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PROSECUTORS AND THE DISPOSITION OF CRIMINAL CASES: AN ANALYSIS OF PLEA BARGAINING RATES

J. B. JONES*

INTRODUCTION

Increasing crime rates generate considerable public concern over the performance of the criminal justice system. Many citizens would be shocked to learn that the system operates on the basis of mutual cooperation and consultation, rather than the media image of the strident prosecutor battling a committed defense attorney. The actual operation of the American system of criminal justice is vastly different from the ideal adversary system. The reality is bureaucratic bargaining.¹ Approximately ninety percent of all criminal cases are resolved through the process of pre-trial negotiation or plea bargaining.²

Plea bargaining results from an agreement between the prosecutor, defense attorney, and occasionally the defendant. The prosecutor offers the defendant a *quid pro quo* (charge reduction or sentence recommendation) for pleading guilty. Plea bargaining is a low visibility process, one which occurs in a private and informal setting. Decisions are made over lunch or in the hallway of the criminal court building. Moreover, the participants wield such discretion that in most cases they serve as the final arbiters in the sentencing decision.

The practice of plea bargaining has created considerable controversy. Various study groups such as the President's Commission on Law Enforcement and Criminal Justice and the American Bar Association have endorsed the practice, although recommending certain reforms.³ However, other groups, specifically the Nixon Administration's National Advisory Commission on Criminal Justice Standards and Goals, have argued for the abolition of plea bargaining.⁴ Given the prevalence of the

practice, as well as the widespread disagreement over its use, plea bargaining merits further study and research.⁵ This study examines the effect of a prosecutor's values and social background on his rate of plea bargaining. The findings presented here are based on a mail survey of prosecuting attorneys and their assistants in the state of Illinois.⁶ The survey instrument contained both open-ended and closed questions focusing primarily on the prosecutor's plea bargaining practices and his view of these procedures. Respondents were also asked to supply biographical data.

The Dependent Variable

Prosecutors' responses to a question on rate of plea bargaining provided the dependent variable for this study. Prosecutors were requested to indicate the percentage of their cases which were resolved through the use of a negotiated plea and the dependent variable is based on the prosecutor's perception of his plea bargaining rate. It was possible to make a crude check of the prosecutor's veracity by comparing his reported rate of plea negotiation with published figures on the percentage of guilty plea dispositions for his county. These figures are included in the report of the Illinois court administrator. Using this technique, one can argue that the perceptions of the responding prosecutors roughly correspond to reality.

While plea bargaining is the most common mode

TICE, STANDARDS RELATING TO PLEAS OF GUILTY (1968).

⁵ Mulkey, *The Role of the Prosecution and Defense in Plea Bargaining*, 3 POL'Y STUD. J. 54 (1974).

⁶ The entire population (n = 350) of prosecuting attorneys and their assistants was surveyed. The response rate was forty-four percent (n = 156). Respondent representativeness is always a problem for researchers using a survey research methodology. However, Larry Leslie argues that "researchers surveying issues directly related to homogeneous groups should not be overly concerned about the percentage of questionnaire returns. Representativeness will most likely be excellent. This presumes, of course, that enough responses are gained to meet statistical assumption." Prosecutors represent a homogeneous group within the larger population. Leslie, *Are High Response Rates Essential to Valid Surveys?* SOC. SCI. RESEARCH 323-34 (1972). The questionnaires were mailed in the summer of 1975.

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¹ A. BLUMBERG, *CRIMINAL JUSTICE* (1967); Skolnick, *Social Control in the Adversary System*, J. CONFLICT RESOLUTION 52 (1962); J. EISENSTEIN, *POLITICS AND THE LEGAL PROCESS* (1973).

² D. NEWMAN, *CONVICTION, THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL* (1966).

³ PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, *TASK FORCE REPORT: THE COURTS* (1967).

⁴ ABA PROJECT ON STANDARDS FOR CRIMINAL JUS-

of case disposition throughout the United States, variations do exist. Legal commentators have attributed this variability in the use of guilty pleas to several factors. Some suggest that variations are the result of individual differences among prosecutors.⁷ For example, prosecutors often weigh such factors as the magnitude of the crime, the adequacy of the state's evidence, the characteristics of the defendant, and the probable defense attorney in order to determine the costs and benefits of plea bargaining. Differences in each prosecutor's calculations result in variations in plea bargaining rates.

Other commentators argue that the dispositional policies of prosecutorial offices may reflect community norms and attitudes.⁸ In Chicago, the prosecutor's office encourages plea bargaining, whereas in Baltimore it does not. These differences reflect variations in community attitudes toward criminal justice or at least variations in the way prosecutors perceive community attitudes. Furthermore, some prosecutorial offices have attempted to decrease the disparity in the bargaining rates of assistants through the establishment of plea bargaining policies. In Chicago, for instance, the supervising state's attorney of the narcotics division developed guidelines on the minimum sentence recommendation and/or charge reductions which assistant state's attorneys could offer in narcotics cases.⁹

The data on variations in plea bargaining rates suggest that further investigation is needed. By focusing on the prosecutor's rate of plea bargaining as the dependent variable, it will be possible to determine how much variation in bargaining rates is due to independent variables such as prosecutorial values and social background characteristics.

