TYPES OF PLEAS
IN
WASHINGTON, D.C.

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PERSPECTIVES ON PLEA BARGAINING

Plea bargaining is the process by which the defendant in a criminal case relinquishes his right to go to trial in exchange for a reduction in charge and/or sentence (Blumberg, 1967). The United States Supreme Court has explicitly approved the practice of plea bargaining (Federal Rule 11) on the assumption that defendants who were convicted on the basis of negotiated pleas of guilt would have been convicted had they elected to stand trial (Finklestein, 1975). For the most part, however, the plea bargaining process is depicted like a market situation with the defense counsel or defendant acting as a buyer and the prosecutor acting as a seller (U.S. Department of Justice, 1976). In fact, plea bargaining is a pre-trial "deal" between the prosecutor and the defense in which charges are dropped or assurances of leniency in sentencing are made in exchange for the defendant's willingness to plead guilty. Such transactions necessarily muddle the relationship between guilt and outcome postulated above. Plea negotiations are, nonetheless, the norm in criminal processing and have been so for a long time. Not only are pleas common in all jurisdictions in the country, but they account for about 90% of all criminal convictions (Brosi, 1980; Heuman, 1978). There is also evidence (Halverston et al., 1977; Heuman, 1975 and 1977) that this is not a recent phenomenon, having been widely used since the court's beginning. However, public and scholarly awareness of the plea issue appeared to have been triggered only in

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the sixties when the American Bar Foundation studied plea bargaining practices.
The persistent belief in the minds of many that the extensive use of plea
bargaining is a recent phenomenon associated with crime explosion and court
inefficiency is a consequence of this late awareness of this process.

In the past two decades a lot of controversy has emerged about the merits
of plea bargaining. Groups opposed to this means of justice administration are
especially concerned with its potential for abuse of power. They argue that
since barbaining "deals" are necessarily handled informally, they are, conse-
quently, devoid of due process requirements designed to protect the civil
rights of defendants (Cleary, 1978; Enker, 1967; Green, 1975; Thomas, 1974;
U.S. Department of Justice, 1977; Hart, 1967). Supporters of the process see
plea bargaining as an efficient way of controlling criminals in a justice system
with scarce resources. It does so by ensuring convictions and avoiding trial
expenses (Barbara, 1978; Heuman, 1978; Newman, 1973; Rosett and Cressey, 1976;
Wooton, 1963).

As Packer (1968) had already pointed out in his book The Limits of Criminal
Sanctions, these opposite positions reflect two aspects of the justice goal
that are difficult to maximize simultaneously under conditions of limited re-
sources (see also, Rhodes, 1978). One of the mandates of criminal courts is to
protect the community and, consequently, to ensure that no criminal goes un-
punished; the other mandate is, however, to ensure that no innocent person be
convicted, that is, to attest for the soundness of the guilty verdicts. The
court should then avoid two types of errors; to let loose a potential criminal
or to convict an innocent person. Because of limited resources, courts are
often constrained in running the risk of either error. The definition of which
error is worse clearly depends on a value judgement. Supporters of plea bar-
gaining as an efficient crime control strategy clearly value avoiding type 1
error above type 2 error. Opponents of plea bargaining, who support full trials

as a guarantee of due process, prioritize avoiding type 2 error.

Nonetheless, even the full trial supporters acknowledge the impossibility
of completely doing away with plea bargaining. On the other hand, plea bar-
gaining supporters are aware of the dangers of the informal (unregulated)
process of negotiation. There is, in fact, on both sides a convergence of
thought that calls for more regulation and due process guarantees in the plea
bargaining process (Bashara, 1978; Buckle, 1977; Enker, 1967; Heuman, 1978;
Green, 1975; Rosett and Cressey, 1976). A clear understanding of how the
process is presently working is a prerequisite to the formulation of viable
regulation. That is, a first step towards regulating plea bargaining requires
the identification of the implicit rules that presently govern the process.
This demands a rather intensive investigation of a variety of courts since
those implicit guidelines are likely to vary from court to court.

PURPOSES AND USES OF PLEA BARGAINING

The emergence and widespread use of plea bargaining in American courts
have been the subject of various interpretations. The most popular explanation
proposes that the extensive use of plea bargaining is a strategy to facilitate
case flow in face of case pressure and limited resources Bashara, 1978;
Cleary, 1978; Folberg, 1968; Corbett, 1975; Hoanie, 1978; Blumberg, 1967).
The argument is made that urbanization and accelerating crime rate have pres-
sured the criminal justice system to develop speedier processing alternatives
to the lengthy adversary trial process. In other words, plea bargaining is
thought to have developed as the principal means to expedite the process of
criminal cases in overcrowded courts. There have been several attempts at
testing this hypothesis either by comparing the same court with variable case
loads at different points in time or by comparing courts with similar resources
but different caseloads. In either case the findings did not support the case-

load hypothesis; that is, no evidence was found that with an increase of cases, the use of plea bargaining would expand (Dodge, 1978; Heuman, 1975 and 1978; Thompson et al., 1979). Rhodes (1978), however, argues that for the most part, short-term fluctuations of case loads will have no effect in plea bargaining because there is always a time lag between environmental changes and organizational responses. It can also be added that controls for resources in these studies are, on the whole, inadequate.

So the caseload hypothesis persists and is widely accepted, more due to its face value validity than to systematic evidence. There is, however, much less agreement about the criteria used to select cases away from full trial processing. Many of the prosecutors interviewed by Heuman (1978) said they used the plea bargaining option as a way of expediently processing nonserious crimes, reserving the lengthier trial process for serious cases. If this criterion was, in fact, used in a given court, one would have expected that a greater proportion of defendants charged with nonserious crimes would have pled guilty, while defendants charged with serious offenses would have been over-represented in formal trials.

Other sets of explanations link the exercise of plea bargaining to the interests of the major actors in the criminal process: the prosecutor and the defendant or his/her representative (Department of Justice, 1976; Green et al., 1975). From the point of view of the prosecutors' interests, pleas offer guaranteed convictions and speedy processing. From the perspective of the defendants' and defense attorneys' interests, plea bargaining opens the opportunity for reducing charges and sentencing. In both instances this processing alternative reduces uncertainty of outcome, but it is clearly based on the presumption of guilt. Indeed, Heuman (1978) found in his study of Connecticut courts that prosecutors believed that 90% of the defendants in the court were

factually guilty. Rhodes (1978) also found that prosecutors in Washington, D.C. thought that at least 80% of the defendants that pled guilty would have been convicted had they gone to trial. Both of these findings would suggest that prosecutors would tend to opt for plea bargaining in cases for which evidence of guilt is well established.

Green (1975) argues, however, that the reverse is true. He advances that prosecutors are more motivated to initiate plea bargaining in cases for which circumstantial evidence may make conviction doubtful. Prosecutors are depicted in this study as primarily committed to what Parker identified as the criminal control goal of the justice system. That is, certainty of conviction of offenders presumed factually guilty takes precedence over due process and legally established guilt.

Defenders and defense attorneys, on the other hand, are assumed to be interested in minimizing sentencing predominantly through charge reduction. For example, Heuman (1978) found that defense attorneys used continuances as a strategy to improve on the bargaining in favor of their clients. This not only gave time to work out a more favorable deal, but also to collect as much exculpatory evidence as possible and if possible, to change the victim's and witnesses' testimony. Naturally, to engage in plea bargaining, they have to anticipate conviction. That is, defendants and defense attorneys, to be motivated to negotiate, have to believe that there is enough evidence to result in a guilty verdict at trial. Since the evaluation of what is "enough evidence" requires expert knowledge, one would expect that defendants with private lawyers and/or with past court experience will be able to make more informed decisions (Berstein et al., 1977). Consequently, it is possible that many defendants charged with crimes for which evidence is weak might nonetheless plead guilty. Rhodes proposes also that defendants involved in minor crimes for which the

the expected punishment is negligible might be willing to forego trial and by pleading guilty, end the court process faster.

This review of the literature on plea bargaining can be translated in five propositions:

1. The higher the case pressure (case load/resources), the larger the number of cases convicted through pleas.

2. More serious cases will tend to go through full trials, while less serious cases will tend to be handled through plea bargaining.

3. The less serious cases will more readily plead guilty than the more serious cases because the consequences of conviction are less severe.

4. The stronger the evidence for a given charge, the greater the likelihood that a case will be processed through plea bargaining.

5. The weaker the evidence on ' se, the greater the probability that it will be handled through plea bargaining.

The second and third propositions, as well as the fourth and fifth, are clearly contradictory, and only empirical testing can decide which, if any, more accurately portraits what happens in court. However, propositions 1, 2 or 3, 4 or 5 are not mutually exclusive, and one will have to explore not only their independent, but additive, effect on pleas.

DATA AND INDICATORS

Sample

In the subsequent analysis we will be using PROMIS data from Washington, D.C. Our sample was drawn from all closed cases that entered the District of Columbia Court in 1974. Because in this study we wanted to focus on gender differences, we selected all female cases and every sixth male case. The size of the resulting sample is 3,954 cases with a fairly even gender distribution.

Of all cases papered in our sample, 67% were dismissed (49% before trial

and 51% at trial); 3.9% were found innocent and 29% convicted. Of those convicted, 79% pled guilty.[*] In the present study we will focus on those cases that went to trial and pled guilt but not on dismissals. While it is conceivable that certain dismissals might have involved some bargaining, this is impossible to document with the present data.

