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Is it a Prosecutor's World?: Determinants of Count Bargaining Decisions

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Determinants of Count Bargaining Decisions

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> The prosecutorial stage is in many respects the linchpin of the criminal justice system. (Thomas & Fitch, 1976, p. 509).

INTRODUCTION

Scholars agree that the American prosecutor possesses a great amount of discretion (see Albonetti, 1987; Kersetter, 1990; Thomas & Fitch, 1976). Scholars also agree that such discretion has the potential to result in discrimination in the form of unwarranted disparity[2] (Walker, Spohn, & DeLone, 2000). American prosecutors use their discretion to make initial charging decisions, to seek the death penalty, and to negotiate plea agreements.

One of the most profound and frequently studied issues in the American criminal justice system is racial discrimination. Research indicates that Black offenders are disproportionately represented in prison populations (Blumstein, Cohen, Martin, & Tonry, 1983; Walker, et al., 2000). Although Black citizens only represent 13% of the U.S. population, they represent 45% of the incarcerated population in state and federal prisons (Harrison & Beck, 2003). On its face, Blumstein and his associates (1983) suggested that the overrepresentation of certain groups in prison populations may be a direct result of disparate treatment at sentencing. One argument Blumstein and his colleagues (1983) proffered, though, was that some of the racial disparity in prison populations might be attributed to a cumulative effect, whereby discretionary decisions at each stage contributed to the overall

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[2] Some disparity is warranted. For example, a defendant with a more serious charge is likely to be treated differently than a defendant with a less serious charge. Disparity is only unwarranted if decisions rely on legally irrelevant factors including, but not limited to, race/ethnicity, sex, age, and/or employment status of the offender.

overrepresentation of racial minorities in prison (Blumstein, et al., 1983). Wilmot and Spohn (2004) argued that plea bargaining decisions which can play an important role in court processing. The current research project attempts to examine potential disparate treatment in one of these prior stages – the plea bargaining stage.

Research conducted on the decision points between arrest and sentencing is scarce. Albonetti (1990) noted that previous research failed to focus on racial/ethnic differences in the processing of defendants. Much research focused on outcome decisions such as bail and sentencing but not on processing decisions such as whether the case went to trial or pled guilty. There is a need for research to examine earlier decision points such as initial charging and subsequent reduction of the number of charges. Few studies have examined unwarranted disparity in plea bargaining decisions, and most of the existing studies on plea bargaining are qualitative in nature, explaining how plea negotiations are processed rather than the determinants of these decisions. Even more remotely studied plea bargaining practices are the decisions to reduce the number of charges; research on plea bargaining often examines the reduction of the severity of charges. The current research provides a quantitative approach to the examination of the effect of offender characteristics on the prosecutor's decision to reduce the number of charges – a phenomenon understudied.

Effect of Offender Characteristics on Court Processing

Court research on disparate treatment of particular defendants typically focused on charging or sentencing decisions (see Spohn & Beichner, 2000; Spohn & Cederblom, 1991; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2000; Steffensmeier, Ulmer, & Kramer, 1998). Research on prosecutors' plea bargaining decisions has not experienced the same vigor and attention. Decisions by prosecutors can impact later decisions (e.g., bail and sentencing) (see Johnson, 2003; Kellough & Wortley, 2002; Wilmot & Spohn, 2004). Wooldredge and Thistlethwaite (2004) found that earlier decisions by the prosecutor (i.e., charging decisions) result in more favorable dispositions in domestic violence cases for suspects who face greater social and financial disadvantage yet less favorable at the conviction and/or sentencing stage for these same defendants. It is important, therefore, to address potential unwarranted disparities in these earlier decisions such as plea bargaining.

Defendants' Decisions to Plead Guilty

Research on plea bargaining has centered around two important decisions: the decision to plead guilty and the decision to reduce charges. Most research has indicated that those defendants who took their cases to trial – that is, they did *not* plead guilty – received harsher penalties (see Brereton & Casper, 1981-1982; Britt, 2000). The most important influences on the likelihood of pleading guilty have been the severity of the current offense and the length and severity of the prior record (Meyer & Gray, 1997). Studies also found, however, that Black defendants and male defendants were the least likely to plead guilty (Albonetti, 1990; Kellough & Wortley, 2002; LaFree, 1985). A higher proportion of Black defendants and Hispanic defendants took their cases to trial than the proportion of white defendants even though the majority of the cases concluded with a negotiated guilty plea (Johnson, 2003). Albonetti (1990) argued that Black defendants, who were more likely to distrust the system, would have expressed this distrust by not pleading guilty and taking their case to a jury trial.

Race and ethnicity is not the only offender characteristic that affects guilty plea decisions. A few studies have acknowledged a relationship between sex of the offender and the likelihood of pleading guilty (Figuiera-McDonough, 1985; Johnson, 2003). Age of the offender, however, has produced mixed results (Kellough & Wortley, 2002; LaFree, 1985).

Prosecutors' Decisions to Reduce Charges

Inexorably linked to defendants' decisions to plead guilty have been the decisions to reduce the severity of charges in order to secure guilty pleas.[3] With the advent of formalized sentencing procedures came greater discretion displaced to the prosecutor. Although there was an increase in the amount of charge reductions given, Wooldredge and Griffin (2005) found that not one particular racial and/or gender group benefited from the greater discretionary power given to the prosecutors.