The Independent Variables

Background studies assume that the investigation of such characteristics will provide clues for understanding decisions. This assumption is based on the supposition that certain background characteristics and experiences are conducive to particular attitudes and values which in turn influence behavior. Although researchers have analyzed the relationship between background traits and the behavior of decision-makers such as legislators, bureaucrats, and judges, they have yet to examine this linkage in the case of prosecutors.¹⁰

Two background variables which appear to influence the behavior of decision-makers are education and experience. For example, research on social workers indicates that a formal education can influence individual working behavior.¹¹ Because common professional values are often transmitted through education, the federal Welfare Administration issued a directive in 1964 requiring that all future public assistance workers and supervisors have college degrees. Studies also disclose that one's career experience affects behavior. For instance, appellate judges with prior judicial experience were less likely to inject personal values into their decisions than their colleagues without prior experience on the bench.¹² James Q. Wilson maintains that the difference in styles, attitudes, and values of politicians in Chicago, California, and New York is partially due to the difference between "amateurs" and "professional politicians"—differences due to experience and ambition.¹³

ence of social background characteristics on political recruitment as well as the effect of social background on the decisions of political elites. See, e.g., S. KELLER, *BEYOND THE RULING CLASS* (1963); D. MATTHEWS, *THE SOCIAL BACKGROUND OF DECISION-MAKERS* (1954); D. MATTHEWS, *UNITED STATES SENATORS AND THEIR WORLD* 102-17 (1960); K. PREWITT, *THE RECRUITMENT OF POLITICAL LEADERS: A STUDY OF CITIZEN POLITICIANS* (1970). Studies have also dealt with the effect of social background on judicial decisions. See e.g., S. NAGEL, *THE LEGAL PROCESS FROM A BEHAVIORAL PERSPECTIVE* 227-36 (1970); Adamany, *The Party Variable in Judges' Voting: Conceptual Notes and a Case Study*, 63 AM. POL. SCI. REV. 57 (1969); Feeley, *Another Look at the "Party Variable" in Judicial Decision-Making: An Analysis of the Michigan Supreme Court*, 4 POLITY 91 (1971); Goldman, *Voting Behavior on the U.S. Court of Appeals, 1961-64*, 60 AM. POL. SCI. REV. 374 (1966); Grossman, *Social Backgrounds and Judicial Decision-Making*, 79 HARV. L. REV. 1551 (1966); Jaros & Canon, *Dissent on State Supreme Court: The Differential Effect on the Characteristics of Judges*, 15 MIDWEST J. POL. SCI. 322 (1971); Ulmer, *The Political Party Variable in the Michigan Supreme Court*, 11 J. PUB. L. 352 (1963); Vines, *Federal District Judges and Race Relations Cases in the South*, 26 J. POL. 338 (1964); Bowen, *The Explanation of Judicial Voting Behavior from Sociological Characteristics of Judges* (1965) (unpublished Ph.D. dissertation, Yale University).

¹¹ Derthick, *Intercity Differences in the Administration of the Public Assistance Program: The Case of Massachusetts*, in CITY POLITICS AND PUBLIC POLICY 265-66 (J. Wilson ed. 1968).

¹² Nagel, *Judicial Attitudes and Those of Legislators and Administrators*, in S. NAGEL, *THE LEGAL PROCESS FROM A BEHAVIORAL PERSPECTIVE* 199-218 (1969). See also at 113-24 for a discussion of the influence of experience on attorney's courtroom results.

¹³ J. WILSON, *THE AMATEUR DEMOCRAT, CLUB POLITICS IN THREE CITIES* 1-31 (1962).

⁷ Vetri, *Plea Bargaining: Compromises by Prosecutors to Secure Guilty Pleas*, 112 U. PA. L. REV. 865 (1964).

⁸ H. JACOB, *URBAN JUSTICE* 109-13 (1973).

⁹ Gilboy, *Guilty Plea Negotiations and the Exclusionary Rule of Evidence: A Case Study of Chicago Narcotics Courts*, 65 J. CRIM. L. & C. 89-98 (1976).

¹⁰ There are numerous studies dealing with the influ-

Using social characteristics as independent variables indicates whether the variables which affect the behavior of other decision-makers also exerts an influence on prosecutors. Moreover, the discovery that common variables affect several political phenomena facilitates the integration of research findings.

In addition to background characteristics, another independent variable will be analyzed—the prosecutor's support for organizational values present in the criminal court environment. Social scientists assert that the organizational pressures of the criminal court and the personal goals of the participants, induce prosecutors to value efficiency in the courtroom and co-operation with colleagues.¹⁴ The prevalence of values such as efficiency and cooperation is conducive to the use of plea bargaining. However, researchers must still determine the extent to which support for these values affects variations in reported plea bargaining rates. Using these values as independent variables allows the researcher to do so.

RESEARCH HYPOTHESES

Political scientists have established that a judge's background characteristics affect his decisions in certain cases.¹⁵ For example, Stuart Nagel observed that a judge's ethnic or religious background provided a clue to understanding the judge's decisions in certain types of cases.¹⁶ And, comparing the sentencing propensities of judges in Pittsburgh and Minneapolis, Martin Levin found that some of the disparities in sentences were attributable to social background differences.¹⁷ Judges in Pittsburgh, who came primarily from low income backgrounds or from religious or ethnic minority groups, treated criminal defendants on an individualistic basis. Levin argues that because of their background, Pittsburgh judges empathized with defendants and attempted to give them a "break." In contrast, Minneapolis judges, who were primarily from middle income, Northern European, Protestant backgrounds applied universalistic criteria in sentencing criminal defendants.

Upon this basis, one might hypothesize that

¹⁴ G. COLE, *POLITICS AND THE ADMINISTRATION OF CRIMINAL JUSTICE* (1973). See also A. BLUMBERG, *CRIMINAL JUSTICE* (1967).

¹⁵ *Supra* note 10.

¹⁶ Nagel, *Ethnic Affiliations and Judicial Propensities*, 23 J. POL. 614 (1961). Nagel, *Judicial Background and Criminal Cases*, 53 J. CRIM. L.C. & P. S. 333 (1962).