Selection of Independent Variables

To test the propositions identified in the previous section, we grouped the predictor variables as indicators of evidence, defense strategies, case pressure, offense seriousness. These groups are shown in Table 1. The five

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TABLE 1

INDICATORS' GROUPINGS

Evidence	Defense Strategy
Corroboration	Number of Continuances
Evidence Recovered	Number of Charges
No. of Witnesses	Exculpatory Evidence
Use of Weapon	Relation to the Victim
Apprehension at the Scene of Crime	
Existence of Codefendants	
Prior Record	

Case Pressure	Offense Seriousness
Prosecutor Caseload	Type of Offense Seriousness

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first indicators of evidence are self-explanatory, but the last two may need some interpretation. It seems reasonable to argue that the more defendants involved, the less easily a charge can be dismissed. Also, past criminal history

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[*] The distribution of dispositions reported by Rhodes (1978) who used the same data source is similar, although not identical. Differences are accountable by the selection of our sample.

is likely to be an important contributor to the belief of factual guilt. This set of variables is crucial to test the propositions more directly related to prosecutor decisions on the basis of evidence. Are cases selected for plea bargaining more likely to be weak on evidence or unambiguous cases of certain conviction if they went to trial?

The second set of variables operationalize defense strategies. If, in fact, plea bargaining is predominantly used by defendants and defense attorneys as a means of getting the least possible punishment, then we would expect the number of continuances to be an indicator of bargaining chances or time for making favorable deals. The existence of exculpatory evidence should naturally encourage bargaining by the defense. From his interviews with defense attorneys, Heuman (1978) concluded that in cases where the victim or complainant was a relative of the defendant, "deals" involving changes on charges could be worked out more easily. It seems also reasonable to contend that there is a greater latitude to bargain when the defendant has been charged with a plurality of charges than a single one. If plea bargaining is used mostly as a defense rather than prosecutorial strategy, we would expect to find that cases going to full trial lack the above characteristics.

The testing of the propositions relating the use of plea bargaining to offense seriousness is pretty straightforward. We have two measures of seriousness, one based on the FBI general classification of offenses and another that differentiates within each type between more and less serious offenses. We will then have to assess if the use of plea bargaining is or is not associated with seriousness of offense or if the association holds for certain types of offenses and not for others.

Since we are presently looking at a single court and at a given point in time, we cannot adequately test the case pressure proposition. It can, none-theless, be argued that if the expansion of the use of plea bargaining is a

prosecutor's response to expedite processing under heavy case loads, then the larger the case load of individual prosecutors, the more they would opt for plea bargaining and vice versa.

We will consider each set of predictors separately in order to evaluate the validity of each proposition. However, it is clear in the definition of plea bargaining and in the literature reviewed that the process reflects simultaneously organizational, prosecutorial, and defense components and consequently, indicators of these components will also be entered jointly in subsequent analysis.

The Dependent Variable: Pleas With and Without Bargaining

Most discussions on plea bargaining do not make a clear differentiation between simple pleas of guilt to the offense originally charged and pleas to lesser charges. While, as discussed previously, plea bargaining might involve charge reduction or simply sentence reduction, we think that it is important to separate pleas to the same charges from pleas to lesser charges. First, a plea to a lesser charge is a greater guarantee of outcome for the defendant than the informal assurance of the prosecutor that plea to the original charge will be rewarded by a milder sentence by the judge. Second, while we have unambiguous information concerning the nature of the plea (to the same or to a lesser charge), we do not have any information concerning minimum or maximum sentence for a given charge[*] and consequently, cannot test if the plea guilty to the same charge was accompanied by lenience in sentencing. We will be able, however, to investigate if there is a difference in sentencing for those charged with the same offense who pled and those who went to full trial. We think, however, that it is advantageous to differentiate between pleas to the same and to a lower charge and investigate sentencing deals separately. This might be particularly interesting

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[*]We will have this information in five other courts.

TABLE 2

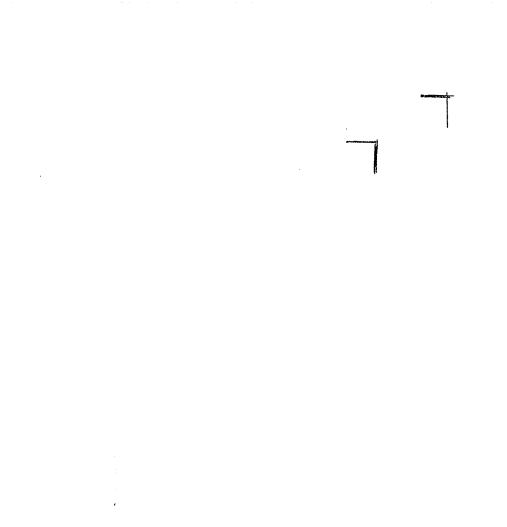**EVIDENCE, DEFENSE, CASE PRESSURE, AND OFFENSE MEASURES BY PLEAS**

		Plea Innocent (21%)	Plea Guilty (64%)	Plea Bargain (15%)	Sign. Level	N
Evidence Indicators						
Corroboration-yes	T	21.1	66.1	12.8	-	1284
	M	25.5	53.3	15.4	-	706
	F	16.3	73.7	10.0	-	578
Prior Record-yes	T	21.8	64.1	14.1	-	1387
	M	21.1	62.3	16.5	-	770
	F	27.8	66.8	10.4	-	617
Evidence Rec.-yes	T	17.4	66.9	15.7	.001	1385
	M	19.0	64.0	17.0	<.001	768
	F	14.9	71.4	13.7	.02	617
No. of Witnesses +1	T	20.8	59.0	20.2	<.000	1386
	M	22.6	56.4	21.1	.04	769
	F	17.7	63.5	18.7	<.000	617
Weapon-yes	T	24.3	57.4	18.3	.001	1221
	M	24.1	59.1	16.9	-	667
	F	24.6	54.2	21.2	<.000	554
Codefendants-yes	T	21.8	56.4	21.8	.000	1387
	M	21.0	50.7	28.3	<.001	770
	F	23.0	64.7	12.2		617
Apprehension Scene of Crime yes	T	19.9	68.6	11.5	.000	1283
	M	20.0	65.5	14.6	<.000	703
	F	19.8	72.0	8.2	<.01	580

		Plea Innocent	Plea Guilty	Plea Bargain	Sign. Level	N
Defense Indicators						
No. of Continuances +1	T	22.3	53.4	24.2	<.000	1321
	M	24.2	49.4	26.4	<.000	738
	F	19.4	59.9	20.7	<.000	583
No. of Charges +1	T	19.3	60.9	19.8	<.000	1387
	M	20.2	57.3	22.5	.003	770
	F	17.9	66.4	15.6	<.01	617
Exculpatory Evidence-yes	T	18.2	56.8	25.0	-	1280
	M	24.0	60.0	16.0	-	703
	F	10.5	52.6	36.8	<.01	577
Victim Related yes	T	22.7	51.5	25.8	.000	1387
	M	25.7	49.6	24.8	.001	770
	F	18.5	54.3	27.2	.001	617
Case Pressure Indicators						
Prosecutor Caseload high	T	19.6	65.3	15.2	<.01	1218
	M	22.5	60.2	17.3	<.01	562
	F	15.6	72.2	12.2	-	401
Offense Indicators						
Type of Offense						
Person	T	29.6	40.5	20.7	<.000	
	M	30.8	41.0	28.2	<.000	
	F	26.6	39.2	34.2	<.000	
Property	T	18.2	63.8	18.0		
	M	19.0	60.0	21.0		
	F	17.1	69.3	13.6		
Victimless	T	20.7	73.9	5.4		
	M	22.5	70.8	6.7		
	F	19.3	76.3	4.4		
Relative Serious-ness/low level	T	24.5	70.9	4.6	<.000	1218
	M	26.4	67.7	6.0	<.000	677
	F	22.4	74.7	2.9	<.000	541

since Rhodes' (1978) analysis of this same set of data did not make this distinction.   In the following discussion we will reserve the term plea bargain for cases pleading to reduced charges.

BIVARIATE ANALYSIS

Evidence and Type of Plea

The distribution of the various predictors by type of plea is presented in Table 2. Two of the evidence variables (corroboration and prior record) show no significant association with type of plea. While all the others are significantly associated with the plea variable, the patterns of those associations differ. "Recovery of evidence" and "apprehension at the scene of the crime" increase the probability of pleas of guilt; "number of witnesses" and "of codefendants" appears to promote plea bargaining, and the presence of a gun appears to somewhat encourage offenders to plead innocent. If we assume that evidence recovered and apprehension at the scene of the crime are legally more solid grounds for conviction than any of the other evidence indicators, then the proposition that pleas of guilt are simply a more efficient way of handling unambiguous cases of guilt receives some support.

For the male and female subsamples the associations of "evidence recovered," "apprehension at the scene of the crime," and "number of witnesses" with plea show the same pattern as for the total sample. "Number of codefendants" and "weapon" show different associations by gender. Existence of "codefendants" appears to facilitate plea bargaining for men but not for women. Existence of a weapon appears to lead more women to plea bargain but shows no significant association for men. It is noteworthy that in every instance, except "use of weapon," evidence is associated with higher levels of pleas of guilty for females than for males. Put otherwise, it appears that females are more easily convinced of the certainty of conviction and hence, more willing to plead guilty.

Defense Strategy and Type of Plea

Of the four indicators of defense strategy, one, "exculpatory evidence," is significantly associated with pleas only for females, facilitating plea bargaining. The association of number of continuances characterizes pleas of guilty and many continuances, plea bargaining. While plurality of charges appears to increase the probability of plea bargaining for males, if anything, it increases pleas of guilt for females. For both genders a related victim appears to facilitate plea bargaining.

In sum, among the defense strategy indicators, number of continuances and number of charges show the clearest associations. Continuances appear to be a strategy of bargaining as Heuman (1975) had suggested. The fact that pleas of guilt occur with the least number of continuances supports our assumption that simple "plea guilty" is quite a different process from plea bargaining and is characterized by expedient case solution. While for men, number of charges facilitates plea bargaining as suggested in the theoretical discussion, it encourages pleas of guilty for females. This again reinforces the pattern found for the evidence predictors: women plead guilty more readily than men.

Case Pressure

We expected that the higher the prosecutor caseload, the larger the proportion of pleas of guilt because the overloaded prosecutor would be under pressure to move his/her cases fast. We find, however, that although the association for the female subsample is in that direction, it is not significant. For the male subsample, the association appears to be the reverse. That is, the greater the prosecutor caseload, the more male defendants go to trial. Obviously, to validate these associations we will have to control for type of offense since it is possible that prosecutors are not assigned cases randomly.

