IMPACT OF PROCEDURAL MODIFICATIONS ON EVALUATIONS OF PLEA BARGAINING

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An experiment was conducted to assess the preferences of undergraduates and inmates for two possible modifications of plea bargaining: allowing the defendant to participate and including a state-paid or community-volunteer mediator in the negotiation. Respondents were asked to role-play a defendant who was either innocent or guilty of a murder and confronted with either weak or strong state's evidence. Results indicate that all defendants preferred plea bargaining procedures which included the defendant. Undergraduates preferred procedures which involved a mediator, but inmates were neutral toward this modification. Undergraduates preferred a state-paid mediator, while inmates preferred a community volunteer. Several interactions qualifying these effects are discussed in the paper.

I. INTRODUCTION

In recent years the use of plea bargaining has become a major topic of debate. After decades of unquestioned acceptance, we have at last begun empirical examinations of the process and results of allowing pleas of guilty in exchange for a reduction in the number or severity of charges or a prosecutor's promise of a sentence recommendation. The results of these examinations have been surprising. Studies have negated theories that plea bargaining is the result of heavy caseloads (Heumann, 1975) or of a conspiracy against the defendant by the prosecutor, defense attorney, and judge

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(Church, 1976; Eisenstein and Jacob, 1977). In addition, research has questioned the value of plea bargaining for both the prosecution (Uhlman and Walker, 1977) and the defendant (Shin, 1973). Indeed, the very procedures by which plea bargaining is conducted have been called into question. For instance, Morris (1974) recommended that judges as well as defense and prosecution attorneys be actively involved in the dispute negotiation process. He also recommended that victims and defendants should be allowed to participate in the plea bargaining. When Kerstetter and Heinz (1978; Heinz and Kerstetter, 1979) attempted to test these recommendations in a field setting, they interpreted their results as evidence that judicial participation reduced the average time from arraignment to final disposition without contributing to the coerciveness of the negotiation process. In addition, victim and defendant participation neither inhibited nor increased settlement rates. Victim participation did not affect victim satisfaction with the disposition, although it did increase victim satisfaction with the case disposition process. Defendant participation resulted in no significant change in defendants' satisfaction with either the dispositions or the negotiation process. Nonetheless, because of a confounding of defendant and judicial participation and other methodological difficulties with this study,[1] the validity of these conclusions is uncertain, and the effect of possible procedural modifications of plea bargaining remains an unsolved and intriguing problem.

The many reasons why one might be concerned about procedural modifications of plea bargaining include consideration of the cost and efficiency of various alternative methods, final sentences, and societal acceptance of such procedures; but a particularly important reason is the effect of procedural modifications on defendants' satisfaction with the resolution of their cases. For if defendants are dissatisfied with the methods employed, they are unlikely to perceive their sentences as justified and less likely when released to abide by the rules of a society which has shown so little concern for them (cf., Casper, 1972; Morris, 1974).

In deciding upon procedural modifications to increase defendants' acceptance of plea bargaining, the concept of defendant participation suggested by Norval Morris may be

[1] These problems include being able to locate only 30 percent of the defendants after case disposition for data collection, using only judges who volunteered for the project as participants in the plea bargaining, and conducting the research in a judicial district that had already initiated similar programs.

crucial. LaTour (1978) has reviewed social psychological research demonstrating the positive consequences of participation and discussed its potential relevance for the legal process. For example, Leavitt's (1951) research on communication networks demonstrated that individuals in a more central position in a communication network, who therefore participated more in network decisions, were more satisfied with their group experience than were individuals in more peripheral positions. A field experiment by French and Coch (1948) revealed that as worker participation in the implementation of new work procedures increased, the frequency of problems traditionally associated with the introduction of new methods of work (e.g., absenteeism, lower production) decreased. More generally, dissonance theory (Festinger, 1957) would predict that participation in making a decision will commit one to that decision and result in an over-evaluation of obtained outcomes. If participation in the determination of an appropriate plea or sentence recommendation were to make defendants feel responsible for the outcome of the negotiation session, they might be less likely to perceive that they had been dealt with unfairly, and more likely to judge their sentence as appropriate.

Rosett and Cressey (1976) have argued that defendant participation will increase defendants' understanding of the proposed resolution of their cases, and that it will also increase attorneys' awareness of the defendant as an individual. Casper's (1972) finding that defendants often confuse the public defender with the prosecutor also implies that participation would be advantageous. If defendants have difficulty in understanding that two attorneys employed by the state can interact in an adversarial manner, participation should make clear that a public defender does try to obtain the best possible outcome for his clients. A defendant dissatisfied with the work of his or her attorney can, if present, intervene in self-defense. Casper (1978) has also reported that defendants are often dissatisfied with trials as a method of case disposition because they provide so little opportunity for presentation of evidence. Defendants' satisfaction with plea bargaining might also be increased if they were allowed greater opportunity to present their case to the prosecution.

