The Impact of Trial Penalty and Evidence Strength on Plea Deal Decision-Making

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Abstract

Despite its popular use in the U.S. legal system, research on plea bargaining and the factors that affect plea bargain decision-making is limited. Although it has been argued that plea bargaining is necessary to the efficiency of the courts (Williams-Fisher, 2005), critics of the practice argue that offers of leniency relative to the threat of the trial penalty may be coercive, so much so that even innocent defendants can be compelled to plead guilty (Bibas, 2004; Givelber, 1996). Others have argued that defendants are at a disadvantage in the negotiations because they are rarely privy to the evidence held by the prosecutor (Meyn, 2014). This study found that trial penalty, evidence strength, and guilt all had an impact on the likelihood to accept the plea. Furthermore, it sheds light on the different ways that guilty and innocent participants make plea deal decisions.
The Impact of Trial Penalty and Evidence Strength on Plea Deal Decision-Making

by

Yaritza Diaz

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# Table of Contents

Introduction .................................................................................................................................. 7
Background .................................................................................................................................. 7
Plea Discount ................................................................................................................................. 8
Knowledge of Evidence ............................................................................................................... 11
The Present Study ......................................................................................................................... 12
Hypothesis ................................................................................................................................... 12

# METHOD

Participants ............................................................................................................................................................... 13
Procedure .............................................................................................................................................................. 14
Materials .............................................................................................................................................................. 14
  Demographics Survey .......................................................................................................................... 14
  Vignettes ....................................................................................................................................................... 14
  Text Manipulations ............................................................................................................................ 16
  Decision-Making Questionnaire ............................................................................................................. 16
Planned Analysis .................................................................................................................................................. 17

# RESULTS

Likelihood to Accept Plea Deal ............................................................................................................. 17
Effect of Trial Penalty on Perception of Evidence Strength ............................................................... 18
Decision-Making Questionnaire ............................................................................................................. 18
  Importance of Case-Specific Factors ................................................................................................. 18
  Beliefs about the Case ....................................................................................................................... 20
  Attitudes towards Trials and Plea Deals ............................................................................................ 22

# DISCUSSION

Trial Penalty ............................................................................................................................................... 23
Strength of the Evidence ..................................................................................................................... 25
Innocence .................................................................................................................................................. 27

# LIMITATIONS AND FUTURE DIRECTIONS

CONCLUSION ................................................................................................................................................. 30
REFERENCES ................................................................................................................................................. 31
APPENDIX A .................................................................................................................................................. 34
APPENDIX B .................................................................................................................................................. 38
APPENDIX C .................................................................................................................................................. 42
The Impact of Trial Penalty and Evidence Strength on Plea Deal Decision-Making

Despite the constitutional right to trial by jury, by which an accused person will go free if the state cannot establish guilt beyond reasonable doubt, 95% of criminal defendants in the United States waive this right and plead guilty (Colquitt, 2001). Nonetheless, our knowledge of jury trials far outweighs our understanding of guilty pleas. In light of recent legal critiques on the potential for plea bargains to be coercive (e.g., Bibas, 2004; Colquitt, 2001; Meyn 2014; Wright, 2005), there has been a renewed interest in plea bargaining within the psychology and law communities, specifically with respect to aspects of the process that may undermine a defendant’s due process rights. In the study reported here, I examined the impact of the size of the threatened trial penalty on the likelihood that a participant will accept a plea offer, in the context of varying levels of criminal responsibility and strength of the evidence in the case.

Most guilty pleas are the result of an agreement between a prosecutor and a defendant, in which the defendant exchanges a guilty plea for a reduced charge or sentence (Garner, 2009). A plea bargain is, therefore, a quid pro quo exchange between the defendant and prosecutor meant to benefit both sides (Church, 1979): the state avoids the time and resource expenditure of a trial and the defendant receives a discounted sentence (and/or charge) in exchange for his or her guilty plea (Williams-Fisher, 2005). Despite a long history of antagonism by both courts and legislatures (see Williams-Fisher, 2005, for a review), by the middle to late 1800s plea bargaining had become the prominent method for the disposal of serious criminal cases in the U.S. (Feeley, 1997). By the time the Supreme Court formally sanctioned the process in 1970 (Brady v. U.S.), approximately 90% of criminal cases were settled by guilty plea (Borteck, 2003).
Proponents of plea bargaining argue that the practice allows for more efficient allocation of scarce resources, saves time and money and allows defendants with no chance of acquittal the option to receive a reduced sentence and avoid the spectacle of a trial (Williams-Fisher, 2005). However, plea bargaining has had no shortage of criticism leveled against it (e.g., Dervan, 2012; Lynch, 1994; Meyn, 2014; Wright, 2005). One of the most frequently raised criticisms is that offers of leniency (i.e., plea discount) can often be so large relative to the trial penalty (i.e., the sentence that the defendant could face if convicted at trial) that they can overpower the will of the defendant (e.g., Bibas, 2004; Givelber, 1996). Furthermore, prosecutors are likely to offer the steepest discounts in cases wherein the evidence is least likely to support conviction at trial (and, likewise, defense attorneys expect steep reductions in cases they might otherwise win; Champion, 1989; Lynch, 1994). This raises several important concerns, particularly for innocent defendants. For example, could the discrepancy between a trial penalty and plea offer be so large as to compel even an innocent defendant to plead guilty?

**Plea Discount**

In *Brady v. U.S.* (1970), the watershed case on the constitutionality of plea bargaining, the U.S. Supreme Court held that *small* sentence reductions are permissible for a defendant who is willing to plead guilty, provided that the evidence in the case points to *obvious* guilt, that the defendant makes a knowing and voluntary choice, and that the difference between the potential trial sentence and the plea sentence is not so great that the defendant "... could not, with the help of counsel, rationally weigh the advantages of going to trial against the advantages of pleading guilty" (*Brady v. U.S.*, 1970, p. 3). Cases wherein there is doubt about the guilt of the defendant or about the
ability of the prosecution to sustain its burden of proof are expected, according to *Brady*, to be reserved for trial.

Despite this apparent constitutional protection, anecdotal and empirical data show that weak cases are likely to be bargained away rather than dismissed or taken to trial (Alschuler, 1968; Bordens, 1984; Bushway, Redlich, & Norris, 2014; Caldwell, 2011; Champion, 1989; Gregory, Mowen, & Linder, 1978; McAllister & Bregman, 1986; Wright, 2005; Wright & Miller, 2002; Zottoli, Daftary-Kapur, Winters, & Hogan, 2016). In fact, when questioned, 82% of prosecutors and their assistants, in an early study, indicated that they would moderate the harshness of a plea in cases where the government’s evidence against a defendant is weak (Champion, 1989). Similar results were reported more than two decades later by Bushway et al. (2014), who manipulated evidence in a hypothetical robbery case presented to a national sample of judges, prosecutors, and defense attorneys. The plea discounts offered or expected by the participants increased as the probative value of the evidence in the case decreased.