Offense and Choice of Pleas

Defendants charged with victimless crimes, both males and females, pled guilty more often than any other type of defendant. Defendants of both genders charged with person offenses are proportionally more represented among those who either plead innocent (and, therefore, go through full trial) or engage in plea bargain. Among persons accused of property offenses, the distribution by gender indicates that women tend to plead guilty, while men tend to bargain. The relative seriousness of the offense is significantly associated with pleas, showing that neither men nor women with low levels of serious charges within each offense type tend to engage in plea bargaining. However, while women predominantly plead guilty for less serious crime levels, the probability of pleading innocent for the same offenses increases only for men.

Type of offense and relative seriousness have consequently a different impact on the probability of the defendant choosing any of the three types of pleas. On the whole, the least serious the offense (victimless and relative nonseriousness), the higher the probability of simple plea guilty and the more serious the offense (person, and relative seriousness), the higher the incidence of plea bargaining or plea innocent.

This would appear to confirm Rhodes' (1978) proposition that readiness to plead guilty is associated with minor offenses and the anticipation of light sentences. That is, if all the defendant risks is a fine, suspended sentence, or short-term probation, then it might be worthwhile to shorten the court processing through simple plea guilty rather than go through the bother and costs of a full trial with an unpredictable outcome.

If, however, the charge is serious and the sentence might be severe, then the risk of a trial might be worthwhile (plea innocent) as certainly will any negotiations that might lead to a decrease in the charge (plea bargain). We will, however, have to investigate which circumstances might lead defendants

charged with serious offenses to opt for pleading innocent or bargaining. It is possible that elements of evidence and/or of defense strategy explain these different choices. This will have to be explored through multivariate analysis.

In Table 2 it is already shown that gender makes a difference. Women have a greater tendency than men to plead guilty for less serious offenses and bargain for serious offenses. For all types of offenses men plead innocent more often than women.

To explore in greater detail the association between type of offense and type of plea, we generated Table 3. In this table a more detailed breakdown of offenses is presented, each divided by two levels of seriousness. Looking first at type of offense alone, we see that persons charged with homicide engage predominantly in plea bargaining, next, plead innocent and only rarely plead guilty. This pattern persists, while less clear cut, for assault, robbery, burglary, and other property offenses, excluding forgery and larceny. Persons charged with these crimes plead guilty less often and bargain more often than any of those differently charged. This pattern of association confirms the one found in Table 2 but gives us more information about specific offenses.

In line with Rhodes' hypothesis that defendants charged with less serious crimes would more readily plead guilty than the ones charged with crimes statutorily calling for more sever sentences, we expected that among the first group of offenses (homicide, assault, robbery, burglary, and other property) relative seriousness would decrease the proportion of pleas of guilt, and among the second group (larceny, sex, and drugs), low seriousness level would further increase the proportion of pleas of guilt.

The expected effect of seriousness on pleas of guilt is visible for homicide, burglary, and other property, but not for assault and robbery. Seriousness for these two latter offenses appears to encourage bargaining, while nonseriousness pleas of innocence. This association of seriousness with plea

TABLE 3

PLEAS BY OFFENSE

N=1195

		Plea Innocent (20.8)	Plea Guilty (64.0)	Plea Bargain (15.3)		
Homicide	–	25.0	10.7	64.3	100.0	(28)
	S	28.6	7.1	64.3		
	NS	21.4	14.3	64.3		
Assault	–	30.4	48.9	20.7		(133)
	S	21.9	51.0	27.1		
	NS	54.1	45.9	–		
Robbery	–	29.7	37.8	32.4		(111)
	S	27.9	38.5	33.7		
	NS	57.1	28.6	14.3		
Burglary	–	16.7	50.0	33.0		(74)
	S	14.3	42.9	42.9		
	NS	22.2	72.2	5.6		
Larceny	–	16.0	71.2	12.8		(255)
	S	10.9	53.1	35.9		
	NS	18.3	79.6	2.1		
Forgery	–	20.4	63.3	16.3		(46)
	S	14.6	65.9	19.5		
	NS	60.0	40.0	–		
Other Prop.	–	26.6	50.6	22.8		(38)
	S	25.9	33.3	40.7		
	NS	45.5	54.5	–		
Weapons	–	23.0	66.9	10.1		(171)
	S	20.9	66.4	12.7		
	NS	32.4	64.9	2.7		
Sex	–	23.2	76.2	.5		(181)
	S	23.4	76.0	.6		
	NS	20.0	80.0			
Drugs	–	13.3	80.8	5.8		(115)
	S	16.3	76.7	7.0		
	NS	6.9	93.1	–		
Other	–	10.7	79.5	9.8		(43)
	S	3.0	63.6	21.2		
	NS	10.0	90.0	–		

bargaining is also present for robbery and "other property," but low seriousness for these offenses impacts more on the proportion of pleas of guilt than pleas of innocence. Among all the other offenses, except forgery and weapons, lesser seriousness increases considerably the probability of pleas of guilt. For forgery and weapons, nonseriousness increases the incidence of pleas of innocenc.

The findings described above, while supporting, on the whole, Rhodes' proposition that nonseriousness increases the probability of pleas of guilty, they also offer information based on the type of offense of the simultaneous association of seriousness with plea bargaining and pleas of innocence. For persons charged with assault, robbery, "other property," forgery, and weapons, degree of seriousness has a clearer effect on pleas of innocence and bargaining than on pleas of guilt. The lower the level of seriousness within these types of offenses, the more pleas of innocence and the higher the level of seriousness, the higher the plea bargaining.

What is there about these types of offenses that leads the defendants to make different choices? It is possible that for these crimes the serious level is so serious that defendants will always attempt plea bargaining and are unwilling to risk trial. Itemization of the offenses included in the serious/nonserious classification of these types of offenses are presented in Table 4 and give some support to this interpretation. Sentences established in statutes for rape and armed robbery are certainly severe enough to justify the option of bargaining over any of the others. The same applies to certain activities of fencing and possession of guns. The information on forgery is not specific enough to make a similar generalizaation.

Why should, however, a high proportion of people charged with low serious level of offenses within these types of crimes choose to go to trial rather than plead guilty? Looking at the types of less serious offenses listed in

Table 4, one could argue that not only are they of a much lower level of seriousness than the others, but also that their prosecution might depend more heavily on the resolve to prosecute of the complainants and/or witnesses. If the complainants or the witnesses pursue half-heartedly or withdraw, the probability of acquittal for simple assault, possession of a knife, false pretenses, or even destruction of property is expected to be high. This seems especially likely, given that 65% of the cases going to trial come from the more serious levels, probably making those other offenses look trivial by comparison. These interpretations obviously have to be checked in the next section as we proceed to the multivariate analysis.

TABLE 4

LEVELS OF SERIOUSNESS WITHIN TYPES OF OFFENSES

	Assault	Robbery	Other Property	Forgery	Weapon
More Serious	Sexual Assault Armed Assault	Armed Robbery	Receiving Stolen Goods	Forgery	Firearms
Less serious	Simple Assault	Attempted/ Unarmed	Destruction of Property	Fraud (Bad Check, False Pretenses)	Knives, Blackjack

MULTIVARIATE ANALYSIS

The previous discussion was based on a simple bivariate exploration of the various explanations of plea bargaining presented in the theoretical overview. Given the plurality of the indicators of evidence and defense, we have to turn to multivariate analysis to examine the net contribution of each indicator and their joint power in explaining the defendants' choice of type of plea. Because most of the variables we are dealing with are nominal in nature, we will use the Multivariate Scale Analysis (MNA) (Andrews and Messenger, 1973). MNA is an

additive model that makes it possible to identify how much of the variation of the dependent variable can be explained by each of the independent variables and by all jointly. The generalized R^2 in the subsequent tables (Tables 5-7) indicates the degree of association between all independent variables and the dependent variable. The β^2 is analogous to a partial correlation coefficient: it measures the association between each independent variable and the dependent, holding all other variables constant. ϵ^2 indicates the strength of bivariate associations. The adjusted percentages reflect the multiple controls.

Testing the "Evidence" Propositions

The results of the MNA using the "evidence" indicators as predictors are presented in Table 5. The "evidence" indicators taken together are poor predictors of plea choice, explaining about 5% of the variance (generalized R^2 .048). As weak as they are, these variables have a greater impact on plea bargainint (R^2 adjusted .06) and on plea guilty (R^2 adjusted .06) than on pleas of innocence (R^2 adjusted .01). Judged by the β^2, the variables with a stronger independent effect are "number of codefendants" and "being caught at the scene of the crime." "No codefendants" and "being caught at the scene of the crime" enhance the probability of simple plea guilty even when all the other "evidence" variables are held constant. In the reverse situation of not having been caught at the scene of the crime and having codefendants, the incidence of plea bargaining goes up. From this analysis we can conclude that there is little support for the hypothesis that evidence alone is the criterion on which the choice of types of plea is based.

