Plea Bargaining Recommendations by Criminal Defense Attorneys: Evidence Strength, Potential Sentence, and Defendant Preference

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Although most criminal cases are disposed of through the process of plea bargaining, little research has focused on this process, and that research has focused on two variables: probability of conviction and potential sentence. This study examined the plea bargaining process from the perspective of the criminal defense attorney and expands prior research by including a third variable: defendant preference regarding plea. Attorney participants (N = 186) responded to a survey containing a vignette presented in a 2 × 2 between-subjects design, in which there was systematic manipulation of the following three variables in the context of criminal litigation: likelihood of conviction based on the strength of evidence, defendant preference regarding plea, and potential sentence if convicted. All of these variables were considered important to criminal defense attorneys, and how these variables significantly interacted with each other is explained. We discuss these findings in light of past research and theory that suggested attorneys make plea recommendations according only to probability of conviction and potential sentence, and we discuss implications and directions for future research. Copyright © 2007 John Wiley & Sons, Ltd.

INTRODUCTION

Understanding the process by which criminal charges are resolved is very important to the larger appreciation of the operation of the U.S. criminal justice system. There has been a great deal of research focusing on jury proceedings as one means of promoting such understanding (see, e.g., Devine, Clayton, Dunford, Seying, & Price, 2001; Gerbasi, Zuckerman, & Reis, 1977; Greene et al., 2002; Saks, 1997). However, the vast

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majority of criminal cases are not resolved through jury or bench trials. According to Bureau of Justice Statistics, in the year 2003, there were 75,573 cases disposed of in federal district court by trial or plea (excluding dismissals); of these, 71,683 (95%) were disposed of by a guilty plea (Pastore & Maguire, 2003). Of the estimated 1,050,000 felony convictions in state court in 2002, 95% were estimated (based on available data from 492,949 convictions) as resolved by the defendant's guilty plea (Pastore & Maguire, 2003). All of these guilty pleas may not have resulted from plea bargains as a defendant may plead guilty even in the absence of a plea bargain; there is no existing precise estimate of the proportion of criminal cases resolved through plea bargaining. However, legal scholars (e.g. Clarke, 2001; Guidorizzi, 1998; Hessick & Saujani, 2002) agree that the vast majority of criminal cases are resolved through the use of plea bargaining. According to some legal scholars (Alschuler, 1975; Blumberg, 1979), there is a bias towards plea bargaining for defense attorneys that may explain the frequent use of plea bargaining. According to Blumberg (1979), criminal attorneys persuade their clients to plea bargain in order to obtain a quick resolution of the case, while Albonetti (1987) suggests that prosecutors consider legal and extralegal factors that increase their likelihood of success. Since the plea bargaining process is apparently the most frequently used method for disposing of criminal cases, one would expect that it would have received significant research attention. Surprisingly, however, there has been limited empirical research to date on plea bargaining—and almost none conducted recently.

Theoretically, a shadow-of-trial model to explain plea bargaining was apparently first described by Robert Mnookin and Lewis Kornhauser (1979). Mnookin and Kornhauser argued that litigants in civil cases bargain “in the shadow of the law.” Under the shadow-of-trial model, plea bargaining in a criminal trial should reflect the likelihood of conviction at trial (strength of the evidence) and the likely post-trial sentence (expected sentence) (Bibas, 2004). Using what they term a decision theory approach, Nagel and Neef (1979) theorized that both prosecutors and defense attorneys, when considering the possible plea, create an expected likely trial sentence from what they perceive as the probability of conviction and the sentence severity for the alleged offense, and then use this value to evaluate the desirability of a plea bargain.