¹⁷ Levin, *Urban Politics and Judicial Behavior*, J. LEGAL STUD. 193-97 (1972).

prosecutors from low status or minority backgrounds might empathize with the defendants who crowd the criminal courtrooms. Plea bargaining provides one method of giving defendants a "break," i.e., a reduction of charges or a favorable sentence recommendation. Thus, prosecutors from such backgrounds should engage in plea bargaining more frequently.

Hypothesis 1: Prosecutors from lower class or ethnic (Blacks, Chicanos, Eastern and Southern Europeans) and religious (Jewish and Catholic) minority groups will engage in plea bargaining at a higher rate than their colleagues from non-minority and middle or upper class backgrounds.

The Langdell case method represents the primary pedagogical technique of American law school professors.¹⁸ The originator of this method, Christopher Columbus Langdell, contended that the purpose of legal education was to teach students governing legal principles.¹⁹ He argued that his method provided a scientific means of achieving this knowledge. The instructor utilizing this method presents students with a mass of appellate court decisions attempting to engage students in a Socratic dialogue. In this way, students learn to analyze, distinguish, and synthesize cases. Theoretically, this method teaches students to "think like a lawyer."²⁰

Despite the predominance of the casebook method, important qualitative differences exist in American legal education. Law schools range from the night and part-time proprietary schools, to a middle level often associated with state and private universities, and finally to a group of top ranked schools such as Harvard and Yale.²¹ While re-

¹⁸ Morgan, *The Case Method*, 4 J. LEGAL EDUC. 379, 391 (1952).

¹⁹ Note, *Modern Legal Education*, 64 COLUM. L. REV. 710 (1964).

²⁰ ASSOCIATION OF AMERICAN LAW SCHOOLS, *PREFACE* (1975).

²¹ Seymour Warkov ranked 125 law schools on the basis of entering students' scores on the Law School Admissions Test (LSAT). See, S. WARKOV, *LAWYERS IN THE MAKING* (1965). In his study Harvard and Yale were the top-ranked schools. More recently, Peter M. Blau and Rebecca Z. Margulies asked law school deans throughout the country to rank the top quality law schools in the United States. Harvard, Yale, Columbia, University of Michigan and The University of Chicago were consistently in the top five. *America's Leading Professional Schools*, CHANGE 21-27 (November, 1973); *A Research Replication, The Reputation of American Professional Schools*, CHANGE 42-47 (Winter, 1974-75). See also Reed, *Training for the Public Profession of Law in NEW DIRECTIONS IN LEGAL EDUCATION* 29-33, Appendix I (H. Packer & T. Ehrlich eds. 1972).

searchers may disagree over the criteria for ranking law schools, they acknowledge that there are differences between proprietary or independent law schools and non-proprietary schools or those affiliated with a state or private university.²²

Typically, the instruction at the proprietary law schools stresses knowledge of precedent rather than the method of analysis. Such schools concentrate primarily on local and concrete law, placing emphasis on preparing students for the state bar examination.²³ The method of instruction is generally straight lecturing, with little discussion of the political, social, or economic aspects of a particular case. Moreover, the faculty members tend to be private practitioners who teach on a part-time basis.

Ladinsky and Lortie found that the nature of one's legal education affected career patterns.²⁴ Students from proprietary law schools were much more likely to become solo practitioners than students from nonproprietary law schools. Additionally, law firms rarely recruited candidates from proprietary law schools, on the assumption that such candidates lacked the skills needed to handle complex legal problems. Confirmation of these findings is provided in a more recent study of the Chicago Bar. Heinz, *et. al.*, discovered that firm lawyers were disproportionately drawn from elite schools (Harvard and Yale), while solo practitioners were more often graduates of local schools (Loyola, DePaul, John Marshall, Kent).²⁵

Furthermore, Smigel observed that Wall Street law firms placed considerable emphasis on recruiting students from particular law schools; students educated in elite schools were expected to have obtained both the values and expertise needed to represent high status clients.²⁶ This reasoning assumes that students assimilate the values and perspectives which are a part of their training. Draw-

ing an analogy to proprietary legal education, one might hypothesize that the proprietary law school with its emphasis on the rules of a particular jurisdiction, would produce students with a myopic perspective of the legal system. Such students may fail to appreciate the more philosophical issues of the adversary system and the rule of law. In contrast, students attending nonproprietary schools in which analysis and method are stressed would be more inclined to have a broader perspective of the legal system and more likely to support the rule of law and the adversary system.

What effect would these differences have on the reported plea bargaining rates of prosecutors? One might assume that prosecutors trained in the proprietary law schools would adapt more readily to the norms of the criminal court organization than prosecutors from nonproprietary schools. This is particularly true since lawyers from nonproprietary schools may view plea bargaining as conflicting with the ideals of the adversary system and the rule of law.²⁷

Hypothesis 2: Prosecutors, who receive their legal education from one of the proprietary law schools, will engage in plea bargaining at a higher rate than their counterparts from nonproprietary law schools.

Beyond his law school training, the lawyer's work environment often shapes his behavior.²⁸ For instance, Heinz, *et. al.*, argue that one reason for the overrepresentation of large firm lawyers in the Chicago Bar Association, is that these law firms encourage bar association membership.²⁹ This occurs because participants in most organizations share certain norms or expectations about the behavior of individuals within the organization. In the criminal court, researchers found that plea bargaining norms supporting stability in the criminal court organization persist largely because these norms are transmitted to new recruits.³⁰

Socialization to the norms of the court occurs in several ways. Beverly Blair Cook observed that seminars for new judges are significant socializing agents for federal district court judges.³¹ Carp and Wheeler discovered that fellow judges, lawyers, and members of the court staff also played a role

²² A. BLAUSTEIN & C. PORTER, *THE AMERICAN LAWYER* 176-79 (1954).

