

Representatives of Justice: Racial Bias in Legal Representation

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This paper analyzes how legal representation affects defendants' criminal proceedings, particularly in their sentencing phase. This qualitative research utilizes various case studies to examine the differences between the outcomes minority defendants get that result from having a public defender. These case studies reveal that there is a racial bias in this type of legal representation with minority defendants receiving worse sentences as opposed to their white counterparts. The findings illustrate yet another aspect of systemic racism that is not only linked to the criminal justice system itself but to its legal actors as well.

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Introduction

Plea bargaining is the leading resolution for criminal cases with approximately 90% of criminal cases ending with a plea which leaves less than 10% of criminal cases actually going through the trial and court processes. But why is it that defendants take these plea deals instead of taking a chance at trial or better yet why do defendants who are factually innocent take plea deals? It is because plea bargains allow the courts to run quickly and efficiently but how can this be a true representation of justice in the United States criminal justice system. The criminal justice system clearly has revealed racial disparities in criminal defendants of minority backgrounds and plea bargained deals can play a large part in these disparities. According to the National Institute of Justice as of 2008, in the United States, Black and Hispanic men are disproportionately incarcerated where “1 in 9 Black males are incarcerated, 1 in 36 Hispanic males are incarcerated versus the 1 in 106 White males are incarcerated” (United States Department of Justice). There are many socioeconomic factors that can play a huge role in these racial disparities like educational background and resources to wealth but the one I focus on is the effectiveness of counsel when it comes to plea bargained deals because it is a factor that is determined not by the defendant but by the other parties involved. The topic holds importance because researching the racial discrepancies there are in the criminal justice system can better our understanding where these disparities are stemming from and hopefully improve racial equality throughout the system.

The question this paper investigates is: what is the effect of obtaining a public defender on plea bargained deals and is this effect conditional on the defendant’s race? Public defenders have always had a reputation that they are overworked, backlogged with a large caseload so their first instinct is to go for plea bargained deals seen as the best-case scenario for all parties except the defendant especially when they are from a minority ethnic and race group. This paper seeks to what extent is the effectiveness of public defenders in getting their minority defendants the best outcomes in criminal cases.

I argue that there are racial disparities in plea bargained deals when a minority defendant has a public defender as counsel that does not benefit the defendant in terms of the best outcome scenario. Over the course of other observations, I have already witnessed, it seems that privately attained lawyers seek the plea deals just as much as public defenders so a possibility could be that the plea bargaining system is just the shortcut of the criminal justice system which saves all the parties involved time, money, and resources.

I collect evidence by attending public court hearings that are issuing plea bargained deals at a local Southern California courthouse. The methodology I use is qualitative research with nine different plea bargained deals with hopes that the defendants obtained a diverse set of defense counsel as well as witness a diverse group of defendants ranging from Black, Hispanic, and White. I seek to observe the defendant’s race, whether the counsel was a public defender or privately attained, and what kind of plea deal was agreed upon. Other important factors I have made sure to note as it pertains to each case, is the type of criminal case being heard such as misdemeanor or felony charges, in which perhaps there is also a discrepancy in plea bargains regarding the severity of cases as well as any prior criminal history background of the defendant.

Literature Review

To commence my research followed by experimenting with new data, we must first understand what has already been found as well as what is still unknown about this topic of plea bargained deals and its correlation to the racial injustices and disparities in the United States criminal justice system. As I have mentioned previously, plea bargains in the criminal justice system have been vastly controversial for a variety of reasons both that are viewed negatively and positively because there are advantages and disadvantages of the plea bargain system. Some of the positive thoughts viewed by people in favor of the plea bargain system are that it creates efficiency in a timely manner between the thousands of cases seen by courtrooms, clears up the caseload of lawyers and judges, and lessens the uncertainty of going

to trial without knowing the outcome. While these all may seem advantageous there are some negative thoughts viewed by critics that it causes inequities and instability of outcomes between defendants, desensitization of criminal activities, injustice for victims of crimes and the list goes on. The critique that I seek to uncover is the inequalities the plea bargained deals cause, more specifically the racial inequalities it causes.

In this literature review, I will first review the injustices that come as a result or in the process of the plea bargaining system to set the basis of how plea bargains are not created to seek justice but rather shortcut its way through it altogether. Secondly, I will then elaborate on the racial disparities and discrepancies there are prevalent in the criminal justice system to create a foundation of how there are a multitude of ways in which the minority groups of Blacks, Hispanics and/or Latinos are severely oppressed and overly policed as opposed to their White counterparts. Lastly and most importantly I will connect these two ideas to address the issues relevant to my research question and that is to explore the racial disparities directly caused by plea bargains in criminal cases.

The Injustices of Plea Bargains

In this section I will set the basis of how plea bargains in of themselves do not exemplify the notions of seeking justice in the criminal justice system as well as the 5th Amendment of the United States Constitution right of innocent until proven guilty. Every single criminal defendant in the United States has the presumption of innocence until they are proven guilty, but this presumption is somehow lost in translation in the process of pretrial motions especially in plea bargains. Authors Michael Beenstock, Josh Guetzkow and ShiKamenetsky-Yadan elaborate on this injustice in their article Plea Bargaining and the Miscarriage of Justice by explaining how plea bargains do not prove advantageous in the criminal justice system. The authors researched on empirical studies that confirmed and proved two things; one being that plea bargains lead to wrongful convictions by convincing factually innocent defendants plead guilty out of fear

and secondly that “the probabilities of shadow trial convictions are smaller for plea bargainers than for observationally similar defendants who were tried in court” (Beenstock, et al., 63). Their research confirmed existing studies that evaluated the effect plea bargained deals have on wrongful convictions and innocent people taking these deals as opposed to going to trial and facing the uncertainties. Plea bargaining deals take advantage of criminal defendants who are already fearful and worried about what their future might hold when there is too much at stake if they refuse the deal. Prosecutors use this to their advantage and apply even more pressure to defendants by sharing alternate outcomes which are far less favorable to them and may not even be the truth. Besiki Kutateladze and Victoria Z. Lawson go into depth on the many ways in which plea bargains are not a bargain at all, at least for the sake of the defendants. They elaborate in their article Is a Plea Really a Bargain? An Analysis of Plea and Trial Dispositions in New York City on just how heavily relied upon plea bargains are and why prosecutors instill fear into defendants to convince them to take the plea deal instead of taking their case to trial. “Perhaps the most important findings of the study...that conviction is not a foregone conclusion if one opts for trial” (Kutateladze et al., 879). My research will coincide with that of the two articles mentioned previously and attempt to find the correlation it may have with racial discrepancies, if any.