[3] To date, there are no studies that examine the determinants of the decision to reduce the number of charges – or, count reduction.

Research indicated strong influence of seriousness of the current offense and prior record on the decision to reduce the severity of charges (see McDonald, 1985; Meyer & Gray, 1997). Although the seriousness of the current offense and prior record were the most important influences in determining charge reductions, a substantial amount of research found that offender characteristics also influenced charge reductions (see Albonetti, 1992; Bernstein, Kick, Leung, & Schulz, 1977; Farnworth & Teske, 1995; Figueira-McDonough, 1985; LaFree, 1980; McDonald, 1985; Miethe & Moore, 1986; Voit, 1987).

The research on the effect of offender characteristics on the charge reduction decision has been mixed. Bernstein and her associates (1977) found that White defendants were more likely to receive favorable charge reductions compared to Black defendants. Albonetti (1992) found that younger defendants and male defendants were less likely to receive reduced charges than older defendants and female defendants, respectively. Farnworth and Teske (1995) found that young, Black male defendants were less likely than other defendants to have their initial charges reduced (Farnworth & Teske, 1995). With these mixed results, it is important to clearly identify any potential unwarranted disparities in plea bargaining decisions based on legally-irrelevant offender characteristics.

An Integrated Theoretical Perspective

The courtroom behaves as its own separate community with shared workloads, interdependent relationships, and organizational cultures where particular goals – formal and informal – may be realized (Eisenstein, Flemming, & Nardulli, 1998; Ulmer, 1997). The term plea *bargaining* evokes images of backroom deals and protracted haggling between the prosecutor and the defense attorney, with each side attempting to get the best possible "deal." Nardulli, Eisenstein, and Flemming (1988) contended that there are two different conceptions, or models, of the guilty plea process that "differ fundamentally in their answer to one key question, what makes the plea process work?" (p. 205). One model, which they called the "concessions" model, suggests that negotiating a guilty plea resembles the give-and-take in a Turkish bazaar where prosecutors induce guilty pleas by offering defendants genuine concessions in the form of reduced charges or agreements for more lenient sentences. According to this view of the guilty plea process, "charging manipulations and sentencing concessions grease the wheels of justice" (Nardulli et al., 1988, p. 205).

The other model of the guilty plea process, which Nardulli et al. (1988) referred to as the "consensus model," suggests that the wheels of justice are greased, not by concessions to the defendant, but by agreements regarding appropriate sentences that are shared by the members of the courtroom workgroup. Nardulli et al., in other words, suggested that prosecutors, defense attorneys, and judges share conceptions of the "going rate" (Heumann, 1978; Ulmer & Kramer, 1998; Walker, 1998) or "normal penalty" (Sudnow, 1965) for specific types of defendants and crimes; similar cases, and similarly situated defendants, receive similar outcomes. As Nardulli et al. (1988) noted, "going rates . . . bind the plea discussions in a given county and provide a measure of predictability to sentencing that renders the machinations implicit in the concessions model unnecessary, even futile, for most cases" (p. 206).

Another difference between these two models of the guilty plea process is the amount of discretion that prosecutors retain in negotiating guilty pleas. The consensus model, with its emphasis on shared conceptions of going rates, implies a certain amount of certainty and consistency in the charging and sentencing processes. The discretion of prosecutors operating under this model is constrained by the expectations of the other members of the courtroom workgroup. In contrast, the concessions model, with its emphasis on explicit negotiation between the prosecutor and the defense, suggests that charging and plea bargaining decisions are more variable and less predictable. Prosecutors have wide discretion to negotiate guilty pleas and, thus, the value of the concessions granted to defendants is highly variable. It is suggested, therefore, that the plea bargaining decisions of prosecutors operating within a consensus framework – with less opportunity for discretion – are determined primarily by legally relevant factors such as the seriousness of the charge and the strength of the evidence, while the decisions of prosecutors operating under a concessions model are affected by a combination of legally relevant and legally irrelevant factors.

These propositions also are consistent with the liberation hypothesis, which was first developed by Kalven and Zeisel (1966) to explain jury behavior and later adapted to sentencing decisions by Spohn and Cederblom (1991). Spohn and Cederblom (1991) argued that appropriate sentences are clearly determined in more serious cases by the severity of the current offense and the defendants' criminal history – that is, the legally relevant variables (Spohn & Cederblom, 1991). In these cases, particular sentences are clearly justified and leave little room for judicial

discretion to consider legally irrelevant variables. On the other hand, in less serious cases the appropriate sentences are *not* clearly determined by legally relevant factors and leave *more* room for discretion to rely on legally irrelevant factors (Spohn & Cederblom, 1991). In other words, judges feel *liberated* from the restrictions of using *only* legally relevant factors.

Baldus, Woodworth, and Pulaski (1990), though, had a different approach to explaining judicial discretion in capital sentencing decisions. They suggested that there are three culpability categories of seriousness upon which the liberated hypothesis may be applied. They suggested that judges feel liberated to use more discretion in capital cases at the middle level of culpability where sentencing decisions are less determined and less discretion in capital cases at the lowest level and the highest level of culpability where sentencing decisions are more determined.