Empirical investigation on plea bargaining has apparently followed this theoretical belief and focused on examining plea bargaining through the two variables of probability of conviction and sentence severity. In sum, this empirical research has suggested that potential sentence is an important factor in the plea bargaining process, when applied to mock (Gregory, Mowen, & Linder, 1978; McAllister & Bregman, 1986a) and actual criminal defendants (Bordens & Bassett, 1985), but not to mock criminal defense attorneys (McAllister & Bregman, 1986a). The research has also more uniformly suggested that probability of conviction (using differing percentages) is an important consideration to mock guilty defendants (Bordens, 1984), mock defendants (McAllister & Bregman, 1986a), and mock defense attorneys (McAllister & Bregman, 1986b).¹

¹There are also two studies focusing exclusively on adolescent legal decision-making that include some examination of plea bargains. More recently, Viljoen, Klaver, and Roesch (2005) found that perceived strength of the evidence was a significant predictor in plea decisions for defendants aged 15–17, but not for defendants aged 11–14. This is in contrast to an earlier study of participants in grades 5, 7, and 9 (Peterson-Badali & Abramovich, 1993), in which investigators reported that even children as young as 10 considered strength of the evidence important in plea decisions when informed in hypothetical semi-structured interviews that the evidence against them was strong or weak.
There were only two studies found that actually focused on attorney decision-making. The first was a study by McDonald, Rossman, and Cramer (1979) that asked defense attorneys and prosecutors to make plea bargain decisions at any point after reading a description of a case and asking for more information. Attorneys in this study usually asked for information regarding the strength of the case, and as a result McDonald et al. manipulated this variable by providing some subjects with a strong case and some with a weak case. They found a weak effect for strength of the case on plea bargain decisions.

Noting that empirical support for the importance of sentence severity and probability of conviction to actual attorneys was extremely limited, McAllister and Bregman (1986b) also manipulated sentence severity and probability of conviction in another study, using the same conditions as in their previous study of mock defendants and mock defense attorneys (2 versus 5 years for sentence severity and probability of conviction at 20, 50, or 80%), in scenarios sent to prosecutors and defense attorneys. They investigated whether attorneys would use the decision theory approach of Nagel and Neef (1979) by asking attorneys whether they would accept a 1-year plea bargain under the various conditions. They found that severity of sentence and probability of conviction were important considerations in attorney plea bargaining decision-making: as severity of sentence and probability of conviction increased (and as the expected values changed based on the expected sentence and the probability of conviction), prosecutors became more willing to plea bargain and defense attorneys became less willing to plea bargain (with one exception). In addition, looking at expected values, they also found that prosecutors were biased towards plea bargaining and defense attorneys were biased against plea bargaining. McAllister and Bregman argued that their results suggested that defense attorneys and prosecutors were not perfectly rational decision-makers (as predicted by Nagel and Neef) and were not uniformly biased towards plea bargaining as Alschuler (1975) and Blumberg (1979) suggested.

Some legal scholars have suggested that there are more relevant variables than just probability of conviction and severity of sentence in plea bargaining decision-making. In discussing how plea bargaining works as a means of negotiation, Hollander-Blumhoff (1997) noted that the good defense counsel determines the best course of action in a given case by assessing the minimum penalty if convicted and the strength of the government’s case, understanding the defendant’s wishes, and being able to advise a course of action based on these wishes. She added that if an attorney chooses plea bargaining, this attorney is weighing additional factors such as (a) the defendant’s record, (b) the facts of the case, (c) the prosecutor’s personality and willingness to go to trial, (d) the judge’s precedent in terms of prior dispositions, (e) the wish to get trial experience, (f) fear of going to trial, (g) and the establishment of a particular reputation. Bibas (2004) focused on the manner in which plea bargains are struck, and argued that the conventional model for explaining plea bargains (the shadow-of-trial model) is too simplistic. Bibas listed several factors similar to and in addition to those of Hollander-Blumhoff, and argued that multiple influences can affect the decision to plea bargain. Bibas suggests a variety of additional influences, including (a) pressure from the prosecutor (who may be motivated to lighten his/her workload, ensure a certain number of convictions, or protect a professional reputation for trying and winning certain cases), (b) financial incentives for defense attorneys (no monetary incentive to try a case with a flat fee or
fixed salary), (c) reducing workload, (d) pressure from judges, (e) limited experience of the defense attorney, (f) continuing to foster relationships with prosecutors and judges, (g) applicable sentencing guidelines, and (h) bail and pre-trial detention (which can influence defendants to accept a plea offer if they are currently in jail, and/or have an offer that would limit subsequent incarceration by incorporating credit for time already served). Since legal scholars have suggested that there are multiple factors relevant to plea bargaining decision-making, we decided to incorporate more than the two factors (probability of conviction and potential sentence) investigated to date.