While “how big a discount is too big a discount?” remains an open legal question, the practice of overcharging by prosecutors (i.e., charging a more serious crime than that for which the prosecutor expects to convict) to gain leverage in the plea bargaining process is thought to occur with some regularity (as discussed by Caldwell, 2011, citing Meares, 1995; Wright & Miller, 2002; and Wright, 2005). A recent field study on adults and juveniles charged with felonies in New York City supports anecdotal claims that the size of these discounts may be quite large (Zottoli et al., 2016). On average, adults received an 80% discount and youth were almost always offered probation in exchange for their guilty pleas, despite facing an average of 57.8 months of incarceration for the
charges against them (Zottoli et al., 2016). There is some evidence to suggest that large discrepancies between plea and original charge may increase the likelihood that a defendant will accept a plea deal (Bordens, 1984; Gregory et al., 1978; McAllister & Bregman, 1986), and innocent defendants are not immune to these effects (Givelber, 1996). Indeed, in the Zottoli et al. (2016) study, 26.5% of the youth and 19% of the adults claimed to be completely innocent. Another 20.4% and 40.5%, respectively, claimed to be innocent of the charges against them, but guilty of what they pleaded to, suggesting potential overcharging on the part of prosecutors to compel guilty pleas.

Anchoring, a common cognitive heuristic, or mental shortcut, by which people use the first point of reference (usually a number) to make decisions about subsequent information (Tversky & Kahneman, 1974), may partially explain these data. Initial charges, or even an initially high plea offer, might be used as an “anchor,” or reference, against which future plea offers will be compared. As a result, any reduced subsequent offer might be perceived as reasonable or fair, when in actuality such an offer might not have appeared so gracious or lenient had a more reasonable charge or sentence been suggested in the first place (Bibas, 2004).

Of course, from a rational perspective, the importance that a defendant places on the penalty if convicted at trial should be assessed in light of the likelihood of conviction. Indeed, the most commonly researched model of plea deal decision-making, Shadow of the Trial (e.g., Mnookin & Kornhauser, 1979), predicts plea acceptance for any offer that is less than the penalty faced at trial discounted by the probability of conviction (e.g., a rational defendant facing a 10-year trial sentence and a 50% chance of losing at trial, should not accept any offer of more than 5 years). The inherent assumption in such a
model is that the defendant can make a reasonable estimation of his likelihood of winning. There is no empirical basis to assume, however, that defendants can make this calculation reliably. Moreover, necessary information, such as the strength and quality of the evidence against them, is rarely provided to defendants who are considering plea offers, making it very unlikely that a defendant can estimate the likelihood of conviction (Douglass, 2001).

Knowledge of Evidence

In theory, the probability of conviction should depend on the quality and strength of the evidence provided to the trial jury (Gregory et al., 1978). As such, knowledge of the evidence that will be used against the defendant should allow him or her to make a reasonable estimate of his or her likelihood of being convicted. However, there are no federal statutes that grant defendants formal investigatory power and individual states vary widely in the extent to which they allow defendants access to the state’s evidence (i.e., discovery) prior to negotiation of a plea deal.¹

Although legal scholars have discussed the importance of, and have advocated for, the disclosure of evidence during plea negotiations (Meyn, 2014), there is a gaping hole in the research on the effects of evidence disclosure. Most studies that have tested the effects of plea discounts on decision-making have made it relatively easy for participants to estimate the expected likelihood of winning at trial. To my knowledge, only one study has systematically examined how knowledge of the evidence affects decision-making in the plea context, with results suggesting that effects depend on various other factors in the case, such as actual guilt of the defendant and the size of the

¹Furthermore, although disclosure of exculpatory evidence by the time of the trial is constitutionally required (Brady v. Maryland, 1963), this right has not been extended to the plea bargaining context.
trial penalty (Daftary-Kapur & Zottoli, 2015). For example, defendants with stronger evidence against them were more likely to accept a plea deal. But interpretation of this result was complicated by the effect that trial penalty had on perception of the strength of the evidence: participants facing stiffer trial penalties perceived the evidence against them as stronger than those facing smaller trial penalties. The effects of evidence disclosure and evidence strength on plea deal decision-making require further study.

The Present Study

To date, it is not known how combinations of legal factors, such as knowledge of evidence and level of criminal responsibility might serve to aggravate or mitigate the potential coerciveness of a steep trial penalty. In this study, I examined the effects of evidence strength and trial penalty on plea deal decision-making in the context of varying levels of criminal responsibility. Participants were presented a brief vignette in which they were asked to assume the role of the defendant in a bar-fight scenario wherein a victim is injured and decides to press charges. The vignettes varied with respect to guilt of the defendant (guilty, partially guilty, innocent); strength of the evidence against the defendant (strong, moderate, weak); and trial penalty (high, low). Participants rated their likelihood of accepting the plea deal offered in the vignette and subsequently answered a series of follow-up questions on the factors that may have led to their decisions. These questions included subjective estimations of the evidence strength and their likelihood of winning or losing at trial, as well as the importance that the participants assigned to various case-specific factors, such as their own responsibility and the penalty faced if they lost at trial.

Hypotheses
I hypothesized that the likelihood of pleading guilty would increase with the size of the trial penalty, strength of the evidence, and actual guilt. I also anticipated interactions between guilt and trial penalty, and between guilt and evidence strength, such that participants in the innocent condition would be less likely than guilty participants to accept plea deals overall, but that this difference would decrease for participants in the strong-evidence and high-penalty conditions. Given the paucity of data in this area, I made no hypotheses with respect to the ratings of factors that participants might have relied on in reaching their decisions; however, given the results of Daftary-Kapur and Zottoli (2015), I considered it possible that the magnitude of the trial penalty would influence the perception participants had of the strength of the evidence against them.

**Method**

**Participants**

Montclair State University undergraduate students ($N = 727$) who were enrolled in an introductory level psychology course were recruited through the Montclair State University SONA system subject pool. All participants were compensated with one credit toward their psychology course research participation requirement. All students enrolled in the SONA system were eligible to participate, provided that they were 18 years of age or older and fluent in English. Participants were excluded if they took less than three minutes to complete the study, or if they took between three and five minutes but did not answer the first open-ended response question, "Please explain your choice." These exclusion criteria were determined prior to data analyses. In total, 39 participants were removed, leaving a final sample of 688 participants. The mean age was 20.1 ($SD = 3.7$) and 77.6% of the sample identified as female. Fifty-seven percent of the sample
identified as Caucasian, 13.9% as Black or African American, 1% as American Indian or Alaskan Native, 6.7% as Asian and 4% Native Hawaiian or Pacific Islander. Thirty-three percent of the sample identified as Hispanic.

**Procedure**

The entire study was conducted online using the Qualtrics (2017) survey platform. After registering for the study via SONA, prospective participants were provided a link to the survey, where they were prompted to read an informed consent form. Upon providing consent, participants were asked to complete a demographics questionnaire and were then randomly assigned to one of 18 conditions.

Participants were next asked to imagine themselves as the character in the story they were assigned to read, which was written in the second person singular (i.e., you). After reading the vignette, participants proceeded to a decision-making questionnaire. At the end of the questionnaire, participants received a debriefing.

**Materials**

**Demographics Survey.** After consenting, participants were prompted to answer an 11-item demographics survey (see Appendix A for the complete demographics survey). The demographics survey included questions about age, gender, race, and ethnicity of the participant, as well as family income, household size, and occupation and education levels of the participant and their primary caregivers (if applicable). Socioeconomic data were collected for purposes unrelated to the current study.