The notion of disparity in plea bargaining decisions might be consistent with the focal concerns perspective, where judges have incomplete information about defendants and their cases and, thus, rely on a "perceptual shorthand" to which they apply their own biases and interject stereotypes regarding the dangerousness of a particular offender (Steffensmeier et al., 1998; Spohn, Beichner, & Davis-Frenzel, 2001). Steffensmeier and his colleagues (1998) suggested that these stereotypes are linked to race, sex, and age of the offender and result in the perception that young, black, male offenders are the most dangerous class of offenders; Spohn and Holleran (2001) proposed that unemployed offenders are also perceived as dangerous.

The Current Study

The current study integrates these theoretical perspectives to examine the potential disparate treatment of particular defendants in count bargaining decisions. It is suggested that the degree to which plea bargains reflect concessions rather than consensus depends upon the seriousness of the case and may be affected by the prosecutor's perception of dangerousness. Although Baldus et al. (1990) used a three-tier distinction for *high severity* cases – that is capital cases – the current study utilizes a similar three-tiered distinction for all seriousness levels of felony cases for very different reasons, integrating the concessions/consensus models. Consistent with the liberation hypothesis (Baldus et al., 1990), it is argued that prosecutors' plea bargain decisions will reflect consensus in the most serious and the least serious cases. In these types of cases, the members of the courtroom workgroup will be in general agreement regarding the appropriate disposition of the case. For the more serious cases, it is hypothesized that plea bargaining is used to ensure a conviction for the prosecutor and reduce the severity of the sentence for the defense attorney. For the least serious cases, it is hypothesized that plea bargaining is used to reduce caseloads for both parties regardless of the defendant's individual characteristics. In the "borderline" serious cases, there will be more disagreement between the prosecutor and the defense attorney regarding the outcome of the case. As a result of this disagreement, there will be more explicit bargaining – and, thus, more genuine concessions – in these borderline serious cases.

If, as suggested above, implicit bargaining (or, consensus) characterizes the most serious and the least serious cases while explicit bargaining (or, concessions) characterizes the borderline serious cases, then prosecutors have more discretion and, thus, more opportunities to consider legally irrelevant offender characteristics in the borderline serious cases – namely, race/ethnicity, sex, age, and employment status of the offender. It is hypothesized, therefore, that the impact of offender characteristics on plea bargaining decisions will be evident in the borderline serious cases yet have no effect in the least serious or most serious cases (see Figure 1). Because young, Black, unemployed male offenders are stereotyped as the most dangerous class of offender (see, Steffensmeier, et al., 1998; Spohn, at al., 2001; Spohn & Holleran, 2001), it is hypothesized that young, Black (and Hispanic), male, offenders who are unemployed will be less likely to receive count reductions than other offenders in borderline serious cases. This same effect will *not* be found in the most serious and least serious cases.

[Insert Figure 1 here]

Much of the research on the effect of individual characteristics on decisions in the courtroom focused on sentencing decisions. Few researchers have examined the effect of these characteristics on prosecutorial decisions – especially, plea bargaining decisions. The majority of research focusing on plea bargaining was conducted in the 1970s and 1980s and has been relatively neglected in the last 25 years in favor of analyses of sentencing outcomes. The lack of research on plea bargaining practices is probably largely driven by the ease of analysis of readily available sentencing data sources in the past 25 years. Thus, this paper fills a neglected gap in the current research.

Illinois Classification Scheme

For the purposes of this current study, it is important to understand the statutory classification punishment scheme in Illinois because plea bargaining and sentencing are inextricably linked in this jurisdiction. Because Illinois is a determinate sentencing system, the prosecutor has great discretionary power to influence sentencing decisions through plea negotiations.[4]

Felonies in Illinois are classified as either Class X – the most serious classification – Class 1, Class 2, Class 3, or Class 4.[5] Offenders convicted of Class X felonies, first-degree murder, attempted first-degree murder, or any other pre-specified offenses cannot be sentenced to probation or any other nonincarcerative sentences. For Class X felonies, judges must sentence the offender to a minimum prison sentence of six years. The minimum and maximum terms of imprisonment for the five classifications of felonies are: 6-30 years (Class X); 4-15 years (Class 1); 3-7 years (Class 2); 2-5 years (Class 3); 1-3 years (Class 4). Judges cannot reduce the minimum required sentences unless they find that at least one statutorily defined mitigating circumstance exists.[6]

Given the literature on plea bargaining practices and the theoretical framework posed earlier, the following hypotheses are drawn:

H: Race/ethnicity, sex, age, and employment status of the offender will be significantly related to the likelihood of receiving a count reduction in the borderline serious cases but not the least serious or most serious cases.

- H_1 Black and Hispanic offenders will be less likely than White offenders to receive a count reduction in the borderline serious cases but not the least serious or most serious cases.
- H_2 Male offenders will be less likely than female offenders to receive a count reduction in the borderline serious cases but not the least serious or most serious cases.
- H_3 Younger offenders will be less likely than older offenders to receive a count reduction in the borderline serious cases but not the least serious or most serious cases.
- H_4 Unemployed offenders will be less likely than employed offenders to receive a count reduction in the borderline serious cases but not the least serious or most serious cases.