**Present study**

In the present study, we survey criminal defense attorneys and focus on three variables with theoretical or empirical relevance to plea bargaining: likelihood of conviction based on the strength of evidence, potential sentence, and defendant preference regarding plea. We seek to replicate the findings of McAllister and Bregman (1986b) to a limited extent by further investigating the importance of sentence severity and probability of conviction on attorney plea decision-making. We also aim to further the empirical literature on plea bargaining and expand part of the findings of McAllister and Bregman by looking for additional variables that may affect attorney plea decision-making, because we agree with scholars such as Hollander-Blumhoff (1997) and Bibas (2004) that there are likely other important variables that attorneys consider in their plea bargain decision-making.

The variable of defendant preference regarding plea mentioned by Hollander-Blumhoff (1997) was chosen for potential procedural justice implications (e.g. defendants who are able to express a preference and have this carefully considered are likely to feel more satisfied with the process) and because of possible relevance to therapeutic jurisprudence—which suggests that the perception of free will has psychological benefits. Consistent with therapeutic jurisprudence, in order to safeguard individual autonomy, attorneys should respond to their clients’ emotional concerns in a way consistent with the clients’ therapeutic interests. So, for example, if a client is emotionally distressed about a current charge and wants to plead quickly to reduce this distress, the attorney should consider this in advising the client about the plea. Conversely, if clients want to prove their innocence at trial, attorneys should recognize this state of mind and more likely recommend going to trial in recognition of the clients’ emotional state and wanting to prove their innocence.

In a separate part of the survey, we also chose to informally investigate several additional variables that we thought might be important to criminal defense attorney

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2We also investigated likelihood of conviction based on the strength of the evidence, defendant substance abuse rehabilitation history, and acknowledgement/denial of a substance abuse problem in a separate vignette, using plea of diversion to mandatory substance abuse treatment through drug court as the scenario. Please contact the authors for information on the results of this vignette.

3See, e.g., the work of Lidz et al. (1995), who found that in an inpatient setting patients’ feelings of being coerced could be minimized if clinicians attended more closely to the patient’s perception that he or she is being listened to and being treated with respect, and that his or her opinions are being recognized and considered.

plea bargaining decision-making. These variables were chosen either from mention by legal scholars such as Hollander-Blumhoff (1997) and Bibas (2004) or through conversations with attorneys.

**Hypothesis**

Based on the limited prior research on plea bargaining that found significant effects for probability of conviction (what we call evidence strength) and potential sentence, and based on legal and psychological theory mentioned above that suggests a defendant’s preference for plea is important, we hypothesized that the variables of (a) likelihood of conviction (based on the strength of the evidence), (b) the defendant’s preference on whether to plead guilty or to go to trial, and (c) the potential sentence if convicted, when systematically manipulated in a vignette and presented to participant attorneys, would yield statistically significant differences in how attorneys rated the likelihood of recommending a plea bargain to a criminal defendant. We made no hypotheses with respect to the additional variables that were considered as part of this research, regarding them as exploratory.

**METHOD**

**Participants**

Participants were criminal defense attorneys in the metropolitan area of a large, east coast city in the United States. Both private criminal defense attorneys ($n = 320$) and attorneys with the public defender’s office ($n = 240$) were surveyed. A power analysis conducted using a power of .81 and a medium effect size of .25 indicated that 136 participants were needed (17 for each cell of the $2 \times 2 \times 2$ between subjects design).