²³ Lortie, *Laymen to Lawmen: Law Schools, Careers, and Professional Socialization*, 29 HARV. EDUC. REV. 352 (1959).

²⁴ Lortie, *supra* note 23, at 357-59; Ladinsky, *The Impact of Social Backgrounds of Lawyers on Law Practice and the Law*, 16 J. LEGAL EDUC. 127 (1973). See also Ladinsky, *Careers of Lawyers, Law Practice, and Legal Institutions*, 28 AM. SOC. REV. 47 (1963).

²⁵ Heinz, Laumann, Cappell, Halliday, and Schaalman, *Diversity, Representation, and Leadership in an Urban Bar: A First Report on a Survey of the Chicago Bar*, 3 AM. BAR FOUNDATION RESEARCH J. 717 (1976) [hereinafter cited as Heinz].

²⁶ E. SMIGEL, *THE WALL STREET LAWYER* (1964).

²⁷ Comment, *The Unconstitutionality of Plea Bargaining*, 83 HARV. L. REV. 1387 (1970).

²⁸ J. SKOLNICK, *JUSTICE WITHOUT TRIAL*, ch. 3 (1966).

²⁹ Heinz, *supra* note 25, at 735.

³⁰ CRIMINAL JUSTICE, LAW and POLITICS 189-90 (G. Cole, ed. 1976).

³¹ Cook, *The Socialization of New Federal Judges: Impact on District Court Business*, 1971 WASH. L. Q. 253.

in the socialization of newly appointed federal judges.³² Additionally, appointees with prior judicial experience had fewer adjustment problems than judges without this experience. Apparently, the more experience one has within an organization, the more likely it is that he will adhere to the norms of that organization.

Hypothesis 3: Prosecutors with more legal experience will engage in plea bargaining at a higher rate than those with less experience.

Milton Rokeach suggests that values serve as standards or criteria for one's actions. In Rokeach's words, "To say that a person 'has a value' is to say that he had an enduring belief that a specific mode of conduct or end-state of existence is personally and socially preferable to alternative modes of conduct or end-states of existence."³³

The values or preferences which govern the conduct of actors in the criminal court organization include co-operation with colleagues and concern for efficiency. According to Abraham Blumberg, the criminal court organization "co-opts" its participants so that they favor organizational values such as efficiency and production.³⁴ He maintains that concern for administrative efficiency overrides concern for individual rights. In this context, Jerome Skolnick argues that most criminal attorneys will attempt to compromise.³⁵ He notes that the nature of American criminal justice encourages the development of informal relationships between the prosecution and defense. Co-operation occurs because participants want to avoid conflict.

Co-operation also makes it possible for prosecutors to advance personal goals. Both prosecutors and their assistants often view their positions as a vehicle for gaining valuable trial experience before entering private practice.³⁶ They are anxious to make contacts within the legal community which will later prove helpful. Some are also seeking to develop a professional reputation, because this facilitates a future private practice.³⁷ While it is

important for prosecutors to appear as formidable opponents, it is more important that they demonstrate an ability to compromise and adapt to the norms of the criminal court system. Moreover, plea bargaining also benefits the politically ambitious prosecutor or assistant, because it assures a high conviction rate. A high conviction rate provides evidence that the prosecutor is doing his job and establishes a record of success which the prosecutor can refer to in subsequent election campaigns. Consequently, plea bargaining facilitates both personal and organizational goals.

Hypothesis 4: Prosecutors who adhere most strongly to values such as efficiency and cooperation will engage in plea bargaining at a higher rate than those prosecutors who support these values less strongly.

The following (Figure 1) is a graphic representation of the model utilized in this research. While the focus of this research is on arrows 1, 2, 3 and 4, it is likely that the relationships indicated by 5, 6 and 7 are also significant. Each of the relationships in 1, 2, 3 and 4 will be evaluated through correlational analysis. Additionally, the combined effect of the independent variables on reported plea bargaining rates will be explored through the use of multiple regression analysis.

RESULTS

The hypothesis (H 1) was that prosecutors from ethnic and religious minority groups or lower status backgrounds would be more likely to engage in plea bargaining. Because these individuals are from less advantaged or minority backgrounds, it was hypothesized that they would sympathize with defendants. Plea bargaining would provide a way of individualizing justice and giving defendants "a break". On the other hand, it was hypothesized that prosecutors from non-minority or middle or high status backgrounds would be less concerned with individualizing justice and more concerned with strict adherence to the rule-of law. Therefore, to some extent, they would be less likely to engage in plea negotiations than their colleagues.

Table 1 reports the association between two social background variables (religion and national origin) and the dependent variable (reported rate of plea bargaining).³⁸ Eta in Table 1 ranges from .06 to .11. Such low scores signify a very weak

³² Carp & Wheeler, *Sink or Swim: The Socialization of a Federal District Judge*, 21 J. PUB. L. 360 (1972).

³³ M. ROKEACH, BELIEFS, ATTITUDES, AND VALUES 159-60 (1968).

³⁴ A. BLUMBERG, *supra* note 1, at 45-71; G. COLE, POLITICS AND THE ADMINISTRATION OF CRIMINAL JUSTICE 193-204 (1973).

³⁵ Skolnick, *Social Control in the Adversary System*, 11 J. CONFLICT RESOLUTION 52 (1967).

³⁶ P. Nardulli, *Organizational Influences Upon Decision-Making in the Chicago Felony Court System* 22-25 (Paper delivered at the Midwest Political Science Association Meeting, Chicago, Illinois) (May, 1975).