METHOD

Data

The current study is an analysis of secondary data collected as part of a larger project studying sentencing in three large urban counties in 1993: Cook County (Chicago, IL), Dade County (Miami, FL), and Jackson County (Kansas City, MO). The data were collected from court case files for formally charged felony cases in these three jurisdictions. The current study uses only the Cook County data to examine the effect of offender characteristics on plea bargaining decisions because it included ethnicity *and* employment status.

Sample

The sample of cases used in the original study (N = 2,850 for Chicago only) was selected randomly from a list of all offenders who were convicted of at least one felony in 1993. Those cases where the defendant did not plead guilty (N = 272) are eliminated from the current study for the purposes of examining plea bargaining decisions. Thus, the analysis includes 2,578 offenders who pled guilty to at least one felony in 1993. In the original study, Chicago was selected for its high racial minority population[7] and employment status, which allows for the opportunity to test the proposed hypotheses.

[4] As of the collection of this data in 1993, Illinois did not have a system of regulating prosecutor's initial or subsequent charging decisions.

[5] See the Illinois Compiled Statutes Annotated (720 ILCS 570/401 (1996)) for elaborated definitions of offenses and penalties.

[6] This requirement is only true for prison sentences. Probation is an option for all classifications except for Class X.

[7] For this reason, the percentage of Black defendants (81%) is unusually high.

In order to test the integrated theoretical perspective for potential differential treatment in plea bargaining decisions, it is necessary to partition the data by case seriousness and perform separate multivariate analyses for each partitioned group. Previous studies have not identified such a three-tiered scheme; therefore, the current study explores this technique. The current study partitions the data into three categories of case seriousness: most serious, borderline serious, and least serious. Because sentences in Illinois in 1993 were defined in a determinate classification scheme, these groups are defined as follows: "most serious" includes Class X offenses, "borderline serious" includes Class 1 offenses, "least serious" includes Class 2, Class 3, and Class 4 offenses. These classifications were determined based on the potential maximum punishment. For the "most serious" classification, the defendant could likely face 30 years in prison. For the "borderline serious" classification, the defendant could likely face 15 years, whereas offenders in the "least serious" partition could only face a maximum of 7 years.

Variables

The dependent variable utilized for this project was the likelihood of receiving a count reduction. More specifically, the analyses are centered on whether the number of charges is reduced or not. For example, if a defendant was initially charged with three current offenses but was only convicted of one offense, then this defendant received a count reduction. Cases with only one original charge were eliminated from this analysis since the sample only included defendants who pled guilty. Cases with only one original charge could not be reduced and, thus, were not included in this analysis.

The project utilizes several independent variables to predict the likelihood of receiving a count reduction. There are three general categories of independent variables outlined in this research: offender characteristics[8], case characteristics,[9] and case processing characteristics. Offender characteristics include race/ethnicity, sex, age, employment status, and number of prior felony convictions. The variables and their codes and frequencies are presented in Table 1.

[Insert Table1 here]

Case characteristics include type of primary charge filed,[10] number of current charges filed, and whether a weapon was used or not. The likelihood of count reductions might be influenced by the number charges filed and the type of primary charge filed by the prosecutor given his/her perception of dangerousness as predicted by the focal concerns theory. An offender with more charges filed and/or with a more serious primary charge filed would be classified as more dangerous and, theoretically, would be less likely to gain a plea bargain. Due to low variability, the number of charges filed is recoded into a dichotomous measure – 2 charges and 3 or more charges. Finally, whether a weapon was used in the charged offense would, again, indicate a more dangerous offender and, therefore, reduce the likelihood of the offender receiving a negotiated guilty plea.

Case processing characteristics address the systemic factors that may impact decisions within the court. These factors include type of defense attorney (public or private), pretrial release status, and whether the defendant was under state control at the time of the arrest. Some suggest that defendants with a public defense attorney receive harsher penalties than those with a private defense attorney (see Chiricos & Bales, 1991; Spohn, 2002). Pretrial release status is defined as whether the defendant gained a release or not. Those who are not released are often treated more harshly (Sorensen & Wallace, 1999; Spohn & Cederblom, 1991). Finally, the state control of the defendant is measured by whether the defendant was on probation/parole or not at the time of the arrest. Those who are on probation or parole are likely not to receive a count reduction compared to those who are not on probation or parole at the time of the arrest.

[8] Although past research has identified a possible interaction effect between race and sex of the offender (see Spohn & Holleran, 2000), the data for the current study do not support such an analysis.

[9] There are no strength of evidence or victim characteristic variables included in the original study. It is presumed, though, that the strength of evidence would have already been considered during the initial screening process.

[10] Charge type is coded as a dummy variable. Both "murder" and "rape" are omitted as the reference category because the low number of murder cases.