**Design**

We created eight versions of the vignette, systematically manipulating three dichotomous independent variables using a $2 \times 2 \times 2$ between subjects design. The three variables were (1) the potential sentence (10 years if convicted/5 years if plea bargain versus 3 years convicted/18 months if plea bargain) if the defendant were convicted of all charges, (2) the defendant’s wishes (yes to plea versus no to plea/prefer trial) regarding a plea bargain, and (3) the likelihood of conviction (bad versus good) based on the strength of the evidence (strong versus weak). The dependent variable for this vignette was the likelihood of an attorney recommending a plea bargain. A sample vignette and the various conditions of the manipulated variables are provided in the appendix.

Instead of using a strict probability of conviction variable, we chose to use likelihood of conviction, based on the strength of the evidence, as we believe that prior research and theory has suggested that probability of conviction is based on strength of the evidence. The use of language employing qualitative terms (e.g. “bad chance of acquittal”) rather than quantitative terms (e.g. “10% chance of acquittal”)...
was guided by the anecdotal observation that attorneys prefer qualitative to quantitative language. For potential sentence, unlike McAllister and Bregman (1986b), we did not hold the potential plea bargained sentence constant for two reasons: one, we were not investigating expected value, and two, we believe it is more realistic to have different plea choices in terms of sentence, depending on the charge and sentence severity. We did, however, keep the same ratio of plea to potential sentence if convicted in both conditions.

Attorneys rated the likelihood of recommending a plea on a five-point Likert scale: (5) very likely, (4) likely, (3) possible, (2) unlikely, and (1) very unlikely. We focused on attorney plea recommendations instead of attorney plea decisions because reality, legal ethics (according to Rule 1.4 of the ABA Model Rules of Professional Conduct, 2003, an attorney must inform and consult with their client on any offered plea bargain), and law (see Johnson v. Duckworth, 1986, where it was decided that the ultimate decision on whether to accept a plea bargain rests with the accused) dictate that the defendant, not the attorney, must ultimately decide whether to accept or reject the plea. Thus, the attorney’s main role in plea bargaining is to make the plea recommendation to the defendant, and it is this dependent variable that we investigated.

In order to informally check that we chose the most relevant variables and to guide future research, we also asked attorneys whether additional variables were important in their decision-making about plea bargain recommendations. Attorneys were asked to rate the importance of 10 variables on a five-point Likert scale ranging from 1 (extremely unimportant) to 5 (extremely important). Among the ten variables were included the three we chose to investigate in the vignette.

As one of the purposes of this study was to replicate in part, and expand, the earlier research of McAllister and Bregman (1986b), like them, we chose to survey attorneys using vignettes.

**Procedures**

The survey included a self-addressed stamped return envelope to facilitate participant responding. The cover letter included a brief description of the research and indicated that participation was voluntary. Each potential participant received one of eight vignettes, in a random stratified procedure that allowed us to send approximately equal numbers of surveys of the eight vignettes and subsequently obtain at least 17 responses for each cell. The university IRB approved this project.

**RESULTS**

A total of 186 attorneys (33%) responded to the survey. The majority of respondents were male (62.4%, \( n = 116 \)), 26.9% \( (n = 50) \) were female, and 10.8% \( (n = 20) \) did not record their gender. Slightly more than half of the respondents identified

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5The question was worded “How important do you consider each of the following in deciding whether to recommend a potential plea bargain to a criminal defendant you represent?”.

themselves as public defenders (51.6%, \( n = 96 \)) while 47.3% (\( n = 88 \)) reported that they were privately employed, and two attorneys did not specify (1.1%).

