectedly are not necessarily judged to be untrustworthy if people feel that they understand why authorities behave in the manner in which they do. Analyses of defendant interviews confirm this finding. As articulated in the previous statements, defendants critique public defenders, but also provide justification for their behaviors. For example, one African-American male who received a stayed sentence for a series of misdemeanor violations indicated that he was disappointed in his lawyer's willingness to fight for a better plea negotiation—"He was alright, but he could have tugged a little harder too to get it down a little more." The defendant followed this statement with the following explanation for the defenders behavior,

> *He was pressed for time 'cause he got to be here, he got to be there. You can't get mad at them because they are overloaded. You know, if you want to keep it real, they are all public defenders, pretenders, or whatever. They are all overloaded. They get more and more everyday. You know it's a wonder that all of them ain't half crazy. It's not good. It's not good. It's not good. But, that's basically what it is, you know. It's bad because you, you ain't have no faith in the system, you know, 'cause you ain't got nobody that's gonna really fight for you. Half of them can't even negotiate on a plea bargain, let alone on a trial. I guess that's probably even how they are taught in college now-a-days, just to be a deal-maker.*

Another White female who received probation for a misdemeanor told me that she was concerned during court because she expected to have more opportunities to talk with

her attorney, but also indicated that "there are so many other cases and horrible things that happen, that they can't worry about [her]." An African-American male who was incarcerated for multiple misdemeanors stated,

> *Those public defenders, you can't even talk to them. It's frustrating. You know that it's six or seven other people to this one person. I mean like how many people can you actually juggle by yourself? I thought public defenders were supposed to be there to help so why isn't there more of them?*

Previous research indicates that defendants express sentiments of distrust for public defenders (Alschuler 1975; Boruchowitz 2009; Casper 1972, 1978; Flemming 1986; Ogletree 1995; The Constitution Project 2009). The findings of this research however show that defendants are not necessarily distrusting of public defenders, but of the system that public defenders work for. Public defenders are perceived by defendants as part of a larger system that prescribes their behavior.

> *It's not fair because they work for the city. So, he started working with the prosecutors and seeing what they want to come up with, but he's not asking the client what's going on. It's not fair. It was all him, him and the prosecutor. The public defender is not fair; it's not justice because they do what they want to do. What them and the prosecutor want to do. (African-American, Male, Felony, Stayed Sentence)*

> *When you're incarcerated they call them public pretenders. But, you know, it's the truth because you know the prosecutors and the public defenders they eat lunch together, they go fishing together, you know they just hang out together, they're friends. You know, so while they're like eating ravioli it's probably like, "Oh what do you want to do with him? Okay I'll give you him, just let me beat this case right here." You know what I'm saying? It's like chess and it's kind of messed up. (African-American, Male, Felony, Stayed Sentence)*

> *He talked to me one time and he told me the offer, that's it. He never*

> *asked me what did I want to do, any of that, because he works for the city so right now he started working with the prosecutors and see what they want to come up with, but he's not asking the client what's going on. It's not fair. It was all him. Him and the prosecutor. (White, Male, Misdemeanor, Stayed Sentence)*
>
> *I do not really feel like he was on my side. I'll be honest with you. Not really. I'm just another, you know, pawn on the chessboard. He's just doing his job. Just get 'em in, get 'em out, get 'em in, get 'em out, you know? It's just a job with the prosecutor. (African-American, Male, Misdemeanor, Incarcerated)*
>
> *I done tried to fire him twice. Because he didn't listen or care about me. Because all public defenders want to be a fucking district attorney and make you do a stupid plea to make the courts happy. (African-American, Female, Felony, Stayed Sentence)*

Defendant statements suggest that they do not necessarily view the behavior of public defenders as representative of the defenders themselves, but rather a reflection of the circumstances of their job in the courts, which relies heavily on the plea process to ensure efficient case progress. Defendants did not perceive public defenders as apathetic, but overextended. For example, defendants commonly referred to public defenders as "public pretenders." This rhetoric is heard throughout the hallways of the courts as defendants talk amongst themselves about their case. Defendants suggest that the name "public pretender" is better-suited because defenders pretend to advocate on behalf of defendants when, in reality, most public defenders are only trying to satisfy their requirements to the court and move a case through as quickly as possible.

All defendants in this research participated in the plea bargaining process. Over ninety percent of criminal cases are resolved through plea bargains; most are settled during the first or second court appearance. In this study, all but six cases were resolved

through plea bargains. No cases went to trial, and no observed differences were found by defendant gender, race, case severity, or disposition.

Discussion

Process-based models of regulation argue that people will perceive institutions of control positively if they feel fairly treated and trust authorities. They are also more likely to be satisfied with the decisions and directions of authorities and more willing to voluntarily accept their rules even if decisions do not provide them with desired or favorable outcomes (Tyler 2003; Tyler and Huo 2002; Sunshine and Tyler 2003; Tyler and Wakslak 2004). Defendants in this study do not feel fairly treated by public defenders; however, they do seem to understand the factors that drive public defender behaviors. Defendants who expressed both positive and negative perceptions of public defender behavior attributed the behavior to the social and situational circumstances of the courts. While only a small number of defendants indicated that they were wholly satisfied with the behaviors and decisions of the public defender, the majority of defendants indicated that they were satisfied with the outcome and procedures of their case (See Table 7; approximately seventy percent of defendants view plea procedures and outcomes as fair).

Attribution theories argue that people make distinctions between persons and their social situations (Gilbert 1998; Jones and Davis 1965). Social attributions occur when individual behavior is interpreted in terms of situational forces and, particularly, when an individual is a member of a group. For example, Yzerbyt and Rogier (2001: 105) argue that "social attribution is especially likely to be at work when perceivers believe that they

are confronted with a clear social entity, a coherent whole," and that social attribution is "of paramount importance for the rationalization and justification function of stereotypes."

Defendants in this study attributed the behaviors of public defenders to the "system"—public defender behavior is therefore a consequence of being a worker in "The Public Defender's Office" which is funded by "The City," "The State," or "The System." The legitimacy of public defenders as figures of authority is contextualized by defendant beliefs about the court system. Defendants viewed public defenders as acting legitimately or, at the very least, consistently in this social context—i.e., eager to plead defendants guilty, disinclined to give them much time and not concerned about their welfare. In this regard, although defendants do not trust the motives of public defenders—because, they are dictated by the system—they trust that they will receive the (substandard) legal representation of an overburdened public defender.

Interestingly, public defenders feel the same way as defendants—public defenders are frustrated in their position as well. Observations support what public defenders consistently claimed—that they care, but do not have enough influence to make a difference. Like the defendants that they represent, public defenders feel as if their workloads and "The System" constrains their interactions with defendants. Public defenders argue that heavy workloads do not provide adequate time to adequately represent defendants—many claim that they never have time to review files before walking in to the courtroom, and cannot remember defendant names. Public defenders articulate feeling that their abilities are limited by the power of prosecutors and

sentencing guidelines—"The System." One of the consistent criticisms of sentencing guidelines is that they reduce judicial power and discretion and place it in the hands of prosecutors (Frase 2005; Tonry 1998). My observations suggest that public defenders' influence over court decisions is largest at initial bail hearings and subsequently decreases as the case progresses. Prosecutors control charging and what pleas will be negotiated; guidelines control what range of sentence the judge can enforce.

These findings complicate the original hypotheses of this research. Most importantly, defendant attitudes towards the procedures and outcome of their case are not necessarily contingent on perceptions of fairness or trust of public defenders. Defendants do not feel as if they receive fair treatment by public defenders, but they express satisfaction with the procedures and outcomes (H1). They do not trust public defenders to represent their best interests, but they are positive about the plea bargaining procedure and outcome (H2). Process-based models of regulations state that defendants who lack confidence in their lawyer are not only likely to harbor negative feelings about the law, but are also more likely to resist the lawyer's and court's advice regarding the implications of future non-law abiding behavior. Research notes that defendants often lay full blame for the faults of the system on their public defender (Alschuler 1975; Boruchowitz 2009; Casper 1972, 1978; Flemming 1986; Ogletree 1995; The Constitution Project 2009). The findings of this research, however, argue that defendants are capable of contextualizing the behaviors of their public defender. Public defenders are criticized and often blamed by defendants, but they are also seen as part of a larger system that is out of both the public defender's and the defendant's control. Thus, the legitimacy of the

criminal justice system is questioned by defendants more so than the actual behaviors of public defenders and the relationships they establish with defendants.

These findings are relevant to managing the relationship between public defenders and defendants. First, it shows that insufficient funding of public defender programs affects the performance of public defenders as viewed through the eyes of the defendant, but also the eyes of public defenders themselves. Over the course of this research, the primary complaint expressed by public defenders was their inability to offer adequate legal representation. Every public defender that I spoke with cited frustration with an underfunded indigent defense system. Public defenders noted that not only are their caseloads overwhelming, but they are also frequently scheduled for cases at the same time in different courtrooms which make meaningful interactions with defendants unfeasible. The role as serving as a public defender is by nature a difficult one that can lead to negativity and burn out. Little attention has been given to the impact that improved public defender services could have on the experiences and attitudes of defendants; however, greater attention and funding of public defender programs can not only increase the positive experiences of defendants, but the attitudes and behaviors of public defenders themselves.

The findings of this study should be viewed in light of the population of defendants that it represents. This research speaks only to socially disadvantaged, indigent defendant experiences—defendants who cannot afford to hire an attorney. If this research included the experiences of defendants of private attorneys, it is likely that their perspectives would be different. Attorneys who receive a fee in exchange for their work

are more likely to devote additional time to investigation and conferring with their client. That being said, it is somewhat surprising that the defendants in this study did not express harsher attitudes towards public defenders; however, scholars argue that disadvantaged groups are less likely to report negative experiences with authorities than we might anticipate; by denying or rationalizing the behavior or authorities, the socially disadvantaged are able to minimize the extent to which they are victims of unfair treatment (See Jost and Major 2001). This research also cannot speak to the extent to which defendant experiences with public defenders affect future behavior. Social psychologists argue that unfair or disrespectful treatment by public defenders and other court authorities influences people's general evaluation of the courts and their overall respect for the law. Losing respect for the law influences both individual behaviors and others who learn of his or her experience. If these assumptions are correct, this study shows that the courts have a long way to go to encourage defendants to support their procedures and accept decisions of court authorities as fair.

Chapter 5. Defendant Decision-Making

The majority of criminal convictions in the United States are achieved by guilty plea rather than by trial. For example, of the 1,205,273 felony criminal convictions in U.S state courts in 2006, 1,132,290, or ninety-four percent were by plea (Statistical Abstracts, 2012, Table 346). Although studies of sentencing routinely find that defendants who plead guilty receive relatively lenient sentences compared with similarly situated defendants convicted by trial (Albonetti 1991; Bushway and Piehl 2001; Dixon 1995; Engen and Gainey 2000; Johnson, Ulmer, and Kramer 2008; King, Soule, Steen and Weidner 2005; Kramer and Ulmer 2002, 2009; LaFree 1985; Peterson and Hagan 1984; Steffensmeier and DeMuth 2000, 2001; Steffensmeier, Ulmer and Kramer 1998; Ulmer and Kramer 1996; Zatz 1984), we have yet to fully understand the process by which defendants decide to plead guilty. The purpose of this chapter, therefore, is to examine the plea-trial decision-making process of defendants.

Although plea-trial decision-making is not usually the main focus of court research, much of the research published on sentencing in the last thirty years is relevant to this discussion. Specifically, many empirical studies find that trial-convicted defendants are more likely to be incarcerated and receive longer sentences than defendants who decide to plead guilty (Albonetti 1991; Bushway and Piehl 2001; Johnson et al 2008; King et al 2002, 2009; LaFree 1985; McCoy 2005; Peterson and Hagan 1984; Steffensmeier and DeMuth 2000, 2001). The meaning and affect of this disparity are topics of considerable debate. Scholars have considered not only why trial disparities exist, but how criminal justice decision-makers justify the use of trial penalties

and plea rewards. Most commonly, researchers explain the difference as the consequence of courts rewarding those who plead guilty for behavior or attitudes that are valued by the organization. For example, rewarding those who plead guilty and penalizing those who lose at trial reflects a need for efficiency in case processing (Dixon 1995; Engen and Steen 2000; Holmes, Daudistel, and Taggart 1992; Nardulli et al 1988). This justification argues that court actors view time- and resource-intensive trials as disruptive to the court community. Legal scholars, however, argue that pleading guilty as opposed to taking a case to trial is associated with differences in perceived blameworthiness. Rewarding those who plead guilty with lighter sentences is widely seen as necessary to encourage defendants' "remorse" and "acceptance of responsibility" for crimes and cooperation with legal authorities (2009 United States Sentencing Guidelines §3E1.1). Others suggest that court members manage the uncertainty associated with trial and sentencing by offering plea bargains that provide certain outcomes and "patterned responses" (March and Simon 1958).