Consistent with the hypothesis is an experiment by LaTour (1978). In this study undergraduates were involved as defendants in a dispute and adjudicated under either a single-investigator inquisitorial procedure, a double-investigator

inquisitorial procedure, an adversary procedure in which an attorney was assigned, or an adversary trial in which defendants chose their attorneys. The study revealed that defendants' satisfaction with procedures increased from the single-investigator inquisitorial to the choice adversary procedure and that satisfaction was paralleled by defendants' perceptions of opportunity for evidence presentation. On the basis of these results LaTour suggested that there are two possible methods of increasing defendants' perceived opportunity for evidence presentation and consequent satisfaction with or preference for a dispute-resolution procedure. The first would be to allow the defendant to choose the attorney who will be aligned with him and represent him. The second would be to increase the defendant's direct personal control over the dispute-resolution process. Since plea bargaining with a public defender should be perceived as similar to the double-investigator inquisitorial procedure (that is, it involves two state-appointed investigators), one way of increasing defendants' preferences for plea bargaining would be to allow defendants to choose their own attorneys. The other way to increase perceived opportunity for evidence presentation would be to permit defendant participation in the disposition of the case.

A laboratory study by Houlden, LaTour, Walker, and Thibaut (1978) demonstrates the importance of defendant control over evidence presentation for procedural preferences. In this study defendants were found to prefer procedures which gave them, rather than a third party (either a mediator or arbitrator), control over evidence presentation. It was also found that defendants were more satisfied when they had control over the presentation of evidence than when they had control over the final decision. Since control over evidence presentation can be achieved by participation, this research strongly suggests that defendants are likely to be concerned about participation in plea bargaining and would prefer procedures that facilitated such participation.

Additional support for this conclusion can be found in a study by LaTour, Houlden, Walker, and Thibaut (1976). In this study subjects indicated their preference for a variety of adjudication procedures. A multidimensional scaling technique was used to assess both the basic dimensions which subjects used to classify dispute-resolution procedures and the relation of those dimensions to disputants' preferences. The results indicated that subjects classified procedures in terms of three

basic dimensions: third-party decision control, the presence or absence of representatives or investigators, and the degree of opportunity for evidence presentation. The first and third dimensions were the most important in determining disputant preferences—with subjects preferring procedures that allowed third-party decision control and full opportunity for evidence presentation. In plea bargaining, in which there is no party who wields complete control over the final decision, the importance of the third dimension, opportunity for evidence presentation, may be greatly increased.

The LaTour *et al.* multidimensional scaling study suggests a second modification of plea bargaining that may increase defendant satisfaction with plea bargaining procedures. In this study, American subjects were found to prefer simple bargaining between two disputants less than any other method of dispute resolution. Their preferences for bargaining were increased, however, if the bargaining included representatives for the two disputants and increased further if a mediator were involved. Since plea bargaining already involves legal representatives, it would seem that an increase in defendants' preferences could be achieved if a mediator were to be included in the plea bargaining process.

Criminal justice research also suggests that the presence of a mediator may increase defendants' satisfaction with plea bargaining. Arcuri (1976) has reported that a large majority of the prison inmates he interviewed thought plea bargaining to be a "fair" method of dealing with criminal charges. The 30 percent of defendants who did not perceive plea bargaining as fair explained that they felt that way either because the state had not kept its side of the bargain or because they had been pressured into plea bargaining. Clearly, whether or not a defendant was present, the presence of a mediator at the time of plea negotiation would dissuade a prosecutor from later breaking commitments that he had made. If the defendant and the mediator both participated in plea negotiations, it would also prevent defense counsel from pressuring the defendant into accepting a plea. In particular, if as Casper (1972) argues, defendants believe that public defenders are no better than middlemen, and at worst pawns of the prosecutor, they may be fearful of the pressure that two attorneys together could exert to force them to plead guilty. Thus, the prediction could be made that participation will only be desired if the defendant is assured that a mediator will be present during the plea negotiation.

One candidate for the role of mediator is the judge who would hear the case if it were to go to trial. Morris (1974) has argued that there are benefits to such judicial involvement, primarily the restoration of meaning to the judicial role of accepting guilty pleas. Alschuler (1976) too has suggested that judicial involvement would restore power to judges as well as introduce procedural safeguards and regulate the amount of punishment received by defendants who choose to go to trial. Rosett and Cressey (1976) suggested that judicial participation would result in more individualized punishment. Although these dimensions are extremely difficult to quantify and measure, the data gathered by Kerstetter and Heinz (1978) in plea bargaining conferences attended by judges permits us to evaluate the utility of these arguments.

Kerstetter and Heinz found little evidence that the conference restored power to judges or gave meaning to their behavior. At the conclusion of the experiment, two of the three judges who had volunteered to participate stated that they would not continue to hold plea bargaining sessions. Presumably, if they had perceived their participation as at all meaningful they would have been anxious to continue this form of involvement in case resolution. The data also indicated little change in the punishment received by defendants as a result of judicial involvement in plea bargaining. Two of the three judges did not change in sentencing severity as a function of their involvement in plea bargaining. The third judge did become less severe over time, but he also became less severe towards defendants with whom he did not participate in plea bargaining conferences. On the basis of this evidence it is impossible to ascertain whether participation in plea bargaining would actually affect judicial sentencing behavior.

Observation of plea bargaining in Philadelphia and New York (White, 1971) suggested that the presence of a judge may hinder the negotiation process. Although judges in New York were able to facilitate plea bargaining, in Philadelphia the inclusion of a judge inhibited both prosecutors and defense counsel and decreased the chance of reaching a plea bargain. Furthermore, the American Bar Association (1967) and the National Advisory Commission on Criminal Justice Standards and Goals (1973) have both recommended against including the judge in plea bargaining. They have expressed fears about the coercive effects of the judge's presence and the resulting judicial inability, at trial, to objectively evaluate a decision

reached during plea negotiation. Kerstetter and Heinz found no evidence to support such fears, but the judges in that study were volunteers. Volunteer judges may be better able to assume a noncoercive role than judges who are required to participate in plea bargaining. In brief, there appears to be no reason to prefer a judge and good reason to prefer an individual other than the trial judge as a mediator in a plea bargaining conference.