Closely related to the power prosecutors yield requires us to ponder how can one ensure a plea bargain is just and fair among defendants who are accused of the same crimes? Granted trials are just as unpredictable because one can never predict what a jury might decide but the process of creating and carrying out a plea bargain is all controlled by one person; the prosecutor with of course the approval of the judge. The prosecutors are ultimately the ones who have the upper hand in these criminal cases and carry their almost unlimited discretionary prosecutorial authority in determining how and what they will offer in plea bargaining processes.

In conducting their research in *Seeking Justice by Plea: The Prosecutor's Ethical Obligations During Plea Bargaining*, author, Palma Paciocco, offers proposals on alternate approaches prosecutors utilize in plea bargaining processes in which fulfilled their duties to seek justice but do so ethically, fairly and justly. Paciocco proposes that instead of abolishing the plea bargain system altogether, mandating proper regulation and a clear structure for carrying out plea bargains can improve the system, (Paciocco, 50). This article will be implemented in my research as a tool for evidence that plea bargain does in fact cause injustices and therefore must be examined for regulations to improve the system overall.

Aside from these issues, structural issues and psychological biases arise as StepanhosBibas mentions in their article *Plea Bargaining Outside the Shadow of Trial*. Bibas emphasizes the importance of structural forces like “agency costs, attorney competence, and workloads” as well as psychological biases like “uncertainty, money, and demographic variation” (Bibas, 2464) and their influence on plea bargains. Bibas argues there are a vast range of factors that need to be assessed in plea bargaining that go beyond the mere merits of the courts. This research proves factual as they find that “Rather than basing sentences on the need for deterrence, retribution, incapacitation, or rehabilitation, plea bargaining effectively basis sentences in part on wealth, sex, age, education, intelligence, and confidence” (Bibas, 2468). I will use this article as proof that plea bargaining is not about ensuring that justice is served, these influences, although not directly stated, also include race as Black and Hispanic/Latino men make up the largest portion of the prison population which allows this research to tie into the socioeconomic aspects that occur in plea bargains.

Additionally, there are also socioeconomic factors that play a huge role in the outcomes of plea bargaining to favor or not favor defendants. A part of my research will seek to evaluate the influence privately attained lawyers have on plea bargains versus public defenders. I utilize

BesikiKutateladze and Victoria Lawson's article to support my research in this aspect as they also explore this perspective. They discover that there is in fact a difference in attempts to go to trial rather than have their clients take plea deals, they write, “...we did find that defendants represented by private attorneys were more likely to go to trial. This finding may suggest that public defenders were perhaps taking only the cases with ambiguous evidence (i.e., those considered unambiguously “winnable”) to trial whereas private attorneys were taking a larger spectrum of cases to trial” (Kutateladze et al., 880). This allows for my research to take these findings and apply them further to explore the possible correlation of these attorneys' effectiveness and effort to any racial biases and/or disparities.

The Racial Disparities in the Criminal Justice System

Now that I have set the foundation of how the plea bargaining system in of itself promotes inequalities in its practice, I will now discuss the numerous ways in which racial disparities appear in the criminal justice system as a whole because plea bargains are just one portion of the system in its entirety. In this section, I will assert literature that has researched extensively on not only the occurrence of racial disparities but the various causes as to why there are racial disparities in the criminal justice system as well as possible solutions to combating these inequalities.

The increasing support of the Black Lives Matter Movement has emerged from police brutality on the Black community, specifically Black males. With the fatal police shootings of Travon Martin and George Floyd, this movement has soared for social and political change in the extremely flawed criminal justice system. Author Margaret Kovera describes in their literature, *Racial Disparities in the Criminal Justice System: Prevalence, Causes, and a Search for Solutions*, how the racial disparities in the criminal justice system begin in the policing of minorities, the prison populations with vast majority being Blacks, and ultimately end with the participation of juries, (Kovera, 1140). To

add to the role that police play into the racial disparities in the criminal justice system as Kovera sheds light on, authors Jaeok Kim and André Kiesel also argue the points she makes in their article, *The Long Shadow of Police Racial Treatment: Racial Disparity in Criminal Justice Processing*. These two pieces of literature are extremely important to the fundamental foundation of the research at hand because we must understand all key components and actors that take into account these racial disparities that have been repeated continuously for decades.

Similarly, author, Michael Tonry, goes into detail about the historical roots of racism and segregation and how these are deeply prevalent in the criminal justice system as Black men are overly represented in the prison population. Tonry explains the causes of the racial disparities between Black Americans and white Americans in their article *The Social, Psychological, and Political Causes of Racial Disparities in the American Criminal Justice System*. This piece of literature is extremely important to the current research at hand because it proves indeed there is a racial disparity in the criminal justice system which was already known; however, it reveals the causes as to why there are these disparities which were rooted into the system for decades.