³⁷ D. NEUBAUER, CRIMINAL JUSTICE IN MIDDLE AMERICA 51-52 (1975).

³⁸ Religion and national origin are categorical variables. The categories utilized for analysis include: religion (Protestant, Catholic, Jewish, other, and no preference); national origin (Northern and Western European, Southern and Eastern European, Middle East, North American, and other).

Figure 1

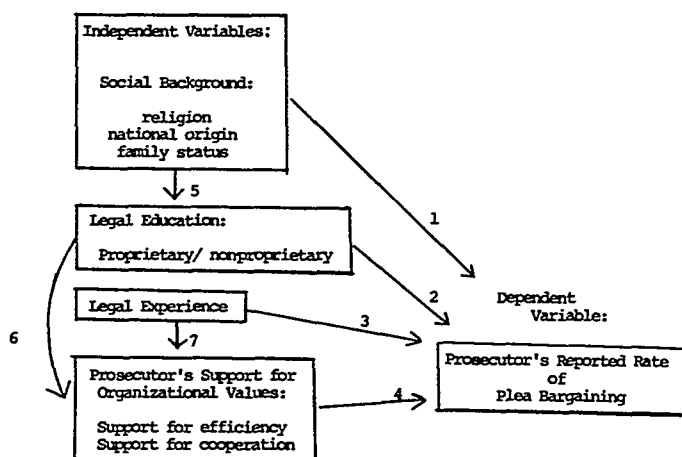


Table 1

SIMPLE ASSOCIATION FOR PROSECUTORS' SOCIAL
BACKGROUND AND REPORTED PLEA BARGAINING RATES

Dependent Variables	Religion (eta)	National Origin (eta)	Father's Occupation (rho)
Percentage of all cases re- solved through plea bargaining	.11 (132) ^a	.06 (121)	-.03 (129)

^aNumbers in parentheses are the numbers upon which the correlations are calculated.

relationship between a prosecutor's religion or national origin and his reported rate of plea negotiation. Also present in Table 1 is the correlation between the prosecutor's family status (operationalized as father's occupation) and his rate of plea bargaining. The correlation (ρ) is low ($-.03$), which implies that the prosecutor's family status is not associated with his plea bargaining rate.³⁹

The statistical analyses demonstrate that knowledge of the prosecutor's religion, national origin, or family status is not useful in predicting his rate of plea bargaining. Prosecutors from low status or minority and ethnic backgrounds do not bargain more frequently than prosecutors from high status or non-minority religious and ethnic backgrounds.

³⁹ The measurement scale used for father's occupation is a modified version of the one developed by Alba Edwards. See A. EDWARDS, *COMPARATIVE OCCUPATIONAL STATISTICS FOR THE UNITED STATES* (1943).

One explanation for this finding may be that many prosecutors and judges, regardless of individual origin, look to the upper-middle class as their reference group.⁴⁰ As Jacob states, "Many (prosecutors and judges) look forward to where they would like their own children to be rather than backward to where they spent their own childhoods."⁴¹ If this is the case, then many prosecutors from minority religious or ethnic backgrounds may be emulating their higher status peers. Consequently, background variables would not explain a prosecutor's propensity to engage in plea bargaining. These results, therefore, do not support Hypothesis 1.

The next hypothesis (H 2) is that prosecutors who received their legal training from proprietary law schools would engage in plea bargaining more

⁴⁰ H. JACOB, *supra* note 8, at 78-79.

⁴¹ *Id.*, at 79.

Table 2

SIMPLE ASSOCIATION FOR PROSECUTORS'
LEGAL EDUCATION AND REPORTED PLEA BARGAINING RATES

Dependent Variable	Legal Education (eta)
Percentage of all cases resolved through plea bargaining	.10 (136) ^a

^aNumbers in parentheses are the numbers upon which the correlations are calculated.

Table 3

SIMPLE ASSOCIATION FOR PROSECUTORS'
EXPERIENCE AND REPORTED PLEA BARGAINING RATES

Dependent Variable	Experience (Pearson's R)
Percentage of all cases resolved through the use of plea bargaining	.07 (n = 135) ^a

^aNumbers in parentheses are the numbers upon which the correlations are calculated.

frequently than prosecutors who attended nonproprietary law schools.⁴² Table 2 demonstrates the strength of the relationship between type of law school training and the prosecutor's reported rate of bargaining. The reported statistic ($\eta = .10$) suggests that the prosecutor's legal training (whether he attended a proprietary or nonproprietary law school) has a minor effect on his rate of plea-negotiation. The fact that one's legal training seems to have little, if any, influence on plea bargaining rates could be due in part to the realities of the criminal justice system.

Critics of legal education argue that law students receive a distorted picture of reality.⁴³ Casebooks, they assert, cannot convey the true nature of criminal law practice. Although knowledge of the criminal law is essential, experience provides one with a greater understanding of the way the courts and the prosecutor's office operate. Students, depending on their legal training, may subscribe to adver-

sary ideals in varying degrees. But, once faced with a system which functions almost completely on the basis of informal negotiations, the new recruit regardless of his training learns to adjust to the system. Reality may override law school values and perceptions and therefore, we find little support for Hypothesis 2.

The correlation (Pearson's R) between the prosecutor's legal experience (operationalized as the number of years in the practice of law) and his reported rate of bargaining is presented in Table 3. It was hypothesized (H 3) that prosecutors with more legal experience will engage in plea bargaining at a higher rate than those with less experience. But, legal experience, as the low correlation implies (.07), has almost no influence on the prosecutor's rate of bargaining. There tends to be minimal differences between the experienced prosecutor and the inexperienced prosecutor in terms of the reported frequency of plea bargaining. This does not imply that differences in the concessions a prosecutor is willing to make do not exist. For example, Albert Alschuler argues that experienced and inexperienced prosecutors differ in respect to the types of concessions they are willing to grant. Al-

⁴² Proprietary law schools included in the survey were: John Marshall, Kent I.I.T., and Detroit College of Law. All other law schools were included in the nonproprietary category.