Two other types of mediators can be suggested: one a state-paid official whose job it would be to participate in plea bargaining sessions, the other a community volunteer who would receive no pay for part-time assistance with negotiations. Defendants might well react very differently to these two types of mediators. If, as Casper (1972) suggests, defendants have difficulty in distinguishing between the prosecutor and the public defender because they are both paid by the state, then defendants should be less favorably inclined towards a state-paid than towards a community-volunteer mediator. In addition, if defendants believe that a community volunteer would be more likely to be able to identify with them and appreciate their situation than would a state-paid mediator, defendants may expect a community volunteer to be more favorably disposed toward them. On the other hand, defendants may fear the community-volunteer mediator, believing that such an individual could be easily duped by a wily prosecutor and defense counsel and would not be as effective a defender of their rights. Again, defendants may fear that a community volunteer would approach any negotiation with the attitude that the defendant must be guilty if he or she is willing to bargain. A state-paid mediator might be more likely to recognize that neither being charged with a crime nor seeking to meet with the state is necessarily evidence of guilt. Thus it is difficult to predict whether defendants would prefer one or the other type of mediator.

Finally, it was hypothesized that defendants' preferences for plea bargaining procedures might be affected not only by the attributes of the plea bargaining process but also by self-perceptions of their cases. Studies have demonstrated that individuals' preferences for adjudication procedures are affected by the role that they have assumed in a conflict. For instance, Houlden, LaTour, Walker, and Thibaut (1978) demonstrated a difference in preference as a function of whether one is a defendant or a third party. Defendants were found to prefer procedures which allowed them control over

the process of evidence presentation, while third parties preferred procedures that allowed them control over the final outcome of the dispute. Thibaut, Walker, LaTour, and Houlden (1974) demonstrated that although all defendants prefer "fair" procedures, defendants who believe they have a strong case define "fairness" differently than do defendants who believe they have a weak case. Defendants who believe they have a strong case define "fair" procedures as those in which they share control over evidence presentation or delegate it to a third party. Those who believe they have a weak case define "fair" procedures as those which allocate control over evidence presentation between defendants, or give the defendant with a weak case greater opportunity for evidence presentation than his opponent.

Two aspects of the defendant's role likely to affect preferences for plea bargaining are: the defendant's perception or belief concerning his innocence or guilt, and the defendant's belief about the strength of the state's evidence. Gregory, Mowen, and Linder (1978) have experimentally demonstrated that persons who believe themselves to be guilty, and who also face strong evidence against them, are more willing to plea bargain than defendants who believe themselves innocent and face strong evidence. In this study, however, the two dimensions will be separated and varied in a factorial design. It is hypothesized that defendants who believe themselves guilty and defendants who expect to confront strong evidence against them will prefer plea bargaining more than will those who believe themselves innocent or who face a weak state's case. For those who believe themselves to be guilty or facing a strong state's case, going to trial will very likely mean severely negative consequences. Plea bargaining will, at worst, not affect these consequences; at best it will provide a lesser sentence than would be received at trial. Such defendants should therefore prefer to plea bargain more than defendants who believe themselves innocent and/or confronted by a weak case and thus have nothing to gain by dealing with the prosecutor.

In addition, it is predicted that defendants who believe themselves guilty will prefer both procedures in which they can participate and which involve a mediator. Such defendants should be particularly concerned that plea bargaining is conducted as fairly, and as advantageously to them, as possible. Defendants who believe the state has substantial evidence against them should have similar preferences. No prediction is

made about the linkage between either belief in guilt or the strength of the state's evidence and preference for either a state-paid or community-volunteer mediator.

This study also provides an opportunity to examine the effect of type of respondent on responses in procedural justice research. The issue has been raised before in other procedural justice investigations. In an experiment by Houlden, LaTour, Walker, and Thibaut (1978) the procedural preferences of law students who role-played judges were compared with the preferences of actual judges. Similarly, a study by Kurtz and Houlden (1979) compared the preferences of prisoners for adjudication and other dispute-resolution procedures with those of undergraduate subjects ascertained in an earlier study by Thibaut, Walker, LaTour, and Houlden (1974). Neither study revealed major differences in the responses of actual participants and those who role-played involvement in similar situations. Nonetheless, it is possible defendants and undergraduates might respond differently to questions about plea bargaining alternatives. Defendants might prefer plea bargaining more than undergraduates because they better appreciate the meaning of a reduction in sentence. Those in jail, or who have served time before, may better understand the benefits of a shorter sentence. On the other hand, "real" defendants might prefer plea bargaining less than undergraduates if they have experienced the procedure and found it to be unfair. Asking *both* undergraduates and inmates for their evaluation of experimental modifications of the plea bargaining process should yield valuable insight into the effects of experience with the criminal justice system.

In conclusion, this article will examine defendants' reactions to two possible modifications of plea bargaining—permitting defendant participation and including a mediator who would be either a state-paid official or a community volunteer. It is predicted that both modifications will increase defendants' preferences for plea bargaining procedures. A double-order interaction is hypothesized such that participation may be desired only if defendants expect a mediator to be present during the plea negotiation process. No predictions are made about which type of mediator will be preferred. In addition, the effect of a defendant's beliefs about his or her innocence or guilt and the strength of the state's evidence upon preferences will be assessed. It is predicted that guilty defendants and those who realize that the state has strong evidence against them will generally prefer plea

bargaining and the two modifications of plea bargaining more than those who believe they are innocent or who are confronted by a weak case against them.