Theory and empirical evidence of plea-trial decision-making is relatively limited. Most studies rely on post-sentencing data to examine decisions that occur before sentencing; yet, pleas of guilty offered to judges are formalities which represent the culmination of processes, interactions, and decisions made prior to sentencing. Research also fails to consider the perspective of the defendant and specifically examine why defendants choose to plead guilty over ninety percent of the time. Do defendants' decisions to plead guilty reflect the assumptions of the court? Do defendants plead guilty because they are remorseful and want to accept responsibility for their behaviors? Do

defendants seek the certainty of outcomes that pleas offer? Do defendants consider economics and time as factors that influence their decisions? By focusing on observations between indigent defendants and their attorneys, and interviews with adult criminal defendants, this chapter aims to advance our understanding of the process by which defendants decide to plead guilty versus take their case to trial.

Literature Review

Plea-Trial Research

Historically, the reason that plea bargaining became the chief method of case disposal does not involve high caseloads or to save courts the time and expense of trial. Many scholars suggest that after plea bargaining first appeared in the 1780s, its use began to increase as public prosecutors and police organizations became more professional. By the 1870's even middle-sized cities had modern police departments to exercise patrol and detective functions (Feeley 1979; Friedman 1993; Friedman & Percival 198; Rothman 1980). Increases in the professional interchange between full-time police and court officials meant that criminal justice professionals became "repeat players" and that the court workgroup became accustomed to the routine disposition of cases and the outcomes and sentences associated with taking a case to trial versus negotiating a plea deal. Sociologists suggest that once outcomes and sentences of pleas and trials became familiar to court workers, a "going rate" of the expected sentence developed so that the system became routine and bureaucratic (Casper 1978; Feeley 1979; Heumann 1977; Rothman 1980). This routinization explanation is the most common argument presented by contemporary scholars to explain the rise of plea bargaining, and runs counter to the

economic efficiency (i.e., plea bargaining is based on the need to save time and money) and caseload explanations.

The normalization of plea bargaining has enabled courts to handle increasing caseloads. Disposing of cases at early pretrial stages through quick guilty pleas means that fewer resources of investigation and advocacy are expended, freeing up the courts' capacity to handle more cases. Plea bargaining has enabled the courts to process higher numbers of cases even as the crime rate drops.

Despite the reasons for the rise of plea bargaining, the practice has produced a typical state of affairs in which steep trial penalties are regarded as ethical by court members, policy makers, and the general public. Many empirical studies find that trial-convicted defendants are more likely to be incarcerated and receive longer sentences than defendants who plead guilty, net of legally relevant factors related to the offense, defendants' criminal history, or other defendant characteristics (Albonetti 1991; Bushway and Piehl 2001; Dixon 1995; Engen and Gainey 2000; Johnson et al 2008; King et al 2005; Kramer and Ulmer 2002, 2009; LaFree 1985; Peterson and Hagan 1984; Steffensmeier and DeMuth 2000, 2001; Steffensmeier, Ulmer and Kramer 1998; Ulmer and Kramer 1996; Zatz 1984). For example, McCoy (2005) shows that jury trial sentences are nine times more severe than guilty plea sentences without controlling for legal and offender factors, and that prison sentences are about three years more severe than guilty plea sentences, controlling for legal and offender factors. Many studies argue that plea-trial disparity varies by jurisdiction (Brereton and Casper 1982; Eisenstein and Jacob 1977; King et al 2005; Nardulli, Eisenstein, and Flemming 1988) and court

caseload pressure (e.g. Brereton and Casper 1982; Dixon 1995; Holmes, Daudistel, and Taggart 1992; Nardulli et al 1988). Others fail to find any significant evidence of plea-trial disparities (Eisenstein and Jacob 1977; Hagan 1975; Smith 1986).

Remorse and Responsibility

The idea that punishment decisions can be influenced by factors beyond the defendant's characteristics and their case challenges widely held notions of fairness and jurisprudence. This concern, in turn, has prompted theoretical discussions of the plea-trial disparity. Many scholars argue that the disparity is built into sentencing guidelines and has been found constitutional by the Supreme Court. Federal defendants receive guideline-based sentencing discounts or departures for "acceptance of responsibility" and "substantial assistance to law enforcement" (2009 United States Sentencing Guidelines §3E1.1). Ulmer (1997: 88) states that judges generally consider remorse a "mitigating factor"—by pleading guilty, defendants are saying "I did it and I am sorry"—and that many judges argue that "you have to give people credit for pleading guilty and expressing remorse." Constitutional theories of plea-trial disparity argue that pleading guilty as opposed to taking a case to trial as a sign that the defendant accepts legal responsibility for their offense and should be rewarded for it. The claims of legalistic theories therefore suggest that defendants are blameworthy and remorseful of their actions.

H1: Defendants plead guilty because they are sorry for their actions and want to accept responsibility for their behavior.

Organizational Efficiency

Many scholars argue that the cause of plea-trial disparities lies beyond constitutional rhetoric. Quite a few suggest that the pressure to keep cases moving and avoid docket backlogs is the primary reason for plea-trial sentencing disparities (see Dixon 1995; Engen and Steen 2000; Holmes et al 1992; Nardulli et al 1988). Organizational efficiency proponents argue that differentially punishing pleas and trials is a rational response to the need to keep cases moving efficiently through the courts. Trials consume scarce time and resources and providing presentence incentives to defendants who plead guilty is a rational organizational strategy. According to this perspective, the greater the caseload pressure, the more incentive defendants receive to plead guilty. Although scholars argue that by providing presentence incentives to plead guilty the courts create a coercive atmosphere for defendants (Bibas 2004; Bowers 2008; Langbein 1978; McCoy 2005), Smith (1986) argues that plea bargaining is a rational rather than a coercive practice. He suggests that from the perspective of defendants, plea-trial sentencing differences must be weighed against the possibility of acquittal at trial. Studies drawing on this perspective argue that court actors view trials as unpleasant and disruptive and, as a result, discourage them (Flemming et al 1992; Ulmer 1997). Hence, the disparity in sentencing severity between trial convictions and guilty pleas is the product of the court rewarding defendant decisions to plead guilty. As Albonetti (1991: 255) states, "Defendant cooperation exemplified by a willingness to plead guilty is viewed, by the sentencing judge, as an indication of the defendant's willingness to 'play the game' in a routine, system defined manner."

Research on lower, misdemeanor courts provides some evidence that defendants make plea decisions based on time and economic considerations. Feeley (1979), for example, indicates that defendants in lower courts care less about the outcome of the case and more about the financial costs and time investment of the process. Subsequent research has also shown that defendants present concerns of time and money—including loss of wages, child-care expenses, and educational set-backs (Feeley 1979; Gertner 2002: Irwin 1985; Levy-Pounds 2007)—above concerns of the disposition or outcome. These findings suggest that defendant decisions parallel the decisions of court actors. They also suggest that defendants charged with less severe offenses may think differently regarding the decision to plea guilty. Defendants charged with misdemeanors that carry less severe sentencing implications might be more inclined to plead guilty to "get it over with"; whereas, defendants charged with felonies that carry more severe implications might be more concerned about the outcome of the case, particularly if they believe they are innocent.

H2: Defendants plead guilty because they want to save the time and money—including loss of wages, child-care expenses, and educational set-backs—required to take their case to trial.

H3: Defendants who are charged with less severe offenses are more likely to plead guilty because they want to save the time and money—including loss of wages, child-care expenses, and educational set-backs— required to take their case to trial.

Uncertainty and Risk

Rational choice models of decision making also provide a useful point of departure for understanding the exercise of discretion among court members. Theorists argue that rational decisions must be made with knowledge of all possible alternatives; although, in reality, decision makers rarely possess enough information to eliminate uncertainty of decisions and outcomes (Simon 1957). Albonetti's (1986) uncertainty avoidance theory of criminal case processing argues that sentencing decisions reflect the use of bounded rationality in which court actors make highly consequential decisions with insufficient information which produces uncertainty (March and Simon 1958). For judges, there is often little information on the background and moral character of a defendant, and the risk of recidivism is never fully predictable. In this context, judges and other court community actors make situational imputations about defendants' characters and expected future behaviors based on criminal history scores and written and verbal assessments provided by court workers which provide a framework for interpreting defendant behaviors and risk of reoffense (Steffensmeier 1980).

According to Simon (1957:102-103) limits to decision-making rationality are overcome through organizational arrangements such as established operating procedures which absorb uncertainty. Plea deals reduce uncertainty of sentencing decisions for judges. Plea deals also reduce the uncertainty of outcomes for defendants. Although the right to a jury trial is fundamental to the American legal system, trials are inherently uncertain events. When cases depend on unreliable or disreputable witnesses, questionable testimony, and the use of less-direct evidence, the likelihood of conviction may or may not diminish over time. In this scenario, the size of the reward associated

with guilty pleas might increase for both court members and defendants. Many scholars argue that it is the uncertainty surrounding the outcome of trial that influences even those who are innocent to accept plea deals (Albonetti 1991). Casper (1972), argues that plea bargaining is positively regarded by defendants because it allows defendants to participate in the process by making a decision about the outcome they will receive.

H4: Defendants plead guilty because they prefer the certainty of outcomes provided by the plea deal.

Data and Methods

Prior to discussing the data it is essential to understand the context that influences the experiences of defendants in this study. In particular, Minnesota pioneered sentencing commissions and guidelines (Frase 2005). In 1978, the Minnesota Legislature created a specialized administrative body, the Minnesota Sentencing Guidelines Commission, to develop and implement a new criminal sentencing system. The Commission's primary goal was to establish a system that would produce greater uniformity in sentencing, thereby assuring that similarly-situated individuals convicted of the same crimes would receive comparable sentences. The Minnesota Sentencing Guidelines determine whether a convicted felon should be sentenced to prison or probation, and if so, for how long. The severity of the convicted offense and the nature of the felon's prior criminal history are the two major variables that are used to derive a convicted felon's presumptive sentence. The felon's offense and criminal history each receive a numerical score. When defendants enter court with a felony charge, attorneys rely primarily on the Sentencing Guidelines—and, specifically, the sentencing grid—to discuss offense and criminal

history points, and to illustrate the defendant's potential minimum and maximum sentences.

Unlike Federal Sentencing Guidelines which explicitly state that defendants may receive sentencing discounts for a plea of guilty, Minnesota Guidelines do not address whether plea bargains are sufficient justification for departing from the presumptive sentence. Minnesota guidelines allow judges to "depart" from the presumptive sentence if there is "substantial and compelling circumstances" (Minnesota Sentencing Guidelines 2010: 28-29); however, the Sentencing Commission has historically found that plea agreements create a great deal of controversy and are hard to define in departure standards. Therefore, although the Commission recognizes that plea bargains play an integral part in the criminal justice system, it has declined to make any changes regarding the plea bargaining process in the guidelines, in effect deferring to the courts on the issue of whether plea agreements warrant departures from the stated guidelines.

Methods

This research relies on one and a half years of criminal court observation and forty defendant interviews completed between 2010 and 2011 in Hennepin County, MN with the Public Defender's Office. Formal interviews focused on the theoretical interests of this research, including the defendant's involvement in the plea process and attitudes towards the procedures, the outcomes, and the decisions involved in their case. Interviews were tape-recorded and lasted from one to three hours; transcription was completed verbatim. Defendant cases were followed through their natural progression in court, and interviews were conducted after case disposition or sentencing. Initial

introductions occurred at arraignment with the public defender who was assigned to the defendant's case. Introductions took place in and out of custody depending on the severity of the charges against the defendant. Public defenders provided initial introductions which included explaining the nature of this research. Verbal consent to observe the defendant's case—including interactions between the defendant and the public defender, and the public defender and other members of the court—was obtained at the first meeting. Written consent was obtained prior to the formal interview.

In addition to those defendants that I formally interviewed, over 250 defendants consented to my request to observe their case (two defendants refused). Thus, my interviews are supported by over 600 hours of observations that served to enrich my understanding of court procedures, attorney-client interactions, and decision-making. I spent the first several months of this research sitting in different courts without following cases or public defenders to understand the flow of cases, the hierarchy of court workers, and how court workers talk both amongst themselves and 'on the record.' After I began following cases and interviewing defendants, it became necessary to spend a large amount of time in court due to court worker and defendant tardiness, no-shows, and the amount of time it takes for a case to be called (up to four hours). During this time I learned much about how court workers interact and the context in which defendants come to make decisions and understand courts. These observations are incorporated into this research to add context to analysis and findings.