Testing the "Defense Strategy" Explanations

To test the "defense hypothesis," we followed the same strategy used to test the "evidence" hypothesis. That is, we ran an MNA in which the independent variables were the indicators of defense strategy identified in Table 1. The

TABLE 5

MULTIVARIATE NOMINAL ANALYSIS

EFFECT OF "EVIDENCE" ON CHOICE OF PLEAS

		Plea of Innocent	Plea of Guilt	Plea Bargain
Distribution		21.1	65.1	13.7	N=2259 100%
Generalized R^2 = .048				
Adjusted R^2 =		.011	.056	.058
Prior Arrest				
	ϵ^2	.001	.000	.000
	β^2	.002	.001	.000
Adj. % No	(49%)	19.5	66.9	13.5
Yes	(51%)	22.7	63.3	13.9
Corrob.				
	ϵ^2	.000	.001	.002
	β^2	.000	.000	.001
Adj. % No	(69%)	20.6	65.1	14.3
Yes	(31%)	22.4	63.3	12.3
Evid. Rec.				
	ϵ^2	.009	.005	.000
	β^2	.011	.007	.000
Adj. % Yes	(61%)	17.7	68.4	13.9
No	(39%)	26.6	59.9	13.5
Witness				
	ϵ^2	.000	.015	.025
	β^2	.000	.008	.014
Adj. % 1	(40%)	20.7	70.5	8.8
+1	(60%)	21.4	61.5	17.1
Weapon				
	ϵ^2	.003	.010	.006
	β^2	.005	.009	.003
Adj. % Yes	(29%)	25.6	51.8	16.6
No	(71%)	19.4	68.1	12.6
Codefendant				
	ϵ^2	.001	.011	.012
	β^2	.002	.013	.011
Adj. % 0	(73%)	20.0	68.4	11.5
1+	(27%)	24.2	56.0	19.8
Scene Crime				
	ϵ^2	.002	.024	.029
	β^2	.000	.019	.026
Adj. % Yes	(82%)	20.7	68.2	11.1
No	(18%)	23.2	51.0	25.8

results are presented in Table 6. The defense predictors together explain 8% of the variance in pleas (R^2 generalized .084). While this is an improvement over the explanation power of "evidence," it is still a rather weak result. As was true in the previous analysis, defense indicators are better predictors of plea bargain (adjusted $r^2 = .13$) and of plea guilty (adjusted $r^2 = .10$) than of plea innocent (adjusted $r^2 = .001$). Examination of the β^2 indicates that

TABLE 6

MULTIVARIATE NOMINAL ANALYSIS

EFFECT OF "DEFENSE" ON CHOICE OF PLEAS

		Plea Innocent	Plea Guilty	Plea Bargain	$N = 670$
Distribution		23.4	56.3	20.3	100.0
Generalized $R^2 = .084$					
Adjusted R^2		.001	.090	.135	
Esculpatory Evid.					
	ϵ^2	.003	.000	.001	
	β^2	.003	.004	.000	
Adj. % Yes (4%)		11.3	71.7	17.0	
No (96%)		23.9	55.6	20.4	
Relation Victim					
	ϵ^2	.000	.007	.011	
	β^2	.000	.004	.005	
Adj. % Related (27%)		24.0	50.9	20.1	
No (73%)		23.2	58.2	18.5	
No. of Charges					
	ϵ^2	.004	.013	.046	
	β^2	.005	.001	.014	
Adj. % 1 (38%)		26.0	58.1	15.8	
2 (26%)		25.5	56.4	18.1	
+2 (36%)		19.3	54.2	26.5	
No. of Continuances					
	ϵ^2	.001	.090	.124	
	β^2	.003	.086	.099	
Adj. % 1 (33%)		20.3	76.1	3.6	
2 (21%)		25.9	54.4	19.7	
+2 (46%)		24.5	42.9	32.5	

number of continuances has the strongest independent effect on type of plea. The adjusted percentages indicate that cases with only one continuance plead predominantly guilty, while increase in the number of continuances increases the incidence of plea bargaining even when all other defense indicators are controlled for. While the defense indicators together have only a modest effect on plea choice, the relation between continuances and type of plea is clearly in the direction predicted.

Testing the Inclusive Model

The theoretical discussions on plea bargaining from which the previous propositions were abstracted do not contend that plea bargaining is the outcome of either a prosecutorial or a defense strategy. In fact, for the most part, students of plea bargaining are aware that the choice of pleas is influenced by organizational, prosecutorial, and defense elements. Which of these elements has a greater weight is an empirical question we investigate subsequently. Table 7 presents the results of a Multivariate Nominal Analysis of pleas in which "evidence," "defense," "offense," and "case load" predictors were included.

The inclusion of all indicators explains 17% of the variances on pleas (generalized $R^2 = .163$) and explains better a guilty plea (R^2 adjusted = .18) and plea bargain (R^2 adjusted = .17) than plea innocent (R^2 adjusted = .04). Inspection of the β^2 reveals that the four most powerful single predictors are "number of codefendants," "number of continuances," "type of offense," and "relative seriousness" of offense. The greater the number of codefendants and of continuances and the more serious the offense, the greater probability of engaging in plea bargaining. Single defendants, with only one continuance and charged with victimless crimes are overrepresented among those who plead guilty. Individuals charged with person offenses of lower levels of seriousness tend to plead innocent. These associations are consistent with the patterns first

TABLE 7

MULTIVARIATE NOMINAL ANALYSIS

EFFECT OF EVIDENCE, DEFENSE, OFFENSE, AND CASELOAD INDICATORS ON TYPE OF PLEA

N = 643
[N = 1024]

	Plea Innocent	Plea Guilty	Plea Bargain
Distribution	20.8 [2.2%]	61.3 [63.0%]	17.9 [15.0%]
Generalized R² = .168 [.11]			
R² Adjusted	.04	.19	.18
Prior Arrest			
c²	.000	.000	.000
β²	.000	.000	.000
Adj. % No 46%	20.5	62.2	17.3
Yes 54%	21.1	60.5	18.4
Corrob.			
c²	.001	.003	.001
β²	.000	.000	.000
Adj. % No 69%	21.4	60.9	17.7
Yes 31%	19.6	62.0	18.4
Evid. Rec.			
c²	.006	.004	.000
β²	.007	.006	.000
Adj. % Yes 63%	18.2	64.1	17.6
No 37%	25.2	56.4	18.3
Witnesses			
c²	.003	.044	.042
β²	.000	.001	.000
Adj. % 1 36%	19.8	63.6	16.6
+1 64%	21.4	59.9	18.6
Weapon			
c²	.005	.017	.008
β²	.002	.005	.002
Adj. % Gun 32%	23.7	56.2	20.1
Nogun 67%	19.5	63.7	16.8
Codefendant			
c²	.001 [.001]	.018 [.012]	.018 [.013]
β²	.002 [.001]	.015 [.007]	.012 [.006]
Adj. % 0 72% [74%]	19.8 [20.9]	64.9 [65.2]	15.3 [13.9]
1+ 28% [25%]	23.6 [23.7]	51.8 [56.2]	24.5 [20.1]
Scene of Crime			
c²	.008	.040	.026
β²	.007	.009	.001
Adj. % Yes 81%	19.2	63.5	17.3
No 19%	27.9	51.6	20.5
Exculpatory Evid.			
c²	.000	.000	.003
β²	.001	.000	.000
Adj. % Yes 5%	15.1	64.9	19.9
No 95%	21.1	61.1	17.8

	Plea Innocent	Plea Guilty	Plea Bargain
Relation Victim			
c²	.004	.030	.025
β²	.002	.000	.005
Adj. % None 43%	19.9	62.7	17.4
Related 16%	17.7	58.5	23.8
Stranger 41%	22.9	60.8	16.2
No. of Charges			
c²	.002	.038	.056
β²	.004	.001	.000
Adj. % 1 40%	23.9	59.2	16.9
2 29%	18.8	62.4	18.7
+2 31%	18.7	62.9	18.4
No. of Contin.			
c²	.017 [.007]	.150 [.092]	.126 [.097]
β²	.021 [.006]	.086 [.046]	.049 [.038]
Adj. % 1 38% [38%]	13.8 [17.6]	77.9 [74.8]	8.3 [7.5]
2 18% [22%]	21.6 [22.4]	62.2 [62.9]	16.2 [14.7]
+2 44% [41%]	26.7 [24.9]	46.3 [51.7]	26.9 [23.3]
Offense			
c²	.018 [.011]	.083 [.074]	.059 [.069]
β²	.009 [.014]	.015 [.040]	.031 [.051]
Adj. % Person 25% [24%]	25.9 [28.8]	53.2 [47.0]	20.8 [24.2]
Property 36% [37%]	15.9 [16.1]	59.3 [63.4]	24.7 [20.5]
Victimless 39% [39%]	22.1 [22.4]	68.1 [72.2]	9.7 [5.5]
Level Seriousness			
c²	.005 [.002]	.017 [.012]	.057 [.040]
β²	.024 [.009]	.002 [.006]	.051 [.047]
Adj. % High 69% [71%]	16.7 [18.4]	59.7 [60.3]	23.6 [20.8]
Low 31% [29%]	30.3 [27.5]	64.8 [68.6]	4.8 [3.7]
Case Load			
c²	.000	.004	.013
β²	.001	.000	.004
Adj. % High 65%	21.9	61.9	16.2
Low 34%	18.7	60.1	21.2

identified in the bivariate analysis, but it is important to have determined that they persist even when all other predictors are held constant.

Because so many predictors were included in this analysis, we lost half of the cases for which plea information was available. Comparing Tables 5 and 6, we can determine that most missing information is concentrated on defense-related variables and that this reduction of the sample alters the distribution of the dependent variable. By comparing Table 6 with the distribution for the total sample (Table 2), it can be seen that the missing information on defense indicators is concentrated on "plea guilty" cases. Cases included in Table 6 fall proportionally less under plea guilty and more under plea bargain than it was true in the sample distribution (Table 2) and in Table 5.

In light of the argument made here that plea guilty is the fastest and most expedient form of processing, involving minimal negotiation (or probably simply persuasion by the prosecutor that this choice is the best for the defendant), the relative scarcity of defense information for these cases is understandable. Still, it is important to check the power of the four variables identified as the best predictors of plea in Table 7 (number of codefendants, number of continuances, offense, and relative seriousness) when considering the larger sample. Accordingly, we ran an MNA for those variables, and the results are indicated in parenthesis in Table 7.

It can be verified that a much larger number of cases is now included. It can be argued that the completeness of information of those four variables is, of itself, an indirect validation of their importance in court processing. Also, because this sample is more representative, the distribution of the dependent variable is almost identical to the one for the total sample indicated in Table 2. Finally, we verify that these four variables alone account for 11% of the total variance of the dependent variables. That is, they represent two-thirds of the explanatory power of the ten predictors included in Table 7.