II. METHOD

Subjects

One group of respondents was composed of 59 male and female inmates of the Alachua County (Florida) Detention Center who were awaiting trial or sentencing, or who were serving a jail term. They were all volunteers. The possibility of volunteer bias is reduced by the fact that 90 percent of all prisoners asked to participate agreed to do so. A majority of those who declined did so because of appointments to see a doctor, imminent court appearances, a simultaneous opportunity for outdoor recreation, or kitchen responsibilities. Inmates who were known to be illiterate, retarded, or mentally disturbed were not asked to participate. The other group of respondents was composed of 65 male and female undergraduates at the University of Florida. Approximately three-quarters were enrolled in an introductory psychology class and volunteered to participate in partial fulfillment of a course requirement. The others were students in other university classes who simply volunteered to participate.

Procedures at the Detention Center

The experimenter and a guard visited various cell blocks of the detention center to explain the nature of the research and ask for volunteers. When six to eight volunteers had been identified, the guard brought them to a lounge where the study was conducted. The study began with the experimenter reading aloud an explanation of plea bargaining. It was expected that all prisoners would be well acquainted with the process of plea bargaining, either through actual experience with it or discussion with fellow inmates, but because there are so many variations of plea bargaining it was necessary to create a common definition for this study. Plea bargaining was defined as the meeting of a defense attorney and prosecutor before trial to negotiate a reduction in the charge brought against the defendant in exchange for the defendant's waiving his right to trial. Respondents and the experimenter then read one of four stories about an individual who drove his automobile over a business partner. Respondents were asked to imagine that they were the central figure in the story and

that they had been charged with first-degree murder. The stories were structured so that the central figure was either innocent or guilty of first-degree murder and the evidence against him was either weak or strong. First-degree murder was defined as a "planned and intentional" killing.

The experimenter and respondents then read descriptions of six different plea bargaining procedures. Respondents were told to think about those procedures from the point of view of the central figure in the story and to consider which of the procedures they would want to employ if they were caught in the situation. The various procedures either did or did not allow the defendant to participate in the plea bargaining process and either did or did not include a mediator. If present, the mediator was described as either a community volunteer or a state-paid official. The descriptions were detailed but written in neutral, nonevaluative language. For example, the description of the procedure which included a state-paid mediator and allowed the defendant to participate in the negotiation read as follows:

> The court will assign you a public defender. If you want, you and the public defender will meet with the prosecutor and a mediator to try to plea bargain. The mediator will be a court-appointed official who has been trained in helping to resolve disputes. He will be paid by the state for his help with your plea bargaining.
>
> During the plea bargaining the public defender and the prosecutor will discuss reducing the charge which has been brought against you from murder in the first degree to murder in the second or murder in the third degree or manslaughter. You will be present at this discussion and may participate whenever you think it is in your best interest to do so. The mediator will listen to the discussion and suggest possible solutions to any conflicts. If the mediator makes a suggestion neither you, nor the prosecutor, nor the public defender have to accept it. It will only be a suggestion.
>
> If you like the deal you can accept it. You will then serve the sentence that is appropriate for the reduced charge (murder in the second degree—20 years; murder in the third degree—15 years; manslaughter—10 years).
>
> If you do not like the deal you can reject it. You will then go to trial. If you, the public defender and prosecutor are not able to agree on a reduced charge you will also go to trial. Remember, if you go to trial and are found gulity, the sentence for first degree murder is 25 years.
>
> *Summary*: A mediator will be present at the plea bargaining between you, the public defender and the prosecutor. The mediator will be a court-appointed official paid by the state. He will suggest solutions to any conflicts.

After the procedures had been read, the inmates were reminded of their role and given a questionnaire to complete. The questionnaire, using a well-anchored scale from −15 (I would strongly dislike using this) to +15 (I would strongly like using this), assessed their preferences for the six procedures. On a series of well-anchored scales from 0 to 25, the

questionnaire assessed subjects' perceptions about various characteristics of the six plea-bargaining procedures: opportunity for the defendant to have his evidence presented; opportunity for the prosecutor to have his evidence presented; control over evidence presentation by the defendant, the prosecutor, and if appropriate, the mediator; influence over the final outcome by the defendant, the prosecutor and when relevant, the mediator; and the fairness of each of the procedures. The outcome expected from each of the procedures (no reduction in charge, reduction to murder in the second degree, third degree, manslaughter, or charges dropped) was also assessed. The choice of these variables was based on previous research into preferences for dispute resolution procedures (LaTour, 1978; Houlden *et al.*, 1978). Respondents also replied to two questions intended to provide insight into their perception of differences between the two types of mediators. On a scale of 1 to 9 they indicated how concerned they thought the state-paid and community-volunteer mediators would be with conviction.[2]

Finally, respondents completed manipulation checks. Perceptions of degree of guilt for the crime of first-degree murder were assessed by responses to the question, "To what extent did you intend to kill your partner?" and the perceptions of strength of the state's case by responses to "How strong is the evidence against you?"

Procedures at the University of Florida

Undergraduate respondents arrived at the experiment in groups of no more than four. They were seated in cubicles which allowed them to watch the experimenter but separated them from the other respondents. In all other respects the procedures were identical at the two locations.