Table 6 provides a description of the defendants interviewed for this research. All defendants in the interview sample participated in the plea process, except six whose

cases were dismissed. Five of these individuals attended several court dates and entertained plea offers until their cases were dismissed. The majority of defendants are young, African-American, and male. Defendants include those charged with both misdemeanor (thirty-five percent) and felony (sixty percent) offenses. Five percent were charged with a gross misdemeanor which carries a maximum sentence of up to one year in jail and/or a $3000 fine. In most cases (approximately fifty percent of the total population), gross misdemeanor charges resulted from DUI convictions.

In order to understand the decision-making process for defendants, all defendants were asked about the decision to take a plea versus go to trial. Defendants were asked what factors they considered when making the decision to plead guilty. They were also asked whether they originally intended and wanted to plead guilty, and whether they understood the plea process and the outcome. All responses are coded into one of three categories—Guilt, Efficiency, and Uncertainty—relying on the prior theoretical discussion of defendant decision-making and on how the defendant articulated their decision to plead.

Results

This section reports the findings associated with defendant decisions to plead guilty. Figure 1 illustrates the proportion of defendants who pled guilty because they felt remorse and guilt for their behavior, the proportion who pled guilty due to time and financial constraints, and the proportion who pled guilty because they did not want to risk the outcome of taking their case to trial. The results show that the smallest proportion of defendants pled guilty because of legal factors such as feeling responsibility or remorse

for the crime. The largest proportion of defendants pled guilty because of the efficiency offered by the plea process. Specifically, fifty percent of defendants articulated that they did not take their case to trial because of the time and cost associated with the process. As one African-American male charged with a felony put it, "Nah, I ain't taking nothing to trial. Plead, give them what they want, get out. A lot of people can't take it to trial because they got family shit at home."

The second largest group of defendants (thirty-eight percent) pled guilty because they did not want to risk going to trial. These defendants articulated concern that they would receive a more severe sentence after trial, and in many cases this concern was legitimate—although public defenders in this study were not often observed telling defendants what decisions they should make in their case (in fact, public defenders always told defendants that it was not their job to tell defendants what to do), public defenders did frequently inform defendants that the prosecutor and judge has indicated that if they do not accept the plea deal and choose to take their case to trial, they will be found guilty and sentenced more severely. For example, in one of the first cases that I observed, a male defendant was charged with a felony count of 1st Degree Assault after shooting his victim in the back of the head. The prosecutor offered the defendant a plea deal which the defendant refused to accept. During negotiations the prosecutor informed the public defender that although the victim in this case did not die, he is severally mentally and physically impaired and in critical care as a result of the gunshot wound. The prosecutor stated that if the defendant did not accept the plea offer she would subsequently charge him with attempted manslaughter at trial.

Defendants in this research did consider taking their case to trial because they believed that they were innocent. These defendants ultimately decided to accept a plea offer out of fear of the outcome that would result from trial. I observed one White male defendant charged with several felony fraud charges who continued his case for a year while deciding whether or not to take it trial. Over the course of the year he attended monthly court dates to confer with his lawyer about his case and the evidence against him—in this case, the prosecutors never disclosed transcripts and reports of guilt to the public defender. At each court date the case was continued to the next month until one day, a year after his first court appearance, the defendant appeared in court and agreed to plead guilty,

> *The reason that I wanted to take it to trial, I don't know, I just felt like every time that I pled guilty I was just giving myself the raw end of the deal because there's no chance to…once you admit to something it's like, you know, there's no chance for a trial or appeal or anything like that. But after I thought about it and I was like, if I go to trial they could honestly look at it in a whole different way and I could get in a lot more trouble them I am. I might as well just take the best thing that I have right here on this table. I just had to sit down and process it like to myself and figure out what was the best thing for me to do, you know what I mean?*

Another African-American male defendant charged with a felony articulates a similar experience,

> *They was offering me six years, you know what I'm saying, so I fought it. I fought it for like four and a half months. I'm sitting down in the county [jail] just fighting it. Like no way, I'm not taking this. I didn't do nothing and I shouldn't even be here. But, like the deals are getting worse and worse and worse. They first offered me 48 months and then they went to 52 and then they went to 57, so they kept climbing the deals and stuff and then I had a public defender, which was like wow, you know what I mean. No I didn't take it to trial because they said if I don't take it to trial they'll*

> *just give me four more months. Just do four more months because I already did four more months. So they made it seem so sweet to me, but it hurt me in the long run, you know, because I've never been in jail before. So I'm panicking I'm in jail for four months and I'm like oh my goodness seems like I've been gone for like two years just sitting in a little cage, cell by yourself is crazy. I've never been in that position so I'm like freaking out. I wanted to take it to trial but I just couldn't handle the jail, you know, and what if I did lose because, you know, I don't know. I would never want to use it as an excuse but you know I just felt that I might have lost. If I would have lost I would have been sitting in prison for six years.*

Many defendants consider the strength of their case against the State during their decision-making process. Some consider how their testimony will sound to juries, particularly if police officer testimony is offered. The presence of police in court and trial is a much discussed and anxiety-provoking consideration for defendants who harbor negative attitudes towards police and blame them for their immediate situation in court and their ability to "beat" their case at trial. As one White Male charged with a felony stated, "You know, to go and fight it, like she said [the public defender] it would be a cop's word that has extensive training in this matter, against mine, with previous history, and then, you know. So in front of a jury it isn't, they're gonna believe the cop over me." Defendants also consider their prior record as a reason that they would not take it to trial. For example, one Black male charged with a Gross Misdemeanor indicated,

> *It was pretty much stacked up against me to go to trial with my background. I mean I felt that I wasn't guilty, I felt that, you know. I wanted to fight it but with my background it would have been something, I don't know, I don't know, I wanted to fight it, but I didn't want to chance it. Because I know in Minnesota if you take it to trial they will give you the max on your sentence and I can't afford the max. My record is so bad if I'm going to try to fight one of 30, it didn't add up.I couldn't afford to get what they give, they give you the max time, and I would have got time if I would have went to trial and lost. Time would have came, so I mean I*

> *couldn't afford that time. Doing time, try to fight something when I should have been trying to fight my cases when I had my first case. You know, now I'm going to take a stand and it didn't really add up to me. I mean I wanted to but I mean.*

Like many other defendants with prior convictions, this defendant repeatedly expressed regret for not fighting earlier, smaller cases which now have implications for a more severe charge that he does not consider himself guilty of.

Figure 2 provides information on decisions to plead by defendant characteristics. Some studies suggest that defendant decisions to plead are influenced by the severity of the charge, pretrial custody, and prior experience with the courts (Smith 1986; Ulmer 1997; Steffensmeier & Demuth 2000). The findings of this research suggest that there are differences in decisions to plead guilty among different types of offenders; however, these differences mirror the findings of the total sample as presented in Figure 1. The majority of male and female defendants expressed that they decided to plead guilty because of the efficiency offered by the plea process. Both African-American and White defendants and those with and without prior convictions pled guilty because of the time and money savings associated with accepting a plea deal. Two-thirds of defendants who were facing a less severe charge than a felony pled to "get it over with," and half of those charged with a felony made the same decision. This finding is somewhat surprising. Although research in the lower courts shows that defendants charged with misdemeanors express little concern about the outcome of their case and more concern over being done with the process as quickly and efficiently as possible (see Feeley 1979), many scholars assume that defendants who are charged with more severe offenses are subsequently more concerned with the procedures and outcome of the case. The findings of this

research, however, show that felony defendants are just as interested in getting the process over with as they are concerned about the risk of going to trial. Not surprising, however, is the finding that defendants held in pretrial custody are most likely to plead guilty because of the uncertainty that is associated with trial. This finding supports previous research on the influence of pretrial custody on defendant decision-making (Alshuler 1968; Bowers, 2008; Feeley, 1979; Lynch 1998). Defendants who are incarcerated prior to sentencing are frequently offered deals that negotiate their release from jail in exchange for a guilty plea. As articulated in the previous passage, the offer to get out of jail trumps defendants' interest in trials which may keep them in jail for a longer period of time and, ultimately, extend their sentence to include time in prison. As one African-American male expressed, "Personally I would just go with whatever they give me so I can hurry up and get out of there. I just went on and told them yep, yep, whatever, anything as long as it's going to get me out of here." Particularly for women with children, pretrial detention can pose significant logistical and financial hardships if they have to arrange for other family members, friends, or child services to care for their children while they are in jail.

These findings provide initial support for Hypotheses 2 and 4 which argue that defendants plead guilty because they prefer to save time away from commitments, such as family, work and school, and the loss of money associated with lost wages and child care needs (H2). Defendants also prefer the certainty of outcomes provided by the plea deal (H4). However, when we further consider the experiences of defendants, decision-making becomes a much more nuanced process. For example, although the majority of

defendants articulate support for an efficiency perspective of decision-making, how defendants arrive at this decision is contextualized by considerations of guilt and risk. That is, defendants state that they decided not to take their case to trial because it takes too much time and money; however, this decision was frequently justified by defendants stating that they were guilty—so why fight it?—or that they didn't want to risk what may happen at the end of trial—so why spend the time on taking it to trial? As one younger White woman charged with a misdemeanor expressed when I asked her about taking her case to trial,

> *It's too emotionally and physically draining for somebody to have to go through that. And then, you know, that means I have to take more time off work, more time finding someone to watch my kids, more time to do this. It's just not worth it overall. I'll take my responsibility. I'm in trouble, I'll take my year of probation, I'll do my fines and then it's done. It just seemed like an easier way to go. Less fines. No jail time. The only thing I really even got was probation and 30 days license suspension. I can take that. I can deal with that. I know I did something wrong and, you know, I got in trouble but they gave me a break too.*

Many defendants arrive at the decision to 'cop out' and take a plea after considering their guilt. Defendants also consider their connections to the community and work. One African-American female charged with a felony was held in custody for several months before being conditionally released. Although she was adamant about taking her case to trial while in jail, her view changed once she was released,

> *I didn't want to take the plea. I said, "No. I don't want to." But now when it gets all the way to this point and I got out and I got all my jobs back. Fuck it. Now I got out I might as well take it and get it over with. When I was in jail I said, lets do something right now. But no. Nobody wanted to do nothing. But they gave me this opportunity to get out and then I get another chance of getting my jobs and telling them the truth of*

what the hell happened. I worked, I be working on these jobs for a long time and I got background criteria on what I do. So no, I don't want to take it to trial now.

A similar experience is reported by a White male charged with a misdemeanor and taken into custody twice during pretrial for contempt of court,

Well then who knows if I would have even gotten out that one day. Like the way the Judge was acting I thought I would have had to stay in there until the trial. So I just wanted out. I couldn't lose my job. It's like I'll get a year probation and keep my job. It's just the whole shitty situation. And like if there was a case I would have lost my job. I'm so busy with work, like missing a day or two puts me like so far behind it's not even. Like today I went in and I'm working like late every day next week to make up for it. And my work wasn't happy about it but they are understanding. Like they kind of knew like what was all going on. But to abruptly miss that much work, well two days because I came and said I'll be back in an hour and not come back…I took a plea agreement without even knowing what I was going to get. Like not even a full understanding, I just, I don't know. Like my public defender wanted me to keep the plea as not guilty. Like he told me that a couple times and like I just wanted out. I'd rather, I guess I'd rather have my plea as not guilty if I could have stayed out and gone to trial. If I knew I was going to be out then I pled not guilty because I don't think they could have proved beyond reasonable doubt that I did this because there was no evidence, there is absolutely nothing. The only witness admitted to saying that she made it all up. Obviously I think I would win, but the whole 'what if I don't.' What if I don't, then I'm dead. Because I've never been through the courts before. I've never been to the jail before so I didn't know anything. I had no idea what was going on, like I'm just sitting there not knowing if I'm going to get out and not knowing if I needed to see the Judge or what was going on.. And so then that's when I'm just like well I just want to take the plea. I just want to get out of here. I guess there was another plea and I didn't understand the other one. I guess like I know that's not why, like you're not supposed to take a plea to get out of jail. Like you can't do it I guess, but I would say that's pretty much what I did just because I wanted it done with so I could move on. I guess I just kind of misunderstood.