⁴³ L. FORER, *THE DEATH OF THE LAW* 376-93 (1975).

Table 4

SIMPLE ASSOCIATION FOR PROSECUTORS' ADHERENCE TO ORGANIZATIONAL VALUES AND REPORTED PLEA BARGAINING RATES

Dependent Variables	Index of Efficiency (Pearson's R)	Index of Co-operation (Pearson's R)
Percentage of all cases resolved through plea bargaining	.05 (135) ^a	.12 (135)

^aNumbers in parentheses are the numbers upon which the correlations are calculated.

schuler found that fear of losing a case as well as a lack of confidence, often led inexperienced prosecutors to offer greater concessions than the merits of a case justified.⁴⁴

Another factor which may account for the failure of experience to predict increases or decreases in plea bargaining rate is the lack of variation in the independent variable. Because there were few experienced prosecutors in the survey, it is difficult to determine the exact effect of experience on the prosecutor's propensity to bargain.

The failure of social background, law school training, and experience to predict plea bargaining rates is not particularly surprising. Evidence from studies dealing with the effect of social background variables on judicial decision-making is also inconclusive.⁴⁵ In most instances, background variables

were only indirectly related to individual behavior and were actually the precursors of certain attitudes and values which are more directly influential in predicting behavior.⁴⁶ This appears to be true for prosecutors as well. As Eisenstein and Jacob point out, background characteristics of prosecutors and defense attorneys influence their experiences and perceptions, and may indirectly influence the disposition of criminal cases. However, the norms and actions of the collective courtroom work group (prosecutors and defense attorneys and judges) mute the role of these personal biases.⁴⁷

The data arrayed in Table 4 show the relationship between the prosecutor's support or non-support for efficiency in the courtroom, co-operation with colleagues, and plea bargaining rates.⁴⁸ It was

⁴⁴ Alschuler, *The Prosecutor's Role in Plea Bargaining*, 36 U. CHI. L. REV. 110-11 (1968).

⁴⁵ One characteristic recognized as influencing a judge's decision is religion. See S. NAGEL, *THE LEGAL PROCESS FROM A BEHAVIORAL PERSPECTIVE* 227-36 (1969); Goldman, *Voting Behavior on the U.S. Court of Appeals, 1961-64*, 60 AM. POL. SCI. REV. 374 (1966); Vines, *Federal District Judges and Race Relations Cases in the South*, 26 J. POL. SCI. 338 (1964). Partisan identification also has been found to be associated with a judge's voting behavior. See, Jaros and Canon, *Dissent on State Supreme Court: The Differential Effect of the Characteristics of Judges*, 15 MIDWEST J. POL. SCI. 332 (1971); Ulmer, *The Political Party Variable in the Michigan Supreme Court*, 11 J. PUB. L. 352 (1963). See also Adamany, *The Party Variable in Judges' Voting: Conceptual Notes and a Case Study*, 62 AM. POL. SCI. REV. 57 (1969); Feeley, *Another Look at the "Party Variable" in Judicial Decision-Making: An Analysis of the Michigan Supreme Court*, 4 POLITY 91 (1971); Nagel, *Multiple Correlations of Judicial Backgrounds and Decisions*, 2 FLA. ST. U.L. REV. 258 (1974). For a general discussion of the use of social background variables as predictors of judicial decisions, see, S. GOLDMAN & T. JAHNIGE, *THE FEDERAL COURTS AS A POLITICAL SYSTEM* 174-78 (1976); W.

MURPHY & J. TANENHAUS, *THE STUDY OF PUBLIC LAW* 103-12 (1972).

⁴⁶ Goldman, *Voting Behavior on the United States Court of Appeals Revisited*, 69 AM. POL. SCI. REV. 496 (1975).

⁴⁷ J. EISENSTEIN & H. JACOB, *FELONY JUSTICE* 10-11 (1977).

⁴⁸ The independent variables, efficiency and cooperation, represent an index which measures the extent to which prosecutors support these values. The indices are based on answers to a series of Likert scale questions dealing with efficiency and cooperation. These questions were factor analyzed in order to determine which best measured the underlying values of efficiency and cooperation. The following two items (which loaded between .631 and .592 on the first factor) were selected for the index of cooperation: 1) the real job of the defense attorney is to negotiate a plea for his client. 2) the real job of the prosecutor is to negotiate with the defense attorney. These two items (which loaded between .421 and .482) were selected for the efficiency index: 1) Prosecutors (public defenders) need to dispose of their cases as quickly as possible. 2) The efficient handling of cases is of foremost importance in the criminal justice system. On the basis of their answers to these questions on

hypothesized (H 4) that as adherence to such values increased, the prosecutor's reported rate of bargaining would also increase.

The correlations (Pearson's R) reveal that support or non-support for efficiency has almost no effect on plea bargaining rates, but that support for co-operation has a somewhat greater influence on the frequency of prosecutorial plea bargaining. Bargaining rates increase as support for co-operation increases, although the correlation is rather weak.