[2] Some readers may be concerned about the generalizability of results based on role-playing. In some circumstances it is true that individuals find it difficult, even impossible, to predict how they would behave or what they would prefer. However, with respect to choice of conflict-resolution procedures, it appears that individuals can accurately assess their preferences for various modes of decision making on the basis of reading vignettes and imagining themselves in a situation. For instance, the results of procedural justice studies obtained using a role-playing methodology (Thibaut, Walker, LaTour, and Houlden, 1974) were replicated in studies in which subjects actually experienced a conflict resolution procedure (Walker, LaTour, Lind, and Thibaut, 1974; LaTour, 1978).

III. RESULTS

Manipulation Checks

Inmates and undergraduates correctly perceived and remembered the characteristics of the role in which they were asked to imagine themselves. Those in "guilty" conditions perceived themselves as having intended the death of their partner significantly more than those in "innocent" conditions ($F[1,116]=298.877$, $p<.001$). Those in conditions in which evidence against the defendant was strong perceived the state's case as stronger than those in conditions in which the evidence against them was weak ($F[1,116]=95.367$, $p<.001$).

Overview of Analysis of Preference Data

The experimental design includes three between-subjects factors: guilt (the belief that one is guilty *vs.* the belief that one is innocent); evidence (strong or weak state's evidence); and respondent (either inmate or undergraduate). There is also one within-subjects factor, the six plea bargaining procedures evaluated by all respondents. The analysis of preference data was therefore conducted according to the procedure recommended by McCall and Appelbaum (1973) for repeated-measure designs. An orthogonal set of contrasts was used to compute difference scores for preferences for various plea bargaining procedures. The contrasts were chosen to permit an understanding of the relative contribution of participation, and presence and type of mediator to respondents' preferences for different methods of plea bargaining.

The contrasts were as follows. First, the average preference for the three procedures which did not permit defendant participation was subtracted from the average of the three procedures which allowed defendant participation (thus permitting evaluation of the importance of defendant participation for respondents' preferences). Second, the average preference for the procedures involving a mediator was subtracted from the average preference for the procedures not including a mediator (permitting an assessment of the importance of the presence *vs.* absence of a mediator). Third, the average preference for procedures with a state-paid mediator was subtracted from the average of procedures with a community-volunteer mediator (allowing a test of the impact of type of mediator). Fourth, a grand mean contrast was computed, which averaged respondents' preferences for all six plea bargaining procedures (permitting an evaluation of overall

favorability toward plea bargaining). Four interaction contrasts involving participation, presence of a mediator, and type of mediator could also have been generated. Because type of mediator was nested within presence-absence of a mediator, however, only two interaction contrasts, Participation × Presence of a Mediator and Participation × Type of Mediator, were assessed. These difference scores were then subjected to a 2 (Levels of Guilt) × 2 (Levels of Strength of State's Evidence) × 2 (Type of Respondent) analysis of variance. As cell frequencies are unequal, all reported tests of significance are "eliminating" tests (cf. Appelbaum and Cramer, 1974).

Analyses of Variance

The results indicate that preferences for plea bargaining are significantly affected by both the possibility of participation in the plea bargaining process ($F[1,116]=97.373$, $p<.001$) and the presence of a mediator ($F[1,116]=4.487$, $p<.036$). As hypothesized, respondents prefer procedures which permit defendant participation and procedures which include a mediator. These results can be observed in Table 1. The former main effect represents a difference in preference of 7 scale points and the latter a difference of 1.8 scale points on a 31-point scale. These measures of effect size represent the distance on the preference scale between the two relevant conditions (e.g., procedures permitting defendant participation and procedures not permitting participation). Other measures of effect size (e.g., omega square) which measure effect size in terms of variance explained are not presented, since procedures for their calculation do not exist for repeated-measures analyses of the type employed in this study, and because they confound effect magnitude and precision of estimation (LaTour, 1980).

The main effects of participation and presence of a mediator are qualified by several interactions. The desire for defendant participation is qualified by an interaction with perceived guilt and presence of a mediator ($F[1,116]=9.749$, $p<.002$). Simple effect tests reveal that there is an interaction of participation and presence of a mediator only within conditions in which respondents believe themselves to be guilty ($F[1,116]=7.649$, $p<.007$). The nature of this interaction is that defendants' dislike of lack of participation is greatest when a procedure does not include a mediator ($F[1,116]=85.341$, $p<.001$). There is a difference of 9.9 scale points between procedures which do and do not permit participation when

Table 1. Cell Means for Preferences for Six Possible Plea Bargaining Procedures

			Procedures which Allow Participation			Procedures which do not Allow Participation		
			No Mediator	Community Mediator	State Mediator	No Mediator	Community Mediator	State Mediator
Weak State's Case	Believe Self Innocent	Undergraduates	3.6	5.0	7.3	−4.3	−1.2	−2.4
		Inmates	−3.1	−.3	−1.2	−4.5	−2.9	−10.2
	Believe Self Guilty	Undergraduates	2.7	3.6	4.1	−5.1	−3.5	2.2
		Inmates	8.2	1.6	1.4	−1.4	−3.1	−2.3
Strong State's Case	Believe Self Innocent	Undergraduates	−1.3	−1.1	5.2	−7.1	−8.0	−2.1
		Inmates	−1.3	5.0	2.1	−5.1	−2.6	−6.9
	Believe Self Guilty	Undergraduates	1.7	6.6	10.3	−12.3	−4.2	−2.6
		Inmates	2.4	−.4	−.8	−6.3	−1.6	−3.9

individuals believe themselves guilty and expect that no mediator will be present, and only 5 points between procedures when respondents believe themselves guilty and expect a mediator to attend.