This passage is particularly insightful because it illustrates how complicated the decision-making process can be for defendants. It also provides evidence to show that how defendants arrive at their decision to plead guilty can be a convoluted path. As articulated by this individual, defendants indicate that they do not know what they plead to and fail to understand their sentence when it is delivered. It is shocking to consider that defendants move through court and accept plea deals that they do not understand because they are scared to ask questions or take their case to trial. However, it is not particularly surprising that individuals accept quick pleas of guilty because they are frustrated and want to be done with a situation that they do not control nor understand. In fact, not understanding the procedures and decisions of the court is the most frequently cited factor that defendants provide to justify pleading guilty:

> *Particularly when it's your first time in there, it's scary. Everything is moving quickly. A lot of people they talk like they get very frustrated by that and they get more scared because they have no idea what's going on, and then you're asked to make pretty quick decisions. And most people like me myself personally I would just go with whatever they give me so I can hurry up and get out of there. Sometimes I just agree just to get out of jail, or to get out of the court room. Like the day we were there for the pre-trial I was already ready to take whatever they were going to give me. (African-American, Male, Misdemeanor)*

> *I believe like at court when they brought it up it was kind of like a deal saying that I would have been on probation for two years - felony probation. And you know I do kind of have a little experience with court… but not really as an adult. So I didn't really know what was going to happen. And I… you know I really didn't want to go through that whole process so I took the first thing that was handed to me. And that's kind of what got me in this situation… well not exactly this situation, but got me on probation. But you know I really don't, you know. And… ah… yeah, I just feel like the decisions that was made was a part of me being tired of dealing with things, and not understanding what was going on… I just felt*

like I didn't want to deal with it. (African-American, Male, Felony)

So I don't even want to risk it. I'm not too, I don't know too much about the system or the law too much about that. I never really had to deal with it like that. So taking them to court, I think it would be a waste of time because I don't get it. I'll just move on. (African-American, Male, Misdemeanor)

Conclusion

Research indicates that the majority of criminal defendants plead guilty. This study focuses on why defendants decide to plead guilty versus take their case to trial. Scholars and legal practitioners argue that defendants' decision to plead guilty reflects their guilt and a concern for taking responsibility for their behaviors. The courts—particularly Federal Courts—have supported the position that defendants should receive leniency in exchange for accepting blame for their actions. This study, however, does not support this hypothesis (H1). While defendant guilt may play an important mediating effect in defendant decision-making, the findings of this research show that guilt has little direct effect on the decision to plead guilty. Indeed those defendants who indicated that they pled because they were guilty are also the same defendants who admitted to their crime to police and investigators prior to arraignment and pre-trial procedures. As one defendant put it, "They already had me saying that I was guilty, so, no, I couldn't really take it to trial."

In contrast to a legalistic perspective, many scholars argue that plea bargains are an efficient way to move cases through court (Dixon 1995; Engen and Steen 2000; Holmes et al 1992; Nardulli et al 1988). As the court system has become more professional and bureaucratic, and as arrest rates have increased, plea bargaining provides

a quick, inexpensive way to handle growing dockets. The plea process also allows court workers to anticipate outcomes and offer lenient sentences. The findings of this research show that the plea bargaining process is not only preferred by court workers; it is also supported by defendants. Defendants indicated that their decision to plead guilty was influenced by a desire to "just get it over with."

In addition to the time and money saved by pleading guilty, defendants also indicated that they preferred the certainty of plea deals. Research shows that defendants who decide to take their case to trial and are found guilty frequently receive more severe sentences than they would if they had plead guilty. Plea-trial disparity research shows that some defendants receive a sentence at trial that is up to ten times more severe than defendants with similar charges and backgrounds who decide to plead guilty (Albonetti 1991; Bushway and Piehl 2001; Johnson et al 2008; King et al 2002, 2009; LaFree 1985; McCoy 2005; Peterson and Hagan 1984; Steffensmeier and DeMuth 2000, 2001). The findings of this study support this perspective—defendants articulated concern for the risk associated with taking their case to trial. Defendants were not willing to take the chance that they may be acquitted or receive a more lenient sentence from a justice or jury at trial because their public defender, probation officer, prosecutor or judge told them that they were receiving a "break" or a "good deal."

Perhaps the most important finding of this study, however, is to show just how confusing the decision-making process can be for defendants. The findings of this study illustrate that defendants arrive at the decision to plead guilty through a series of justifications that are influenced by the strain of making a quick decision and a lack of

understanding about plea bargaining, court procedures, and the implications of sentencing outcomes. Although defendant decisions to plead guilty may be adequately described by an efficiency or risk avoidance perspective (H2 and H4), the final decision to accept a plea is influenced by a combination of factors that include guilt, responsibility, financial concerns, and fear. These considerations are mediated by a lack of understanding of the procedures that they are participating in.

That defendants do not understand court procedures is supported by the time I spent as an observer in the courts. As previously mentioned, the interviews included in this research are supported by hundreds of hours of court observations. This additional time spent in court was necessary for many reasons, including the very long waiting period for cases to be called and tardiness of court members; however, it was most necessary as an outsider to understand how court works—including case flow, decision-making processes, and vocabulary. That it took such a long period of time to feel like an "insider" and understand the context of defendant decision-making puts the experiences of defendants—particularly first-time defendants—in perspective. It is therefore not particularly shocking that defendants are unable able to discuss case options and implications when asked. Indeed, most defendants were not able to accurately state their charge and sentence as they walked out of the courtroom.

It is possible that the findings of this research are not generalizeable to the total population of defendants. After all, this research relies only on adult criminal defendants located in a mid-sized Midwestern town—defendants in smaller or larger areas may have different court experiences. This research also takes place in the first state to implement

determinant sentencing. We know that sentencing guidelines vary by state and sentencing standards may or may not reflect other states, particularly those who still rely on indeterminate sentencing practices. Sentencing rules and guidelines may significantly affect defendant experiences and decisions. For example, defendants in Hennepin County speak openly about situating their decisions and experiences within the confines of the Minnesota Sentencing Guidelines (e.g. "the grid"). Although defendants do not agree with their sentence, they feel fairly treated because they assume that guidelines guarantee that similar defendants receive similar outcomes.

Finally, this research includes only those defendants who are represented by a public defender. Individuals represented by public defenders are the largest and most socially disadvantaged population of defendants in the criminal courts. Unlike indigent defendants, affluent defendants are more likely to hire private attorneys and be able to afford the costs of childcare and time away from work which are necessary to take a case to trial. They are also less reliant on governmental assistance which often stipulates that an individual may not receive assistance if they have a criminal conviction. Due to these differences in circumstances, it is likely that the decision-making considerations and processes of defendants in this research are different than the population of defendants who are not represented by public defenders.

Despite the limitations of this research, the implications are significant. This research shows that defendants plead guilty because they are scared and feel coerced. Since plea bargaining was first discovered over a century ago, scholars have argued that the process creates a coercive atmosphere for defendants—defendants feel that they have

to plead guilty or risk receiving a more severe sentence at trial, even if they are innocent (Bibas 2004; Bowers 2008; Langbein 1978; McCoy 2005). The findings of this research support this argument—defendants are scared to take their case to trial. Even those defendants who originally enter a plea of not guilty with the intention to go to trial plead guilty out of fear that the outcome at trial might result in more significant consequences. Although Minnesota does not have a strict guideline rule that reduces sentences for those who plead guilty, public defenders rely on sentencing guidelines and grids to illustrate minimum and maximum sentences. Public defenders may not insist that defendants take a plea bargain; however, they do adamantly remind defendants that if they do not accept a plea, they may go to trial and receive the maximum sentence. Indeed, in the most difficult situations, defenders openly inform the defendant that the judge has indicated that if the defendant chooses to take the case to trial, that he or she will be given them the maximum sentence allowed by law.

Perhaps the most important implication of this research, therefore, is that defendants need help. Not only are indigent defendants poor, undereducated and underemployed, once they are swept into the criminal courts they are required to navigate a system that they do not understand. Defendants are required to make quick decisions that have significant implications on their lives, families, and communities; however, their decisions are bounded by limited information and an incomplete comprehension of the procedures and meanings of sentences. Plea bargaining allows court members to move through cases quickly. Court members rationalize that plea bargains are fair because defendants make the decision to plead guilty. This research shows that we should

not assume such a grand and tidy conclusion. Future research should consider how we can strengthen the position of defendants by providing defendants access to dispositional advisors, or staff that are available to counsel defendants about their decision-making processes. If courts are not capable of providing defendants adequate representation and informed decision-making, this research suggests that we need to consider how fair the court system really is.

Chapter 6. Conclusion

Despite claims that procedural fairness matters to defendant perceptions of court, and to the extent that perceptions of outcome fairness rely in part on experiences with procedural fairness, this research shows that defendants are not overly concerned about the procedures of their case. Defendants do not expect to be involved in plea procedures and case processing, and they do not anticipate receiving outstanding representation by a public defender. Defendant perceptions of court experiences are based largely on perceptions of distributive justice and case outcomes. Perhaps most importantly, defendant decision-making rests on a limited understanding of the procedures and decisions that are involved in the criminal courts. Broadly speaking, defendants support court procedures such as plea bargaining because they feel that the procedure allows them to quickly exit an uncontrollable and confusing situation while receiving the benefit of a more lenient sentence.

These findings have implications for theoretical discussions of legitimacy, deterrence and recidivism, and organizational change. This research is largely based on theories of procedural and distributive fairness. Theories of procedural fairness claim that defendants who perceive the procedures and outcomes of their case as fair—including the ability to participate in procedural and outcome decision-making—are more likely to obey the law in the future and view courts and other decision-making institutions as legitimate (Tyler 2003, 2006; Tyler and Huo 2002). Based on these assumptions, the findings of this research suggest that defendants may be more or less likely to obey the law in the future—most defendants did not report a sense of participation in their case,

yet over two-thirds of defendants perceived both the procedures and outcome of their case as fair. These findings complicate strict adherence to the application of theories of procedural fairness. First, defendants do not interpret court fairness as procedurally based. Second, defendants do not interpret procedural fairness through court decision-maker behaviors. Rather, court procedures and behaviors are a result of a broken system and, in this regard, defendants do not respect the criminal justice system.

Because this research focuses on an indigent population, it brings to light a different perspective and experience than may be the case for defendants who are more economically stable and less reliant on governmental assistance, including free public defense. Yet, the low standard by which defendants measure their experience is troubling. Defendants may disaggregate their experiences, expectations, and attitudes between criminal justice decision-makers (e.g. police and court workers); however, it continues to be the case that defendants have generally low expectations and standards for the justice system. This finding is disturbing but not surprising when we consider defendant experiences with other institutions of control. As some of the most socially marginalized individuals in our society, indigent defendants are the subject of unfair and discriminatory treatment on a daily basis and in their own communities. Frequent interactions with governmental bureaucracies and actors mold expectations of fairness. It is therefore highly likely that one of the reasons that participation in criminal case procedures does not influence attitudes of fairness is because most defendants enter the courts with low expectations for individualized consideration and treatment.

These findings lend themselves to a discussion of policy and court reform. The criminal courts have entered an era in which the mass processing of cases through quick pleas of guilty is not only the norm, but a process that is employed in over ninety percent of cases. Thus, public defenders who once envisioned a career of zealously fighting criminal cases in the name of justice quickly find themselves in a situation of adapting to the organizational norms and expectations of swift court justice (Huemann 1977). In his work on street-level bureaucrats, Lipsky (1980: xii) accurately describes the "paradoxical reality" of public service workers like public defenders. In this paradoxical reality, public service workers are confronted with a situation in which they are expected to work in a highly structured and scripted environment where each individual is treated the same and, yet, must also be open to recognizing and responding to the individual case when necessary. Accordingly, the decisions of public service workers, including the routines that they establish and the devices they invent to cope with their work environment become the public policies that they carry out. To understand crime-based policies therefore we must not only consider law makers, but also the workers who implement laws in courtrooms across the nation.

It is helpful to consider the influence of court workers on the application of law and routines of court justice when advocating for policy reform. This research does not argue that plea bargaining is bad or that the courts need change their reliance on the plea process. Admittedly, I did enter this research with the assumption that plea bargaining is detrimental to defendants and the administration of justice; however, I soon came to realize that it is necessary and in many cases a beneficial process for defendants. Yet, I do

believe that relying on plea bargaining as the criminal procedure of choice in criminal courts has significant policy implications. I do not approach these changes as strictly bottom-up or top-down—for example, I do not support the notion that we need to mobilize public defenders or that policy makers need to completely overhaul court procedures. These notions are simply unrealistic. Instead, we need to focus on small, incremental steps that can lead to larger changes over time..