Neither organizational value is particularly helpful in predicting the frequency of prosecutorial plea bargaining. Several factors could explain this: first, support for co-operation is a goal which prosecutors are reluctant to articulate, largely because the public views this goal as illegitimate.⁴⁹ Thus, the responding prosecutors may have been reluctant to indicate the extent of their support for co-operation. Second, these values could be only indirectly related to the rate of negotiation: support for such values may encourage the development of policy guidelines for handling cases which have a more direct impact on reported bargaining rates. For example, Eckart and Stover noted that public defenders and prosecutors followed certain rules of thumb in the disposition of felony cases.⁵⁰ First offenders might have their charges reduced to misdemeanors, or defendants facing multiple felony charges may automatically have all but one of the charges dismissed. Although the rules will vary depending on the jurisdiction, each case is treated according to the established rule for that particular category of cases.

Eisenstein and Jacob discovered that policy norms on plea negotiation also existed both in the Cook County State's Attorney's office and in Detroit (Wayne County).⁵¹ Failure to comply with official policy in Cook County resulted in disciplinary action. Violators were often called to the supervisor's office and required to explain their behavior.

Such policies would encourage more plea bar-

efficiency and co-operation, the prosecutors received a cumulative score. Low scores indicate weak adherence to the values, while high scores indicate strong adherence to the values. Medium range scores represent a neutral category. The Pearson's correlation between efficiency and co-operation is (.16) which indicates that these indices represent two different value dimensions.

⁴⁹ J. EISENSTEIN & H. JACOB, *supra* note 47, at 28.

⁵⁰ Eckart & Stover, *Public Defenders and Routinized Criminal Defense Processes*, 51 J. URB. L. 665 (1974).

⁵¹ J. EISENSTEIN & H. JACOB, *supra* note 47, at chs. 5 & 6.

gaining because they provide a method of settling cases with minimum conflict and expenditure of resources. Such policies may reflect support for efficiency and co-operation, but the linkage between these values and plea bargaining rates may be indirect, thereby accounting for the low correlations reported.

Thus far, the correlational analysis demonstrates that each of the independent variables has a slight effect on reported plea bargaining rates. One shortcoming of such bivariate analysis is that it does not allow the researcher to account for the simultaneous effect of several independent variables on the dependent variable. Nor does it permit the researcher to hold constant other independent variables which can affect the initial relationship under analysis. One way of ascertaining the collective effect of these variables is through a multiple regression analysis. This mode of analysis also gives the researcher an idea of the unique effect of each independent variable, while controlling for all other independent variables.⁵²

The results of a multiple regression analysis are revealed in Table 5. The four independent variables used in the analysis were: adherence to co-operation, father's occupation, experience, and proprietary law school attendance.⁵³ The squared multiple correlation coefficient (R square) gives the researcher an indication as to how much of the variation in the dependent variable is accounted for by the independent variables in the analysis. The R squared in this instance is .06. In other words, these particular independent variables explain about six percent of the variance in prosecutors' reported plea bargaining rates. Thus, the

⁵² Several assumptions are required for such an analysis. The assumptions are: 1) a linear relationship exists between the independent and the dependent variables, 2) the data are normally distributed and the independent variables are not substantially correlated with one another. See, F. KELLEY, D. BEGGS, & K. MCNEIL, *RESEARCH DESIGN IN THE BEHAVIORAL SCIENCES: MULTIPLE REGRESSION APPROACH* (1969).

⁵³ The variable proprietary law school attendance was used in the regression analysis as a dummy variable. Scores of 1 were assigned if a respondent attended a proprietary law school and 0 if he did not. The use of a dummy variable allows a researcher to utilize a nominal level variable in the regression analysis. For a discussion of the use of dummy variables, see, H. BLALOCK, *SOCIAL STATISTICS*, 498-501 (1972). Father's occupation is an ordinal level scale. For a discussion of ordinal and dichotomized variables in regression analysis see Tanenhaus, *et. al.*, *The Supreme Court's Certiorari Jurisdiction—Cue Theory*, in *JUDICIAL DECISION-MAKING* (G. Schubert ed. 1963).

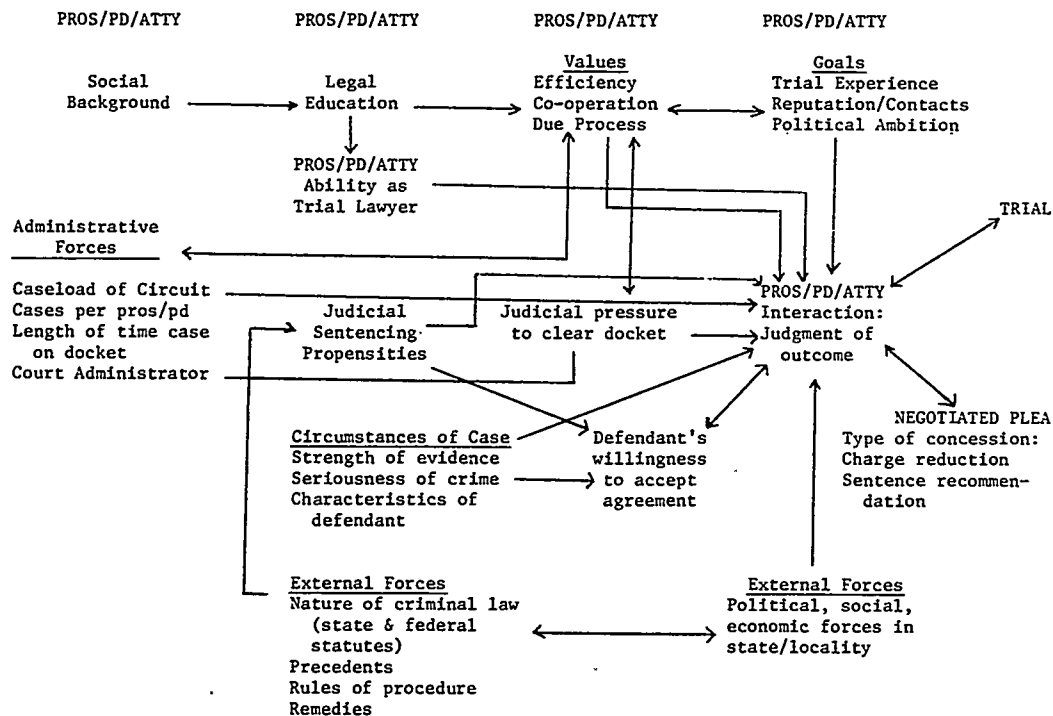


Figure 2 A model of the dispositional process in the criminal court.

combined influence of these particular independent variables on prosecutorial bargaining rates is not particularly high.