There is also an interaction of participation, type of respondent, perceived guilt, and strength of the state's case ($F[1,116]=5.070$, $p<.026$). Simple effect tests suggest that participation is equally preferred by inmates and undergraduates, regardless of the state's case, when they believe themselves innocent. Yet when they perceive themselves to be guilty, the strength of the state's case differentially affects the preferences of undergraduates and inmates ($F[1,116]=4.899$, $p<.029$). When they believe they are guilty and facing a strong case, undergraduates prefer participation over nonparticipation much more than do inmates ($F[1,116]=8.560$, $p<.004$) (effect sizes for undergraduates = 12.5; effect size for inmates = 4.3). Clearly, the predictions that those who believed they were guilty and those who believed the state had strong evidence against them would prefer participation more than those who believed they were innocent or faced weak evidence are only partially supported. Preferences of inmates are not affected by these variables, and undergraduates' preferences for participation are affected only when they believe that they are *both* guilty and facing strong evidence.

The main effect of presence of a mediator on preference is also qualified by other independent variables. It is qualified by an interaction with type of respondent ($F[1,116]=4.623$, $p<.034$). Undergraduates preferred procedures involving a mediator ($F[1,116]=17.233$, $p<.001$), while inmates did not distinguish between procedures as a function of presence of a mediator (effect size for undergraduates = 3.9; for inmates = −.3). Because there is no interaction between preference for a mediator and perceptions of either guilt or strength of the state's case, there is no support for the predictions that those who believed they were guilty and those who believed the state had strong evidence against them would prefer procedures that included a mediator more than those who believed they were innocent or faced weak evidence.

Preferences for the type of mediator also differ between undergraduates and inmates ($F[1,116]=10.379$, $p<.002$). Inmates are less favorable toward a state-paid mediator than toward a community volunteer ($F[1,116]=5.932$, $p<.05$), while undergraduates are more favorable towards a state-paid

mediator ($F[1,116]=12.19$, $p<.025$). Although the effect sizes of 2.2 for inmates and 2.4 for undergraduates seem similar and thus unimportant, it must be recalled that these effects are in opposite directions. Thus the effect size for the interaction contrast (5.2) is a more accurate reflection of the effect size. An analysis of respondents' perceptions of government-paid and community-volunteer mediators provides some insight into this finding. Inmates perceived state-paid mediators to be more concerned with conviction than did undergraduates ($F[1,108]=11.973$, $p<.001$).

Preferences for type of mediator are further qualified by an interaction with strength of the state's case, belief in guilt, and presence of participation ($F[1,116]=4.506$, $p<.036$). Simple effect tests indicate that when defendants believe themselves to be faced with strong evidence, they have no preference for either type of mediator, regardless of their belief in their guilt or innocence or their opportunity to participate in the plea bargaining process. However, when defendants believe that the state has only a weak case, and that they will not be allowed to participate in the plea bargaining process, the preferences of innocent and guilty defendants diverge ($F[1,116]=6.754$, $p<.011$). Defendants who believe themselves guilty prefer state-paid mediators more than community volunteers ($F[1,116]=7.281$, $p<.001$) (effect size = 3.25), while defendants who believe themselves innocent prefer community-volunteer mediators more than state-paid officials ($F[1,116]=20.443$, $p<.001$) (effect size = 4.3). Again, as these effects are in opposite directions, the effect size of the interaction contrast more accurately reflects this effect. The effect size of the belief in innocence by type of mediator interaction within a weak state's case with no defendant participation is 7.01.

Finally, there is one further difference in preferences for plea bargaining procedures between undergraduates and inmates ($F[1,116]=4.550$, $p<.035$). Simple effect tests indicate that within the guilty condition, there is no difference between undergraduates and inmates in their preferences for plea bargaining in general as a function of strength of the state's case. However, when respondents believe themselves innocent and believe that the state has a weak case, inmates prefer plea bargaining less than undergraduates ($F[1,116]=7.316$, $p<.008$) (effect size = 5).

Determinants of Preferences

In order to account for respondents' preferences among the six plea bargaining procedures, normalized correlation scores were developed to indicate for each subject the correlation between preferences for the six procedures and his or her evaluation of whether the procedures gave ample opportunity for evidence presentation, were fair, etc. The normalized correlation scores represent the correlation between each of the ten dimensions on which respondents evaluated the plea bargaining procedures and their relative preferences for each of the six procedures. These correlations are not computed across subjects but for each subject on each dimension across the six procedures. Because distribution of correlation coefficients is other than normal, the correlation scores were transformed using Fisher's r to z transformation.