**Vignettes.** Participants were asked to read a brief vignette in which the participant is at a bar where an altercation occurs and a customer is injured. The participant is either directly involved, indirectly involved or not involved in a bar brawl, after which the
participant, as the mock defendant, is arrested and charged with a crime. The trial penalty (i.e., charges faced) and strength of the evidence in the case were also manipulated. The vignette was written in the second person, singular; e.g., "... as you were leaving the crowded bar, a man made a snide comment about your friend." To enhance realism, the gender of the characters in the assigned vignette matched the gender that the participant indicated in the demographics survey. If no gender was indicated by the participant, the participant was assigned the male vignette. The vignette for the innocent + high trial penalty + strong evidence condition is shown below. Bold font indicates text that was altered across conditions; text for the other conditions follows the sample vignette.

Sample vignettes are also provided in Appendix C.

Last weekend, you went out to your favorite bar with three close friends. It was your friend’s birthday, so you had a few more drinks than you usually do. As you were leaving the crowded bar, an argument broke out between two people at the bar. A man was knocked down to the floor and was bleeding because he hit his face on a bar stool. You bent over to help him get up, but he was behaving aggressively so you quickly left the bar and went home. When you got home, you realized you did not have your wallet.

The man ended up going to the hospital and receiving three stitches. He made a complaint to the police. The bar manager found your wallet at the scene and told the police he was “pretty sure it belonged to the guy who did it.”

You were subsequently arrested for Assault.

The prosecutor is charging you with Assault in the first degree. If found guilty at trial, you will be sentenced to at least 5 years in prison.

The prosecutor is willing to offer you a plea deal for a lesser charge of Menacing in the first degree. If you take the deal, you will have to go to prison for 1 year.

If you do not take the plea deal, you will go to trial and face the charges of Assault in the first degree. You need to decide whether to take the deal or go to trial.

Your attorney told you that in addition to the bar manager’s statement, the prosecutor has video surveillance from the bar. The footage clearly shows you
bent over the injured man when he was on the floor. Your attorney also told you that the prosecutor is cracking down on any alcohol related crimes, and he is worried about your case.

**Text Manipulations:**

*Guilt—Guilty condition.* "... a man made a snide comment about your friend. You called him an unfriendly name and pushed him on purpose. He fell to the floor and was bleeding because he hit his face on a bar stool. Realizing what you did . . ."

*Guilt—Partially guilty condition.* "... a man pushed into your friend who pushed back, causing him to fall towards you. You pushed him away and he fell to the floor and was bleeding because he hit his face on a bar stool. Realizing what happened . . ."

*Evidence—Weak strength.* In the weak condition, the wallet is the only inculpatory evidence.

*Evidence—Moderate strength.* "... the prosecutor said that a witness came forward and described a man who was wearing dark jeans and a blue jacket. The witness was drunk at the time, but this description fits what you were wearing that night."

*Trial Penalty—Low.* Participants in the low trial penalty condition are instead told that they "could get at least 2 years in prison" and "Assault in the second degree" as an original sentence.

**Decision-Making Questionnaire.** Participants were asked to rate the likelihood that they would accept the plea deal on a 7-point Likert-type scale that ranged from "Extremely Unlikely" to "Extremely Likely," and to explain their decision via an open-ended-format question. Next, participants were asked to rate their agreement with a series of statements about various case-specific factors. The questionnaire items fell roughly into three distinct categories: (1) importance of case-specific factors to the decision to plead guilty (e.g., "The amount of time I would have to spend in jail if I were found guilty at trial was very important to me when making my decision"); (2) beliefs about the case and case-related factors (e.g., "The evidence that the prosecutor had against me was
(3) general opinions about trials and plea deals (e.g., "In general, taking your chances at trial is better than taking a plea deal"). This was done using a 7-point Likert-type scale, ranging from 1 (strongly disagree or extremely weak) to 7 (strongly agree or extremely strong). Participants were then asked to indicate any other factors that played a role in their decision-making that were not already asked about directly, and to state the single factor that was most important in making their decisions. Finally, the questionnaire ended with four items about the extent to which participants were able to visualize themselves in the vignette (e.g., "How easy was it for you to imagine yourself in the story?"). Responses to these final four items, as well as all qualitative/open ended response items, were not analyzed as part of this thesis. The entire questionnaire is available in Appendix B.

**Planned Analyses**

Analysis of variance (ANOVA) tests were used to evaluate main and interaction effects of guilt (guilty, partially guilty, innocent); strength of the evidence (strong, moderate, weak); and trial penalty (high, low), with respect to the likelihood to accept the plea deal, as well as to test the hypothesis that the trial penalty would affect perceptions of evidence strength. Tukey post-hoc analysis was then used to further explore significant findings. Finally, a series of multivariate analysis of variance (MANOVA) tests, with Bonferroni alpha value corrections, were used for the exploratory analyses concerning the effects of guilt, evidence strength, and trial penalty on the decision-making questionnaire items.

**Results**

**Likelihood to Accept the Plea Deal**
Regarding the first hypothesis, all three independent variables significantly and independently affected participants' likelihood to accept a plea deal: trial penalty, $F(1, 665) = 4.20, p = .041, \eta^2_p = 0.01$; guilt, $F(2, 665) = 68.22, p = .000, \eta^2_p = .17$; and evidence strength, $F(2, 665) = 4.84, p = .008, \eta^2_p = .01$. Participants in the high trial penalty condition were more likely than those in the low trial penalty condition ($M_{diff} = .27, p = .041, d = .014$) to accept a plea deal. Post-hoc tests revealed that all three guilt conditions differed significantly from each other. Guilty participants were more likely to accept the plea deal than those in the partially guilty ($M_{diff} = .95, p = .000, d = .55$) and innocent conditions ($M_{diff} = 1.88, p = .000, d = 1.09$). Similarly, participants in the partially guilty condition were more likely to accept the plea deal than those in the innocent condition ($M_{diff} = .93, p = .000, d = .52$). Post-hoc tests on the three evidence strength conditions revealed that participants in the strong evidence condition were more likely to accept the plea deal than those in the weak evidence condition ($M_{diff} = .48, p = .008, d = .25$), while participants in the moderate evidence condition did not differ significantly from those in weak or strong evidence conditions. Contrary to the second hypothesis, there were no significant interaction effects among these three variables.

**Effect of Trial Penalty on Perception of Strength of the Evidence**

The third hypothesis was that trial penalty would have an effect on perceptions of the strength of the evidence. It was not supported, $F(1, 680) = .05, p = .83, \eta^2_p = 0$.

**Decision-Making Questionnaire**

**Importance of Case-Specific Factors.** Table 1 contains the means and standard deviations for these dependent variables, broken out by condition.