We conducted a 2 \( \times \) 2 \( \times \) 2 between subjects analyses of variance using “rated likelihood of recommending a plea bargain” as the dependent variable, with the following independent variables: (a) likelihood of conviction based on strength of the evidence, (b) defendant’s wishes with respect to plea bargaining, and (c) potential sentence if the defendant were convicted of all charges. There was a significant main effect for likelihood of conviction based on strength of evidence, with attorneys reporting a greater likelihood of recommending a plea bargain when conviction appeared more likely (\( F(1, 177) = 21.21, p < .001 \); effect size, calculated using eta squared, was .107). There were two significant interactions. The first was a two-way interaction between potential sentence and the defendant’s wishes, with a plea bargain recommendation most likely when the sentence was longer and (interestingly) the defendant preferred a trial (\( F(1, 177) = 20.30, p < .001 \); effect size for this interaction, calculated using partial eta squared, was .103). The second was a three-way interaction (see Table 1) between potential sentence, defendant’s wishes, and likelihood of conviction based on strength of the evidence (\( F(1, 177) = 4.14, p = .043 \); effect size for this interaction, calculated using partial eta squared, was .023). Post hoc comparisons were conducted using Tukey’s HSD test. Applying Tukey’s HSD (HSD = .40) to the three-way interaction, we found significant differences between the following conditions (see Table 1). The strong evidence/longer sentence/defendant wish for trial condition was associated with a significantly higher mean recommendation for a plea bargain than all other conditions. The condition with weak evidence/longer sentence/plea bargain preference was significantly lower than all other conditions, except the lowest; the weak evidence/shorter sentence/wish for trial condition was the least likely to be associated with an attorney recommendation for plea bargaining. None of the other conditions differed significantly from one another.

We considered the importance of a number of other influences on whether participating attorneys would recommend a plea bargain to a client by asking participating attorneys about them directly at the end of the survey, following their ratings of the vignette (see Table 2). The three variables from the vignette were

<table>
<thead>
<tr>
<th>Defendant preference</th>
<th>Trial</th>
<th>Plea</th>
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<tbody>
<tr>
<td>Strong</td>
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<tr>
<td>Long</td>
<td>4.39*</td>
<td>3.50</td>
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<tr>
<td>Short</td>
<td>3.79</td>
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<td>Weak</td>
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<tr>
<td>Long</td>
<td>3.60</td>
<td>2.59*</td>
</tr>
<tr>
<td>Short</td>
<td>2.07*</td>
<td>3.40</td>
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*Significantly different from all other conditions using Tukey’s HSD.
generally rated among the most important, with likelihood of the defendant’s conviction based on the strength of the evidence rated close to extremely important, the value of the negotiated plea based on the potential sentence if convicted at trial regarding plea rated between important and extremely important, and the defendant’s wishes rated slightly above important. In addition, the judge assigned to the case was rated important.

**DISCUSSION**

This study replicates, in part, the finding from McAllister and Bregman (1986b) that, for criminal defense attorneys, likelihood of conviction based on the strength of the evidence and potential sentence are important considerations in plea bargaining decision-making. When interacting with potential sentence and defendant’s wishes, criminal defense attorneys are generally more likely to recommend a plea when the evidence against the defendant is strong and generally less likely to recommend a plea bargain when the evidence against the defendant is weak. In particular, attorneys are most likely to recommend a plea for a defendant with strong evidence against him/her when that defendant is facing a long potential sentence and when that defendant states a preference to go to trial. This is not surprising, and is consistent with the notion that a plea bargain should be considered a more favorable option when there is less chance of winning the case at trial. In addition, under two of the four conditions of weak evidence (long sentence/defendant preference to plea and short sentence/defendant preference to go to trial), attorneys were least likely to recommend a plea bargain. This suggests that attorneys recognize that weak evidence against a defendant may increase the chance of success at trial and are making plea recommendations consistent with the evidence even under differing conditions of potential sentence and defendant’s wishes.
The findings from the present study continue to suggest that potential sentence is important, but suggest that its importance is fairly complex; criminal defense attorneys sometimes consider the defendant’s potential sentence if convicted, but do so in combination with other factors and in not so predictable a manner. Criminal defense attorneys most strongly considered the potential sentence along with the strength of the evidence in plea recommendations when the defendant has stated a desire to go to trial: the attorney was most likely to recommend a plea when the defendant was facing a longer sentence if convicted and the evidence was strong, and conversely least likely to recommend a plea when the defendant was facing a shorter sentence if convicted and the evidence was weak. However, in all other conditions, the importance of potential sentence seems less clear and appears to depend more on the other two variables.