First, we need to respond to the finding that defendants do not understand their court experiences, including the decisions made by themselves and by others. This finding has significant implications for the decisions defendants make in the court, but also for the decisions that defendants make outside of the court. Historically, criminal sanctions have rested upon the theoretical assumptions of deterrence and retribution. In this sense, we have invested a lot time and effort in the expectation that individuals will interpret participation in deviant behavior through the certainty and severity of punitive sanctions. The findings of this research however beg to question whether we can rightfully expect offenders to make law-abiding decisions based on their interactions with the criminal courts. It seems unreasonable to assume that defendants can correctly interpret the theoretical underpinning of sanctions when they do not understand the language and procedures of court, and are subsequently unable to correctly state their charge, plea offer, and sentencing outcome. Similarly, we must consider the implications of court experiences on issues of reentry—for example, how should offenders interpret the transition from prison to community if they do not understand the transition from court to prison?

If we expect defendants to benefit from court sanctioning, we need to help them better understand not only their pathway through court, but also the decisions to be made and the implications of outcomes. This can happen on many levels, but we can begin by providing defendants with more information about the justice system and court procedures. When defendants enter the court, they should be provided with a sheet or a packet of information that outlines essential vocabulary, the flow of case processing, legal procedures, options, the implications of plea bargaining versus taking a case to trial, and the affect that being charged with a misdemeanor, gross misdemeanor, or felony will have on their lives, including their ability to find a job, housing, care for their children, participate in political processes, and receive governmental assistance. This information should also include how to file complaints against a police officer or court worker, and how to contact individuals or organizations that provide legal advice. Finally, the information should include a copy of a plea petition that defendants are able to read prior to pleading guilty.

Second, we need to better enable courts to provide (at the very least) adequate services to defendants. To do this requires additional resources from county, state, and federal governments. Public defenders in particular are unable to provide legal advocacy to defendants if they are primary focused on keeping up with an overwhelming caseload. The public defenders in this research are stuck in the paradox that Lipsky (1980) so accurately describes—public defenders want to give more attention to cases that need them and are frustrated that they cannot do so because the construction of court justice does not allow room for it. In order to relieve the stress of public defenders, we need to

provide them with more time and resources. This is an important step to court reform because it would not only increase the amount of time that public defenders can spend with defendants and therefore their moral, but also positively affect the experiences of defendants.

Finally, we need to focus on societal awareness of court procedures. The general public is not familiar with the procedure of plea bargaining and court processing—in fact, most people continue to believe that all cases are tried before a judge or jury. This dissertation research focuses on the experiences of indigent defendants in our criminal courts through discussions with defendants themselves. This perspective is important because it highlights experiences and perspectives that are not always familiar to the general public or easily measurable with survey research. This perspective is also important because it allows us to consider how the bureaucratization of procedures and decision-making in one institutional arena may influence expectations in other institutional arenas. Findings of this research should be extended to consider the broader influence of system actors and procedures. Future research efforts should consider how and where attitudes and knowledge of procedural fairness and justice intersect and diverge between institutional actors, administrators, law makers, the public, and the citizens who are most directly affected by systems of control. This is an important step to reform in of itself—as a society, we cannot always recognize injustice if we are not aware that it is occurring, and we cannot advocate for change if we do not understand that something needs to be changed.

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Appendix A. Tables

Table 1. Descriptive Characteristics of Interview Sample and Adult Criminal Cases in Hennepin County, 2005-2009[1]

	2005	2006	2007	2008	2009	2005-2009	Sample
Total	63,716	68,392	64,206	62,349	59,484	318,147	40
Gender							
Male	46,270 (73%)	50,136 (73%)	46,987 (73%)	44,879 (72%)	42,382 (71%)	230,654 (73%)	31 (77%)
Female	15,359 (24%)	16,119 (24%)	14,898 (23%)	15,327 (25%)	15,060 (25%)	76,763 (24%)	9 (23%)
Missing	2,087 (3%)	2,137 (3%)	2,321 (4%)	2,143 (3%)	2,042 (4%)	10,730 (3%)	--
Race							
White	26,351 (41%)	25,771 (38%)	19,080 (30%)	17,277 (28%)	18,204 (31%)	106,683 (34%)	13 (33%)
Black	23,497 (37%)	25,578 (38%)	22,766 (36%)	21,979 (35%)	21,866 (37%)	115,686 (36%)	24 (60%)
Hispanic	4,822 (8%)	4,472 (7%)	3,400 (5%)	2,886 (5%)	2,836 (5%)	18,416 (6%)	--
Other[2]	9,046 (14%)	12,571 (18%)	18,960 (29%)	20,207 (32%)	16,578 (27%)	77,362 (24%)	3 (7%)
Age							
< 18	319 (<1%)	283 (<1%)	211 (<1%)	180 (<1%)	171 (<1%)	1,164 (<1%)	--
18-25	21,891 (34%)	22,747 (33%)	21,045 (33%)	20,073 (32%)	18,600 (31%)	104,356 (33%)	14 (36%)
26-35	18,694 (29%)	20,135 (29%)	18,680 (29%)	18,363 (29%)	17,576 (29%)	93,448 (29%)	9 (22%)
36-45	13,460 (21%)	14,233 (21%)	13,611 (21%)	12,678 (20%)	11,680 (20%)	65,662 (21%)	9 (22%)
46-55	6,739 (11%)	7,960 (12%)	7,888 (12%)	8,303 (13%)	8,406 (14%)	39,296 (12%)	8 (20%)
> 56	2,613 (4%)	3,034 (4%)	2,771 (4%)	2,752 (5%)	3,051 (5%)	14,221 (4%)	--
Charge							
Felony	6,086 (9%)	6,602 (9%)	5,983 (9%)	5,878 (10%)	5,229 (9%)	29,778 (9%)	24 (60%)
Gross Misdemeanor	6,847 (10%)	7,772 (11%)	7,303 (11%)	6,901 (11%)	6,257 (11%)	35,080 (11%)	2 (5%)
Misdemeanor	41,350 (65%)	44,528 (65%)	42,581 (66%)	41,361 (66%)	38,748 (65%)	208,568 (65%)	14 (35%)
Petty Misdemeanor	9,430 (15%)	9,485 (14%)	8,332 (13%)	8,209 (13%)	9,250 (15%)	44,706 (14%)	--
Missing	3 (<1%)	5 (<1%)	7 (<1%)	--	--	15 (<1%)	--

Table 1. (cont). Descriptive Characteristics of Interview Sample and Adult Criminal Cases in Hennepin County, 2005-2009[1]

	2005	2006	2007	2008	2009	2005-2009	Sample
Total	63,716	68,392	64,206	62,349	59,484	318,147	40
Offense							
Homicide	102 (<1%)	114 (<1%)	91 (<1%)	50 (<1%)	44 (<1%)	401 (<1%)	--
Assault	3,715 (6%)	3,861 (6%)	4,659 (7%)	4,666 (7%)	4,400 (7%)	21,301 (7%)	3 (8%)
Domestic[3]	718 (1%)	1,070 (1%)	837 (1%)	556 (1%)	706 (1%)	3,887 (1%)	4 (10%)
Sex Offense	402 (<1%)	536 (1%)	490 (1%)	471 (1%)	481 (<1%)	2,380 (<1%)	2 (5%)
Weapons	564 (1%)	742 (1%)	699 (1%)	778 (1%)	606 (1%)	3,389 (1%)	--
Drugs	2,606 (4%)	3,019 (4%)	2,268 (4%)	1,884 (3%)	1,463 (2%)	11,240 (3%)	4 (10%)
Property	2,984 (4%)	3,360 (5%)	3,148 (5%)	3,013 (5%)	2,607 (4%)	15,112 (5%)	16 (40%)
Alcohol	8,213 (13%)	9,623 (14%)	9,057 (14%)	9,048 (14%)	7,979 (13%)	43,920 (14%)	1 (2%)
Conduct[4]	13,306 (21%)	14,456 (21%)	15,684 (24%)	16,548 (26%)	15,317 (26%)	75,311 (24%)	3 (8%)
Traffic	29,960 (47%)	30,177 (44%)	25,959 (40%)	24,138 (39%)	24,797 (42%)	135,031 (42%)	7 (17%)
Other[5]	1,146 (2%)	1,434 (2%)	1,314 (2%)	1,197 (2%)	1,084 (2%)	6,175 (2%)	--
Legal Representation							
Public Defender	20,749 (32%)	23,160 (34%)	22,389 (35%)	22,214 (36%)	21,848 (37%)	110,360 (35%)	40 (100%)
Private Attorney	8,827 (14%)	9,425 (14%)	11,409 (18%)	13,179 (21%)	11,720 (20%)	54,560 (17%)	--
Pro Se	34,140 (54%)	35,807 (52%)	30,408 (47%)	26,956 (43%)	25,916 (43%)	153,227 (48%)	--
Disposition							
Dismissed[6]	31,777 (50%)	34,469 (50%)	32,584 (50%)	31,769 (51%)	29,081 (49%)	159,680 (50%)	6 (15%)
Convicted	16,687 (26%)	17,112 (25%)	16,121 (25%)	16,037 (26%)	15,567 (26%)	81,524 (26%)	14 (35%)
Stay of Imposition[7]	1,877 (3%)	2,048 (3%)	2,088 (3%)	2,248 (3%)	2,187 (3%)	10,448 (2%)	6 (15%)
Continued[8]	13,374 (21%)	14,761 (22%)	13,408 (21%)	12,283 (19%)	12,621 (21%)	66,447 (21%)	14 (35%)
Missing	1 (0%)	2 (0%)	5 (<1%)	12 (<1%)	28 (<1%)	48 (<1%)	--

[1] Data obtained from Hennepin County Research Division; Data contains all adult criminal cases filed; Data includes only one charge per criminal case.
[2] Includes Indian (3%), Asian (2%), Hawaiian (<1%), and defendants whose race is missing.
[3] Includes defendants charged with violation of protection orders.
[4] Includes defendants charged with disorderly conduct, trespassing, loitering, solicitation, obstructing justice, giving false information to police, etc.
[5] Includes defendants charged with land, housing, boating, animal violations, etc.
[6] Includes cases that were dismissed for mental incompetence (<1%) and cases that were acquitted (<1%).
[7] A stay of imposition (SOI) or stay of execution occurs when an imposition is pronounced but delayed to a further date. If the offender complies with the conditions of the court, a felony conviction will be reduced to a misdemeanor conviction. If the offender fails to comply with the conditions of the court the court may hold a hearing and impose/execute the sentence.
[8] Includes cases with a disposition of stay of adjudication (SOA) or continued without prosecution (CWOP). SOA's and CWOP's occur when a defendant pleads guilty and the case is continued for dismissal. SOA's and CWOP's do not result in a conviction unless the defendant violates conditions of the court. SOA's and CWOP's include cases that are diverted through probation and/or diversion programs.

Table 2. Descriptive Characteristics of Adult Criminal Cases in Hennepin County, by Charge, 2005-2009[1]

	Felony	Gross	Misdemeanor	Petty	Total[2]
Total	29,778	35,080	208,568	44,706	318,147
Gender					
Male	24,171 (81%)	25,237 (72%)	151,076 (73%)	30,161 (67%)	230,654 (73%)
Female	5,556 (18%)	7,992 (23%)	50,733 (24%)	12,476 (28%)	76,763 (24%)
Missing	51 (<1%)	1,851 (5%)	6,759 (3%)	2069 (5%)	10,730 (3%)
Race					
White	8,618 (29%)	16,565 (47%)	66,087 (32%)	15,409 (34%)	106,683 (34%)
Black	14,165 (48%)	9,542 (27%)	80,113 (39%)	11,861 (26%)	115,686 (36%)
Hispanic	1,405 (5%)	2,362 (7%)	13,378 (6%)	1,270 (3%)	18,416 (6%)
Other[3]	5,590 (18%)	6,611 (19%)	48,990 (23%)	16,166 (37%)	77,362 (24%)
Age					
< 18	105 (<1%)	31 (<1%)	219 (<1%)	809 (2%)	1,164 (<1%)
18-25	10,810 (36%)	9,342 (26%)	73,962 (35%)	10,240 (23%)	104,356 (33%)
26-35	8,899 (30%)	11,263 (32%)	60,153 (29%)	13,127 (29%)	93,448 (29%)
36-45	6,244 (21%)	8,179 (23%)	41,053 (19%)	10,182 (23%)	65,662 (21%)
46-55	3,066 (10%)	4,883 (14%)	24,639 (12%)	6,705 (15%)	39,296 (12%)
> 55	654 (2%)	1,382 (4%)	8,542 (4%)	3,643 (8%)	14,221 (4%)
Offense					
Homicide	401 (1%)	--	--	--	401 (<1%)
Assault	3,726 (12%)	1,189 (3%)	16,386 (8%)	--	21,301 (7%)
Domestic[4]	512 (2%)	375 (1%)	2,999 (1%)	1 (<1%)	3,887 (1%)
Sex Offense	703 (2%)	1,348 (4%)	327 (<1%)	2 (<1%)	2,380 (<1%)
Weapons	2,282 (8%)	728 (2%)	378 (<1%)	1 (<1%)	3,389 (1%)
Drugs	7,364 (25%)	50 (<1%)	3,048 (1%)	776 (1%)	11,240 (3%)
Property	9,721 (33%)	3,088 (9%)	2,274 (1%)	26 (<1%)	15,112 (5%)
Alcohol	686 (2%)	16,947 (48%)	26,263 (13%)	26 (<1%)	43,926 (14%)