Analytical Procedures

To measure the effect of offender characteristics on plea bargaining, the current study employs a logistic regression analysis.[11] Logistic regression is used for analyses examining dependent variables that are dichotomous (see Aldrich & Nelson, 1984; Menard, 2002). The current project uses logistic regression for analyzing the effect of offender characteristics on the likelihood of count reduction – a dichotomous dependent variable. More specifically, a backward selection logistic regression is run in which all of the theoretically relevant independent variables are included initially. Insignificant variables are then removed one at a time until all of the variables in the model are statistically significant ($p<.10$).[12] By completing a backwards selection logistic regression, the current research can eliminate the insignificant variables. By including insignificant variables in the model, the fit of the model increases just simply adding a variable to the model – whether significant or not.

RESULTS

Table 2 presents the frequency distributions disaggregated by case seriousness. The data indicate that count reductions are fairly evenly distributed. The table indicates that 78.5% of the offenders in the most serious group received a count reduction, compared with 68.3% of the offenders in the borderline serious group and 73.5% of the offenders in the least serious group. The typical offender in each group is an unemployed black male offender who was less than 35 years old and had no prior felony convictions.

Direct Effects

The results from the direct effects logistic regression model are summarized in Table 3 where no partitions are made. The overall count reduction model is statistically significant ($p < .10$) with a proportional reduction in error of 0.156 (or, 15.6%). None of the offender characteristics have a statistically significant relationship with the decision to reduce the number of charges, whereas the legally-relevant variables *do* have a statistically significant effect ($p<.10$). Offenders who are facing three or more original charges are significantly more likely than those facing only two charges to receive a count reduction. Offenders facing a violent or property offense are more likely to receive a count reduction than offenders facing a drug offense. Finally, offenders facing a Class 3 or Class 4 charge were less likely to receive a count reduction than offenders facing a Class X charge – the reference category.

[Insert Table 3 here]

Partitioned Effects

To test the proposed integrated theory, it is important to partition the data into three main categories of case seriousness: most serious, borderline serious, and least serious. The only model that was found to be statistically significant ($p<.10$) is the "least serious" model. This least serious model has a proportional reduction in error of 23% (Nagelkerke $R^2 = 0.230$). Table 4 indicates that none of the offender characteristics produced significant effects, whereas the legally-relevant factors are statistically significant predictors of whether an offender received a count reduction or not.

[Insert Table 4 here]

Offenders who had two or more prior felony convictions or one prior felony conviction are less likely to receive a count reduction than those who had no prior felony convictions ($p<.10$). Offenders facing a theft or motor vehicle theft charge are significantly more likely to receive a count reduction than offenders who face a robbery charge ($p<.10$). Finally, offenders facing three or more current charges are more likely to receive a reduction of the number of charges than offenders facing only two current charges ($p<.10$).

[11] No multicollinear problems arose after examining the zero order correlation matrix. Another test of multicollinearity is to calculate variance inflation factors (a more sensitive test). One problem arose with the direct effects models where narcotics charges, other drug charges, and class variables resulted in high variance inflation factors. After recoding the type of charge variable into more aggregate categories for the direct effects model, the calculation of variance inflation factors indicated no severe multicollinearity (VIF < 5) (Studenmund, 1997). In fact, no variance inflation factors were higher than 3.

[12] The probability level ($p<.10$) is chosen to avoid a Type II error. Smaller samples can yield "false negatives" in predicting outcomes (see Bachman & Paternoster, 2004)

To address the importance of statistically significant variables, the current research standardizes these effects. The standardized coefficient is calculated by multiplying the unstandardized coefficient by the standard deviation of the independent variable (D. W. Roncek, 1999). The absolute values of the results of these computations and rank orders are summarized in Table 4 and indicate the most important significant variables relative to the other significant variables. The most important variable in this model is the type of primary charge. The results summarized in Table 9 indicate that offenders facing a theft charge is the most important variable (0.551), followed by the burglary charge (0.515) and the motor vehicle theft charge (0.447). Therefore, the type of current charge has the most explanatory power in predicting the likelihood of receiving a count reduction.

DISCUSSION

Prosecutors have a substantial amount of discretionary power, which is often left unchecked. This is potentially problematic, given that discretion can lead to disparate treatment within the criminal justice system (Walker, et al., 2000). Previous research has not studied determinants of count reduction decisions. Since prosecutors have nearly unfettered discretion in negotiated guilty pleas, there is the possibility that legally irrelevant offender characteristics will influence decisions to reduce the number of charges.

The current research hypothesized that plea bargaining decisions would be clearly determined by legally-relevant factors in the lowest level and highest level of case seriousness. It was also hypothesized that plea bargaining decisions would *not* be clearly determined by legally-relevant factors and rely more on prosecutorial discretion in the medium level of case seriousness. More specifically, it was hypothesized that Black/Hispanic, male, young, and unemployed offenders would be less likely to receive a count reduction in the borderline serious cases than white female older offenders who were employed at the time of the crime.

The analyses suggest that no statistically significant relationships between offender characteristics and the likelihood of receiving a count reduction were found. Finding nothing, however, is often finding something. The results of this study suggest that prosecutors do not treat offenders differently in their decision to drop the number of charges based on the offenders' race/ethnicity, sex, age, and employment status regardless of offense severity. Instead, prosecutors rely primarily on legally-relevant factors – but only for the least serious cases. Therefore, the hypothesis that offender characteristics impact the decision to reduce the number of charges in the borderline serious cases is not supported.