Table 2. Mean Normalized Correlations Between Preference and Procedural Characteristics

Characteristic	
Defendant Opportunity to Present Evidence	.809***
Prosecutor Opportunity to Present Evidence	−.205**
Mediator Control Over Evidence Presentation	.093**
Defendant Control Over Evidence Presentation	.681***
Prosecutor Control Over Evidence Presentation	−.223***
Mediator Influence Over Final Outcome	.057
Defendant Influence Over Final Outcome	.627***
Prosecutor Influence Over Final Outcome	−.238**
Fairness of Procedure	.804***
Likely Outcome of Procedure	.632***

*** $p<.001$
** $p<.01$
* $p<.05$

The mean normalized correlation scores for respondents in all eight conditions are reported in Table 2. The significance of the correlation of each predictor with the preference data is also presented. Examination of that table reveals that the best predictors of subjects' preferences, regardless of experimental

condition, are defendant opportunity for the presentation of evidence and the perceived fairness of a procedure. Other good predictors of respondents' preferences are: defendant control over evidence presentation, influence of the defendant over the final outcome, and the likely outcome of a procedure. The prosecutor's control over evidence presentation is strongly related to defendants' preferences, but the relationship is negative. Respondents' preferences for a procedure decrease as the prosecutor's control over evidence presentation is perceived to increase. None of the six major predictors of preference is significantly better than the others. There are no differences in determinants of respondents' preferences as a function of assumed role or type of respondent.

IV. DISCUSSION

The major purpose of this investigation was to discover whether two possible modifications of current plea bargaining procedures would increase defendants' satisfaction with this method of case disposition. The two modifications were: allowing the defendant to participate in the plea bargaining session, and including a mediator who would be either state paid or a community volunteer. Psychological theories and previous empirical investigations suggested that permitting defendant participation in plea negotiation would increase defendants' preferences for plea bargaining. The results of this experiment are consistent with those earlier findings. Although the effect was qualified by two interactions, the interactions only indicate circumstances in which participation was particularly desired or a lack of participation was particularly disliked. Participation was especially desired by undergraduates when they believed themselves to be guilty and facing strong state's evidence. The lack of participation was particularly disliked if a procedure also did not include a mediator and defendants believed themselves to be guilty. The first interaction suggests that undergraduates are more hopeful about the effect of allowing participation than are inmates. Inmates appear to believe that when one is guilty and the evidence is strong, there is very little to be gained by procedural modification. Inmates would still prefer defendant participation, but they are more pragmatic about the advantages that such participation will provide. The second interaction indicates that guilty defendants are particularly unhappy with current plea bargaining practices which include neither participation nor a mediator. Guilty defendants appear

very distrustful of what will transpire if the negotiation involves only the prosecutor and public defender. Whether they are wary of the public defender's abilities and/or the nature of his relationship with the state, however, was not ascertained in the current study.

The inclusion of a mediator in plea bargaining had additional effects on defendants' preferences. Although the overall effect size of this factor was small, the effect of a mediator increases in specific circumstances. In particular, the involvement of a mediator increased the preferences of undergraduates for plea bargaining (although it did not significantly increase the preferences of inmates).

The two effects of type of mediator are fairly large. If a mediator were to be included in plea negotiation, undergraduates would favor a state-paid mediator, while inmates would prefer a community volunteer. Inmates apparently fear that the state-paid mediator would have too great an interest in conviction, but why undergraduates should prefer a state-paid mediator is not as clear. It may be, however, that they perceive a state-paid mediator to have a greater likelihood of legal training and greater expertise as a result of working full-time as a mediator.

An interaction qualifies this effect. Inmates agree with undergraduates in disliking the community-volunteer mediator, and undergraduates concur with inmates in disliking the state-paid mediator in two particular sets of circumstances. First, when they believe themselves guilty, believe the state to have only a weak case, and believe that they will not be allowed to participate in plea bargaining, inmates also dislike the community-volunteer mediator more than the state-paid mediator. In this situation it may be that inmates also fear the community-volunteer mediator's lack of expertise and legal training. Since the state has a weak case one could reasonably expect the prosecutor to drop all charges. Although the role of the mediator should therefore be minor, it appears that both types of respondents fear that a community-volunteer mediator, with different standards for prosecution than those of "legal" guilt may encourage the state's attorney to continue with the case. Aware of their actual guilt and wary of the effects of continued scrutiny of their case, all defendants would necessarily oppose a potentially unpredictable community-volunteer mediator.

Second, when they believe themselves innocent, believe the state to have only a weak case, and believe that they will

not be allowed to participate in the plea bargaining process, both undergraduates and inmates are strongly opposed to a state-paid mediator. In this critical situation when the charge is clearly unjust, even inexperienced defendants apparently recognize the potential for collaboration and collusion among three state-paid officials against the defendant and/or the possibility of a coalition against the public defender that would render him unable to secure the best possible outcome for his client.

It is interesting to compare this latter result with those of Heinz and Kerstetter (1979). It will be recalled that they had found no increase in defendants' satisfaction with the method or outcome of case disposition as a function of allowing defendant participation. The results may explain why this occurred. Allowing defendants to participate in plea bargaining should have increased their satisfaction with the method of case disposition. But, the inclusion of the judge, a state-paid mediator, can only have detracted from experienced defendants' satisfaction. Although persons who had never experienced plea bargaining might expect that both modifications would increase defendants' preferences for the plea negotiation process, actual defendants would have been extremely distressed by the presence of a judge.

It is also possible that the difference in results of these studies is due to the fact that the present study asked subjects to rate a procedure in the absence of any outcome. Respondents evaluated various modes of plea bargaining according to their procedural merits. They did not know the sentence they would have received from any of the procedures. Yet, as research has indicated (LaTour, 1978), evaluation of procedures is affected by outcome. Thus, if respondents had received actual verdicts, their procedural evaluations might have differed. In particular, if defendants received verdicts harsher than they had expected, their satisfaction with procedural modifications might have diminished. Further research is required to determine which of these explanations better accounts for the discrepancy between the two studies.