Table 2. (cont). Descriptive Characteristics of Adult Criminal Cases in Hennepin County, by Charge, 2005-2009[1]

	Felony	Gross	Misdemeanor	Petty	Total[2]
Total	29,778	35,080	208,568	44,706	318,147
Offense					
Conduct[5]	3,011 (10%)	5,425 (15%)	66,442 (32%)	416 (1%)	75,299 (24%)
Traffic	147 (<1%)	5,802 (17%)	85,904 (41%)	43,177 (96%)	135,031 (42%)
Other[6]	1,225 (4%)	128 (<1%)	4,547 (2%)	281 (1%)	6,181 (2%)
Legal Representation					
Public Defender	20,636 (69%)	14,960 (43%)	73,665 (35%)	1,093 (3%)	110,360 (35%)
Private Attorney	6,401 (22%)	13,365 (38%)	31,048 (15%)	3,743 (8%)	54,560 (17%)
Pro Se	2,741 (9%)	6,755 (19%)	103,855 (50%)	39,870 (89%)	153,227 (48%)
Disposition					
Dismissed[7]	12,516 (42%)	25,386 (72%)	110,160 (53%)	11,611 (26%)	159,680 (50%)
Convicted	9,647 (32%)	6,198 (17%)	50,635 (24%)	15,040 (33%)	81,524 (26%)
Stay of Imposition[8]	2,713 (9%)	1,334 (4%)	6,384 (3%)	16 (<1%)	10,448 (2%)
Continued[9]	4,882 (16%)	2,154 (6%)	41,371 (19%)	18,037 (40%)	66,447 (21%)
Missing	20 (<1%)	8 (<1%)	18 (<1%)	2 (<1%)	48 (<1%)

[1] Data obtained from Hennepin County Research Division; Data contains all adult criminal cases filed; Data includes only one charge per criminal case.

[2] Includes Indian (3%), Asian (2%), Hawaiian (<1%), and defendants whose race is missing.

[3] Includes defendants charged with violation of protection orders.

[4] Includes defendants charged with disorderly conduct, trespassing, loitering, solicitation, obstructing justice, giving false information to police, etc.

[5] Includes defendants charged with land, housing, boating, animal violations, etc.

[6] Includes cases that were dismissed for mental incompetence (<1%) and cases that were acquitted (<1%).

[7] A stay of imposition (SOI) or stay of execution occurs when an imposition is pronounced but delayed to a further date. If the offender complies with the conditions of the court, a felony conviction will be reduced to a misdemeanor conviction. If the offender fails to comply with the conditions of the court the court may hold a hearing and impose/execute the sentence.

[8] Includes cases with a disposition of stay of adjudication (SOA) or continued without prosecution (CWOP). SOA's and CWOP's occur when a defendant pleads guilty and the case is continued for dismissal. SOA's and CWOP's do not result in a conviction unless the defendant violates conditions of the court. SOA's and CWOP's include cases that are diverted through probation and/or diversion programs.

Table 3. Descriptive Characteristics of Adult Criminal Cases in Hennepin County, by Attorney, 2005-2009[1]

	Public	Private	Pro Se	Total
Total	110,360	54,560	153,227	318,147
Gender				
Male	84,389 (77%)	39,507 (73%)	106,758 (70%)	230,654 (73%)
Female	24,732 (22%)	12,427 (23%)	39,604 (26%)	76,763 (24%)
Missing	1,239 (1%)	2,626 (4%)	6,865 (4%)	10,730 (3%)
Race				
White	28,321 (26%)	24,382 (45%)	53,980 (35%)	106,683 (34%)
Black	55,398 (51%)	11,630 (21%)	48,658 (32%)	115,686 (36%)
Hispanic	6,968 (6%)	2,887 (5%)	8,561 (6%)	18,416 (6%)
Other[2]	19,673 (17%)	15,661 (29%)	42,028 (27%)	77,362 (24%)
Age				
< 18	143 (<1%)	196 (<1%)	825 (<1%)	1,164 (<1%)
18-25	38,173 (34%)	16,336 (30%)	49,847 (32%)	104,356 (33%)
26-35	31,156 (28%)	16,268 (30%)	46,024 (30%)	93,448 (29%)
36-45	24,159 (22%)	11,305 (21%)	30,198 (20%)	65,662 (21%)
46-55	13,741 (12%)	7,446 (13%)	18,109 (12%)	39,296 (12%)
> 55	2,988 (3%)	3,009 (5%)	8,224 (5%)	14,221 (4%)
Charge				
Felony	20,636 (18%)	6,401 (11%)	2,741 (2%)	29,778 (9%)
Gross Misdemeanor	14,960 (13%)	13,365 (24%)	6,755 (4%)	35,080 (11%)
Misdemeanor	73,665 (67%)	31,048 (57%)	103,855 (67%)	208,568 (65%)
Petty Misdemeanor	1,093 (1%)	3,743 (7%)	39,870 (26%)	44,706 (14%)
Missing	6 (<1%)	3 (<1%)	6 (<1%)	15 (<1%)
Sex Offense	1,535 (1%)	508 (1%)	337 (<1%)	2,380 (<1%)
Weapons	2,309 (2%)	669 (1%)	411 (<1%)	3,389 (1%)
Drugs	6,255 (6%)	2,143 (4%)	2,842 (2%)	11,240 (3%)

Table 3. (cont). Descriptive Characteristics of Adult Criminal Cases in Hennepin County, by Attorney, 2005-2009[1]

	Public	Private	Pro Se	Total
Total	110,360	54,560	153,227	318,147
Offense				
Homicide	246 (<1%)	119 (<1%)	36 (<1%)	401 (<1%)
Assault	13,554 (12%)	4,350 (8%)	3,397 (2%)	21,301 (7%)
Domestic[3]	2,401 (2%)	754 (1%)	732 (<1%)	3,887 (1%)
Property	10,153 (9%)	2,555 (5%)	2,404 (2%)	15,112 (5%)
Alcohol	12,678 (11%)	19,158 (35%)	12,084 (8%)	43,920 (14%)
Conduct[4]	38,333 (35%)	9,256 (17%)	27,722 (18%)	75,311 (24%)
Traffic	21,522 (20%)	14,171 (26%)	99,338 (65%)	135,031 (42%)
Other[5]	1,374 (1%)	877 (1%)	3,924 (2%)	6,175 (2%)
Disposition				
Dismissed[6]	62,847 (56%)	32,622 (60%)	64,211 (42%)	159,680 (50%)
Convicted	30, 879 (28%)	10,800 (19%)	39,845 (26%)	81,524 (26%)
Stay of Imposition[7]	4,427 (4%)	2,153 (4%)	3,868 (2%)	10,448 (2%)
Continued[8]	12,174 (11%)	8,979 (16%)	45,294 (29%)	66,447 (21%)
Missing	33 (<1%)	6 (<1%)	9 <1%)	48 (<1%)

[1] Data obtained from Hennepin County Research Division; Data contains all adult criminal cases filed; Data includes only one charge per criminal case.

[2] Includes Indian (3%), Asian (2%), Hawaiian (<1%), and defendants whose race is missing.

[3] Includes defendants charged with violation of protection orders.

[4] Includes defendants charged with disorderly conduct, trespassing, loitering, solicitation, obstructing justice, giving false information to police, etc.

[5] Includes defendants charged with land, housing, boating, animal violations, etc.

[6] Includes cases that were dismissed for mental incompetence (<1%) and cases that were acquitted (<1%).

[7] A stay of imposition (SOI) or stay of execution occurs when an imposition is pronounced but delayed to a further date. If the offender complies with the conditions of the court, a felony conviction will be reduced to a misdemeanor conviction. If the offender fails to comply with the conditions of the court the court may hold a hearing and impose/execute the sentence.

[8] Includes cases with a disposition of stay of adjudication (SOA) or continued without prosecution (CWOP). SOA's and CWOP's occur when a defendant pleads guilty and the case is continued for dismissal. SOA's and CWOP's do not result in a conviction unless the defendant violates conditions of the court. SOA's and CWOP's include cases that are diverted through probation and/or diversion programs.

Table 4. Descriptive Characteristics of Adult Criminal Cases in Hennepin County, by Race[1]					
	White	**Black**	**Hispanic**	**Other[2]**	**Total**
Total	106,683	115,686	18,416	77,362	318,147
Gender					
Male	76,283 (72%)	90,651 (78%)	14,991 (82%)	48,729 (63%)	230,654 (73%)
Female	27,088 (25%)	23,891 (21%)	2,854 (15%)	22,930 (30%)	76,763 (24%)
Missing	3,312 (3%)	1,144 (1%)	571 (3%)	5,703 (7%)	10,730 (3%)
Age					
< 18	555 (1%)	160 (<1%)	34 (<1%)	415 (<1%)	1,164 (<1%)
18-25	34,554 (32%)	39,795 (34%)	6,299 (34%)	23,708 (31%)	104,356 (33%)
26-35	30,265 (28%)	35,338 (31%)	7,416 (40%)	20,429 (26%)	93,448 (29%)
36-45	21,373 (20%)	25,408 (22%)	3,191 (18%)	15,690 (20%)	65,662 (21%)
46-55	14,102 (13%)	12,539 (11%)	1,155 (6%)	11,500 (15%)	39,296 (12%)
> 55	5,834 (6%)	2,446 (2%)	321 (2%)	5,620 (8%)	14,221 (4%)
Charge					
Felony	8,618 (8%)	14,165 (12%)	1,405 (7%)	5,590 (7%)	29,778 (9%)
Gross Misdemeanor	16,564 (15%)	9,542 (8%)	2,362 (13%)	6,612 (8%)	35,080 (11%)
Misdemeanor	66,087 (62%)	80,113 (70%)	13,378 (73%)	48,990 (63%)	208,568 (65%)
Petty Misdemeanor	15,409 (14%)	11,861 (10%)	1,270 (7%)	16,166 (22%)	44,706 (14%)
Missing	5 (<1%)	5 (<1%)	1 (<1%)	4 (<1%)	15 (<1%)
Offense					
Homicide	63 (<1%)	258 (<1%)	29 (<1%)	51 (<1%)	401 (<1%)
Assault	5,948 (5%)	9,741 (8%)	1,245 (7%)	4,367 (6%)	21,301 (7%)
Domestic[3]	1,390 (1%)	1,734 (1%)	246 (1%)	517 (1%)	3,887 (1%)
Sex Offense	802 (1%)	802 (1%)	145 (1%)	631 (1%)	2,380 (<1%)
Weapons	556 (1%)	2,064 (2%)	154 (1%)	615 (1%)	3,389 (1%)
Drugs	3,119 (3%)	5,679 (5%)	476 (3%)	1,966 (2%)	11,240 (3%)
Property	4,745 (4%)	6,674 (6%)	547 (3%)	3,146 (4%)	15,112 (5%)
Alcohol	21,601 (20%)	7,388 (6%)	3,123 (17%)	11,808 (15%)	43,920 (14%)

Table 4. (cont). Descriptive Characteristics of Adult Criminal Cases in Hennepin County, by Race[1]

	White	Black	Hispanic	Other[2]	Total
Total	106,683	115,686	18,416	77,362	318,147
Offense					
Conduct[4]	19,295 (18%)	34,169 (30%)	3,254 (18%)	18,593 (24%)	75,311 (24%)
Traffic	46,883 (44%)	45,635 (39%)	8,934 (48%)	33,579 (43%)	135,031 (42%)
Other[5]	2,331 (2%)	1,542 (1%)	263 (1%)	2,039 (3%)	6,175 (2%)
Legal Representation					
Public Defender	28,321 (26%)	55,389 (48%)	6,968 (38%)	19,682 (25%)	110,360 (35%)
Private Attorney	24,382 (23%)	11,630 (10%)	2,887 (16%)	15,661 (20%)	54,560 (17%)
Pro Se	53,980 (51%)	48,658 (42%)	8,561 (46%)	42,028 (55%)	153,227 (48%)
Disposition					
Dismissed[6]	52,861 (50%)	62,091 (54%)	10,152 (55%)	34,576 (45%)	159,680 (50%)
Convicted	26,613 (25%)	31,807 (27%)	4,366 (24%)	18,738 (24%)	81,524 (26%)
Stay of Imposition[7]	3,618 (3%)	2,973 (3%)	487 (3%)	3,370 (4%)	10,448 (2%)
Continued[8]	23,578 (22%)	18,863 (16%)	3,408 (18%)	20,598 (27%)	66,447 (21%)
Missing	13 (<1%)	24 (<1%)	3 (<1%)	8 (<1%)	48 (<1%)

[1] Data obtained from Hennepin County Research Division; Data contains all adult criminal cases filed between 2005 and 2009; Data includes only one charge per criminal case.
[2] Includes Indian (3%), Asian (2%), Hawaiian (<1%), and defendants whose race is missing.
[3] Includes defendants charged with violation of protection orders.
[4] Includes defendants charged with disorderly conduct, trespassing, loitering, solicitation, obstructing justice, giving false information to police, etc.
[5] Includes defendants charged with land, housing, boating, animal violations, etc.
[6] Includes cases that were dismissed for mental incompetence (<1%) and cases that were acquitted (<1%).
[7] A stay of imposition (SOI) or stay of execution occurs when an imposition is pronounced but delayed to a further date. If the offender complies with the conditions of the court, a felony conviction will be reduced to a misdemeanor conviction. If the offender fails to comply with the conditions of the court the court may hold a hearing and impose/execute the sentence.
[8] Includes cases with a disposition of stay of adjudication (SOA) or continued without prosecution (CWOP). SOA's and CWOP's occur when a defendant pleads guilty and the case is continued for dismissal. SOA's and CWOP's do not result in a conviction unless the defendant violates conditions of the court. SOA's and CWOP's include cases that are diverted through probation and/or diversion programs.