The direction of the associations is identical. Observing the beta[2], we can see, however, that the strength of the associations decreased in all instances except for "offense" which increased.

While none of the proposed explanations about the criteria determining the use of plea bargaining receives strong support here, there is some indication that bargaining is facilitated by number of continuances, plurality of defendants, and seriousness of offense. Defendants opting for simple plea guilty have, for the most part, been accused of nonserious offenses which they committed alone and went through a short process (few continuances).

These differences justify our argument that plea guilty and plea bargaining are two distinct processes. It would seem that defense strategies are more a part of plea bargain and prosecutorial of plea guilty. It would also seem that Rhodes' generalization that willingness to plead guilty for crimes for which there is an anticipated lenient sentence refers only to pleas of guilt to the original charge, not to plea bargaining. It is noteworthy that while we get some suggestive information as to the differentiation between pleas of guilt and plea bargaining, the above analysis contributed little to understanding the decision to plead innocent.

GENDER DIFFERENCES IN CHOICE OF PLEA

Introduction

The conflict approach to the study of crime proposes that differentials in political and economic power become reflected in the selective control by the justice system. Deprived groups, such as the poor, the blacks, women, and the young, because less powerful, would consequently be more severely treated for the same crimes than members of the more powerful groups (Chambliss and Leidman, 1971; Taylor et al., 1973). This might either be because the system discriminates against thes groups or because groups with high resources are more able to avoid

sanctions, especially due to the ability of controlling the process better Schur, 1971). Many of the early studies trying to identify differential treatment across groups have either suffered from methodological shortcomings and/or focused on late outcomes of processing. (See for example Chiricos and Waldo, 1975; Green, 1964; Hewitt, 1977; Kelly, 1976). Bivariate designs, for example, are necessarily inadequate due to their limitation in including all the theoretically relevant controls. Equally inadequate is the use of regression or other types of methods requiring interval variables in the analysis of typically nominal data.

On the other hand, focus on late outcomes of court processing, such as dispositions and sentencing, also are problematic in the investigation of discrimination, when legal variables (such as, prior record, number of charges, etc.), which are themselves the product of other stages of processing, are included as predictors. Horan et al. (1979) contend that this implies an assumption of nondiscrimination at earlier stages of the process. It is, for example, a common finding that a greater proportion of black than white juveniles being processed at a given time in the juvenile court have a prior record (Thornberry, 1973; Terry, 1967). Controlling for this variable (prior record) has produced little evidence of discrimination at disposition. However, if one examines disposition of first offenders, even controlling by offense, one finds that there is a somewhat lesser probability of dismissals for blacks than for whites (Figueira-McDonough, 1979). It follows that the pool of blacks with a past record will be cumulatively increasing, justifying dispositions at later periods.

Further, adopting Bernstein et al's. (1977) view that the "process of the administration of justice often serves as the sanction," every step of the process is relevant in the assessment of discrimination. Differential treatment of deprived groups means that the legal process works differently for those that

do not have power than for the dominant group. Processual analysis, such as used by Bernstein et al. (1977), deals with the issue of identifying possible discrimination at different levels of the process and estimating its effect at subsequent and final levels. Farnworth and Moran (1980) propose, however, that the major question is not simply the identification of discrimination in legal outcomes, but the similarity or dissimilarity of the effects of background and legal procedural factors for disadvantaged and dominant groups in the justice system. This question, they argue, can only be pursued through a separate analysis for each group. In exploring the issue of gender differentials in court processing, we adopted the strategy of separate analysis.
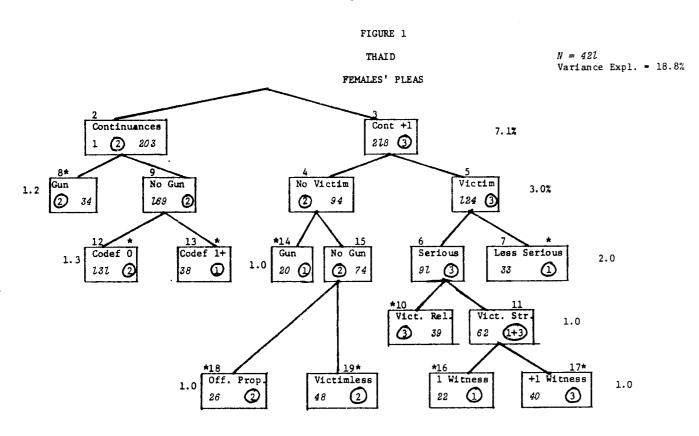
Male/Female Differences

It was apparent from the bivariate analysis (Table 2) that in our sample women tend to plead guilty more often than men. To identify the configuration of "evidence," "defense," and "offense" attributes that affect the choice of pleas in each subsample and how the various variables interact to produce this outcome, we use the THAID logarithm (Morgan and Messenger, 1973). THAID is a program designed for the sequential analysis of nominal dependent variables. It uses a sequential binary split algorithm based on delta as a criterion statistic. "The primary idea behind the binary split is that data be sequentially partitioned into two parts, determined by an independent variable's codes so as to optimize at each stage a criterion function for the dependent variable" (Morgan and Messenger, 1973, p. 9). "The delta criterion is based on the simple notion that one should find split groups whose probability distribution differs maximally from the original group and hence, from each other" (Morgan and Messenger, 1973, ;. 15). The output, consequently, is a set of subgroups, characterized by the terms of the independent variables whose dependent variable distributions are maximally different; that is, it will select those

"evidence," "defense," and "offense" indicators that will distinguish maximally the groups that opted for each type of plea.

The results of the separate THAID analysis for the female and male subsamples are presented in Figures 1 and 2. Firstly, we can verify that the distribution of the cases selected reflects the distribution by gender for the total sample (Table 2); that is, while similar proportions of men and women pled innocent, women pled guilty proportionally more often, while men engaged in bargaining more often that their female counterparts. The more obvious finding from this analysis is that the variables selected explain more of the females' plea choice than the males' (18.8% vs. 9.7%). In both instances, however, number of continuances—a "defense" indicator—is the most powerful predictor (males, 5.3%; females, 7.1%). For females, existence and type of victim is the second most important predictor (explaining 4% of the variance), followed by use of weapon (3.2%) and level of seriousness within offense (2%). Presence of codefendants, of witnesses, and type of offense have minimal contributions (around 1%). In this sample, for males, presence of the victim and weapon are not factors explaining choice of pleas, but level of seriousness of offense makes some contribution (1.6%).

Examination of the final groups gives us a clearer idea of the combination of factors that influence plea decisions for each gender. For females, we can see that, with one exception (group 18), having more than one continuance considerably increases the probability of plea bargain and lessens the probability of pleas of guilt. For those with more than one continuance, the choice between plea bargaining and plea of innocence appears to be the result of interaction between victim and offense seriousness. In instances characterized by the existence of victims and high level of seriousness, plea bargaining appears to be favored (groups 17 and 10). In cases with victim but low in seriousness (g. 7) or serious but without victim (g. 14), defendants are more likely to opt for

FIGURE 1

THAID

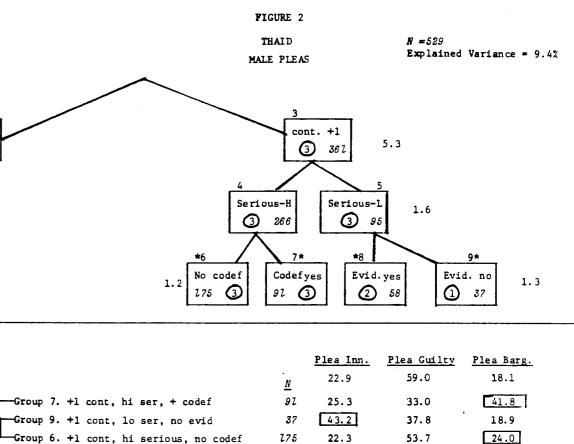FEMALES' PLEAS

$N = 421$
Variance Expl. = 18.8%


```
                              2                            3
                        Continuances                   Cont +1
                        1  ②  203                      218  ③        7.1%

             8*              9                    4                    5
  1.2      Gun           No Gun              No Victim             Victim           3.0%
           ②  34         169  ②              ②  94               124  ③

                    12    *      13    *      *14        15         6              7      *
           1.3    Codef 0      Codef 1+     Gun       No Gun     Serious      Less Serious      2.0
                  131  ②       38  ①   1.0  20  ①    ②  74      91  ③       33  ①

                                                                      *10          11
                                                                   Vict. Rel.   Vict. Str.        1.0
                                                                   ③  39       62  ①+③

                          *18           19*                            *16              17*
                  1.0   Off. Prop.    Victimless                    1 Witness       +1 Witness       1.0
                        26  ②         48  ②                         22  ①          40  ③
```

*Final Groups
Minimum case in a group set at 20
Minimum of variation explained to permit split set at 1%

	Females' Pleas		
	Plea Innoc	Plea Guilty	Plea Barg
Final Groups	N	21.1	69.1	9.7

Final Groups	N	Plea Innoc	Plea Guilty	Plea Barg
Group 17. +1 cont, vict stranger, serious, +1 witn	40	25.0	37.5	37.5
Group 10. +1 cont, vict related, serious	29	6.9	44.8	48.3
Group 14. +1 cont, no vict, gun	20	35.0	50.0	15.0
Group 7. +1 cont, vict, low serious	33	42.4	51.5	6.1
Group 16. +1 cont, vict str, serious, 1 witn	22	31.8	59.1	9.1
Group 13. 1 cont, no gun, +1 codef	38	34.2	65.8	0.0
Group 8. 1 cont, gun	34	23.5	70.6	5.9
Group 18. +1 cont, no vict, no gun, prop	26	11.5	76.9	11.5
Group 19. +1 cont, no vict, no gun, victimless	48	20.8	79.2	0.0
Group 12. 1 cont, no gun, no codef	131	11.4	88.5	0.0