Defendant preference emerged as a relevant third variable in attorney plea recommendations. The results suggest that defense attorneys may advise defendants differently depending on whether the defendant prefers a trial or a plea bargain. When interacting with potential sentence and evidence strength, a defendant’s wish to plea bargain appeared to impact attorney plea recommendations less clearly along with the other conditions than when a defendant stated a wish to go to trial. A defendant’s wish for trial generally elicited the attorney’s strongest recommendations to plea under most conditions (particularly when interacting with strong evidence and differing conditions of potential sentence) and the weakest recommendation to plea (when interacting with shorter potential sentence and weak evidence). Only in one condition of combination of evidence strength and potential sentence—when the evidence was weak and the sentence was short—did the attorney make a recommendation to plea or go to trial consistent with the wish of the defendant. In two of the other conditions (strong evidence/long potential sentence and weak evidence/long potential sentence), attorneys were more likely to recommend a plea when the defendant wanted to go to trial than when the defendant wanted to plea bargain, while the defendant’s preference had little impact in the strong evidence/short potential sentence condition. These findings suggest that there may be a trend for attorneys to more strongly recommend a plea bargain against a defendant’s stated wish to go to trial, particularly when the evidence against the defendant is strong. This makes some sense, as perhaps an attorney, in the role of advisor, feels the need to more strongly convince the defendant to accept the better option (the plea) when the attorney feels the chance of success at trial is poor.6 Consistent with this, an attorney may feel less of a need to act strongly in this role of advisor when the defendant is making the best legal choice (when the evidence is weak and the defendant is facing a shorter sentence). Why attorneys’ recommendations under strong evidence and longer potential sentence conditions were not stronger when the defendant stated a preference to plead guilty is unclear.7 However,

6With adolescent defendants, the preference for plea may be influenced directly by advice of counsel. Viljoen et al. (2005) reported that adolescent defendants planning to plead guilty were more likely to have been advised to do so by their attorneys than were adolescents who planned to plead not guilty.

7One possibility, although purely speculative, is that attorneys interpreted their rating of how likely they would recommend a plea bargain, using a five-point scale, as some crude, although not exact measure of how enthusiastically they needed to make that recommendation. If that is the case, that might help explain why attorneys made stronger plea recommendations against their client’s stated wish when defendants stated a preference to plea; attorneys might simply have felt that they did not have to make a strong recommendation if the defendant was already, appropriately, considering a plea bargain.
the findings do suggest that, perhaps contrary to psychological theories such as procedural justice and therapeutic jurisprudence, attorneys are generally advising in ways inconsistent with defendant preference. Why this might be warrants further investigation.

Another implication from these findings is that criminal defense attorney decision-making regarding plea recommendations appears more complex than both the decision theory approach of Nagel and Neef (1979) and the shadow-of-trial model of Mnookin and Kornhauser (1979). These results suggest that criminal defense attorney plea decision-making involves more than just considering the potential sentence and probability of conviction. The finding of an additional variable is relevant because it may help explain why attorneys do not think so rationally as in an expected value scenario, and this is because they consider more than just sentence severity and probability of conviction. The findings from the study suggest that there is at least one additional variable—defendant’s wish—that criminal defense attorneys consider along with potential sentence and evidence strength. Somewhat surprisingly, they seem to advise against that stated wish in most situations. In addition, the more informal part of our research suggests that there may be at least one other variable (judge assigned to the case) that criminal defense attorneys consider important.