*Table 1 about here*
Trial penalty and guilt, but not evidence strength, significantly affected ratings of the importance of jail time associated with conviction at trial; trial penalty, $F(1, 661) = 7.28, p = .007, \eta^2_p = .01$; guilt, $F(2, 661) = 33.03, p = .000, \eta^2_p = .09$; evidence strength, $F(2, 661) = 1.34, p = .263, \eta^2_p = 0$. Guilty participants and participants facing the high trial penalty were more likely to rate this factor as important to their decision compared to innocent (but not partially innocent) participants ($p = .000$) and compared to participants facing the low trial penalty ($p = .011$). Guilt also had an effect on the importance of jail time associated with the plea deal, $F(2, 661) = 24.75, p = .000, \eta^2_p = .07$, and on the importance of the evidence in the case, $F(2, 661) = 10.65, p = .000, \eta^2_p = .03$. All three guilt conditions significantly differed from each other ($ps < .047$) on the importance of the plea penalty, with guilty participants most likely to agree that jail time associated with the plea deal was important to their decisions and innocent participants least likely to agree. Likewise, compared to guilty and partially guilty participants, innocent participants were less likely to agree that that the evidence in the case was important to their decision ($ps < .028$); guilty and partially guilty participants did not significantly differ from each other on importance of the evidence. Trial penalty and evidence strength did not have an effect on importance of jail time associated with the plea deal; trial penalty, $F(1, 661) = 5.86, p = .016, \eta^2_p = .01$; evidence strength, $F(2, 661) = 1.18, p = .309, \eta^2_p = 0$. These factors also did not have an effect on importance of the evidence in the case; trial penalty, $F(1, 661) = .21, p = .651, \eta^2_p = 0$; evidence strength, $F(2, 661) = .17, p = .845, \eta^2_p = 0$. Finally, there was a significant interaction between guilt and trial penalty on ratings of the importance that participants placed on personal responsibility for what happened in the bar in making their plea decisions, $F(2, 661) =$
5.09, \( p = .006, \eta^2_p = .02 \). All three guilt conditions significantly differed from each other, 
\( F(2, 661) = 39.55, p = .000, \eta^2_p = .12 \), with guilty participants most likely to agree that
their personal responsibility was important to their decisions and innocent participants
least likely to agree \( (p < .002) \). However, innocent participants facing the high trial
penalty were more likely to agree that their personal responsibility was important to their
decision compared to innocent participants in the low trial penalty condition. Trial
penalty and evidence strength did not have a significant effect on the importance of their
personal responsibility; trial penalty, \( F(1, 661) = 1.01, p = .315, \eta^2_p = 0 \); evidence
strength, \( F(2, 661) = .34, p = .710, \eta^2_p = 0 \). Neither guilt, trial penalty, nor strength of the
evidence had a significant effect on the importance of having a criminal record; trial
penalty, \( F(1, 661) = 4.07, p = .044, \eta^2_p = .01 \); guilt, \( F(2, 661) = .47, p = .624, \eta^2_p = 0 \);
evidence strength, \( F(2, 661) = .37, p = .689, \eta^2_p = 0 \).

**Beliefs about the Case.** Table 2 contains the means and standard deviations for
these dependent variables, stratified by condition.

*Table 2 about here*

Guilt and evidence strength, but not trial penalty, both significantly affected
perception of the strength of the evidence; trial penalty, \( F(1, 648) = .01, p = .913, \eta^2_p = 0 \);
guilt, \( F(2, 648) = 36.47, p = .000, \eta^2_p = .10 \); evidence strength, \( F(2, 648) = 32.96, p = .000, \eta^2_p = .09 \). All groups significantly differed based on guilt and evidence, with those
in the guilty and strong evidence conditions being most likely to agree that the evidence
was strong and those in the innocent \( (p < .004) \) and weak evidence conditions \( (p < .026) \) being least likely to agree that the evidence was strong. Guilt, with all groups
differing, and evidence strength also had effects on the perceived fairness of the charges,
although trial penalty did not; trial penalty, $F(1, 648) = 4.48, p = .035, \eta_p^2 = .01$, guilt, $F(2, 648) = 102.82, p = .000, \eta_p^2 = .24$; evidence strength; $F(2, 648) = 5.84, p = .003, \eta_p^2 = .02$. Guilty participants and those in the strong evidence condition were most likely to agree that the charges were fair and participants in the innocent ($ps < .000$) and weak evidence conditions ($p = .005$) were least likely to agree, but participants in the moderate evidence condition did not differ from those in the strong or weak evidence conditions. Both guilt and evidence strength, but not trial penalty, affected the belief that based on the evidence, the participant would be found guilty at trial; trial penalty. $F(1, 648) = .06, p = .804, \eta_p^2 = 0$; guilt, $F(2, 648) = 43.07, p = .000, \eta_p^2 = .12$; evidence strength, $F(2, 648) = 9.87, p = .000, \eta_p^2 = .03$. All guilt conditions differed from each other, with those in the guilty condition being most likely to agree they would be found guilty at trial and those in the innocent condition being least likely to agree ($ps < .01$). Participants in the strong and moderate evidence conditions were more likely to believe they would be found guilty at trial than those in the weak evidence condition ($ps < .001$), but participants in the moderate and strong evidence conditions did not differ.

Guilt and trial penalty, but not evidence strength, significantly affected the perception of the fairness of the plea deal; trial penalty, $F(1, 648) = 17.18, p = .000, \eta_p^2 = .03$; guilt, $F(2, 648) = 26.22, p = .000, \eta_p^2 = .08$; evidence strength, $F(2, 648) = 2.45, p = .087, \eta_p^2 = .01$. All groups differed such that participants in the guilty and high trial penalty conditions were most likely to agree that the plea deal was fair and those in the innocent and low trial penalty conditions were least likely to agree that the plea deal was fair ($ps < .012$). There was a main effect of guilt, $F(2, 648) = 165.75, p = .000, \eta_p^2 = .34$, with all groups differing, on the extent to which participants felt responsible for the
crime; guilty participants were most likely to agree that they felt responsible for the crime and innocent participants were least likely to agree (ps < .000). Trial penalty and evidence strength did not have an effect on the extent to which participants felt responsible for the crime; trial penalty, $F(1, 648) = 2.20, p = .139, \eta_p^2 = 0$; evidence strength, $F(2, 648) = 1.09, p = .336, \eta_p^2 = 0$. Both guilt and evidence strength, but not trial penalty, had effects on ratings of the strength of the evidence; trial penalty, $F(1, 648) = 1.01, p = .315, \eta_p^2 = 0$; guilt, $F(2, 648) = 50.90, p = .000, \eta_p^2 = .14$; evidence strength, $F(2, 648) = 45.78, p = .000, \eta_p^2 = .12$. All three guilt conditions differed from each other, with guilty participants giving the highest ratings of strength of the evidence and innocent participants giving the lowest ratings (ps < .002). Participants in the weak evidence condition gave stronger ratings of the evidence than those in the strong and moderate conditions (ps < .000); strong and moderate evidence conditions did not differ from each other.

**Attitudes towards Trials and Plea Deals.** Table 3 contains the means and standard deviations for these dependent variables, broken out by condition.

*Table 3 about here*

Guilt and evidence strength, but not trial penalty, had significant effects on the opinion that taking your chances at trial is better than taking a plea deal; trial penalty; $F(1, 639) = 3.32, p = .069, \eta_p^2 = .01$; guilt, $F(2, 639) = 22.02, p = .000, \eta_p^2 = .06$; evidence strength, $F(2, 639) = 6.73, p = .001, \eta_p^2 = .02$. Innocent participants were more likely than guilty (p = .002) and partially guilty participants (p = .005) to believe that taking your chances at trial is a better option; participants in the guilty and partially guilty conditions did not differ from each other. There were no effects of guilt, evidence
The impact of trial penalty and evidence strength on the belief that most people who go to trial lose (trial penalty, \(F(1, 639) = .05, p = .833, \eta_p^2 = 0\); guilt, \(F(2, 639) = .64, p = .529, \eta_p^2 = 0\); evidence strength, \(F(2, 639) = .64, p = .529, \eta_p^2 = 0\)), or the belief that most people who take a plea deal would have lost at trial anyway (trial penalty, \(F(1, 639) = 2, p = .158, \eta_p^2 = 0\); guilt, \(F(2, 639) = 1.16, p = .313, \eta_p^2 = 0\); evidence strength, \(F(2, 639) = 1.91, p = .149, \eta_p^2 = .01\)).

