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Demystifying the Plea Process: Investigating Attorney Communications and Client Misconceptions

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ABSTRACT AND ARTICLE INFORMATION

As the United States has shifted to "a system of pleas," the role of defense attorneys has swung from trial litigator to plea negotiator. To further investigate how this shift has impacted defense attorneys, we surveyed a nationwide sample (N = 134) to assess the duration and frequency of client meetings, information clients frequently lack and misconceptions they espouse concerning the plea and trial process, and how attorneys convey advice to accept or reject plea offers to clients. The results indicated that defense attorneys spend a significant amount of time meeting with clients (an average of 5.7 meetings for an average of 44.9 minutes). They also cited substantial deficits in criminal defendants' knowledge of the legal system, as well as many misconceptions regarding legal procedures. Attorneys provided a diversity of responses regarding the most important advice they offer their clients with many mentioning facts related to the case resolution process (56.0%), the direct and collateral consequences associated with a criminal conviction (29.4%), the role of the defense attorney (32.1%), and the importance of the right to silence (24.8%). Further, over half of the attorneys surveyed indicated a general hesitance (54.0%) and others an outright refusal (15.0%) to provide an explicit plea recommendation to their clients. In sum, these findings provide valuable insight into the challenges faced by defense attorneys who must be adviser, negotiator, and apparently, educator. Further, many appear to draw a sharp line between counseling their clients and moving them to a decision.

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Increased scholarly attention has been devoted to the primary method by which cases are resolved in the United States: the guilty plea (see Edkins & Redlich, 2019; Wilford & Redlich, 2018). Each day, thousands of defendants must choose to accept a guilty plea or invoke their right to trial. Facing this difficult choice, lucky defendants (as legal counsel is not universally required prior to misdemeanor plea convictions; Mayson & Stevenson, 2020) will seek advice from their defense attorney (see Alschuler, 1975; Henderson & Levett, 2019). Defense attorneys can not only inform clients of their case details (e.g., specific charges), but also advise them on likely outcomes (e.g., trial outcomes, sentencing exposure), as well as the implications of conviction (e.g., collateral consequences). However, as much of that relationship is protected through attorney-client privilege, little research has explored plea negotiations and how attorneys navigate this process with their clients (Roberts & Wright, 2016). We surveyed defense attorneys to investigate this process. Specifically, we asked defense attorneys what type of information most clients lack, or have erroneous assumptions about, and the facts and advice they wish all defendants knew. The data presented in this article represent a valuable contribution in illuminating how defense attorneys advise defendants, and ultimately, how defendants might approach consequential plea decisions.

Literature Review

Defense Attorneys' Role in Law

Defense attorneys are expected to zealously represent their clients as they navigate the legal system, acting as both an advocate and a guiding hand (American Bar Association, n.d.). During plea negotiations, defense attorneys must communicate with prosecutors to obtain the best possible offer and prepare their clients to make knowing, voluntary, and intelligent plea decisions (*Boykin v. Alabama,* 1969; *Lafler v. Cooper*, 2011). However, it is important to note that variations in the administration of counsel (see Wright & Roberts, 2023) and overall plea process across jurisdictions likely impact the precise role defense attorneys play. Nevertheless, the Supreme Court has repeatedly recognized the right to effective counsel during the plea-bargaining process and has even further elaborated upon what *effective* means in the plea context (e.g., *Lafler v. Cooper*, 2011; *Lee v. United States*, 2017*; Padilla v. Kentucky*, 2010).

Strickland v. Washington (1984) established a standard for assessing ineffective assistance of counsel claims: defendants must prove that their counsel's representation failed to meet an "objective standard of reasonableness." The *Strickland* standard was then applied to plea cases in which a defendant accepts an unfavorable plea offer due to ineffective assistance of counsel (*Hill v. Lockhart*, 1985). This right was even expanded to include cases wherein a defendant rejects a favorable plea due to ineffective assistance of counsel (*Lafler v. Cooper*, 2012; *Missouri v. Frye*, 2012*)*. More recently, the Supreme Court has found that failing to disclose serious collateral consequences (i.e., "determinative issues") such as deportation, also merits ineffective assistance of counsel (*Lee v. United States*, 2017; *Padilla v. Kentucky*, 2010).

These legal precedents, as well as the standards described by the American Bar Association (ABA), establish criteria for evaluating whether counsel met performative thresholds for the minimum actions needed to achieve *effective* assistance of counsel. Yet, there are clear indications that defense attorneys are meant to exceed these minimal thresholds, as evidenced by some of the aspirational language present in Court opinions – "guiding hand" and "vital and imperative" (*Powell v. Alabama*, 1932). These phrases contribute to a venerated depiction of defense counsel and the attorney-client relationship. However, marked differences exist between the idealized defense attorney and the (often overburdened) real defense attorney.

Defense Attorneys' Role in Reality

Public defenders regularly experience financial challenges while being saddled with caseloads exceeding ABA recommendations (ABA, 2004). Furthermore, law school training and continuing education coursework focus primarily on preparing criminal defense lawyers for trial; as such, they may have little exposure or training on negotiation techniques and strategies related to plea-bargaining (Akon & Schneider, 2021; Roberts & Wright, 2016). The absence of formal training, lack of time and resources, and high-volume caseloads can lead defense attorneys to necessarily expedite cases, affecting critical conversations between defendants and their representation.

