Plea
Bargaining
Institute

EXECUTIVE SUMMARY

Plea Bargaining Institute
2023 Inaugural Symposium

June 15-16, 2023

Belmont University College of Law, Nashville, Tennessee

Introduction

The American criminal justice system is dominated by pleas of guilty and plea bargaining. Increasingly, other criminal justice systems around the world are also embracing varying forms of plea bargaining. The Plea Bargaining Institute (PBI) has been established to provide a global intellectual home for researchers, practitioners, policymakers, and advocacy groups to share knowledge and promote collaboration related to plea bargaining and its role in criminal processes. The PBI strives to ensure that practitioners, policy makers, and advocacy organizations have access to important research findings and case developments so that this information might assist them in their works. Simultaneously, the PBI seeks to create opportunities for dialogue and collaboration between academics, practitioners, policymakers, and advocacy organizations to assist in identifying new areas for research and inquiry in this field. Through these efforts, the PBI will assist in the creation of cutting-edge research and create opportunity for plea bargaining reform efforts, policy initiatives, and legislation to be informed by research.

Pursuant to the PBI mission to create opportunities for dialogue and collaboration, the institute convenes and participates in various events throughout the year. The focus of these events and the target audiences for these offerings vary, but each is designed to further the institute's mission of sharing knowledge and creating opportunities for collaboration. The flagship event each year is the annual PBI Symposium.

PBI convened its inaugural annual symposium on June 15th and 16th of 2023 in Nashville, Tennessee at Belmont University College of Law. The goal of the inaugural symposium was to share information about current developments in plea bargaining research, advocacy, and policy making. The event also sought to begin the work of creating networks of researchers, practitioners, policymakers, and advocacy organizations to create more opportunities for collaboration, including cross-disciplinary research. Finally, the symposium sought feedback from the participants regarding a number of issues in the plea bargaining field, including the identification of new areas of research and new issues for inquiry as the institute seeks to increase our understanding of plea bargaining and use this knowledge to positively impact reform efforts and policy developments.

The two-day symposium was attended by academics from various disciplines, practitioners, including a Justice of the Ohio Supreme Court, and representatives of various think tanks and policy organizations. Representatives from the following organizations attended the symposium: Fair Trials, the Quattrone Center, The Innocence Project, NACDL, The Sentencing Project, Fair & Just Prosecution, Council on Criminal Justice, Center for Justice Innovation, Right on Crime, CATO, ACLU, and the Wilson Center.

The Symposium opened on day one with welcome remarks and an overview of the institute from Founding Director Professor Lucian Dervan. Professor Dervan also discussed the history of plea bargaining and the importance of current research efforts in better understanding plea bargaining and informing reform efforts and policy developments. The day continued with the "Academics Panel Discussion," which explored the field of plea bargaining research. This included both presenting regarding new and innovative research findings and discussing future directions and needs of researchers. The second panel on day one was the "Policy & Advocates Panel Discussion," which presented developments in advocacy work related to plea bargaining and discussed future reform work. Day one ended with a panel entitled, "The Power of Collaboration." This panel explored how academic research can assist advocacy and practitioner efforts and how collaboration can inform research and assist in identifying future research inquiries. This panel also considered the role of expert academic testimony both in advocacy settings and policy development.

Day Two of the inaugural symposium began with a "Practitioners Panel Discussion," which explored how practitioners operate in the plea bargaining space and areas in need of further research and reform from the perspective of those in the criminal justice system. Day two concluded with several breakout sessions. These included sessions in which individuals discussed issues and questions related to plea bargaining within their own self-identified working groups – academics, practitioners, or advocates. Participants were then placed in a second break-out session in which members from each working group were brought together to further discuss plea bargaining, research, collaboration, and reform work. Day two also included an engaging discussion about plea bargaining with Judge Kevin Sharp and Chris Young. Mr. Young received two mandatory life sentences and, after receiving clemency, now works in the advocacy space. This discussion focused on their experiences in the criminal justice system and the role of plea bargaining.

Below is further information regarding the discussions during the two day event around particular areas of inquiry.

Research

During the inaugural symposium researchers from various disciplines discussed current research findings, challenges faced by researchers, and future research directions. Regarding the obstacles faced by researchers, the discussion identified several areas of focus. First, researchers discussed the importance of maintaining academic objectivity when data may influence advocacy work. Second, researchers considered the detrimental impact of limited data collection regarding the plea process by the courts and practitioners. Third, researchers discussed the need for more interaction between academics and practitioners from two perspectives. As an initial matter, researchers

expressed a desire for more access to clients, courts, and practitioners to better examine and research the operation of the plea system. Further, researchers expressed a need for more assistance from practitioners and advocacy groups in identifying future research needs and directions. In response, practitioners and advocates also expressed a desire for more information from academics about how to access, understand, and utilize their research. As previously noted, the Plea Bargaining Institute was created to address many of these challenges and began this work at the symposium.