A number of differences between the procedural preferences of undergraduates and inmates have already been discussed. There is, however, one final difference between them. Under the circumstances of a belief in their own innocence and a weak state's case, inmates appear to believe that they can best protect their interests by going to trial. They may expect to be acquitted, or they may expect the threat of

trial to induce the prosecutor to drop the charges against them. Although they are innocent and confronted by a weak case, they may nonetheless doubt the efficacy of a meeting with the prosecutor which might result only in some offer of plea reduction. Under these circumstances, however, undergraduates seem to prefer plea bargaining. Less cynical or less wise than actual defendants, undergraduates may believe that such a meeting will convince the prosecutor of their innocence and persuade him to drop the charges against them. Since an arraignment is unlikely to occur where the state's case is weak and the defendant truly innocent, an exploration of the reasons for differences between inmates and undergraduates in this context is unlikely to yield results of practical importance.

In sum, this study confirms the finding of previous procedural justice research that disputants prefer participation in conflict-resolution procedures. This would now appear to be true of both traditional adjudication procedures and plea bargaining procedures. Also, consistent with previous research, undergraduates appear to prefer the presence of a mediator in bargaining procedures. That this is not true of inmates is puzzling. This is the first instance in procedural justice research when the preferences of role-playing undergraduates have differed significantly from those of persons actually in a particular role. Yet, examination of Table 1 indicates that undergraduates and inmates do agree that a community-volunteer mediator is slightly preferable to the lack of a mediator. Thus, it is only with respect to the evaluation of the state-paid mediator that undergraduates and inmates really differ.

Consideration of the dimensions of participation and presence and type of mediator may suggest why this discrepancy occurred. Opportunity for defendant participation is a purely procedural dimension, but presence and type of mediator are dimensions that involve people. Preferences of undergraduates may parallel those of inmates for purely procedural dimensions but may become more divergent when the dimensions elicit assumptions about the type of persons likely to be involved in the procedure. In this instance, undergraduates appear to have made the assumption that state-paid mediators would usually be fair and impartial persons. Inmates, consistent with Casper's findings that they frequently fail to perceive the difference between public defenders and prosecutors, appear to have assumed that the

mediator would be another party interested in securing a conviction. It would appear that contact with the criminal justice system has altered expectations about the behavior of persons who are likely to serve as state-paid mediators. Thus, if respondents are asked preferences for dimensions which involve predictions about the likely behavior of others, experience with the criminal justice system may make a crucial difference in how they respond. Further research is necessary to determine whether this conclusion is valid, as well as to ascertain whether the general conclusions of this study can be replicated across a variety of cases in a variety of settings.

The study also assessed the correlates of respondents' preferences for different types of plea negotiation procedures. Perceived fairness of a plea bargaining procedure and opportunity for the presentation of the defendant's evidence are highly correlated with preference; but preference is predicted almost as well by defendant control over presentation of evidence, defendant influence over the final decision, the likely outcome of the plea bargaining process, and limitation of the prosecutor's control over evidence presentation. The study can therefore be interpreted as providing confirmation of LaTour's (1978) hypothesis that opportunity for evidence presentation mediates defendants' procedural preferences. LaTour had suggested that opportunity for evidence presentation mediated the effect of the two possible methods of increasing defendants' satisfaction with a dispute-resolution procedure: (a) allowing a defendant to choose an attorney, and (b) increasing a defendant's direct personal control over the dispute-resolution process. Although no formal causal modeling has been conducted, a logical interpretation is that respondents perceived participation in plea bargaining to increase their control over evidence presentation and thus increase their opportunity for evidence presentation. Opportunity for evidence presentation may in turn have enhanced the perceived fairness of plea bargaining procedures and increased defendants' preferences for them. It is also probable that undergraduates perceived a mediator as offering the defendant increased opportunity for evidence presentation.

Policy Implications

The major implication of this research is that defendants' acceptance of plea bargaining might be greatly increased by allowing them to attend the plea negotiation session and

participate whenever they felt their case would benefit by such intervention. This would be neither a particularly difficult modification of current plea bargaining practices nor an unrealistically expensive one. It would probably increase the time spent in plea bargaining, but since attorneys would have to bargain only once for each defendant rather than several times (i.e., they would not have to engage in shuttle diplomacy between courthouse and jail) the time needed for plea bargaining might not increase significantly. If this modification also increased defendants' satisfaction and improved currently negative attitudes toward plea bargaining, the cost of the extra time spent in negotiation (if any), would be small compared to the gains in acceptance of sentences and increased respect for the criminal justice system.

Addition of a mediator, on the other hand, does not appear to be a modification that would significantly improve actual inmates' preferences for plea bargaining. The inclusion of a community-volunteer mediator does increase those preferences, but only slightly. It seems clear that any attempt to add a state-paid mediator, such as a judge, to the plea bargaining process would elicit negative reactions from inmates.

Finally, the study reveals both similarities and differences in undergraduates' and inmates' preferences for plea bargaining procedures. Inmates and undergraduates expressed similar preferences for participation. Although they differed somewhat in preferences for presence and type of a mediator, they were similar in their greater preference for a community-volunteer mediator. Nonetheless, the difference between the two types of respondents cautions researchers and policy makers to be wary of reaching conclusions and making policy recommendations for plea bargaining wholly on the basis of studies conducted with undergraduates.

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