Taking a closer look at the social causes of racial disparities, authors Rebecca Hetey and Jennifer Eberhardt, examine the irony of the racial disparities in numerical statistics which have the opposite effects on people. One would think that by viewing statistics of incarceration rates where Blacks are 5.1 times more likely to be incarcerated than whites, would promote people to feel strongly against over policing in Black communities and less punitive policies but in fact it does the contrary as Hetey and Eberhardt discovered in their article *The Numbers Don't Speak for Themselves: Racial Disparities and the Persistence of Inequality in the Criminal Justice System*.

There is an additional way in which racial disparities appear in the criminal justice system which move away from social, historical, and political causes, which is the legal factor of the magistrate themselves and other discretionary

authorities such as the prosecution. Shawn Bushway and Anne Morrison, research the effects of judicial discretion in racial discrimination when it comes time for criminal sentencing in their article, *Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing*. They explain that there is no clear-cut guideline for sentencing, there are many factors that a judge considers when sentencing a defendant and these factors can very well be skewed to be racially biased. In their research they found “that African Americans have 20% longer sentences than whites, on average” (Bushway et al., 761), which unfortunately proves the racial biases that judges may have when it comes to defendants of color. To redress, this literature is also important because as mentioned previously, understanding the key factors that play a role in these injustices is crucial and will help better examine my research by being able to view which components, if any, are affecting the racial disparities as a result of plea bargaining.

The Racial Disparities in Plea Bargains

Legal Factors and Structure

Now that the foundational basis of how there are injustices of the plea bargain system and the racial disparities of the criminal justice system have been discussed, we will begin to examine the literature that specifically connects these two themes and whether they are dependent on each other. This section of the literature review will discuss how there are racial disparities in the plea bargaining process, more specifically how these disparities appear in the system's structure as well as the legal factors that play a role in them.

It is clear through the literature that has been examined thus far that there are in fact discrepancies between races of defendants in the criminal justice systems, in more ways than one, but which factors are the ones that cause these discrepancies is what this research seeks to uncover, more specifically the factor of counsels. In the article, *Race and the Probability of Pleading Guilty*, by author Celesta Albonetti, they first examine the already established factors that influence guilty plea deals to confirm if

these prove true in their research which it does. They then apply these factors to view if there are any factors that differentiate between Black and white defendants in which they find there are. Surprisingly enough however, the results of this literature came as a shock to me because my expectations and assumptions were that minority groups, specifically Black and Hispanic/Latino men, were much more likely to agree to a plea deal than white men. But in this research, Albonetti discovers that Black defendants are less likely than white defendants to take a plea deal in general, a reason they offer is due to the distrust they may feel in the criminal justice system as a whole due to its racial biases throughout history, but this likelihood of taking a plea deal when looked at with privately attained counsel decreases even more whereas the likelihood of a white defendant taking a plea deal increases with a privately attained counsel.

Author Vanessa Edkins elaborates further on Albonetti's research in their article, *Defense Attorney Plea Recommendations and Client Race: Does Zealous Representation Apply Equally to All*, by taking a closer look on the overall representation a defendant has regardless of whether they obtained private counsel or given a public defender. The research compared the difference in the recommendations given by counsel to both Black and white defendants and found that attorneys across the country were three times more likely to encourage a plea deal, even if it included jail time, to a Black defendant rather than a white defendant. A more recent study, researched by authors Christi Metcalfe and Ted Chiricos, in their article *Race, Plea and Charge Reduction: An Assessment of Racial Disparities in the Plea Process*, confirms once again Albonetti's findings. Based on their research sample of felony cases, Black defendants were less likely to take a plea deal and were also given less favorable outcomes compared to white defendants. They also added in their research what factors predicting the likelihood of agreeing to a plea deal were and found these factors differentiated between the races. This is crucial for my research at hand because it correlates to the general

understanding that one of the disadvantages to the plea bargaining system is that these deals are being offered and discussed behind closed doors and there is an increased risk of coercion between the counsels and defendant especially for minority defendants who have everything to lose.

Quite similarly, Jeffrey Weatherly and Andre Kehn take these pieces of literature further and put them to the test. In their article, *Probability Discounting of Legal and Non-Legal Scenarios: Discounting Varies as a Function of the Outcome, the Recipient's Race and the Discounter's Sex*, they add a twist to the literature that has been thus far presented by experimenting with hypothetical scenarios in which students decided on the discount of punishment for various crimes with respective defendants of different races. This experiment found a racial bias only when the defendant was African- American between male and female students who were deciding the discount. This piece of literature is important as such are the others for two reasons; one for the strengthening of how the plea bargain system is racially biased and two because it allows for new studies to expand on a different factor that causes racial injustice different than the type of counsel examined in this research. This study also reveals the intersectionality of race and gender, this can vary between the race and gender of the defendant as well as the race and gender of both defense counsel and prosecuting attorney.

Elayne Greensberg agrees with Michael Tonry and their perspective on the racial biases and disparities within the criminal justice system. Greensberg elaborates on Tonry's work, in their article, *Unshackling Plea Bargaining from Racial Bias*, and expands by centering in on the plea bargaining system rather than the criminal justice system as a whole. Like Tonry, Greensberg explains the historical aspect of racial biases and how it has been rooted into the criminal justice system where it is very prevalent still today. They add to their research by not only discussing how prosecutors and defense attorneys play a role in how their personal

biases affect their work when dealing with Black defendants as well as offering possible resolutions for legal actors to contain their racial biases to prevent from racial disparities at the hands of the judicial system. All of the literature that has been reviewed thus far in this section shed light on the legal and structural aspects that factor in on the racial biases in the plea bargaining process that prove detrimental for my research.

Convictions and Sentencing

To conclude this review of literature, this final section will offer the ways in which research has found there to be racial disparities in the convictions and sentencing steps in the criminal justice system after a guilty plea has been accepted by a defendant. We have taken a look at how the process of accepting a guilty plea has negative consequences in terms of racial disparities, but these disparities only continue further once a plea deal has been made and agreed upon. Under judicial discretion, convictions and sentencing have always been ambiguous only because there are only suggestions for punishments, not mandatory rules to follow when convicting and sentencing occurs. This allows room for personal biases to appear in the sentences when it comes to defendants of different races.