There are a few possible explanations for the findings from this research. First, prosecutors' reliance on legally-relevant variables may suggest that prosecutors do not attempt to circumvent the determinate sentencing scheme in Illinois through their plea bargaining power. Although it is possible that prosecutors have the power to affect sentencing decisions through plea bargaining practices, the evidence from this study may indicate that prosecutors, for the most part, do so uniformly. It is possible, though, that important distinctions may be made within each class of offense masking disparity within each partition. The current study only examined potential disparities *between* partitions.

Second, the effects of offender characteristics on plea bargaining decisions may be minimized by "straight pleas." Defendants can plead guilty in the absence of any concessions given by the prosecutor. They engage in such activities for a variety of reasons: strong and convincing evidence against the offender; lack of support from their defense attorney; or the offenders' personal regret or remorse. This study did not control for "straight pleas," which could explain the high number of guilty pleas that were not accompanied by a count reduction.

"Symbolic bargaining" may also explain why offender characteristics did not significantly influence plea bargaining decisions.

> While some changes (a reduction of rape to battery or armed robbery to robbery) can be significant and have important sentencing implications, others may be symbolic or largely so (a reduction of burglary to larceny in a building or dropping three counts of theft in a four-count indictment) (Nardulli, et al., 1988, p. 214).

Having knowledge about whether a specific guilty plea is a result of a true bargain or a symbolic bargain could greatly improve the validity of the findings of this study. Even though the current analyses did not produce evidence to suggest disparate treatment in prosecutors' plea bargaining decisions, these disparities may be masked by symbolic bargaining.

Another masking agent is the potential for prosecutors' overcharging practices. Overcharging is quite prominent for charge and/or count bargaining practices (see Shulhofer & Nagel, 1997). It is unknown what the legitimate number of charges is to make an assessment about which defendants were more likely to receive a count reduction. Without knowing the "real evidence" of the case, it is unclear as to whether an offender received a true plea bargain or whether the guilty plea was a result of a "markup" during the initial charging phase. Again, disparities may be masked because certain groups of offenders may have received a "markup" reduction as opposed to a "true" reduction.

Although this study is one of the few studies to explore plea bargaining decisions in a systematic way, there are a few limitations. First, there was no data on straight pleas and strength of evidence. Without appropriate knowledge about why defendants choose to plead guilty without these concessions, research cannot conclude which cases truly received a count reduction and which cases did not. For all intents and purposes, offenders who did not receive a count reduction may have pled guilty without consideration of a plea bargain.

Strength of evidence may also relate to the validity of the reduction measures. Previous research noted that the strength of evidence is an important factor when considering plea bargaining decisions (see Albonetti, 1992; Bernstein et al., 1977; Wilmot & Spohn, 2004). It is important for future research to include strength of evidence which may have been considered in the charging phase and/or the plea negotiation phase.

Finally, it is important to note that the data used for this study were collected from one jurisdiction – albeit a fairly large jurisdiction – in one state. The external validity of this research project may be fairly limited. It would be prudent to compare across similar jurisdictions in different states. This research is also limited to state and local prosecutors; findings may differ in federal cases with federal prosecutors.

Although the hypotheses tested in the current study were not confirmed, important differences may be masked by straight pleas and/or symbolic plea bargaining. Therefore, it would be important to include measures on undercharging and overcharging practices and measures on trial convictions to cover straight guilty plea decisions.

One final consideration for future research is to examine potential disparities as a cumulative effect across the system. As Blumstein and his associates (1987) have noted, much of the research in this area examined disparities at independent decision points of the criminal justice system. They argued that research should, rather, concentrate on examining how disparate treatment at one stage can factor into a cumulative disparity effect across multiple stages. Although little to no disparity was found in the plea bargaining stage in this study, researchers may find that disparity is prevalent at prior stages that might mask important differences not revealed in research concentrated on one stage of the criminal justice system. It is important to examine possible cumulative effects across multiple stages of the criminal justice system.

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Figure 1. Illustration of the Integrated Theoretical Perspective