Table 5. Descriptive Characteristics of Adult Criminal Cases in Hennepin County, by Interview and Public Defender Sample, and Total Number of Cases, 2009[1]

	Sample	Public Defender	2009
Total	40	21,848	59,484
Gender			
Male	31 (77%)	16,494 (75%)	42,382 (71%)
Female	9 (23%)	5,073 (24%)	15,060 (25%)
Missing	--	281 (1%)	2,042 (4%)
Race			
White	13 (33%)	5,180 (24%)	18,204 (31%)
Black	24 (60%)	11,013 (50%)	21,866 (37%)
Hispanic	--	1,131 (5%)	2,836 (5%)
Other[2]	3 (7%)	4,524 (21%)	16,578 (27%)
Age			
< 18	--	20 (<1%)	171 (<1%)
18-25	14 (36%)	7,781 (36%)	18,600 (31%)
26-35	9 (22%)	6,026 (27%)	17,576 (29%)
36-45	9 (22%)	4,297 (20%)	11,680 (20%)
46-55	8 (20%)	3,054 (14%)	8,406 (14%)
> 55	--	670 (3%)	3,051 (5%)
Charge			
Felony	24 (60%)	3,794 (17%)	5,229 (9%)
Gross Misdemeanor	2 (5%)	2,813 (13%)	6,257 (11%)
Misdemeanor	14 (35%)	15,032 (69%)	38,748 (65%)
Petty Misdemeanor	--	209 (1%)	9,250 (15%)

[1] Data obtained from Hennepin County Research Division.
[2] Includes Indian (3%), Asian (2%), Hawaiian (<1%), and defendants whose race is missing.

Table 6. Selected Characteristics of Interview Sample and Defendants in Hennepin County (2009, Most Serious Charge Per Case)

	Defendants of Hennepin County		Defendants of Public Defender's Office		Defendants of Interview Sample	
Total	59,484		21,848		40	
	N	%	*N*	%	*N*	%
Gender						
Male	42,382	71	16,494	75	31	77
Female	15,060	25	5,073	24	9	23
Missing	2,042	4	281	1	--	--
Race						
White	18,204	31	5,180	24	13	33
African American	21,866	37	11,013	50	24	60
Hispanic	2,836	5	1,131	5	--	--
Other[2]	16,578	27	4,524	21	3	7
Age						
< 18	171	<1	20	<1	--	--
18-25	18,600	31	7,781	36	14	36
26-35	17,576	29	6,026	27	9	22
36-45	11,680	20	4,297	20	9	22
46-55	8,406	14	3,054	14	8	20
> 56	3,051	5	670	3	--	--
Charge						
Felony	5,229	9	3,794	17	24	60
Gross Misdemeanor	6,257	11	2,813	13	2	5
Misdemeanor	38,748	65	15,032	69	14	35
Petty Misdemeanor	9,250	15	209	1	--	--
Offense						
Homicide	44	<1	31	<1	--	--
Assault	4,400	7	2,852	13	3	8
Domestic	706	1	509	2	4	10
Sex Offense	481	<1	304	1	2	5
Weapons	606	1	432	2	0	--
Drugs	1,463	2	831	4	4	10
Property	2,607	4	1,785	9	16	40
Alcohol	7,979	13	2,552	12	1	2
Conduct[3]	15,317	26	8,058	37	3	8
Traffic	24,797	42	4,222	19	7	17
Other[4]	1,084	2	272	1	--	--
Legal Representation						
Free, Appointed Counsel	21,848	37	21,848	100	40	100
Private Attorney	11,720	20	--	--	--	--
None	25,916	43	--	--	--	--
Disposition						
Dismissed[5]	29,081	49	12,185	56	6	15
Convicted	15,567	26	6,238	29	14	35
Stay of Imposition[6]	2,187	3	978	4	6	15
Continued[7]	12,621	21	2,428	11	14	35
Missing	28	<1	19	<1	--	--

[1] Data obtained from Hennepin County Research Division; Data contains all adult criminal cases filed; Data includes only one charge per criminal case.
[2] Includes Indian (3%), Asian (2%), Hawaiian (<1%), and defendants whose race is missing.
[3] Includes defendants charged with disorderly conduct, trespassing, loitering, solicitation, obstructing justice, etc.
[4] Includes defendants charged with land, housing, boating, animal violations, etc.
[5] Includes cases that were dismissed for mental incompetence (<1%) and cases that were acquitted (<1%).
[6] A stay of imposition (SOI) or stay of execution occurs when an imposition is pronounced but delayed to a further date. If the offender complies with the conditions of the court, a felony conviction will be reduced to a misdemeanor conviction. If the offender fails to comply with the conditions of the court the court may hold a hearing and impose/execute the sentence.
[7] Includes cases with a disposition of stay of adjudication (SOA) or continued without prosecution (CWOP). SOA's and CWOP's occur when a defendant pleads guilty and the case is continued for dismissal. SOA's and CWOP's do not result in a conviction unless the defendant violates conditions of the court. SOA's and CWOP's include cases that are diverted through probation and/or diversion programs.

Table 7. Defendant Perceptions of Plea Bargaining

	Procedure is Fair		Outcome is Fair		Participation	
	Yes	**No**	**Yes**	**No**	**Yes**	**No**
Total	27 (67.5%)	13 (32.5%)	28 (70.0%)	12 (30.0%)	11 (27.5%)	29 (72.5%)
Gender						
Male	23 (74.2%)	8 (25.8%)	24 (77.4%)	7 (22.6%)	11 (35.5%)	20 (64.5%)
Female	4 (44.4%)	5 (55.6%)	4 (44.4%)	5 (55.6%)	-- --	9 (100.0%)
Race						
White	9 (69.2%)	4 (30.8%)	8 (61.5%)	5 (38.5%)	2 (15.4%)	11 (84.6%)
African American	16 (66.7%)	8 (33.3%)	18 (75.0%)	6 (25.0%)	8 (33.3%)	16 (66.7%)
Other	2 (66.7%)	1 (33.3%)	2 (66.7%)	1 (33.3%)	1 (33.3%)	2 (66.7%)
Charge						
Misdemeanor and Gross	10 (62.5%)	6 (37.5%)	13 (81.3%)	3 (18.7%)	7 (43.7%)	9 (56.3%)
Felony	17 (62.5%)	7 (37.5%)	15 (62.5%)	9 (37.5%)	4 (16.7%)	20 (83.3%)
Disposition						
Dismissed	6 (100.0%)	-- --	6 (100.0%)	-- --	5 (83.3%)	1 (16.7%)
Convicted	9 (64.2%)	5 (35.7%)	10 (71.4%)	4 (28.6%)	3 (20.0%)	9 (80.0%)
Stay of Imposition	3 (50.0%)	3 (50.0%)	3 (50.0%)	3 (50.0%)	2 (33.3%)	4 (66.7%)
Continued	9 (64.2%)	5 (37.5%)	9 (64.2%)	5 (35.8%)	1 (7.1%)	13 (92.9%)

Table 8. Defendant Perceptions of Plea Bargaining, by Procedure and Outcome

		Procedure is Fair		Outcome is Fair		Participation	
		Yes	**No**	**Yes**	**No**	**Yes**	**No**
Total		27 (67.5%)	13 (32.5%)	28 (70.0%)	12 (30.0%)	11 (27.5%)	29 (72.5%)
Procedure is Fair	**Yes**	--	--	25 (89.3%)	2 (16.7%)	11 (100.0%)	16 (55.2%)
	No	--	--	3 (10.7%)	10 (83.3%)	0	13 (44.8%)
Outcome is Fair	**Yes**	25 (92.5%)	3 (23.0%)	--	--	11 (100.0%)	17 (58.6%)
	No	2 (7.5%)	10 (77.0%)	--	--	0	12 (41.4%)
Participation	**Yes**	11 (40.7%)	0	11 (39.3%)	0	--	--
	No	16 (59.3%)	13 (100.0%)	17 (60.7%)	12 (100%)	--	--

Table 9. Defendant Perceptions of Plea Bargaining, by Procedure, Outcome , and Charge Level

		Procedure is Fair		Outcome is Fair		Participation	
		Yes	**No**	**Yes**	**No**	**Yes**	**No**
Misdemeanor and Gross		10 (62.5%)	6 (37.5%)	13 (81.3%)	3 (18.7%)	7 (43.7%)	9 (56.3%)
Procedure is Fair	**Yes**	--	--	10 (76.9%)	0	7 (100.0%)	3 (33.3%)
	No	--	--	3 (23.1%)	3 (100.0%)	0	6 (66.7%)
Outcome is Fair	**Yes**	10 (100.0%)	3 (50.0%)	--	--	7 (100.00%)	6 (66.7%)
	No	0	3 (50.0%)	--	--	0	3 (33.3%)
Participation	**Yes**	7 (70.0%)	0	7 (53.8%)	0	--	--
	No	3 (30.0%)	6 (100.0%)	6 (46.1%)	3 (100.0%)	--	--
Felony		17 (62.5%)	7 (37.5%)	15 (62.5%)	9 (37.5%)	4 (16.7%)	20 (83.3%)
Procedure is Fair	**Yes**	--	--	15 (100.0%)	2 (22.2%)	4 (100.0%)	13 (65.0%)
	No	--	--	0	7 (77.8%)	0	7 (35.0%)
Outcome is Fair	**Yes**	15 (88.2%)	0	--	--	4 (100.00%)	11 (55.0%)
	No	2 (11.8%)	7 (100.0%)	--	--	0	9 (45.0%)
Participation	**Yes**	4 (23.5%)	0	4 (26.7%)	0	--	--
	No	13 (76.4%)	7 (100.0%)	11 (73.3%)	9 (100.0%)	--	--

Appendix B. Figures

Figure 1: Defendant Decisions To Plead Guilty

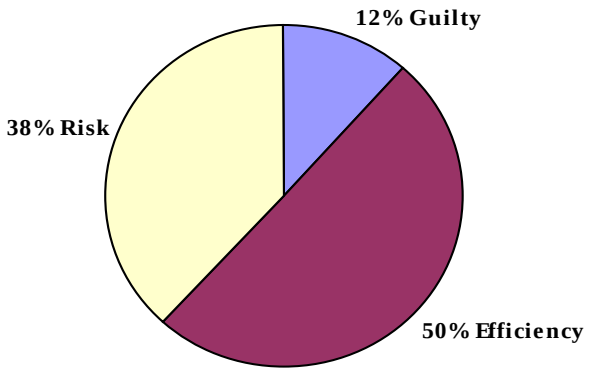
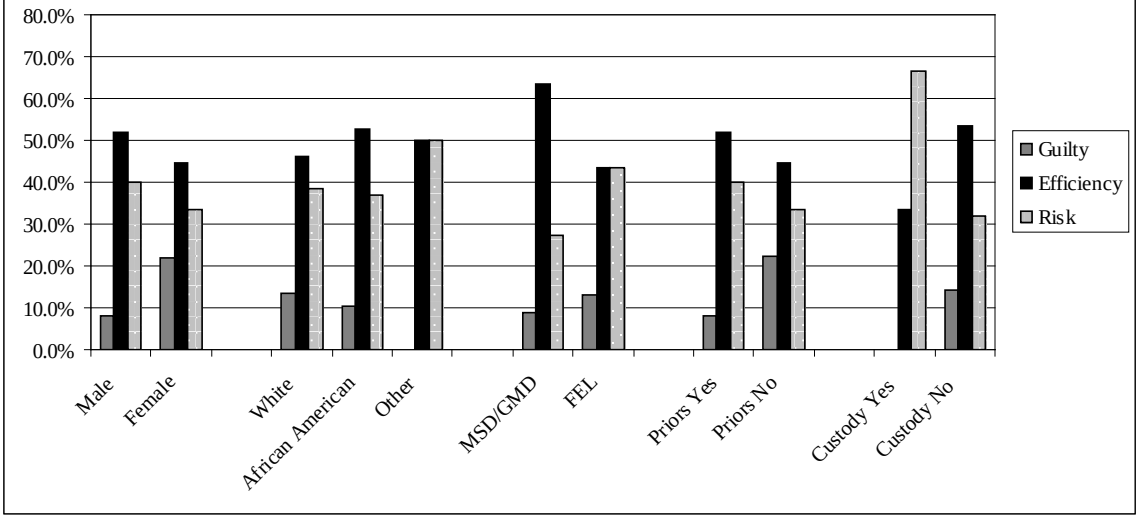


Figure 2. Defendant Decisions to Plead Guilty, by Defendant Characterists



Appendix C. Defendant Interview Schedule

Tell me about your case.
Did you intend to plead not guilty/guilty to this charge?
If you had to pick out a sort of crucial factor that changed your mind from the time you were going to plead not guilty to the time you decided to plead, what was it?
Overall, how do you feel about the plea bargaining process? Do you feel like you benefited from it? Do you understand it?