The findings in Porche' Okafor, Patricia Warren and Eric Stewart's article, *Plea Bargaining and Trial Decisions in Context: An Examination of Disparities in Punishment*, reveal firstly that judges in criminal courts are less likely to unreasonably sentence Black and Latino defendants with more severe punishments. They offer the mere explanation being that they are less punitive because they simply cannot be due to strict penal codes they must abide by. They argue that judges do not enjoy the loose, minimal judicial discretion they have in plea bargained settlements because there are no set in stone rules since the plea deal is primarily determined by the prosecutor. To elaborate further, if a defendant decides to go to trial, specifically a Black or Latino male defendant, they will be more likely to receive a severe sentence from a plea deal than they

possibly will in trial because judges are more constrained in sentencing by laws and precedent following a trial. However, the authors do advise that there are other aspects that should be taken into account such as the social context in which cultural and ethnicity of the studied locations play a role in these outcomes.

The separate aspect Okafor suggests that should be considered is the social context of where these racial disparities are occurring because the cultural and ethnic population of a given area does matter and can affect these criminal processes in many ways. In the previous literature, the results did not prove their hypothesis of their third qualifier that examined if the racial disparities differentiated between geographical areas, theorizing that the disparities were greater in areas with high minority poverty concentration. While this may have not been proven true, Danielle Rousseau and Gerald Pezzullo argue the opposite. In their article, *Race and Context in the Criminal Labeling of Drunk Driving Offenders: A Multilevel Examination of Extralegal Variables on Discretionary Plea Decisions*, they discovered that levels of racial profiling in highly policed areas as well as "better off" communities are a large predictive indicator of a guilty plea deal taken by the defendant. In addition, the defendant is more likely to receive an unfavorable plea outcome if they are a man, non-white, have a prior arrest and the location of the arrest is a highly racially profiled area. Despite this finding not being proven in Okafor, et al.'s article, both pieces of literature are helpful in my research because it allows me to examine each to determine what factors come to respective outcomes given the area, I observe is heavily populated with the Hispanic community and is arguably highly policed.

To expand more on the structural aspect of the criminal justice system and how it correlates to the racial disparities we are examining at hand we now take a closer look at John Sutton's article, *Structural Bias in the Sentencing of Felony Defendants*. The results found that there is strong evidence of racial bias in the sentencing stage of a case where Black defendants are 26% more likely to receive

severe sentences than white defendants and Latino defendants are 30% more likely to receive severe sentences than white defendants. Sutton also reveals in their findings that racial discrimination also takes a role in the earlier stages of cases at the point of detaining a suspect. This is concerning because as they explain, any defendants who are detained before trial are more likely to be found guilty, but these results showed that Blacks and Latinos are more likely than whites to be detained so by this chain reaction, detainment alone causes racial disparities apart from all the other aspects the literature has proven.

As I finalize this literature review, we now understand the themes that correspond to the main research question of: what is the effect of obtaining a public defender on plea bargained deals and is this effect conditional on the defendant's race? The themes that I have extensively went into detail about are the injustices of the plea bargain system, the racial inequalities of the criminal justice system and concluded with the theme that ties both together, the racial disparities in plea bargaining.

Research Methodology

To investigate the question this research paper seeks to answer of what is the effect of obtaining a public defender on plea bargained deals and is this effect conditional based on the defendant's race, I carefully planned my research methodology. The methodology that I used to conduct my research was qualitative research in the form of observational fieldwork. This form of research studies was the most appropriate for the given research at hand because it allowed me to view firsthand these racial discrepancies, if any, in the criminal justice system through the plea bargain system. In my opinion, this research question and the implications that came from the results as my research was completed would not be answered effectively with any other forms of methodology.

The observational fieldwork I did took place at a courthouse in Southern California, the exact location is kept anonymous to protect the privacy of all legal actors and other parties involved. A potential downside of my research

methodology is that by choosing only one courthouse, would mean that I would not be able to use this research to explain the racial disparities in the criminal justice system due to plea bargains in all of California, let alone the entire United States in which I discuss in more depth later in this paper. One downside of observational fieldwork in my research was the fact that court cases and trials are unpredictable and there is no telling whether a plea bargain was going to take place regardless of the statistics that more than 90% of criminal cases are resolved through plea bargains. Plea bargains were happening, but I was not lucky enough to be present each time. The fortunate aspect of observational fieldwork, however, is that I did not have to reach a large number of plea bargain deals I observe to obtain sufficient data, I looked for much more than just the plea bargain itself so it ultimately did not matter if I did not see too many plea deals take place just enough to have the data as opposed to quantitative research which takes a statistical approach needing much more data.

The first observation and quite notably the most important for me to make note of, was documenting what kind of counsel the defendant has obtained in terms of whether they were appointed a public defender by the state or did the defendant hire a private defense attorney. This information was easily accessible to me while observing the court proceedings because the names and their roles were listed and stated for the court's records. The second most important observation was a little more challenging to uncover because it was not directly stated in court proceedings, but the demographics of the defendants was needed for documentation as well. To discover the personal background of each defendant I had to utilize the Sheriff's Department Inmate Search website. The information I inquired about the personal background of the defendants regarding their race and gender, other details included the date and time in which they were arrested, past and future court dates as well as where they are currently being held. Inquiries made on this website needed the following information: the

defendant's first and last name, middle name if applicable, and their date of birth. This information was available to me as I explained previously, the names of the parties involved in each case are stated in the court's records which include the defendant's government identification and date of birth.