**Discussion**

Using brief vignettes, I tested the impact of hypothetical level of criminal responsibility, strength of the evidence, and trial penalty on plea deal decisions. Participants were asked to assume the role of a defendant who was arrested and charged with assault for injuring a bargoer during a fight and was subsequently offered a plea deal. In addition, the study explored the effect of these variables on various factors that may have contributed to participants’ plea decisions, including the importance of case-specific factors, beliefs about case facts, and general attitudes towards trials and plea deals. (Note that these factors were treated as secondary dependent variables in this study; their effects on the outcome of ultimate plea decision was not evaluated as part of this study).

All three independent variables affected the likelihood that a participant would accept a plea deal, supporting the first hypothesis. Specifically, individuals were more likely to accept plea offers when they had high culpability, high trial penalty or when the evidence was strong. These data are consistent with previous findings (Bordens, 1984; Daftary-Kapur & Zottoli, 2015; Gregory et al., 1978; McAllister & Bregman, 1985) and collectively suggest that guilty defendants are more likely than innocent defendants to
accept a plea deal, and that defendants facing a higher trial penalty are more likely to accept a plea deal. However, contrary to expectations, innocent defendants were not disproportionately affected by trial penalty and strength of the evidence variations. This result suggests that innocent participants may be more resilient to the potential coercive effects of a high trial penalty than has been suggested previously in the literature. However, further exploration of the decision-making questionnaire data suggests that innocent participants may not carefully consider factors beyond their own actual innocence when making their plea decisions. Innocent and guilty participants appear to have relied on different pieces of information about the case in reaching their decisions, and in some cases the data can be interpreted as suggesting that innocent defendants may make detrimental decisions by rejecting plea deals when faced with strong evidence that carries a high likelihood of conviction, or a high trial penalty.

**Trial Penalty**

A primary hypothesis of this study was that the likelihood of accepting a guilty plea would increase for defendants facing a steeper trial penalty. This hypothesis was supported, and consistent with that result, participants facing a higher trial penalty placed more importance on the jail sentence associated with a conviction at trial than those facing a lower trial penalty. In addition, data on the perception of the fairness of the plea deal revealed that participants facing the high trial penalty perceived their plea deals to be fairer than those facing the low trial penalty. As has been suggested by others, this effect of trial penalty severity on both the likelihood of pleading guilty and perception of fairness may be indicative of an anchoring effect (Tversky & Khaneman, 1974). This, in turn, has implications for charging more severe offenses that correspondingly carry more
severe potential punishments. Anchoring, a cognitive heuristic by which individuals evaluate a number based on a point of reference—usually the first number suggested (Tversky & Khaneman, 1974)—may account for some of the observed variation in plea deal decision-making. Prosecutors have nearly unfettered discretion in charging decisions (Lynch, 1994). In practice, they may utilize this common bias in human decision-making by “overcharging” cases to increase the attractiveness of a plea offer relative to the trial penalty to increase the likelihood of securing a guilty plea. The data from this study suggest that defendants indeed perceive deals as fairer when the initial charge for which a discount is offered is higher. This is of particular concern considering that the effect of trial penalty was the same for innocent participants as it was for those in the guilty and partially guilty conditions. At the same time, however, it should be noted that the effect of trial penalty on the likelihood of accepting the plea deal was much smaller than the effect of guilt itself.

**Strength of the Evidence**

Participants presented with stronger evidence against them were more likely than those confronting weaker inculpatory evidence to accept a plea deal, and more likely to believe that a jury would find them guilty based on the evidence in the case. This finding is logical as it suggests that defendants may be using the strength of the evidence to rationally assess the likelihood of being convicted at trial (i.e., those with stronger evidence against them have a higher likelihood of being convicted at trial, and therefore are more likely to accept the certainty of a more lenient punishment). This suggests that participants were able to rationally reason about the impact that evidence strength would have on their cases if they decided to forgo the plea deal and take the case to trial.
Of note, the results also suggested that regardless of the level of actual involvement in the crime, participants with stronger evidence against them were more likely to believe that the charges against them were fair. This result additionally suggests that with knowledge of the evidence against oneself, a defendant may be capable of making a rational assessment of what charges the state is considering bringing. If this is true, such knowledge may benefit the government and the defendant. Specifically, the prosecution benefits in that a reasonable plea deal may be more readily accepted by a knowledgeable defendant, and the defendant benefits in so far as an estimation of the reasonableness of a charge may temper the tendency to be influenced by a prosecutorial practice of overcharging. Of course, this possibility requires further empirical testing. The effect of strength of the evidence on the belief that a plea deal is fair raises other questions as well: Does the utility of evidence knowledge depend on the extent to which the defendant believes the justice system is charging him or her appropriately based on the evidence? If so, can defendants be made to perceive themselves as more culpable or a subsequent plea deal as more fair if they are presented with unvetted evidence by a prosecutor, or potentially exposed to fabricated evidence during a police interrogation? The results of this study only suggest that defendants can use evidence to rationally assess their likelihood of conviction and may use that evidence to evaluate the fairness of the charges against them.

At the present time, despite the assumption made by current models of plea deal decision-making that a defendant can reliably make an estimation of the probability of conviction, it is very unlikely that most defendants are able to do this in practice, given that defendants are rarely privy to information regarding the evidence against them at the
time plea offers are made (Douglass, 2001). Even if the defendant is made aware of the evidence against him or her, it is difficult for the defendant to know if this information is complete, whether it will all be presented at trial, or that all the exculpatory evidence has been provided. This study is unique in that it demonstrates the impact of evidence strength on defendants’ plea-deal decisions and on factors that theoretically may relate to that ultimate decision. Replication of this effect, and further research on the aforementioned follow-up questions, is warranted.

**Innocence**

The strongest effect on plea deal decision-making in this study was actual guilt. While the plea deal decisions of innocent, partially guilty, and guilty participants were similarly affected by trial penalty and strength of the evidence, participants in the innocent condition were much less likely to accept a plea deal. This result is what might be expected—and desired—in *weak* evidence conditions wherein the defendant has a *low* likelihood of conviction at trial; indeed, these are the cases, according to *Brady*, that should be taken to trial (i.e., cases in which the culpability of the defendant is uncertain and the evidence is insufficient). However, study results revealed that innocent defendants are comparatively more resistant to plea deals even when the prosecutor has stronger evidence against them and when they are facing a high trial penalty.

Regardless of the strength of the evidence, guilty participants were most likely to perceive the evidence in their cases as being strong and to agree that they would be found guilty at trial based on that evidence. Because these defendants were actually guilty, it does not pose more than a philosophical problem when they accept an offer of leniency, even if that acceptance was influenced by the threat of a higher trial penalty. Innocent
participants, on the other hand, regardless of the evidence against them, were least likely to view the evidence as strong, least likely to believe that they would be found guilty at trial based on the evidence, and most likely to believe that taking their chances at trial was their best option. Innocent participants were also least likely to perceive the plea deal as being fair regardless of whether they were in the high or low trial penalty condition, respectively. Plea bargaining jurisprudence accepts that there are times when an innocent person may be facing damning, incriminating evidence, and thus taking a plea offer is not only rational, but their right (Easterbrook, 1983). On the other hand, though, it can be argued that there are times when innocence itself might put innocent defendants at greater risk of losing their liberty, relative to guilty defendants who see a plea deal as a certain “win.” Innocent participants who might reasonably be expected to take a plea deal (i.e., those with strong evidence against them and facing a high trial penalty) may be making unwise choices (i.e., choices that present a higher risk of more negative outcomes) due to engaging in a less rationale assessment about how all of the factors in their case will impact them at trial.