Defender
Did you get the feeling that he/she wanted you to plead guilty?
Do you think that the lawyer thought you were innocent or guilty?
Do you think he/she was on your side?
Do you think he/she was fair to you?
Thinking back over your dealings with _____, do you generally feel that he/she tried to tell you what to do or took instructions from you?
If you got in trouble again, would you like to be represented by him/her?
Suppose you had some money and you had hired a lawyer—to you think you could have come out of this any better?

Prosecutor
Let me ask you a few questions about the prosecutor in your case. How do you think he saw his job? Think that he was interested in giving you a fair shake, punishing you, getting rid of the case?
Do you think the prosecutor was fair to you?
Why do think the prosecutor agreed to drop the charges?

Judge
Do you think the judge was fair?
What do you think about the judge who sentenced you? Did he seem concerned about your welfare? Hostile to you? Matter of fact?
Overall how satisfied were you with the manner in which you were treated by the judge?
Suppose you'd been a judge and some had come before you for sentencing and had all your characteristics and pled guilty what would you have given him?

Sentence - Outcome
Let me ask you a couple of questions about your sentence: Was the sentence you received about what you had expected?
How satisfied with the outcome are you?
So you think the sentence you received was fair?
How do you think your outcome compares to the outcomes that others receive with similar cases?
Do you think that you received a worse outcome than others because of your race, sex, age, nationality or some other characteristic of you?
How does your outcome compare to outcomes you have received when you have been in court in the past?
Do you feel like you received the outcome you deserved (a better outcome or worse outcome than you deserve)?
How important was it to you whether you won or lost your case?
What about the way your case was handled did you feel was unfair?
What is your definition of justice?
Do you feel like justice was served in your case?

Where did you learn all of the things you know about court? Past experience? Other people?
Thinking about this from the time you were arrested till the time you got sentenced, if you had it to do over again, would you do it different?
On a scale of 1-10 how would you rate your experience?
Is there anything that you think the court can change to make the process better?

Appendix D. Defendant Consent Form

You are invited to be in a research study of defendant decision-making. You were selected as a possible participant because you are currently involved as a defendant in a court proceeding. Please read this form and ask any questions that you may have before agreeing to be in the study.

This study is being conducted by Jeanette Hussemann, PhD Candidate, Department of Sociology, University of Minnesota, Minneapolis, MN 55455.

Background Information:

The purpose of this study is to help us understand the experiences of defendants within the criminal justice system and, in particular, the court system. As defendants enter the court system they are required to make a series of decisions that will impact their immediate and future lives. Therefore, this study is interested in why and how defendant's come to make the decisions that they do about going to trial and accepting pleas of guilty.

Procedures:

If you agree to be in this study I will ask you to complete one interview that will last approximately 30 minutes and involve questions pertaining to your attitudes about and experiences with the criminal justice system.

Risks and Benefits of being in the Study:

This study has one risk: Reflecting on what we had hoped would happen with our lives and what actually happens can often be a sensitive topic, and discussions focused on negative experiences in the past or in the present can be emotionally painful. A comprehensive list of community resources is available upon request.

There are no direct benefits of participating in this research.

Compensation:

You will not receive any compensation for participating in this research.

Confidentiality:

Any information that is collected about you for the purposes of this research will be kept private. Your name and any other personal information about you will be used only for research purposes. Your name will not appear on any record or reports involved in this research. When the research is complete, I will destroy any private information I have about you.

Research records will be stored securely and only I will have access to those records. I will tape record my interviews with you to ensure that I have an accurate account of your story. If you do not wish to have your interviews recorded, I will take notes during our interview. Your name will never be linked with your interview. After the study is complete all tape recordings will be destroyed.

Written research reports may be shared with the public. Your name or other identifying information will not be included in these reports. I will not share any private information that is discussed during the course of our interview with anyone.
The following information is not limited by confidentiality and may not be released as governed by law: 1) information about a child being maltreated or neglected, 2) information about an individual's plan to seriously harm him/herself, and 3) information about an individual's plan to seriously harm another person.

Voluntary Nature of the Study:

You do not have to take part in this study or agree to release private information. Your decision to participate in the study is completely voluntary. If you decide not to participate or you want to withdraw from the study at any time, this decision will not change how the public defender represents you and will not cause any problems for you with the Public Defender's Office, the Court, or the University of Minnesota.

By agreeing to participate in this study and by signing this form, you are not giving up or waiving any legal rights.

Contacts and Questions:

If you have any questions or concerns about the study or decide at any time that you would like to withdraw from the study, please contact myself: **Jeanette Hussemann at #847-772-1334 (cell), #612-624-0081 (office), or by email, huss0131@umn.edu.**
You may also contact my Co-Advisor: Joshua Page at #612-624-9333, or by email, page@umn.edu.

If you have any questions or concerns regarding this study and would like to talk to someone other than the researcher(s), **you are encouraged** to contact the Research Subjects' Advocate Line, D528 Mayo, 420 Delaware St. Southeast, Minneapolis, Minnesota 55455; (612) 625-1650.

You will be given a copy of this information to keep for your records.

Statement of Consent:

I have read the above information. I have asked questions and have received answers. I consent to participate in the study.

Signature:_____ Date: _____

Signature of Investigator:_____ Date: _____

Appendix E. Interviewees

ID	Gender	Race	Age	Priors	In-Custody[1]	Count 1 (Statute)[2]	Charge Level	Plea Level	Days to Plea[3]	Plea Deal	Incarceration[4]
1	M	Indian	39	N	N	Driving without Proof of Insurance	MSD	NONE	0	Dismissed	No
2	F	White	52	Y	Y	Financial Transaction Card Fraud (609.821.2(1))	FEL	FEL	34	Convicted	Yes
3	M	Black	52	Y	N	Voting while on Probation	FEL	NONE	13	Dismissed	No
4	F	Black	27	N	Y	Assault-2nd Degree (609.222.1)	FEL	FEL	211	Convicted	Yes
5	M	White	19	Y	Y	Offering a Forged Check (609.631.3)	FEL	NONE	161	Continued	No
6	M	Black	19	N	Y	Not Complying with Police Officer	MSD	PMD	0	Convicted	Yes
7	M	Black	36	Y	Y	Domestic Assault - Harm (609.2242.2)	GMD	MSD	69	Continued	No
8	M	Black	45	Y	Y	Drug Possession - 5th Degree (152.025.2(1))	FEL	FEL	62	Continued	No
9	M	White	31	Y	N	Receving Stolen Property (609.53.1)	FEL	GMD	42	Continued	No
10	M	White	23	Y	Y	Offering a Forged Check (609.631.3)	FEL	FEL	274	Stay of Imposition	Yes
11	M	Black	33	N	N	No Insurance Owner (169.797.2)	MSD	NONE	135	Dismissed	No
12	M	Black	19	Y	N	Revo-DANCO	MSD	FEL	27	Convicted	Yes
13	F	White	42	N	N	Theft by Swindle over $1000 (Aggregated) (609.52.2(4))	FEL	FEL	49	Stay of Imposition	No
14	F	Black	47	Y	Y	Theft (609.52.2(1))	MSD	MSD	30	Convicted	Yes
15	M	Black	42	Y	Y	Theft (609.52.2(1))	MSD	MSD	0	Convicted	Yes
16	M	Black	53	Y	Y	Traffic-DL-Driving After Cancellation (171.24.5)	GMD	GMD	0	Convicted	Yes
17	M	White	19	Y	Y	Theft by Swindle over $1000 (Aid/Abet) (609.52.2(4))	FEL	FEL	76	Continued	No
18	M	Black	51	Y	N	Trespassing (609.605.1(b)(4))	MSD	MSD	55	Continued	No
19	M	Black	26	Y	N	DWI - Fourth Degree (169A.27.1)	MSD	MSD	41	Convicted	Yes
20	M	Black	22	Y	N	Drug Possession - 5th Degree (152.025.2(1))	FEL	NONE	92	Continued	No
21	M	Black	41	Y	N	No Insurance Owner (169.797.2)	MSD	NONE	0	Dismissed	No
22	F	White	23	N	N	No Insurance Owner (169.797.2)	MSD	MSD	41	Continued	No
23	M	White	23	Y	Y	Revo-Restitution	FEL	FEL	43	Convicted	No
24	M	White	49	Y	Y	Possession of Burglary Tools (609.59)	FEL	FEL	155	Convicted	Yes
25	M	Black	23	Y	N	Traffic-DL-Driving After Cancellation (171.24.5)	MSD	NONE	41	Dismissed	No
26	F	Black	22	N	N	Financial Transaction Card Fraud (609.821.2(1))	FEL	FEL	42	Stay of Imposition	No
27	M	White	41	Y	Y	Registration of Predatory Offender (243.166.5(a))	FEL	FEL	98	Convicted	Yes
28	M	White	28	Y	Y	Registration of Predatory Offender (243.166.5(a))	FEL	FEL	81	Continued	No
29	M	Black	23	Y	Y	Violation of Order of Protection (518B.01.14(a))	FEL	FEL	154	Stay of Imposition	Yes
30	M	White	26	N	Y	Domestic Assault (609.2242.1(1))	MSD	MSD	118	Convicted	Yes
31	F	Black	28	N	N	Check Forgery (609.631.2(1))	FEL	NONE	49	Continued	No
32	M	A Indian	47	Y	Y	Revo-THC for 2nd Degree Burglary	FEL	FEL	5	Convicted	Yes
33	F	Black	29	Y	Y	Terroristic Threats (609.713.1)	FEL	FEL	111	Stay of Imposition	Yes
34	M	Black	23	Y	Y	Possession of Burglary Tools (609.59)	FEL	MSD	42	Continued	No
35	F	Black	49	N	N	Drug Possession - 5th Degree (152.025.2(a)(1))	FEL	MSD	0	Continued	No
36	M	Black	42	Y	N	Traffic-DL-Driving After Cancellation (171.24.5)	MSD	NONE	0	Dismissed	No
37	M	Black	22	Y	Y	Drug Sale-5th Degree (152.025.1(1)	FEL	FEL	22	Stay of Imposition	Yes
38	M	Black	25	Y	Y	Terroristic Threats (609.713.1)	FEL	FEL	62	Convicted	Yes
39	M	A Indian	35	Y	Y	Contempt of Court (588.20.2(4))	MSD	MSD	3	Continued	No
40	M	White	39	N	N	Theft of Property (609.52.2(1)	FEL	NONE	0	Continued	No

[1] Indicates if defendant was detained in jail at some point over the duration of the case.

[2] Defendants may have been charged with additional counts. Count 1 represents most severe charge. Count 1 does not represent the plea charge and outcome of plea deal.

[3] Indicates the days from first appearance in court to pleading guilty before a judge. This number does not include the the time from being arrested/charged to first court appearance.

[4] Indicates if a defendant was sentenced to serve time in jail or prison as on outcome of their case.