Other observations that were essential for conducting my research were the documentation of the alleged crime committed by the defendant. I also needed to know whether the alleged crime committed was a felony or misdemeanor as the sentences between the two can vary drastically from community labor to years in state prison. Another thing that I felt important to note was whether or not the alleged crime committed was a violent or nonviolent offense because this factor can influence not so much the severity of the sentence of the defendant but the details and quality of the plea bargained deal itself such as imposing a protective order from a victim or court mandated counseling classes. Similarly, I discovered whether the alleged crime committed was the defendant's first criminal offense or were they repeat offenders with a prior criminal history. This was especially important in the instance where there was a convicted felon who was in violation of their probation to their prior felony. This would also allow the maximum sentence for the alleged crime to be doubled if it were the defendant's second strike. In this sense, the California three strikes law can heavily hinder plea deals of convicted felons. Atlas, I ultimately had to document the plea bargain itself. I noted in my data what kind of plea deal was offered by the prosecution; whether it resulted in dropping and/or lessening the charges made by the state, or whether it resulted in minimal jail time or none. How or why the prosecution came up with the plea deal was a detail I was not able to uncover because of the discretionary aspect behind these deals which are not shared to the courtroom and its judge.

For the purpose of this research and the conduction of my observational fieldwork, I offer some guidelines that are necessary to measure certain instances throughout

the duration of this research. I include the maximum punishments for each criminal felony and misdemeanor offense, this is useful to compare whether a defendant's outcome in their plea deal was more or less reasonable given the possible maximum sentence they could have gotten. An inherently "good" plea bargain deal would potentially mean little to no imprisonment, if it is reasonable considering the offense. For reference, a reasonable punishment resulting from a plea deal for a defendant accused of violent felonies would be prison time but would not be for nonviolent misdemeanors. An inherently "bad" plea bargain deal would potentially mean the maximum punishment for a minimal nonviolent crime. With the observations and the maximum punishment sentences, I was then able to determine whether a plea deal was good or bad because these classifications were made based on the relative observations made solely by me and not outside plea deals not observed by myself.

I was able to make these classifications by standardizing the measurement of each plea bargained outcome. I achieved this by taking the sentences of each individual defendant that resulted from a plea deal and dividing it by the possible maximum sentence for each criminal offense to reach a percentage. For example, if a defendant pleads guilty or no contest to a felony charge where the maximum sentence was ten years in state prison and only received three years in state prison, then the defendant got 30% of the possible maximum sentence. To preface, I used state prison and county jail interchangeably to mean imprisonment generally and not separately. The main difference between the two is that a county jail is typically for inmates who are serving less than a year sentence or for inmates charged with less serious crimes. A state prison, on the other hand, is for inmates who are serving lengthier sentences and/or for inmates charged with more serious crimes. The reason I use both interchangeably is for purposes of clarification and simplicity to measure, evaluate and compare the sentence percentages of each defendant. I determined whether the plea deal was good or bad using

this sentence percentage and the following guidelines: a sentence percentage of 0%-40% was a good plea deal for the defendant, 41%-59% was a neutral plea deal for the defendant and 60%-100% was a bad plea deal for the defendant.

Results: Observational Data

Over the course of several months, I have personally visited courtrooms of the selected courthouse to conduct my research to observe court proceedings and gather my data. To assess the effect of obtaining a public defender on plea bargained deals and whether this effect was conditional based on the defendant's race, I observed numerous court proceedings hopeful of witnessing plea bargained deals. While it was challenging and filled with uncertainty, I successfully managed to document nine criminal cases that resolved their matters through a plea bargained deal. All the observational data occurred in the same criminal courtroom of Department A with Judge A except for one which occurred in Department B with Judge B. Specific names and classifications will be kept anonymous to protect all of the parties involved. The court proceedings in both departments range similarly from arraignments to trials to dispositions because of the nature of court proceedings each department hears, this difference was not enough to skew the results.

As I discuss each observational data of the nine cases I observed, I briefly described the parties involved in the case providing their title, name, race and gender. Description of the parties' title and name is necessary for identification and categorization purposes. Description of the race and gender of the parties is necessary for analytical purposes to examine whether diversity in these social identities create racial bias and disparities when it comes to plea bargained deals of minority defendants contrary to their White counterparts.

1. Observational Data #1

The first observational data was documented with Defendant 1 in Department A. The defendant is a Black male who was represented by public defender, Lawyer A, who is also a Black male. The prosecuting attorney in this case

was district attorney A, who is a White Male. Defendant 1 was charged with a felony of grand theft with a maximum possible sentence of 3 years in state prison and/or a \$5,000 fine. The alleged crime committed was determined to be a nonviolent offense and the defendant did not have any prior criminal history. The defendant ultimately plead no contest to the felony charge and received a sentence of 2 years of probation and 90 days community service. Because there was no imprisonment sentence, the sentence percentage for this observational data is 0%.

2. Observational Data #2 & #3

The second and third observational data occurred simultaneously with codefendants on the same case, Defendant 2 and Defendant 3 in Department A. The first defendant is a Hispanic male and the second is a White male. Defendant 2 was represented by public defender, Lawyer B, who is also a Hispanic male, and Defendant 3 was represented by public defender, Lawyer C, who is a Black Female. Both were prosecuted by district attorney B, who is a White male. Both defendants were charged with felonies of grand theft that were nonviolent offenses similar to Defendant 1, but unlike him, Defendant 2 was a convicted felon and Defendant 3 also had previous misdemeanors. The maximum possible sentence was again 3 years in state prison and/or a \$5,000 fine but in the case of Defendant 2, due to his previous felony conviction it could have potentially been doubled that amount as it was his second felony. He got a very small portion of that maximum of 8 years in state prison, as he plead no contest to 16 months in state prison and did not receive a second strike. Defendant 3 seemed to also be fortunate enough to plead no contest to 180 days in the county jail and 2 years of probation. The plea deal that Defendant 2 accepted gave him a sentence percentage of only 22% and Defendant 3's plea deal was a sentence percentage of 16%. The slight difference in the sentence percentages of the two defendants is quite remarkable given that the first defendant is a convicted felon who is in violation of their parole from his first strike compared to his counterpart who has only had minor nonviolent,

misdemeanors. Although for the purposes of this research, the sentence percentage is calculated by time imprisoned regardless of whether the sentence was to be served in state prison or county jail, it is noteworthy to distinguish the distinction of Defendant 3 serving his sentence in the county jail and not state prison.