Why might this effect occur? Innocent participants may simply believe that their own innocence will be self-evident in the court room (see Kassin, 2005, for a similar discussion in the interrogation context). Other plausible explanations include effects of overconfidence and optimism cognitive heuristics, by which individuals believe that an unfavorable outcome (in this situation, being convicted at trial) is less likely to happen to him or her (Weinstein, 1980). More specifically, when faced with a negative situation, an individual tends to compare him or herself to someone to whom “that sort of situation usually happens.” That is, a stereotypical victim who failed to control his or her situation.
And the individual may thus conclude that he or she can control the future situation, therefore making him or herself less likely to accrue the negative outcome (Weinstein, 1980). In a plea bargaining scenario, this would involve the innocent defendant comparing him or herself to another wrongfully convicted defendant (which would be the "stereotypical victim" of an arrest) and believing that he or she, on the other hand, can take control of the situation by convincing the jury of his or her innocence.

While it is important that future studies focus on the problem of innocent pleas, especially in cases where evidence is weak and overcharging might compel false pleas, it is also important that studies focus on the opposite problem: that innocent defendants with small chances of acquittal are apt to take a very risky chance at trial, instead of accepting the more lenient sentence. Wrongful conviction research should not ignore this opposite side of the coin and hence future studies should be designed with an eye toward understanding the decisions made by innocent defendants.

**Limitations and Future Directions**

Interpretation of the results is limited by various factors, several of which are highlighted here. First, this study focused on the effects of evidence strength but does not compare these effects to a situation in which the defendant is unaware of the evidence against him or her. Second, the sample was not representative of the population of persons charged with a crime, and therefore it is hard to generalize their decisions to those actually facing criminal sanctions. Indeed, some participants indicated that they do not drink, do not go to bars often and have never been in a bar-fight situation such as the one described in the vignette, so it is uncertain whether the participants were able to imagine themselves as the character in the story. The study also lacks ecological validity.
because of the use of a vignette to simulate a scenario in which a person is arrested and going through legal procedures. Future studies may benefit from using a more ecologically valid paradigm. Notwithstanding these limitations, this study contributes to the growing body of knowledge on plea deal decision-making, particularly with respect to how strength of the evidence contributes to a mock defendant’s likelihood of accepting a plea deal, while also suggesting potential issues regarding innocent defendants in need of further investigation.

**Conclusion**

Although the primary aim of this study was to research the effects of trial penalty and strength of the evidence on plea deal decision-making, a perhaps more interesting possibility emerged from the findings. When legal scholars discuss the innocence problem in plea bargaining, they typically refer to innocent defendants entering false guilty pleas. However, results from this study suggest that there is another innocence problem in plea bargaining that should be further explored; namely, that innocent defendants may not be accepting guilty pleas when faced with a small chance of acquittal at trial and a far more severe penalty. Therefore, research on the innocence problem in plea bargaining may prove to be more complex and nuanced than has thus far been recognized. The ability for the accused, whether guilty or innocent, to make an autonomous decision is essential to ensuring the fairness and legitimacy of the justice system. Therefore, it behooves the courts to ensure that aspects of the plea bargaining process do not overpower the will of otherwise competent defendants.
References


Appendix A

Questionnaire 1 - Demographic Information

The following questions will ask some simple demographic information:

1. Age in years: ______

2. Gender: Male___ Female___ Prefer not to answer___

3. Please specify your race:
   ___ White
   ___ Black or African American
   ___ American Indian or Alaska Native
   ___ Asian
   ___ Native Hawaiian or Pacific Islander
   ___ Other

4. Ethnicity. Please select one:
   ___ Hispanic
   ___ Non-Hispanic

5. What is your annual family income? Please select one:
   ___ Less than $30,000
   ___ $31,000-$50,000
   ___ $51,000-$100,000
   ___ $101,000-$150,000
   ___ $150,000 or more

6. Number of people living in your household: ______

7. Please indicate your occupation (if not applicable, leave blank)

   Not Applicable
   Unemployed
   Business / Management / Finance
   Computer / Information Technology
   Architecture / Engineering
   Life / Physical / Social Sciences
   Government / Social Service
   Legal
Education
Arts / Entertainment / Sports
Healthcare Practitioner
Law Enforcement / Protective Services
Food Preparation and Service
Maintenance
Personal Care / Service
Sales
Office / Administrative
Farming / Fishing / Forestry
Construction / Extraction
Manufacturing / Production
Transportation / Materials Moving
Military

8. Please indicate the occupation of your primary caregiver (e.g., mother, father or other guardian; if not applicable, leave blank).

Not Applicable
Unemployed
Business / Management / Finance
Computer / Information Technology
Architecture / Engineering
Life / Physical / Social Sciences
Government / Social Service
Legal
Education
Arts / Entertainment / Sports
Healthcare Practitioner
Law Enforcement / Protective Services
Food Preparation and Service
Maintenance
Personal Care / Service
Sales
Office / Administrative
Farming / Fishing / Forestry
Construction / Extraction
Manufacturing / Production
Transportation / Materials Moving
Military

9. Please indicate the occupation of your secondary caregiver (e.g., mother, father or other guardian; if not applicable, leave blank).
10. What is the highest degree or level of schooling you have completed? If currently enrolled in college, you would choose “High School Diploma” (Please select one)

___ Less than high school
___ Some high school, no diploma
___ High school diploma or the equivalent (for example: GED)
___ High School and Trade/Technical/Vocational training
___ Some college credit, no degree
___ Associate’s degree
___ Bachelor’s degree
___ Master’s level degree (e.g., MA/MS/MBA)
___ Terminal/Doctoral level degree (e.g., Ph.D./M.D./J.D.)

11. What is the highest degree or level of school completed by anyone in your household? For example, if your mother has a college degree and your father has a high school degree, you would select “college degree”? (Please select one)

___ Less than high school
___ Some high school, no diploma
___ High school diploma or the equivalent (for example: GED)
___ High School and Trade/Technical/Vocational training
___ Some college credit, no degree
___ Associate’s degree
___ Bachelor’s degree
___ Master’s level degree (e.g., MA/MS/MBA)
___ Terminal/Doctoral level degree (e.g., Ph.D./M.D./J.D.)
Appendix B

Questionnaire 2- Plea Deal Decision-Making

Considering what you have just read, please answer the following questions:

<table>
<thead>
<tr>
<th></th>
<th>Extremely unlikely</th>
<th>Unlikely</th>
<th>Somewhat unlikely</th>
<th>Neither likely nor unlikely</th>
<th>Somewhat likely</th>
<th>Likely</th>
<th>Extremely likely</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>How likely would you be to accept a plea deal?</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please explain your choice:

People think about a lot of different things when they are deciding whether or not to take a plea deal.

Please indicate how strongly you agree or disagree with the following statements about the event in the bar, your charges and your decision.