FIGURE 2

THAID

MALE PLEAS

$N = 529$
Explained Variance = 9.4%


```
                              2                              3
                           1 cont.                        cont. +1
                          168  ②                          ③  361              5.3

                                               4                    5
                                          Serious-H          Serious-L        1.6
                                          ③  266            ③  95

                                    *6          7*          *8          9*
                          1.2    No codef    Codefyes    Evid.yes    Evid. no     1.3
                                 175  ③      91  ③       ②  58      ①  37
```

		Plea Inn.	Plea Guilty	Plea Barg.
	N	22.9	59.0	18.1
Group 7. +1 cont, hi ser, + codef	91	25.3	33.0	41.8
Group 9. +1 cont, lo ser, no evid	37	43.2	37.8	18.9
Group 6. +1 cont, hi serious, no codef	175	22.3	53.7	24.0
Group 8. +1 cont, lo serious, + evid	58	20.7	74.1	5.2
Group 2. 1 cont	168	18.4	78.0	3.5

pleas of innocence. The highest incidence of pleas of guilt is verified in groups characterized by minor offenses and for which apparently "evidence" factors are irrelevant or nonexistent (no weapon, no victim, no codefendant) (groups 18, 19, 12). Comparing groups 17 and 10, we can see some support for Heuman's finding that victims related to the defendant make plea bargaining easier, presumably because they are more willing not to press charges as rigidly as strangers. On the other hand, comparison between groups 17 and 16 indicates that plea bargain is harder to carry on when there is a plurality of witnesses. Finally, contrasting group 13 with group 12 suggests that the existence of codefendants might be perceived as an attenuation of guilt, thus encouraging pleas of innocence rather than pleas of guilt.

Turning to Figure 2, we verify that the combination of high seriousness and more than one continuance increases the probability of bargaining for males (g. 7, 6). On the other hand, continuances with low seriousness facilitates pleas of innocence (g. 9). Contrary to females, existence and type of victims do not affect this association for males. The group with higher rates of plea guilty is simply characterized by having only one continuance. The presence of codefendants facilitates some plea bargaining (g. 7, 6); and evidence, even for cases with more than one continuance, appears to make the difference between the option of plea of innocence (g. 9) and plea of guilt (g. 8).

To summarize, the variables included in the model explain better the women's than men's choice of pleas. The most important predictor in both subsamples is number of continuances. One continuance is associated with pleas of guilt. It is noteworthy, however, that while two-thirds of the males had more than one continuance, only about half of the females did. It is also interesting that while in both samples seriousness of offense is associated with plea bargaining, existence of victims is only a factor for females. Also, although lack of evidence in less serious offenses appears conducive to pleas of innocence among men, it is more conducive to pleas of guilt among women.

Although the amount of variance explained is modest, it is, nonetheless, interesting to verify how important continuances—a defense strategy indicator[*]— is for both males and females and how differently it is distributed by each sub-sample. That is, there is some support for the proposition that "continuances" are used as a defense strategy in bargaining, this being so the lesser number of continuances among females would indicate their relative weakness in defense by comparison to males. Also, while bargaining appears to be used more often by both males and females in cases charged with more serious offenses, for less serious offenses, "lack of evidence" tends to lead men to plead innocent and women to plead guilty.

By reference to our initial propositions, these findings indicate that for both genders plea bargaining is a defense strategy more than a prosecutorial one; but it is used more by males than by females; that cases charged with less serious offenses are more likely to plead guilty. To the extent that "evidence" variables have an effect on pleas, it appears that "lack of evidence" reinforces pleas of guilt, but only for females. On the whole, this analysis confirms the bivariate analysis in portraying females as less able to bargain and more willing to plead guilty.

Interpretations of this difference have to be speculative at this point. Assuming that for the defendant "plea bargaining" is more favorable than plea of guilty, these differences could reflect differential awareness of the options

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[*] Procedural reasons are the most common reasons for any continuance. However, among cases that go beyond one continuance, the majority of continuance reasons is due process (see table below). The use of due process arguments in handling criminal cases has been found to be typically a defense strategy.

		Type of Pleas			
		Plea Inn.	Plea G.	Plea B.	
Due Process					N
Reasons	2 continuances	47.5%	42.8%	70.6%	801
	+2 continuances	58.2%	52.3%	74.2%	445

and of court processing. Women's lower awareness could be tied to lower access

to defense lawyers, lower education, or lower experience. This data does not,

however, allow us to explore any of these speculations.[*]

CHARGE REDUCTION

This far our analysis has focused on the classification of pleas directly

derived from the disposition information in PROMIS. That is, the plea variable

refers to charges officially registered at conviction but not to other changes

or modification of charges that might have occurred at previous stages. In

principle, those previous changes would be constituted primarily by charges dis-

missed, presumably due to lack of evidence or due process infractions and more

likely to occur at the screening stage. It is, however, possible that some of

those changes are, in fact, a type of plea bargaining occurring early in the

process. In the subsequent analysis we use as a measure of charge reduction

the difference between the most serious initial charge and the most serious

convicted charge. For cases with only one charge (63%), this measure is pretty

straightforward. For individuals with multiple charges, this indicator fails

to measure all possible changes among less serious charges and is consequently

rather conservative.

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[*]There is an enormous amount of missing data on defense attorney, no information
on education, and only very partial information on past experience. Still,
using past record as an indicator of experience, we found no significant dif-
ference in the association of pleas with continuances between men and women first
offenders (see Table 2 - Appendix). Among those with past record, there are sig-
nificant differences by gender. More men than women have more than two contin-
uances for pleas of innocence and plea bargaining, while more women will plea
guilty and plea innocent after only one continuance. Inexperience appears to
produce similar behavior in females and males, while experience appears to have
different effects on men and women. Men with past record pleading innocent or
pleading guilty make significantly more use of continuances. People with past
record might vary widely in the actual frequency and length of exposure to the
court. Consequently, our findings about continuance incidence of inexperienced
males and females appear to be the most reliable.

Table 8 shows that changes in charges occur not only for those who bargain,

but also for those classified in the final disposition as having pled to the

same charge (24%) and those who pled innocent (27%). In other words, 50% of

the cases for which some charge reduction occurred have disposition outcomes

that are not indicative of charge reduction. On the other hand, half of the

cases classified as plea bargaining are shown in Table 11 under "no change."

In the first instance it can be presumed that some kind of early bargaining

occurred. In the second instance the most plausible interpretation is that plea

bargaining occurred for other than the most serious charge.

TABLE 8

MOST SERIOUS CHARGE CHANGE DOWN BY PLEA

	No Change	Change	_N_
Plea Innoc.	72.6 (183)	27.4 (69)	252
Plea Guilt	5.1 (698)	23.9 (194)	812
Plea Barg.	50.5 (94)	49.5 (92)	186

[*]Cells boxed indicate the extent of mismatch between
pleas and the measure of charge reduction.

On the assumption that reduction of charges is a more exact measure of

changes that occurred at any processing stage than the previous plea variable,

we replicated the plea analysis using charge reduction as the dependent variable.

Because in this instance we are dealing with a dichotomous dependent variable,

we used the Multiple Classification Analysis (MCA),[*] a program which is analogous

to the MNA but requires an interval dependent variable (Andrews and Sonquist, 1975).

Including all the evidence, defense, offense, and case pressure predictors

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[*]See Methodological Appendix for a more detailed description of MCA.

in the multivariate analysis, the N was reduced to 580 cases and 15% of the variance on charge change was explained. The beta weights for all independent variables are shown in Table 9. We then selected the six top variables and ran a new MCA. The results are presented in Table 10. The number of cases increased considerably, and the variance explained by the six variables is 16%.

The probability of having the most serious charge reduced is greater for defendants with more than one charge, especially if the most serious offense charged was most serious property, involved a gun, involved more than one defendant, and those who went through more than one continuance in court. These results appear consistent with the "defense" propositions since number of charges, number of continuances, number of codefendants, and relation to the victim facilitate charge reduction. Presence of a gun ("evidence indicator") enhances the probability of reduction, as does seriousness of offense. It appears then that anticipation of severe sentence will also motivate some deal for charge reduction.

Comparison between Table 9 (charge reduction analysis) and Table 7 (plea analysis) shows that while the additive amount of variance explained is similar, the order of the strength of the predictors differs. The most conspicuous difference refers to the lesser importance of number of continuances in predicting charge reduction as compared to pleas. This reinforces the interpretation that a certain amount of charge reduction occurs at very early stages of processing. It cannot, however, be argued that such reductions are the result of evidence problems since all evidence variables, with the exception of weapons, have extremely low beta weights in the multivariate analysis. The results of the analysis including only the high loaders are shown in Table 10 and further confirm the finding of the irrelevance of number of continuances for charge reduction even for a more comprehensive sample. However, type of offense is a strong predictor for both pleas and charge reduction, and they vary in the

TABLE 9

PREDICTING CHANGE DOWN MCA RESULTS (ALL PREDICTORS)

$N = 580$
Multiple $R^2 = .148$

	β
Offense	.227
Weapon	.224
No. of Charges	.185
Relation to Victim	.136
No. of Continuances	.106
Seriousness	.081
Witness	.066
Codefendant	.064
Evidence Recovered	.056
Caseload	.024
Prior Arrest	.016
Scene of Crime	.012
Corrob.	.007
Exculpatory Evidence	.004

TABLE 10

PREDICTING CHANGE DOWN

Range of Change 0-No change
Down Variable 1-Change

$N = 889$
Multiple $R^2 = .155$

		Adjusted Means	β Weights
No. of Charges	1	0.1	.230
	+1	0.3	
Weapon	Gun	0.4	.202
	No Gun	0.2	
Offense	Person	0.1	.165
	Property	0.3	
	Victimless	0.2	
Relation Victim	None	0.8	.155
	Related	0.4	
	Stranger	0.2	
Seriousness Level	High	0.3	.092
	Low	0.2	
No. of Cont.	1	0.2	.082
	+1	0.3	
Codef.	0	0.2	.054
	1+	0.3	

same direction.[*] Number of charges and weapon are more important for charge reduction, while level of seriousness and number of codefendants for plea.