3. Observational Data #4

The fourth observational data was also in Department A, and it was a case involving Defendant 4 who is a Hispanic male represented by public defender, Lawyer D, who is a White Male and prosecuted by district attorney A. The defendant was charged with two counts, one count of a misdemeanor child abuse and one count of felony corporal injury on a spouse both in which were violent offenses. The felony charge of corporal injury is defined in legal terms as “willfully inflicting a physical injury resulting in a traumatic condition on an intimate partner” (Eisner Gorin LLP) and has a maximum possible sentence of 4 years in state prison and/or a \$6,000 fine. However, like Defendant 2, this defendant was also a convicted felon, so this maximum sentence for his felony charge could be doubled. On the other hand, his prior felony conviction did not seem to affect his misdemeanor maximum possible sentence which is 1 year in the county jail and/or a \$6,000 fine. The defendant accepted the prosecutor’s offer and plead no contest to 4 years and 3 months in state prison. The 4 years served as part of the felony sentence to his plea and the 3 months served as part of the misdemeanor sentence to his plea in which the 3 months sentence would be concurrent with his felony sentence. A concurrent sentence refers “to a type of sentence judges are able to give defendants convicted of more than one crime. Instead of serving each sentence one after another, a concurrent sentence allows the defendant to serve all of their sentences at the same time, where the longest period of time is controlling” (Cornell Law School), essentially meaning he is not actually serving time separately for the misdemeanor child abuse charge. However technically speaking, the

misdemeanor sentence percentage is 25% and the felony sentence percentage is 50% which was the highest percentage out of all the plea bargained cases.

4. Observational Data #5

The fifth observational data observed was with Defendant 5, which also took place in Department A with the same presiding judge. The defendant is a Hispanic male who was represented by public defender, Lawyer E who is a Black female. Defendant 5 was prosecuted by district attorney B and charged with a felony of evading the police. The alleged crime committed, although reckless and dangerous, is considered nonviolent and the defendant did not have any prior criminal history. The defendant could have possibly faced a maximum possible sentence of 3 years in state prison and/or a \$10,000 fine and/or probation. The defendant took the prosecutor’s deal and plead no contest to 16 months in state prison. He accepted a plea bargained deal with a sentence percentage of 44%.

5. Observational Data #6

The case of Defendant 6 was the sixth observational data documented which again occurred in Department A. The defendant in this case is a Black male who was represented by a previously mentioned public defender, Lawyer B, and prosecuted by repeat district attorney B. The defendant was charged with a felony of robbery, which was a violent offense and his first criminal charge. The maximum possible sentence Defendant 6 could have been sentenced to is 9 years in state prison and/or a \$10,000 fine. This case took a surprising turn when the judge released the defendant out of custody on his own recognizance due to the minor nature of the alleged crime. Even more shockingly both the district attorney and the judge offered the defendant a plea deal which is very uncommon for a judge to do so. The prosecutor offered the defendant a plea deal of 2 years in state prison while the judge offered a plea deal of 60 days community labor not to be confused with community service. Although the defendant has until his preliminary hearing set for May 28th to decide whether he will accept either of the plea

offers, this case was truly unexpected for several reasons. One being that the judge ordered the defendant charged with a violent felony to be released on his own recognizance. This is usually not the case for felonies as most judges would require a defendant to post bail given that felony crimes are much more serious and tend to have a violent factor. Another reason this case was unexpected was that the judge offered a plea deal to the defendant. It is exceedingly rare for the judges themselves to give plea bargained offers to defendants. Lastly, the other reason being that the plea offers were noticeably different in severity of the punishment. It was quite interesting to observe that the district attorney's plea offer was more punitive than the judge's offer. Theoretically speaking, if the defendant chose to accept the district attorney's offer, he would be getting a possible sentence percentage of 22% whereas he could get a possible sentence percentage of 0% if he chose to accept the judge's offer.

6. Observational Data #7

Defendant 7's case was the seventh observational data recorded and was the exceptional court proceedings that took place in Judge B's courtroom located in the criminal court, Department B. The defendant is a Hispanic male who was represented by public defender, Lawyer F, who is a Hispanic female and prosecuted by district attorney C who is a Hispanic male. Defendant 7 was charged with a felony count of vandalism of \$400 or more, which was classified as a nonviolent offense. The defendant did have a prior criminal history but was not a convicted felon. The maximum possible sentence for this type of felony is 3 years in state prison. The defendant accepted the prosecutor's plea offer and plead no contest to 16 months in the county jail and a \$1,295 restitution fee ordered to the victim as well as two other charges dropped. In conjunction with the jail sentence and restitution fee, a 10-year protective order was also issued to prevent the defendant from having any contact with the victim. The sentence percentage for Defendant 7 was 44% despite being sentenced to county jail and not state prison. (Please find Figure One

attached before Works Cited).

Figure 1 depicts the observational data in a charted format in the order in which they were observed. Upon viewing this chart, several results can be observed after examination. It was apparent that the majority of the defendants were Hispanic which represented 57% of the total male defendants in the observational fieldwork conducted, following were Black defendants which constituted 29% of the total male defendants, and the single White defendant which represented 14% of the observational fieldwork. Another distinction that can be noticed was that the Hispanic defendants did receive the highest sentences compared to the Black and White defendants; however, the White defendant received a higher sentence than both Black defendants. This distinction is of more importance when considering all the defendants were facing felony criminal charges with a maximum possible sentence of at least 3 years in state prison.