<table>
<thead>
<tr>
<th></th>
<th>Strongly disagree</th>
<th>Disagree</th>
<th>Somewhat disagree</th>
<th>Neither agree nor disagree</th>
<th>Somewhat agree</th>
<th>Agree</th>
<th>Strongly agree</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The amount of time I would have to spend in jail if I were found guilty at trial was very important to me when making my decision.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>The amount of time I would have to spend in jail if I accepted the plea deal was very important to me when making my decision.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Whether or not I would have a criminal</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>records was very important to me when making my decision.</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The evidence the prosecutor had against me was very important to me when making my decision.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The evidence that the prosecutor had against me was strong.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Considering what I did at the bar, the charges filed against me were fair.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Based on the evidence in my case, I would be found guilty at trial.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The plea deal that the prosecutor offered to me was fair.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My responsibility for what happened to the victim in the bar was very important to me when making my decision.</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I felt that I was responsible for what happened to the victim in the bar.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## IMPACT OF TRIAL PENALTY AND EVIDENCE STRENGTH

<table>
<thead>
<tr>
<th>Rate the strength of the evidence that the prosecutor had against you.</th>
<th>Extremely weak</th>
<th>Weak</th>
<th>Somewhat weak</th>
<th>Moderate</th>
<th>Somewhat strong</th>
<th>Strong</th>
<th>Extremely Strong</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly disagree</td>
<td>Disagree</td>
<td>Somewhat disagree</td>
<td>Neither agree nor disagree</td>
<td>Somewhat agree</td>
<td>Agree</td>
<td>Strongly agree</td>
<td></td>
</tr>
<tr>
<td>In general, taking your chances at trial is better than taking a plea deal.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Most people who go to trial lose.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Most people who take plea deals probably would have lost at trial anyway.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If you considered anything else in making your decision, please indicate these factors here:

What was the single most important reason for your decision?

Finally, please answer the following questions about your ability to imagine yourself in the story.

How easy was it for you to imagine yourself in the story?

___ It was easy for me to imagine myself in the story
___ It was not easy to imagine myself in the story, but I was able to do it
___ It was very hard to imagine myself in the story, but I was able to do it
___ I tried, but I could not imagine myself in the story
I imagined someone else I know in the story, because it was too hard to imagine myself.

I did not try to imagine myself or someone else I know in the story.

How often do you go to bars?
- Never
- Rarely
- Sometimes
- Often

How often do you drink alcohol?
- Never
- Rarely
- Sometimes
- Often

Have you ever been in a bar-fight situation like the one described in the story?
- No, and I cannot imagine something like that ever happening to me
- No, but I could imagine something like that possibly happening to me
- Yes
Appendix C

Sample 1: Guilty/High Trial Penalty/Strong Evidence

Last weekend, you went out to your favorite bar with three close friends. It was your friend’s birthday, so you had a few more drinks than you usually do. As you were leaving the crowded bar, a man made a snide comment about your friend. You called him an unfriendly name and pushed him on purpose. He fell to the floor and was bleeding because he hit his face on a bar stool. Realizing what you did, you bent over to help him get up, but he was behaving aggressively so you quickly left the bar and went home. When you got home, you realized you did not have your wallet.

The man ended up going to the hospital and receiving three stitches. He made a complaint to the police. The bar manager found your wallet at the scene and told the police he was “pretty sure it belonged to the guy who did it.”

You were subsequently arrested for Assault.

The prosecutor is charging you with Assault in the first degree. If found guilty at trial, you will be sentenced to at least 5 years in prison.

The prosecutor is willing to offer you a plea deal for a lesser charge of Menacing in the first degree. If you take the deal, you will have to go to prison for 1 year.

If you do not take the plea deal, you will go to trial and face the charges of Assault in the first degree. You need to decide whether to take the deal or go to trial.

Your attorney told you that in addition to the bar manager’s statement, the prosecutor has video surveillance from the bar. The footage clearly shows you bent over the injured man when he was on the floor. Your attorney also told you that the prosecutor is cracking down on any alcohol related crimes, and he is worried about your case.

Sample 2: Partially Guilty/High Trial Penalty/Moderate Evidence

Last weekend, you went out to your favorite bar with three close friends. It was your friend’s birthday, so you had a few more drinks than you usually do. As you were leaving the crowded bar, a man pushed into your friend who pushed back, causing him to fall towards you. You pushed him away and he fell to the floor and was bleeding because he hit his face on a bar stool. Realizing what happened, you bent over to help him get up, but he was behaving aggressively so you quickly left the bar and went home. When you got home, you realized you did not have your wallet.
The man ended up going to the hospital and receiving three stitches. He made a complaint to the police. The bar manager found your wallet at the scene and told the police he was “pretty sure it belonged to the guy who did it.”

You were subsequently arrested for Assault.

The prosecutor is charging you with Assault in the first degree. If found guilty at trial, you will be sentenced to at least 5 years in prison.

The prosecutor is willing to offer you a plea deal for a lesser charge of Menacing in the first degree. If you take the deal, you will have to go to prison for 1 year.

If you do not take the plea deal, you will go to trial and face the charges of Assault in the first degree. You need to decide whether to take the deal or go to trial.

Your attorney told you that in addition to the bar manager’s statement, the prosecutor said that a witness came forward and described a man who was wearing dark jeans and a blue jacket. The witness was drunk at the time, but this description fits what you were wearing that night. Your attorney also told you that the prosecutor is cracking down on any alcohol related crimes, and he is worried about your case.

Sample 3: Innocent/Low Trial Penalty/Weak Evidence

Last weekend, you went out to your favorite bar with three close friends. It was your friend’s birthday, so you had a few more drinks than you usually do. As you were leaving the crowded bar, an argument broke out between two people at the bar. A man was knocked down to the floor and was bleeding because he hit his face on a bar stool. You bent over to help him get up, but he was behaving aggressively so you quickly left the bar and went home. When you got home, you realized you did not have your wallet.

The man ended up going to the hospital and receiving three stitches. He made a complaint to the police. The bar manager found your wallet at the scene and told the police he was “pretty sure it belonged to the guy who did it.”

You were subsequently arrested for Assault.

The prosecutor is charging you with Assault in the second degree. If found guilty at trial, you will be sentenced to at least 2 years in prison.

The prosecutor is willing to offer you a plea deal for a lesser charge of Menacing in the first degree. If you take the deal, you will have to go to prison for 1 year.
If you do not take the plea deal, you will go to trial and face the charges of Assault in the second degree. You need to decide whether to take the deal or go to trial.