Regarding potential future research directions, attendees identified and discussed a number of areas of need. Those areas of research are listed below in hopes that this preliminary material from these initial discussions my inspire future research within various academic disciplines:

- What are the risk factors for when an innocent person will plead guilty?
- When is the best point in litigation to use academic research?
- Does the ease of plea bargaining increase criminal charges?
- What is the cost-benefit analysis of plea bargaining (including opportunity costs)?
- What are the benefits of going to trial more often as a system?
- What is the impact of having and not having exploding plea offers?
- Does plea bargaining promote public safety?
- What type of jury reform would be necessary to allow for more and fairer trials?
- Do defendants believe the plea process treats them fairly?
- What are defendants' perspectives during and after the plea process?
- What elements of the plea process in particular are coercive or most coercive?
- Do Early Disposition Courts increase the likelihood that innocent people plead guilty?
- What is the comparative frequency of plea bargaining in misdemeanor and felony cases?
- What sentencing differential size creates a system in which guilty defendants have sufficient incentives and autonomy, but innocent defendants do not feel coerced?
- How does plea bargaining policy impact individual cases?
- How do withdrawn pleas alter the plea process?
- How do jurisdictions with and without the trial penalty compare to one another across various datapoints?
- What impact do exploding offers have on the plea process?
- Does plea bargaining increase crime?
- How to gauge what is "knowing and voluntary"?
- What effect does the colloquy have on the plea process?
- What is the impact of providing discovery pre-plea?
- What is the impact of bail reform on plea bargaining?
- What is the impact on plea bargaining of eliminating mandatory minimums?
- What is the standard of proof in plea bargaining?
- What is the most effective way to review pleas?
- Conduct a study to show leniency associated with plea bargaining and if recidivism is increased in these cases.

Education and Outreach

Throughout the symposium, attendees discussed the use of academic research in informing criminal justice system and plea bargaining reforms. There was further discussion about the importance of increased education and outreach for the legal community and the public regarding the operation of the plea system and the insights offered by academic research regarding the plea system. In particular, participants encouraged more training and outreach for practitioners, both prosecutors and defenders and members of the judiciary. The Plea Bargaining Institute will focus on these and other stake-holders as it expands it education and outreach initiatives.

PBI Future Directions

Attendees offered suggestions for the Institute's future work on its website, working groups, outreach and education, and partnerships. Suggestions for initiatives included engaging in the filing of amicus briefs to ensure that courts are aware of relevant research findings, the housing of model plea bargaining policies and legislation, and the housing of practitioner resources, such as a brief bank and policy papers for relevant litigation issues.

Conclusion

The PBI thanks all those who participated in the inaugural symposium. The networking and discussions that occurred at this event contributed greatly to the institute's mission of creating opportunity to share knowledge and promote collaboration related to plea bargaining and its role in criminal processes. The insights offered by our attendees will also guide the institute's work as it continues work on its initial launch and its future expansion.

Appendix A: Inaugural Symposium Participants

- Abbe Smith / Director, Criminal Defense and Prisoner Advocacy Clinic / Georgetown University
- Alex Redmond / PBI Research Assistant / Belmont University College of Law
- Alisha Alcantar Tomovic / Legal & Policy Officer / Fair Trials
- Allison Redlich / University Professor, Department of Criminology, Law, and Society / George Mason University
- Andrew Daffron / PBI Research Assistant / Belmont University College of Law
- Angie Weis Gammell / Policy Director / Wilson Center
- Carissa Byrne Hessick / Distinguished Professor of Law / University of North Carolina
- Chris Slobogin / Law Director, Criminal Justice Program & Affiliate Professor of Psychiatry / Vanderbilt Law School
- Clark Neily / Senior VP for Legal Studies, CATO
- Cynthia Jones / Professor of Law / Washington College of Law at American University
- James Felman / Partner / Kynes, Markman, & Felman
- Jared Keenan / Legal Director / ACLU of Arizona
- Jenny Roberts / Professor of Law & Co-Director, Criminal Justice Clinic / Washington College of Law at American University
- Justice Michael Donnelly / Justice / The Supreme Court of Ohio
- Katherine Ray Murray / PBI Research Assistant / Belmont University College of Law
- Lars Trautman / National Director / Right on Crime
- Lisa Bailey Vavonese / Director, Research-Practice Strategies / Center for Justice Innovation
- Lucian Dervan / Professor of Law / Belmont University College of Law and Founding Director / Plea Bargaining Institute
- Marc Levin / Chief Policy Counsel / Council on Criminal Justice
- Martín Sabelli / Attorney at Law / Law Offices of Martín Antonio Sabelli
- Miko Wilford / Associate Professor / University of Massachusetts, Lowell
- Miriam Krinsky / Executive Director / Fair and Just Prosecution
- Monica Reid / Senior Director of Advocacy / NACDL
- Nate Mensah / Visiting Professor of Law / Georgetown Law
- Nate Pysno / Director of Economic Crime & Procedural Justice / NACDL
- Nicole D. Porter / Senior Director of Advocacy / The Sentencing Project
- Norman Reimer / Former Global CEO, Fair Trials, Former Executive Director, NACDL
- Rebecca Brown / Director of Policy / The Innocence Project
- Rebecca Shaeffer / Interim Global Director / Fair Trials
- Ross Miller / Assistant Director of the Quattrone Center / University of Pennsylvania Law School
- Russ Covey / Professor of Law / Georgia State University College of Law
- Simone Oberschmied / Summer Intern / Fair Trials
- Thea Johnson / Professor of Law / Rutgers Law
- Tina Zottoli / Associate Professor, Psychology / Montclair State University