Also reported in Table 5 are the standardized regression coefficients (Betas). These demonstrate the relative contribution of each independent variable, while controlling for the other independent variables. Experience is the most important variable affecting the prosecutor's rate of bargaining, but it is only slightly more important than proprietary law school attendance and support for co-operation. Father's occupation has the least effect on the reported rate of bargaining.

CONCLUSION

Does a prosecutor's background or support for organizational values influence his plea bargaining rate? To some extent, yes. However, given the large amount of unexplained variance in the dependent variable, it is obvious that additional factors account for variation in reported plea bargaining rates. Certainly, additional research is needed. Lawrence Mohr argues that the criminal courts can be better understood if one looks at the behavior of the participants within the framework of a

decision-making paradigm.⁵⁴ Following Mohr's suggestion, the model in Figure 2 represents a general outline of the various factors which influence the decision to go to trial or to negotiate a plea.

Social scientists often construct models to assist them in theory-building. A model, according to Lawrence Mayer, is an analytical system that is "developed or constructed so that the logical relationships between its elements correspond in logical form to the relationships between a set of elements in the real world."⁵⁵ Models then, simplify reality and, in performing this function, allow researchers to isolate certain variables for analysis. Moreover, they serve a heuristic function, suggesting new relationships which logically ought to exist. When these relationships have survived empirical testing, "the task of logically integrating the lawlike propositions generated from the model into theory is facilitated."⁵⁶

⁵⁴ Mohr, *Organizations, Decisions, and Courts*, 10 LAW & SOC'Y REV. 621 (1976).

⁵⁵ L. MAYER, *COMPARATIVE POLITICAL INQUIRY* 52 (1972).

⁵⁶ L. MAYER, *supra* note 55, at 53.

The model in Figure 2 depicts the institutional and environmental factors which affect the prosecutor's decision to plea bargain or go to trial. The findings of this research, as well as that of Cole, Skolnick, Blumberg, Jacob and Eisenstein, suggest that institutional variables such as the participants' social background, education, values, ability, sentencing propensities and goals, are indirectly predictive of case disposition.⁵⁷

Additional institutional factors which are significant include the circumstances surrounding a particular case, i.e., the strength of the state's evidence; the seriousness of the crime, felony or misdemeanor; personal characteristics of the defendant; judicial pressure to clear the court docket; and the defendant's willingness to accept the plea agreement.

Administrative factors also effect the disposition process. Variables such as the volume of cases handled in a particular jurisdiction, the length of time that a case has been on the docket, the number of cases per attorney, and the presence of a professional court administrator all influence dispositions. In addition to these administrative factors, environmental or external forces also play an indirect role in determining the disposition of cases. For example, the nature of the criminal law (state or federal) or the social, political, and economic characteristics of a particular state or locality, are all variables which potentially affect the operation of the criminal court. Researchers have generally tended to ignore this aspect of the model, but it is important nonetheless. Courts do not operate in a vacuum; they are best understood in an environmental context. Thus, it is necessary for researchers to examine the effect of crime rate, public opinion, or media pressure on the criminal court operation.

The model suggests that it is the interaction among the prosecutor, defense attorney, and judge (indirectly) which determines the final outcome of the case. Attorneys assimilate the available information and attempt to estimate the likely outcome of a case; that is, what will occur if the case goes to trial as opposed to what will happen if the case is

settled through a negotiated plea. This judgment, in a sense, acts as a filter through which attorneys process information surrounding individual cases. Often this judgment may simply reflect the established policy for disposing of particular cases. For instance, some prosecutor's offices refuse to bargain in certain types of cases—drug cases or carrying a concealed weapon. This type of policy would have an influence on case disposition.

Participants in the decision-making process must weigh institutional factors such as individual values, goals, and abilities along with the circumstances of the case and the defendant's willingness to accept a particular agreement. All of these factors, as well as external factors, are considered in making a final decision on trial or negotiation. Past experience influences an attorney's estimates of a case outcome as well. Moreover, such past experiences serve as the basis for developing policy guidelines on case disposition. Thus, the interaction among those involved both directly (prosecutors and defense attorneys) and indirectly (judges and defendants) results in a decision on case disposition.

The model requires several caveats. First, it needs refinement to determine more specifically what the circumstances are for trial disposition rather than negotiating a plea. In other words, it must consider which of the institutional or environmental factors are weighed more heavily in the final decision to go to trial or to negotiate. Second, further testing of the model should take into consideration differences in plea bargaining styles. It must question whether the kinds of concessions which are made in particular jurisdictions (charge reduction, sentence reduction, or modification of conviction label) effect the decision to negotiate or go to trial. Moreover, researchers should not assume that the model operates in the same fashion in all jurisdictions. Comparisons across jurisdictions are necessary in order to determine the common factors which influence case disposition. This model provides a starting point for future research, for it identifies a number of relationships which need empirical testing. Proceeding in this fashion will allow researchers to develop a theory of plea bargaining.

⁵⁷ See notes 1, 14, 35 and 36 *supra*.