Your attorney told you that besides the bar manager’s statement, the prosecutor had no other evidence against you. Your attorney also told you that the prosecutor is cracking down on any alcohol related crimes, and he is worried about your case.
### Table 1

**Means and Standard Deviations of the Impact of Guilty, Strength of the Evidence, and Trial Penalty on the Importance of Case-Specific Factors**

<table>
<thead>
<tr>
<th></th>
<th>Guilty (n = 229)</th>
<th>Partially Guilty (n = 222)</th>
<th>Innocent (n = 228)</th>
<th>Strong (n = 224)</th>
<th>Moderate (n = 227)</th>
<th>Weak (n = 228)</th>
<th>High (n = 340)</th>
<th>Low (n = 339)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Importance of the time spent in jail if found guilty at trial</td>
<td>6.28 (.99)</td>
<td>6.00 (1.29)</td>
<td>5.28 (1.76)</td>
<td>5.96 (1.35)</td>
<td>5.86 (1.40)</td>
<td>5.75 (1.58)</td>
<td>6.00 (1.40)</td>
<td>5.71 (1.48)</td>
</tr>
<tr>
<td>Importance of the time spent in jail if I accept the plea deal</td>
<td>6.25 (1.29)</td>
<td>5.95 (1.73)</td>
<td>5.37 (1.31)</td>
<td>5.97 (1.46)</td>
<td>5.82 (1.48)</td>
<td>5.78 (1.40)</td>
<td>5.98 (1.40)</td>
<td>5.73 (1.43)</td>
</tr>
<tr>
<td>Importance of having a criminal record</td>
<td>5.55 (1.57)</td>
<td>5.75 (1.79)</td>
<td>5.65 (1.61)</td>
<td>5.71 (1.63)</td>
<td>5.61 (1.69)</td>
<td>5.58 (1.60)</td>
<td>5.76 (1.60)</td>
<td>5.50 (1.67)</td>
</tr>
<tr>
<td>Importance of the evidence against me</td>
<td>5.93 (1.12)</td>
<td>5.65 (1.33)</td>
<td>5.31 (1.76)</td>
<td>5.67 (1.52)</td>
<td>5.60 (1.43)</td>
<td>5.61 (1.42)</td>
<td>5.60 (1.42)</td>
<td>5.65 (1.48)</td>
</tr>
<tr>
<td>Importance of my responsibility</td>
<td>5.00 (1.40)</td>
<td>4.48 (1.61)</td>
<td>3.67 (1.84)</td>
<td>4.45 (1.77)</td>
<td>4.36 (1.66)</td>
<td>4.33 (1.72)</td>
<td>4.45 (1.66)</td>
<td>4.32 (1.77)</td>
</tr>
</tbody>
</table>

**Note.** *a* Denotes levels of a variable that differ significantly at the .05 alpha level. *b* Denotes levels of a variable that differ significantly at the .05 alpha level. Cohen's $d$ overall ranged from .19-.81 for significant effects; trial penalty, $d = .19$; guilt, $d > .22$. 
### Table 2

**Means and Standard Deviations of the Impact of Guilty, Strength of the Evidence, and Trial Penalty on the Beliefs about the Case**

<table>
<thead>
<tr>
<th></th>
<th>Guilt (n = 224)</th>
<th>Partially Guilty (n = 225)</th>
<th>Innocent (n = 225)</th>
<th>Strong (n = 219)</th>
<th>Moderate (n = 222)</th>
<th>Weak (n = 225)</th>
<th>High (n = 333)</th>
<th>Low (n = 333)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The evidence against me was strong</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4.95 (1.68)^a</td>
<td>4.08 (1.88)^a</td>
<td>3.53 (1.97)^a</td>
<td>4.80 (1.85)^a</td>
<td>4.32 (1.83)^a</td>
<td>3.45 (1.88)^a</td>
<td>4.18 (1.94)</td>
<td>4.19 (1.93)</td>
</tr>
<tr>
<td><strong>The charges against me were fair</strong></td>
<td>4.30 (1.71)^a</td>
<td>2.91 (1.78)^a</td>
<td>2.08 (1.57)^a</td>
<td>3.36 (1.96)^a</td>
<td>3.12 (1.92)^a</td>
<td>2.82 (1.85)^a</td>
<td>3.24 (1.96)</td>
<td>2.96 (1.87)</td>
</tr>
<tr>
<td><strong>Based on the evidence, I would be found guilty at trial</strong></td>
<td>4.74 (1.58)^a</td>
<td>3.80 (1.66)^a</td>
<td>3.35 (1.73)^a</td>
<td>4.17 (1.72)^a</td>
<td>4.16 (1.72)^b</td>
<td>3.57 (1.75)^b</td>
<td>3.95 (1.78)</td>
<td>3.98 (1.72)</td>
</tr>
<tr>
<td><strong>The plea deal was fair</strong></td>
<td>4.43 (1.63)^a</td>
<td>3.77 (1.69)^a</td>
<td>3.30 (1.76)^a</td>
<td>4.01 (1.77)</td>
<td>3.82 (1.74)</td>
<td>3.66 (1.73)</td>
<td>4.10 (1.73)^a</td>
<td>3.57 (1.73)^a</td>
</tr>
<tr>
<td><strong>I felt responsible</strong></td>
<td>4.86 (1.57)^a</td>
<td>3.35 (1.82)^a</td>
<td>2.06 (1.54)^a</td>
<td>3.54 (2.06)</td>
<td>3.41 (1.98)</td>
<td>3.31 (1.99)</td>
<td>3.52 (2.07)</td>
<td>3.23 (1.95)</td>
</tr>
<tr>
<td><strong>Rating of the strength of the evidence</strong></td>
<td>4.64 (1.43)^a</td>
<td>3.76 (1.51)^a</td>
<td>3.28 (1.67)^a</td>
<td>4.39 (1.58)^a</td>
<td>4.15 (1.54)^b</td>
<td>3.15 (1.54)^b</td>
<td>3.95 (1.61)</td>
<td>3.84 (1.65)</td>
</tr>
</tbody>
</table>

*Note. ^aDenotes levels of a variable that differ significantly at the .05 alpha level. ^bDenotes levels of a variable that differ significantly at the .05 alpha level. Cohen's d overall ranged from .23-1.82 for significant effects; trial penalty, d = .31; guilt, d > .28; evidence strength, d > .23.*

Cohen's $d$ overall ranged from .23-1.82 for significant effects; trial penalty, $d = .31$; guilt, $d > .28$; evidence strength, $d > .23$. 
### Table 3

**Means and Standard Deviations of the Impact of Guilty, Strength of the Evidence, and Trial Penalty on Attitudes toward Trials and Plea Deals**

<table>
<thead>
<tr>
<th></th>
<th>Guilty (n = 219)</th>
<th>Partially Guilty (n = 218)</th>
<th>Innocent (n = 220)</th>
<th>Strong (n = 214)</th>
<th>Moderate (n = 221)</th>
<th>Weak (n = 222)</th>
<th>High (n = 329)</th>
<th>Low (n = 328)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Taking your chances at trial is better than taking a plea deal</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Most people who go to trial lose</td>
<td>3.69 (1.23)</td>
<td>3.72 (1.29)</td>
<td>3.59 (1.23)</td>
<td>3.73 (1.09)</td>
<td>3.63 (1.26)</td>
<td>3.66 (1.38)</td>
<td>3.68 (1.27)</td>
<td>3.66 (1.23)</td>
</tr>
<tr>
<td>Most people who take plea deals would lose at trial</td>
<td>4.13 (1.43)</td>
<td>3.93 (1.40)</td>
<td>3.98 (1.57)</td>
<td>4.17 (1.41)</td>
<td>3.95 (1.50)</td>
<td>3.92 (1.48)</td>
<td>4.1 (1.52)</td>
<td>3.94 (1.41)</td>
</tr>
</tbody>
</table>

*Note.* aDenotes levels of a variable that differ significantly at the .05 alpha level. bDenotes levels of a variable that differ significantly at the .05 alpha level. Cohen's $d$ overall ranged from .27-.63 for significant effects; guilt, $d > .27$; evidence strength, $d > .28$. 