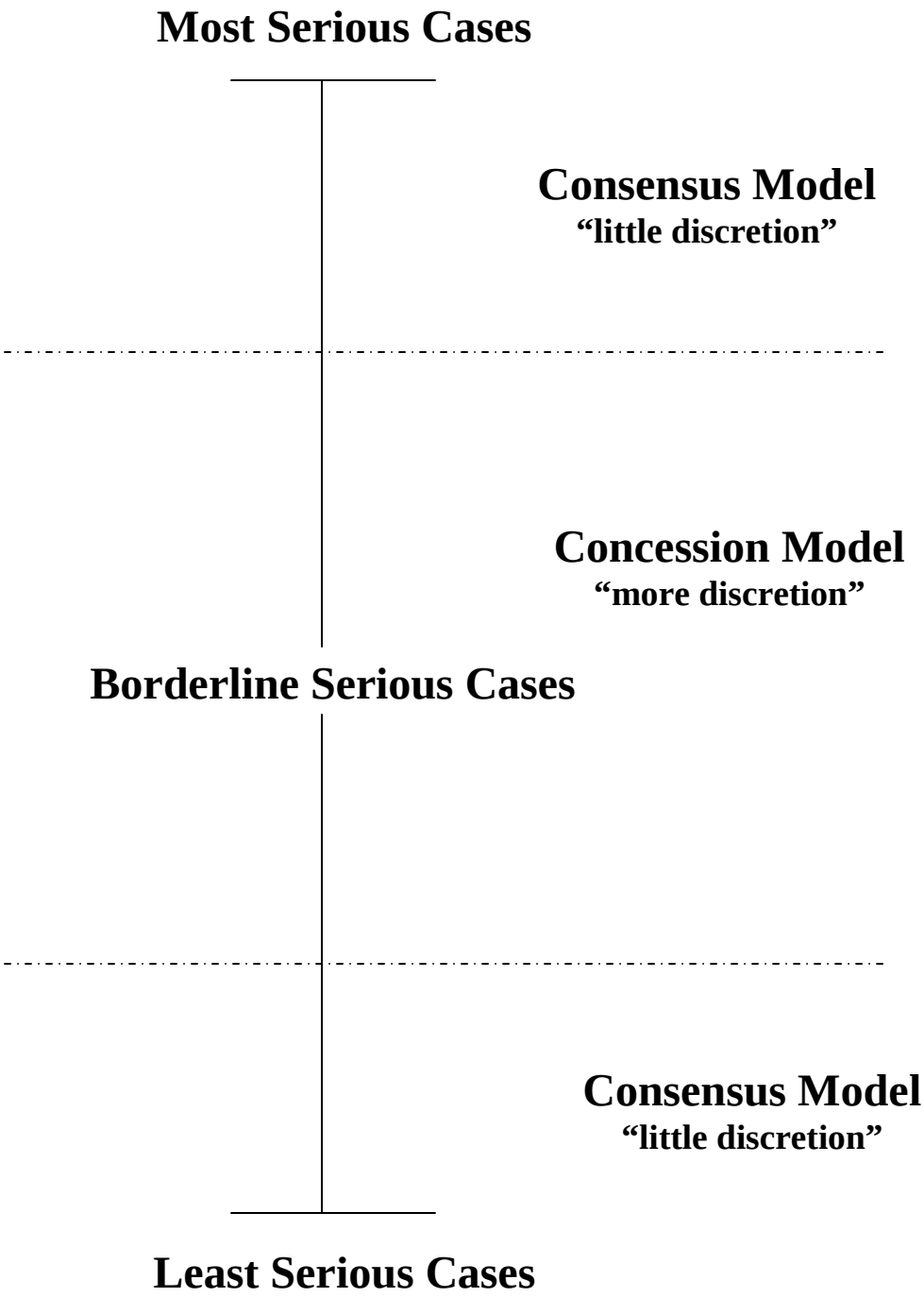

Table 1. Dependent and Independent Variables: Codes and Frequencies

Variable	Code	N	%
Dependent Variable			
Counts Reduced	1=yes	599	74.3
	0=no	207	25.7
Independent Variables			
Offender characteristics			
Race/ethnicity			
Black		2087	81.0
Hispanic		267	10.4
White		224	8.7
Sex	1=male	2335	90.6
	0=female	243	9.4
Age	0=24 years or younger	1195	46.4
	1=25-34 years	914	35.5
	2=35 years or older	469	18.2
Employment Status	1=unemployed	1629	72.9
	0=employed	607	27.1
Prior Felony Convictions	0=zero convictions	1096	42.5
	1=one conviction	760	29.5
	2=two or more convictions	722	28.0
Case Characteristics			
Most Serious Charge Filed			
Murder		52	2.0
Rape		29	1.1
Robbery		200	7.8
Aggravated Assault		22	0.9
Burglary		328	12.7
Weapons Offense		143	5.5
Larceny/theft		124	4.8
Motor Vehicle Theft		169	6.6
Possession of Narcotics with Intent		755	29.3
Other Drug Offenses		628	24.4
Other Felony Offenses		128	5.0
Class of Primary Charge Filed			
Class X		267	10.4
Class 1		444	17.2
Class 2		879	34.1
Class 3		346	13.4
Class 4		642	24.9

Variable	Code	N	%
Weapon Use	1=yes	383	15.3
	0=no	2124	84.7
Number of Charges Filed	1=one charge	1772	68.7
	2=two charges	537	20.8
	3=three or more charges	269	10.4
Case Processing Characteristics			
Type of Public Defense Attorney	0=public	2393	92.8
	1=private	185	7.2
Pretrial Status	1=in custody	1616	62.7
	0=released	962	37.3
Under State Control (on	1=yes	509	19.7
	0=no	2069	80.3