Moreover, the following two cases were not finalized and not given much detail about the alleged crimes committed when being described by the judge for the court's records. Limitations in this aspect are discussed in further detail later in this paper. Nonetheless these cases are still important to the research because it shows the diverse intersectionality of race and gender being factors of plea bargained deals. Both cases involve female defendants and both women were charged with a felony of child abuse.

8. Observational Data #9

Shortly after, in the same courtroom, was Coincidentally, the cases occurred one after the other which is of great importance when comparing the two.

7. Observational Data #8

The first case of Defendant 8 in Department A with Judge A was already in progress when I entered the courtroom, but I was able to catch the last portion of the case when the judge was reading the court script for the record. Defendant 8 is a Hispanic female and was appointed a previously mentioned public defender, Lawyer A, who is a Black male. District attorney A, a White male, represented

the People and charged the defendant with a felony of child abuse. This charge was considered violent in nature; however, this was the defendant's first criminal offense. The felony charge has a maximum possible sentence of 6 years in state prison and/or a \$6,000 fine. Although the plea bargained deal offered by the prosecutor was not described for the court record, the defendant plead no contest to the felony charge and a sentencing hearing will be held at a later date in May.

The case of Defendant 9

The defendant is a White female who was represented by public defender, Lawyer G, a Hispanic male. Similar to the previous case, the defendant was charged by repeat district attorney A with a felony of child abuse which was violent in nature with no prior criminal history but was out of custody on her own recognizance. Again, the maximum possible sentence for a felony of child abuse is 6 years in state prison and/or a \$6,000 fine. Unlike Defendant 8, however, the district attorney went into great detail describing her plea deal in which she accepted by pleading no contest. First and foremost, the prosecutor declared the charge a wobbler which means "the prosecutor can choose to file the case as a misdemeanor or felony case depending on: The specific circumstances of the alleged child abuse case and the criminal history of the defendant" (Eisner Gorin LLP). On top of this, the plea deal offered by the prosecutor was characterized by 30 days of community labor, not to be confused with community service, and 52 hours of parent counseling classes. The district attorney and the judge went over the details of the offer extensively, in that there would be a progress hearing in six months from that court date and a sentence hearing in six months following the progress hearing. To reiterate, Defendant 9 will have a whole year to complete both parts of her plea deal before she is sentenced. During this sentencing hearing, the court will determine and verify she completed the community labor and classes. If proven to be successful, the charge will drop from a felony of child abuse to a misdemeanor of child

abuse. In addition, if successful, she will only be sentenced to 3 years of probation. However, if she fails at completing the community labor and classes within the one-year time frame, the charge will remain as a felony of child abuse and she will be on probation for 5 years instead of 3 years, with an additional 15 days of community labor.

As stated previously, both cases have yet to be closed, Defendant 8's case will not be finalized until her sentencing hearing in May of 2023 and Defendant 9's case will not be finalized until her sentencing hearing next February of 2024. The comparison of the two is significant for multiple reasons. The first reason being that the cases were heard directly after the other and had almost opposite outcomes. The second reason being the differentiation of the racial backgrounds, Defendant 8 who is Hispanic and Defendant 9 who is White. And although, the plea bargain was unclear in the case of Defendant 8, the contrast between both cases in how they process each felony of child abuse was remarkable, given that the second defendant had her felony be filed as a wobbler offense while the first defendant did not. Another important factor that was noteworthy was the fact that Defendant 8 was still in custody while her white counterpart had been out on her own recognizance, which takes prior criminal history into consideration. Regardless of the specific sentence Defendant 8 will receive because of her pleading no contest, this outcome was worse than the outcome Defendant 9 received as a result of her plea deal because no matter what, she will have a felony offense on her criminal history meanwhile Defendant 9 has the opportunity to have a lesser offense.

Analysis of Results- What does this all mean?

There are numerous implications that were revealed upon examining the observational data that has been recorded. Firstly, to my dismay, I did not observe any privately attained attorneys in my plea bargained observational data or in any court proceedings for that matter. This reveals an implication that most cases, regardless of whether or not it was resolved through a plea bargained deal, are being handled by a public de-

fender. This can also prove the literature I have studied to be true, as one article found that privately attained attorneys were more likely to go to trial for their client whereas public defenders, not so much. This could be for several reasons, one being the economic factor of cases being a transaction of services from the private attorneys to their defendants who ultimately are their purchasing clients. Since most defendants do not have the ability to afford a private attorney, most of the cases are appointed to public defenders. This can also be tied into the previous literature to explain another reason as to why this prevails true in that there are simply too many cases that public defenders have to handle at a time, so this creates a backlog of court matters that need to be put through and plea bargains help move the flow of the courtrooms.

Another significant finding was that 55% of my observational data regarding plea bargained deals involved Hispanic defendants both male and female. Arguably, this can be a possible implication that Hispanics are committing more crime in the area than their White and Black counterparts or merely that I simply did not gather enough observations for a lengthier amount of time. This can also be an indication that Hispanic defendants are more likely to take a plea deal than White and Black defendants which concurs with what the literature review has shown that argue Black defendants are less likely to take plea deals due to their distrust and lack of confidence in legal actors like defense counsel and district attorneys. Adding to that, surprisingly, the Black defendants were given better plea bargained deals compared to their White and Hispanic counterparts. The Hispanic defendants, however, did receive worse plea bargained deals than both White and Black defendants but were still not bad plea deals according to my measurements of their sentence percentages. To simplify, no one defendant got an inherently bad plea, all the defendants in my observations got a good or neutral plea bargained deal which means their public defenders did their job in getting their client the best-case scenario.