To investigate gender differences, we used the Automatic Interaction Detector (AID)[**] alogarithm. AID is analagous to THAID but handles dependent variables with interval level of measurement (see Baker and Morgan, 1971). The results of this analysis are shown in Figures 3 and 4. The amount of variance explained by the model is considerably higher for charge reduction than for pleas. As was the case with pleas, for females, the amount of variance explained is higher than for males (27% vs. 17%). But contrary to the pleas analysis, fewer number of variables appear to affect females' charge reduction than males'.
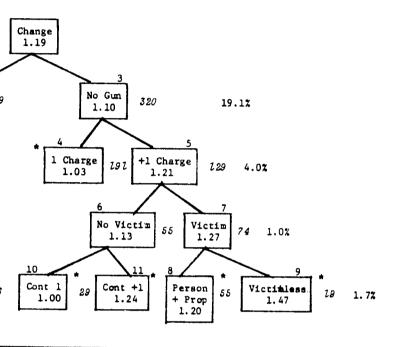
For women, weapon alone contributes to more than two-thirds of the total variance explained, and the second strongest contributor is number of charges (4%). Victim, continuances, and type of offense together add only 3.9% to the explanatory power of the model. For men, the two stronger contributors are also number of charges (8.5%) and weapon (2.4%), and most of the weaker predictors of the model (victim, continuances, and offense) are the same as in the female analysis and together have the same level of explanatory power (3.9%). Level of seriousness is included in the male, but not in the female, model.

The two models are not as similar as the above description suggests, and a closer look at the final groups will help to identify differences. Females with a gun offense have the highest probability (50%) of having their charge dropped. If their original charge did not involve a gun, then the chances of charge reduction varied between 0 and 47% (g. 10 and g. 9). Among this latter

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[*]Excluding pleas of innocence and recalculating the percentages in Table 7, we have 89% of defendants charged with property offenses pleading guilty, followed by 88% of those charged with victimless crimes and 72% of those charged with offenses against persons.

[**]See the Methodological Appendix for a more detailed description of AID.

FIGURE 3

AID

FEMALES

CHARGE REDUCTION
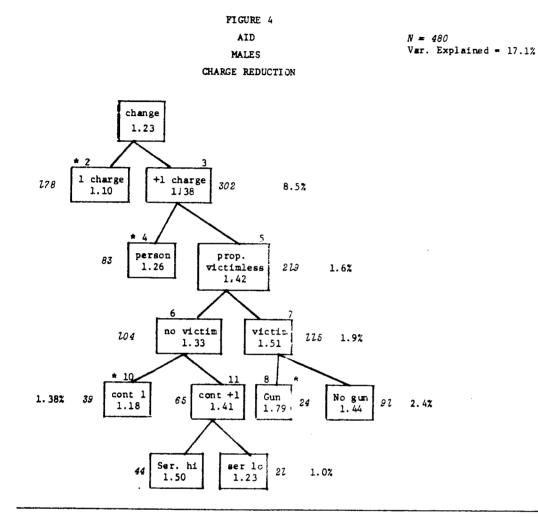
N = 409
Var. Explained = 27.2%

Final Groups

10. No gun, more than 1 charge, no vict, 1 cont	1.00	1.00
4. No gun, 1 charge	1.03	
8. No gun, +1 charge, vict, person/prop	1.20	
11. No gun, +1 charge, no vict, + cont	1.24	
9. No gun, +1 charge, vict, victimless	1.47	
2. Gun	1.51	

FIGURE 4

AID

MALES

CHARGE REDUCTION

N = 480
Var. Explained = 17.1%


```
                    change
                     1.23
                   /       \
              * 2           3
       178  1 charge   +1 charge  302      8.5%
             1.10       1.38
                      /       \
                  * 4           5
            83  person   prop.          1.6%
                 1.26    victimless 213
                          1.42
                        /        \
                    6              7
          104   no victim   victim  115   1.9%
                 1.33        1.51
               /      \      /    \
          * 10        11    8   *
   1.38% 39 cont 1  cont +1  Gun   No gun  91  2.4%
           1.18  65  1.41  24 1.79   1.44
                 /      \
            44  Ser. hi  ser lo  21   1.0%
                1.50     1.23
```

Final Groups

	Mean
2. 1 charge	1.10
10. +1 charge, prop + victimless offense, no victims, 1 cont	1.18
13. +1 charge, prop + victimless offense, no victims, lo ser, +1 cont	1.23
4. +1 charge, person	1.26
9. +1 charge, prop + vict. off., without gun but with victim	1.44
12. +1 charge, prop + victimless offense, serious, but with no victim and with +1 cont	1.50
8. +1 charge, property, victimless, with weapon and victim	1.79

group (no gun) having only one charge reduces considerably the probability of charge reduction (from 21% to 3%) as comparison between groups 4 and 5 shows. However, cases with more than one charge but only one continuance and no victims (g. 10) have no charge reduction at all (0%). Here, continuances alone appears to make a considerable difference since cases with identical characteristics (no gun, more than one charge, and no victim) but with more than one continuance have a 24% probability of having their charges dropped (g. 11). Type of offense also affects the chances of charge reduction for cases where weapons were not involved but had a victim and more than one charge. If the charge referred to person or property offenses, the probability of reduction was 20%, if to victimless offenses, 47%.

If we take the presence of a weapon as an indicator of evidence, then it would appear that existence of evidence facilitates dropping of charges rather than the reverse. The effect of number of charges is in the expected direction since it was argued that plurality of charges allowed for greater flexibility in charge negotiation. The association of number of continuances and victim with charge reduction also reinforces the defense propositions. That is, negotiations are facilitated by more continuances, more charges, and by the possibility of making deals with the victim. For females, with the exception of offense, all these patterns of associations, while not identical with those found for pleas, are in the same direction. That is, the above-mentioned variables affect plea bargain and charge reduction in the same way. One of the differences is that while females charged with victimless crimes tend to plead guilty, they are also more likely to have the charge reduced. The second major difference is that continuances is a much better predictor of females' pleas than charge reduction, while weapon is a much better predictor of charge reduction than of pleas.

Examination of the final groups in the AID analysis of charge reduction for

males (Figure 4) indicates again that the lowest probability of charge reduction (10%) is for defendants charged with only one offense (g. 2). Among those charged with more than one offense, the probability of having the most serious charge reduced is almost twice as high (42% vs. 26%) if the offense is classified as property or victimless (g. 5) than as against persons. Among those charged with various offenses, the most serious of which are property or victimless, the presence of a victim and of a gun increases the probability of charge reduction (g. 7/6 and g. 8/9). On the other hand, absence of victim, together with high level of seriousness of property and victimless cases and more than one continuance, increases the likelihood of charge reduction.

It becomes evident from observation of Figure 4 that for male defendants with various charges, the most serious of which is either property or victimless, the more the other characteristics of the case reinforce seriousness (presence of a gun and victim as well as most serious level within offense type), the greater the tendency to drop charges. This is especially evident if we compare groups 8 and 9 and groups 12 and 13. For identical offenses the presence of a gun increases the chances of charge reduction by 35% and most serious level by 27%.

On the whole, the two major differences in the results of the male and female analysis refer to the relative strength of the two major predictors. Number of charges is about twice as important in predicting charge reduction for men than women. On the other hand, weapon appears to be almost eight times more important in determining charge reduction for females than males.[*] However, both number of charges (a defense indicator) and presence of a gun (an

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[*]Since the percentage of men and women charged with a gun offense for violent crimes (37% vs. 36%) and for simple possession (54% vs. 52%) is almost identical, it is tempting to speculate that the reason why so many women have their charges reduced is probably due to the perception of women as less dangerous than men.

evidence indicator) increases the probability of charge reduction both for men and women. Nonetheless, the overall probability of charge reduction for females is lower (19%) than for males (23%). Comparing the findings of the analysis of charge reduction with the analysis of pleas, we find that:

- The variables included in the model are better predictors of charge reduction than pleas.
- In both instances, the amount of variance explained is about 10% higher for females than for males.
- However, the overall probability of charge reduction and of plea bargaining is lower for females than for males.
- While number of continuances is the stronger predictor of pleas, it is one of the weakest predictors of charge reduction. This confirms the assumption that charge reduction is inclusive of deals made very early in the process. Another "defense indicator," number of charges, which was irrelevant for pleas, is of greater relevance for charge reduction.
- Both evidence variables and seriousness indicators have the same type of association with pleas and charge reduction. That is, existence of evidence and high level of seriousness facilitate charge reduction as well as plea bargaining.

SENTENCE REDUCTION

As referred to previously, the definition of plea bargaining comprehends not only charge reduction, but also sentence reduction. To quote again Blumberg's definition (1967), plea bargaining is the process by which the defendant in a criminal case relinquishes his right to go to trial in an exchange for a reduction in charge and/or sentence. This report so far has addressed exclusively the issue of charge reduction and types of plea. We

now turn to the issue of sentencing reduction. The basic question we want to address focuses on the association between different types of convictions (found guilty, pled guilty to the same charge, and pled guilty to another charge) and severity of sentence (noncommitment-out/commitment-in) when offense and offense seriousness are controlled for.

Consistent with the rationale for plea bargaining—(e.g., expedite case processing by avoiding lengthy trials)—and with the basis for motivating pleas of guilt—(some kind of reward in terms of charge or sentence reduction)—we would expect that for the same type of offense people who pled guilty would receive less severe sentences than those who pled innocent and were found guilty. It could be further argued that sentence reduction might be expected to have been the particular inducement offered to those who pled guilty to the same charge. For those who pled guilty to a lesser charge, charge reduction is the explicit inducement. In sum, we expected that those who pled guilty

TABLE 11

SENTENCE BY PLEA AND OFFENSE (Means)   Range: 0 (out) - 1 (in)

Offense	1 Found Guilty	2 Pled Guilty	3 Charge Bargain	N	ε^2	Sign. Level	Pair 1-2	Wise 1-3	Sign. Level 2-3
Serious/ Persons	.6 (43)	.3 (71)	.5 (51)	165	.06	.006	.004	.606	.015
Nonserious/ Persons	.3 (22)	.1 (16)	.8 (6)	57	.23	.005	.172	.011	.022
Serious/ Property	.4 (23)	.3 (66)	.4 (49)	138	.01	.345	.20	.69	.27
Nonserious/ Property	.2 (42)	.2 (149)	.2 (5)	196	.00	.943	.73	.96	.93
Serious/ Victimless	.1 (80)	.0 (264)	.3 (20)	364	.03	.002	.04	.07	.00
Nonserious/ Victimless	.3 (15)	.1 (55)	1.0 (1)	72	.13	.009	.07	.03	.00

(to the same charge) would receive the least severe sentence for the same type of offense.