Table 2. Dependent and Independent Variables: Codes and Frequencies by Case Type

	Most Serious		Borderline Serious		Least Serious	
	N	**%**	**N**	**%**	**N**	**%**
Dependent Variables						
Counts Reduced						
Yes	117	*78.5*	82	*68.3*	275	*73.5*
No	32	*21.5*	38	*31.7*	99	*26.5*
Independent Variables						
Offender Characteristics						
Race/ethnicity						
Black	174	*81.3*	305	*82.4*	1396	*82.6*
Hispanic	13	*6.1*	35	*9.5*	161	*9.5*
White	27	*12.6*	30	*8.1*	134	*7.9*
Sex						
Male	197	*92.1*	342	*92.4*	1545	*91.4*
Female	17	*7.9*	28	*7.6*	146	*8.6*
Age						
24 years or younger	115	*53.7*	193	*52.2*	783	*46.3*
25-34 years old	67	*31.3*	125	*33.8*	597	*35.3*
35 years or older	32	*15.0*	52	*14.1*	311	*18.4*
Employment Status						
Unemployed	128	*69.6*	260	*77.4*	1085	*73.7*
Employed	56	*30.4*	76	*22.6*	387	*26.3*
Prior Felony Convictions						
Zero Convictions	92	*43.0*	153	*41.4*	685	*40.5*
One Conviction	60	*28.0*	127	*34.3*	495	*29.3*
Two or More Convictions	62	*28.2*	90	*24.3*	511	*30.2*
Case Characteristics						
Murder Charge						
Yes	49	*22.9*				
No	165	*77.1*				
Robbery Charge						
Yes	86	*40.2*			93	*5.5*
No	128	*59.8*			1598	*94.5*
Burglary Charge						
Yes			82	*22.2*	245	*14.5*
No			288	*77.8*	1446	*85.5*
Theft Charge						
Yes					121	*7.2*
No					1570	*92.8*
Motor Vehicle Theft Charge						
Yes					135	*8.0*
No					1556	*92.0*
Weapons Charge						
Yes					130	*7.7*
No					1561	*92.3*

Table 2. (cont.)

	Most Serious		Borderline Serious		Least Serious	
	N	**%**	**N**	**%**	**N**	**%**
Narcotics Charge						
Yes	79	*36.9*	288	*77.8*	388	*22.9*
No	135	*63.1*	82	*22.2*	1303	*77.1*
Other Drugs Charge						
Yes					579	*34.2*
No					1112	*65.8*
Number of Charges Filed						
One Charge	65	*30.4*	250	*67.6*	1317	*77.9*
Two Charge	65	*30.4*	103	*27.8*	296	*17.5*
Three or More Charge	84	*39.3*	17	*4.6*	78	*4.6*
Weapon Use						
Yes	67	*33.0*	4	*1.1*	174	*10.5*
No	136	*67.0*	356	*98.9*	1477	*89.5*
Case Processing Characteristics						
Type of Defense Attorney						
Public	182	*85.0*	337	*91.1*	1614	*95.4*
Private	32	*15.0*	33	*8.9*	77	*4.6*
Pretrial Status						
In Custody	175	*81.8*	238	*64.3*	1028	*60.8*
Released	39	*18.2*	132	*35.7*	663	*39.2*
Under State Control						
On Probation/parole	35	*16.4*	80	*21.6*	356	*21.1*
Not on Probation/parole	179	*83.6*	290	*78.4*	1335	*78.9*

Table 3. Logistic Regression: Count Reduction Model (Direct Effects)

	b	Sig.	Odds Ratio	$\lvert b(\sigma_x) \rvert$
Type of Primary Charge Filed ("drug charge" is reference category)				
Violent charge	0.476	0.071	1.610	0.365 **(3)**
Property charge	1.123	0.000	3.073	0.861 **(1)**
Number of Charges Filed ("2 charges filed" is reference category)				
3 or more charges filed	1.295	0.000	3.652	0.396 **(2)**
Class of Primary Charge Filed ("Class X" is reference category)				
Class 3 charge	-0.577	0.043	0.562	0.197 **(5)**
Class 4 charge	-0.695	0.097	0.499	0.301 **(4)**
Constant	0.418			
Number of cases	689			
Nagelkerke R^2	0.156			
-2 Log Likelihood (goodness of fit)	693.48*			

All variables listed are statistically significant ($p < .10$)

*$p < .10$

Table 4. Logistic Regression: Count Reduction Model (Least Serious Cases)

	b	**Sig.**	**Odds Ratio**	**$\lvert b(\sigma_x) \rvert$**
Prior Felony Convictions ("0 felony convictions" is reference				
One prior felony conviction	-0.559	0.090	0.572	0.254 **(6)**
Two or more prior felony convictions	-0.869	0.011	0.419	0.399 **(4)**
Type of Primary Charge Filed ("robbery" is reference category)				
Burglary charge	1.463	0.000	4.4320	0.515 **(2)**
Theft charge	2.138	0.043	8.485	0.551 **(1)**
Motor vehicle theft charge	1.648	0.000	5.197	0.447 **(3)**
Number of Charges Filed ("2 charges filed" is reference category)				
3 or more charges filed	1.290	0.004	3.634	0.271 **(5)**
Constant	0.614			
Number of cases	332			
Nagelkerke R^2	0.230			
-2 Log Likelihood (goodness of fit)	328.750*			

All variables listed are statistically significant ($p < .10$)

*$p < .10$