An unexpected result was also observed upon

examining my data and that was of the intersectionality of race and gender. Recalling the data from observations #4, #8 and #9, all included either felonies or misdemeanors of child abuse. The Hispanic male defendant was charged with a misdemeanor of child abuse and did not receive a separate punishment since the district attorney and judge allowed for a concurrent sentence. Both female defendants, however, were given felony charges and harsher punitive sentences. This reveals the implication that female defendants are charged and sentenced more gravely than men in child abuse cases.

Conclusion

Limitations

As with any other research studies, there are some possible limitations that could affect conducting the observations as well as the results. First and foremost, the research at hand has the limitation of location. This is a limitation on my research because the location of the data collected cannot be widely utilized across the United States criminal justice system. According to the United States Census Bureau, as of 2021, the city in which the courthouse resided in has a large Hispanic population demographic with a median household income of approximately \$67,549 compared to the \$84,097 median household income for the whole state of California. This is important because this could possibly explain why I observed majority Hispanic defendants. Due to this limitation, the findings in this research can only be applied to areas similar to these demographics.

Another limitation of this study is the time constraint I have had conducting this research. As a full-time student and a full-time worker, visits to the courthouse were troublesome to make to ensure I saw sufficient observations. This limitation correlates to the next limitation I discuss because given the uncertainties of court processes and cases, my visits had no time to spare. A researcher with the ability to sit in courtrooms from start to finish, would be able to observe much more in terms of quantity as well as quality of court proceedings.

This research also unfortunately encompasses difficulties in visiting the courtrooms. Of

course, any California courthouse is open to the public with the exception of juvenile courts. However, going to observe court proceedings with the intent of viewing plea bargained deals specifically can be quite precarious. Legal actors including the prosecutors and judges must always be expecting the unexpected regardless of if they think a case will go in a certain direction. So as an observer, this uncertainty of case flow gave me a disadvantage because indeed there were court visit days where I left with no observational data and some where I left with five within 2 hours. Observational fieldwork in the legal field, particularly in the courtroom setting, is an unpredictable waiting game which coincides with the limitation of time constraints that I have previously mentioned. Additionally, as I have mentioned previously in the analysis of my results, I discussed how there is an implication that could indicate that the majority of the criminal cases being handled at the courthouse are by public defenders only.

Additionally, I would have also liked to include some observations and possibly interviews with the legal actors if they were willing and allowed to do so. In future research I would be more proactive in creating more connections to gather further information. Some information I would have wished to seek is if there were multiple plea deals offered before an agreement was reached, if so, how many were made by the prosecution. If there were multiple offers, was there any relevance in how they differed and why might have the defendant rejected it. Another question from the perspective of the prosecutor would have been how they came up with the specific plea deal. Another important observation to be made is whether there is a difference in plea deals for the same types of crimes. If so, observations of everything that differed from one case to the next would be crucial. This would require further inquiry from either the prosecutors or defense counsel which they may not be open to discuss so this may not be attainable but perhaps research in the future may be able to uncover this using different techniques and methodology.

To Conclude

As mentioned in the limitations section, these results and implications can only be related and compared to cities or areas similar to the one chosen for this research. Nonetheless, the results of my observational data have partially defended my argument. To reiterate, this paper sought to answer the research question of what is the effect of obtaining a public defender and is this effect conditional on the defendant's race? I argued that there were racial disparities in plea bargained deals when a minority defendant has a public defender as counsel and these disparities do not benefit the defendant in terms of the best outcome scenario.

The minority defendants in this case were the Hispanic defendants which were the majority of my observations and the Black defendants which were a small fraction of my observations. My argument was partly correct because out of all the defendants observed the Hispanic defendants received the highest sentences, but the Black defendants received the lowest sentences which was not as I expected. A possible explanation for this could be that I simply did not observe enough cases of diverse defendants to assess a true representation of whether this argument can be true for both races or if the results remain true that Hispanic defendants get higher sentences than both Black and White defendants which would prove previous literature false. An overarching question that is left for researchers of public law to ponder is the consensus of whether the argument is to provide more resources and support for public defenders to better their defendant's outcomes or make privately attained attorneys more accessible to defendants to have better chances at favorable outcomes. There are surely advantages and disadvantages to both arguments but after commencing my research I would argue that more support for public defenders, in the form of expanding resources and limiting caseload, would better benefit the defendants who are accepting plea bargained deals to resolve their criminal cases. This argument would be solely based on my observations of plea bargains while conducting my research and not for defendants who choose

to go through their criminal trial.

Furthermore, while assessing my observational fieldwork, I gained a new profound respect for the California criminal justice system and its legal actors, more specifically the public defenders I got the pleasure of not only observing but also meeting and discussing some of the cases with. It is important to highlight that these public defenders not only juggled multiple case matters at a time, but each counsel got relatively good or decent outcomes given specific circumstances. Regardless of the minor discrepancies that might arguably be insignificant and could potentially be accounted for prior criminal history and nature of crimes, not one defendant got a bad plea deal according to my measurements of the sentence percentages of each defendant.

All things considered, this research has invalidated my expectations in which I believed the minority defendants would have very hefty and more punitive sentences compared to White defendants. To my pleasant surprise, while the Hispanic defendants did receive higher sentences it was by a slight margin and not as drastic as I had suspected. Further research can hopefully expand upon my findings and conduct more quantities of observational fieldwork data to either confirm or deny the results I have found thus far in my research.

Figure 1

Defendant #	Race	Criminal Charge	Sentence Percentage
Defendant 1	Black	Felony	0%
Defendant 2	Hispanic	Felony	22%
Defendant 3	White	Felony	16%
Defendant 4	Hispanic	Felony Misdemeanor	50% 25%*
Defendant 5	Hispanic	Felony	44%
Defendant 6	Black	Felony	22% or 0%**
Defendant 7	Hispanic	Felony	44%

*Sentence concurrent with felony sentence.

**TBD at a later court date.

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