Using a vignette-based approach, there are several limitations to this study. A vignette obviously does not begin to cover the range of cases and circumstances faced by defense attorneys, something that can be accomplished only through further research. In addition, this was a study of perceptions, based on hypothetical vignettes. It remains to be seen whether real behavior in legal contexts is consistent with these perceptions—and to what extent. The vignette-based approach allows systematic manipulation of independent variables, but also limits the number of such variables that may be employed. We had some evidence from the factors endorsed at the end of the survey that we selected among the most influential factors—but further study will promote better understanding of whether we have correctly identified the range of potential influences on plea bargaining. Another limitation involves our response rate (33%) and our sample (criminal defense attorneys in a U.S. east coast major metropolitan area). Both raise questions about the generalizability of present findings, which will need replication before we can be reasonably confident about their applicability.

This study represents a further exploratory step in studying defense attorney decision-making in recommending plea bargains. Future research could profitably investigate the perceptions of the other parties—defendants and prosecutors—in the plea bargaining process, as well as the actual behavior of these actors when engaging in plea bargaining. More specifically, such research could address perceived coercion in plea recommendations, the nature of attorney plea advice communication in general (if this advice is communicated qualitatively or quantitatively and how defendants view this communication) and the factors relevant to the interaction of all parties.

The findings from this study may have implications for the psychological theories of procedural justice (Lidz et al., 1995) and therapeutic jurisprudence (Wexler, 1990; Wexler & Winick, 1991, 1996; Winick, 1999). For example, future research might focus in more detail on the relationship between defendants’ wishes, what is broadly “therapeutic,” and the interactions of these influences with other factors.
Determining to what extent attorneys are influenced by client wishes and what type of advice or communication is considered “therapeutic” when attorneys do or do not listen to client wishes may have future relevance, as may considering other extra-client situational factors, such as ones we attempted to investigate in the questionnaire.

This study furthered the limited existing research on plea bargaining by investigating some of the relevant factors that affect criminal defense attorney decision-making in plea bargain recommendations. This is both very important (the vast majority of criminal cases are disposed of by plea bargains) and grossly understudied (little research to date has examined the plea bargaining process). We hope that these findings will reverse a 20-year trend involving almost no empirical research whatsoever in this area, and stimulate other empirical investigation into the plea bargaining process so that we may better understand this complex and important process.

REFERENCES


APPENDIX
SAMPLE VIGNETTE

Mr. A is a 30 year old male charged with several state criminal charges. If convicted of all of his charges, he could receive a prison sentence of up to 10 years. This is his first offense. Neither the prosecutor nor the judge has expressed any particular preference for a negotiated plea. However, Mr. A told you that he would prefer to dispose of the case as quickly as possible because these charges are very stressful to him and his family. He added that he would prefer to quickly work out a plea, even if it includes some prison time, rather than risk prolonging this experience and possibly serving 10 years in prison. Based on your experience and an initial conversation with the prosecutor, you are aware that the particular facts of Mr. A’s case would allow a plea bargain of up to 5 years in prison if the defendant were to plead guilty to a lesser charge. Based on the strength of the evidence, you believe that the prosecutor has a weak case, and you evaluate Mr. A’s chance of acquittal at trial on all charges as good. Neither the prosecutor nor the judge assigned to the case has any particular reputation that would affect your recommendation on plea bargaining in this case.

Variable of potential sentence:

(1) **long sentence condition**—10 year sentence if convicted at trial versus 5 year sentence if plea;

(2) **short sentence condition (replacing numbers in bold)**—3 year sentence if convicted at trial versus 18 month sentence if plea.

Variable of defendant’s plea wish:

(1) **preference to plea condition**—as written above in underlined text;

(2) preference to go to trial condition (replacing underlined text)—However, Mr. A told you that he would prefer to go to trial because he is innocent and wants to clear his name and does not care how long it takes to resolve his case.

**Variable of likelihood of conviction based on strength of the evidence:**

1. weak evidence condition—as written above in bold/italic;
2. strong evidence condition (replacing text in bold and italic)—Based on the strength of the evidence, you believe that the prosecutor has a strong case, and you evaluate Mr. A’s chance of acquittal at trial on all charges as bad.