Table 11 shows the results of comparisons between the means of a dichotomous sentence variable (1 - out [not committed] 2 - in [committed]) for each type of plea within the same level of seriousness of each offense type. We can see that for serious crimes against persons, as well as for all victimless crimes, defendants who pled guilty are significantly less often committed to prison than either those who pled innocent and were found guilty or pled to a reduced charge. There appears to be no significant difference on the probability of commitment by plea for property offenses. In bivariate analysis with a more detailed sentence variable (fine, probation, less than one year of commitment, and more than one year commitment) the results are identical: the associations between type of pleas and sentencing for property offenses were found to be nonsignificant.

In Table 12 we can examine if those associations between plea and sentence by offense hold for males and females. The same pattern of association identified in Table 11 persists for males. That is, for serious persons and serious victimless crimes, men who pled guilty got significantly lighter sentences than those who were found guilty or engaged in bargaining. This finding suggests that for those types of offenses male defendants who plea guilty to the same charge engaged in some type of sentence bargaining. For females, however, type of plea is significantly associated with sentence only for two types of offenses: serious property and nonserious victimless. However, of those women charged with serious property, the greater proportion of lighter sentencing is among the ones who were found guilty rather than pled guilty. That is, only for the least serious of offenses (nonserious victimless) is

there any suggestion of sentencing bargaining among women who pled guilty.

This reinforces the findings from the plea and charge reduction analysis that

women are less effective in defense strategies than men.[*]

TABLE 12

SENTENCE BY TYPE OF PLEA AND OFFENSE
FOR MALES AND FEMALES
(% of _out_ sentences)

		Found Guilty	Plea Guilty	Plea Bargain	N	x^2 Sign. L.	Conting. Coef.
Serious/Persons	M	34.4	71.4	42.4	80	.002	.32
	F	63.6	63.6	55.6	31	-	.07
Nonserious/Persons	M	64.3	81.8	-	18	.01	.47
	F	75.0	100.0	33.3	12	-	.46
Serious/Property	M	37.5	60.5	63.2	56	-	.18
	F	100.0	91.3	54.5	34	.01	.42
Nonserious/Property	M	18.9	77.0	4.1	74	-	.06
	F	90.9	80.0	100.0	81	-	.13
Serious/Victimless	M	75.8	95.0	63.6	127	.000	.31
	F	89.4	90.2	77.8	197	-	.08
Nonserious/Victimless	M	81.8	87.5	-	37	.06	.34
	F	50.0	95.7	-	24	.000	.46

[*] While in Table 12 it appears that within each type offense and for all types of pleas, proportionally more women than men receive higher proportion of out sentences, these differences are significant in only one instance: women are committed proportionally less often than males when they are found guilty or plea guilty for serious property offenses (see Table 3 - Appendix). So, while generally women do not receive more severe sentences than men, such results do not seem to be the result of defense strategies.

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APPENDIX

TABLES

TABLE 1 - APPENDIX

CLASSIFICATION OF OFFENSES BY SERIOUSNESS

	Homicide	Assault	Robbery	Burglary	Larceny	Forgery/Fraud
More Serious	Willful	Sexual	Armed	Forced Entry	Grand	Uttering
		Armed			Car Theft	
Less Serious	Negligent	Simple	Attempted	Unlawful Entry	Shoplifting	Bad Checks
			Unarmed			False Pretenses

Other Property	Drugs	Weapons
Receiving Stolen Goods	Hard Drugs Sale	Firearms
Destruction of Property	Possession	Knives Blackjack

TABLE 2 - APPENDIX

CONTINUANCES BY PLEA FOR MALES AND
FEMALES WITH AND WITHOUT PAST RECORD

		No Record					Record				
		1 Cont.	2 Cont.	+2 Cont.	N	S.	1 Cont.	2 Cont.	+2 Cont.	N	S.
Plea Inn.	M	26.5	21.7	51.8	83	–	27.5	21.3	51.3	80	.03
	F	39.2	19.6	41.2	51		47.3	21.8	30.9	55	
Plea Guilt	M	48.0	22.4	29.6	72	–	41.0	20.9	38.1	239	.02
	F	54.8	19.2	25.9	79		54.2	19.0	26.8	168	
Plea B.	M	9.2	19.7	71.1	76	–	4.7	17.2	78.2	64	–
	F	13.6	27.3	32.5	44		–	19.2	80.8	26	

TABLE 3 - APPENDIX

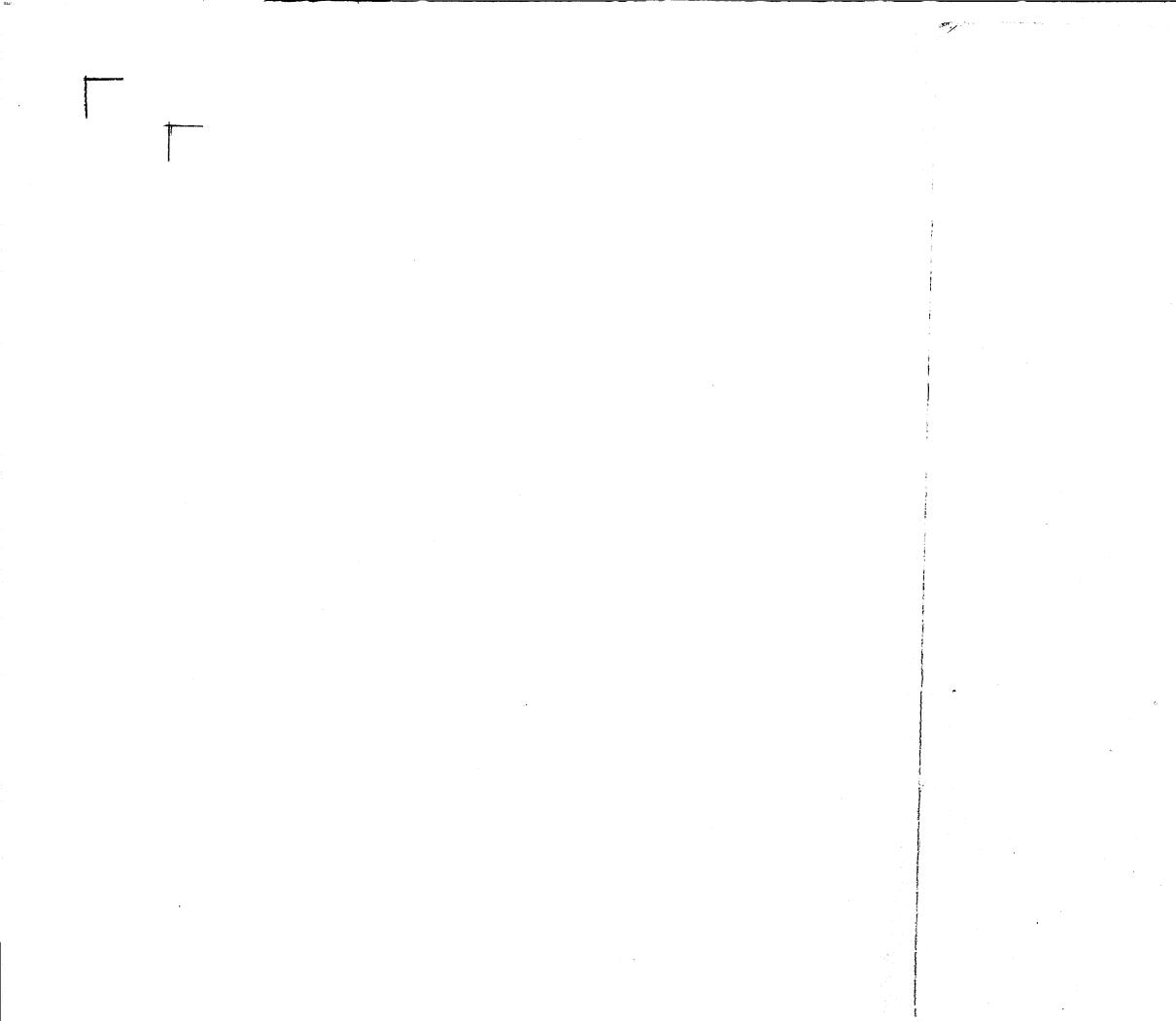MALE AND FEMALE DIFFERENCES ON SENTENCE
FOR THE SAME OFFENSE AND PLEA TYPES

		Plea Innocent			Plea Guilty			Plea Bargain		
		M	F	Sig. L.	M	F	Sig. L.	M	F	Sig. L.
Pers./Serious		34.4	63.6	.09	71.4	63.6	–	42.4	55.6	–
	N	(32)	(11)		(35)	(14)		(10)	(10)	
Pers./Nonserious		64.8	75.0	–	81.8	100.0	–	–	33.3	–
	N	(14)	(8)		(9)	(5)			(1)	
Prop./Serious		37.5	100.0	.01	60.5	91.3	.01	63.2	54.5	–
	N	(16)	(7)		(26)	(21)		(24)	(6)	
Vict./Serious		75.8	89.4	–	95.0	90.2	–	63.6	77.8	–
	N	(33)	(47)		(95)	(148)		(7)	(7)	
Vict/Nonserious		81.8	50.0	–	87.5	95.7	–	–	–	–
	N	(11)	(4)		(28)	(22)				

END