Since the right to counsel was established (*Gideon v. Wainwright*, 1963), most criminal defense attorneys have been court-appointed. In the United States, four out of five defendants are represented by a public defender or assigned counsel (Harlow, 2000; Wright & Roberts, 2023). Relative to other areas of government, or even other areas of the criminal legal system (e.g., corrections), "the structure, funding, quality, and breadth of the right to counsel" is highly variable and decentralized (Worden et al., 2011, p.

1424). As of 2013, 28 states and D.C. have state-administered public defender systems (Strong, 2016). Twenty-six states fund 100% of their public defender systems (Furst, 2019); but 14 states pay less than 25% of public defense costs, leaving the remaining financial burden to local jurisdictions (Worden et al., 2011). The pervasive issues associated with a lack of adequate funding for public defense have resulted in caseloads that undermine attorneys' abilities to provide effective assistance of counsel to every client (see Backus & Marcus, 2018).

There are countless examples of attorneys handling *thousands* of misdemeanor cases annually, spending less than one hour on average per client (Brenner, 2011). Further, many of the professional environments for public defenders fall far outside the ABA's standards (see The Constitution Project, 2009). For example, a 2017 report on Louisiana's public defender system found that the state would need an additional 1,700+ attorneys to handle the 150,000 cases the state prosecuted annually (ABA Standing Committee on Legal Aid and Indigent Defendants, 2017). At the time of the report, the state had only ~363 public defenders. Louisiana funds public defense through fines and fees (e.g., traffic tickets), but this funding system has proven volatile, and it has been critiqued repeatedly—even being challenged before the Louisiana Supreme Court (*Allen v. Edwards*, 2021; *Citizen v. Louisiana*, 2005; see Brink, 2017). A report on Oregon's public defense system found similar deficiencies; namely, that the state needed an additional 1,300 attorneys. In lieu of that, the current workforce would "need to spend 6,632 hours per year working on case specific public defense work (*26.6 hours per working day* during a calendar year)" (ABA Standing Committee on Legal Aid and Indigent Defendants, 2022, p. 5). These reports and others shed light on public defenders' high-volume caseloads, which necessarily impact the time attorneys can devote to individual clients.

Researchers have sought to quantify the gap between the time attorneys *should* spend on individual cases (using the "Delphi" method of calculating the number of hours it takes to provide effective assistance of counsel on a case), and the amount of time they are *able* to spend on cases. These calculations consistently demonstrate that overworked public defenders have been unable to dedicate the time needed for each case (Furst, 2019; Oppel & Patel, 2019). This likely translates to less time for attorney-client communication and meetings. There have been few in-depth analyses of the frequency of attorney-client meetings, but most of these suggest minimal interactions before defendants' plea decisions (Daftary-Kapur & Zottoli, 2014; Zottoli et al., 2016), with most meetings occurring immediately before scheduled court appearances, limiting the duration of the meetings, as well as their privacy (e.g., lack of confidentiality; Zottoli & Daftary-Kapur, 2019). Often these meetings are brief (Fountain & Woolard, 2018). In fact, in one sample, over two-thirds of conversations between clients and their attorneys were less than 15 minutes (Nugent-Borakove et al., 2017). Restrictions imposed during the COVID-19 pandemic exacerbated these issues, further limiting attorneys' abilities to communicate with their clients (Daftary-Kapur et al., 2021). Ultimately, the less time that attorneys spend with their clients, the fewer opportunities they have to counsel them on legal proceedings and address their questions.

Effective Attorney-Client Communication

Campbell and Henderson (2021) found that good attorney-client communication involves defense attorneys attentively listening to their client, translating clients' needs into legal action, and advocating on their client's behalf. Good attorney-client communication then forms the foundation of a strong attorney-client relationship (Pruss et al., 2022; Sandys & Pruss, 2017), which, in turn, promotes client satisfaction (Campbell et al., 2015). A study of 22 public defender clients found that better communication is timely and frequent, with attorneys clearly informing clients of their options and providing them with a voice (Moore et al., 2019). Yet, the first communication between an attorney and their client might not occur until the day of their first court appearance, at which time they might already be offered a plea (Dunlea & Wilford, 2025; Moore et al., 2019). Boccaccini and colleagues (2014) found that both attorneys and incarcerated adults in Alabama rated keeping clients informed and involving clients in legal decisions among the most important attorney skills.

To communicate effectively with their clients and adequately advise them throughout the legal process, defense attorneys must possess sufficient knowledge about the law and factors specific to their client's case. A study of court actors in a large, urban county showed that effective client counseling includes conducting sufficient case research; sharing appropriate information about the case, outcomes, and any collateral consequences with clients; and recognizing that the client has full autonomy in legal decisions (Lee & Ropp, 2020). Effective communication between attorneys and their clients ultimately leads to greater trust and satisfaction with their representation (see Boccaccini & Brodsky, 2002; Boccaccini et al., 2004). Conversely, a lack of effective communication–and resulting lack of trust–between defendants and their attorneys can have detrimental consequences for defendants, affecting

both liberty and livelihood (e.g., *Lee v. United States*, 2017; *Missouri v. Frye*, 2012; *Padilla v. Kentucky*, 2010). Given the critical role defense attorneys play in guiding defendants throughout their experiences within the legal system, mitigating these consequences to promote a positive attorney-client relationship is critical to achieving favorable (and just) case outcomes.

Importance of the Attorney-Client Relationship

A defense attorney is typically a defendant's primary source of information about all aspects of their case, including evidentiary discovery and possible resolutions (Fountain & Woolard, 2018; Henderson & Shteynberg, 2019). Defendants look to their attorneys for legal advice and recommendations and to translate case elements (e.g., case-specific jargon, their probability of conviction) into language they can comprehend (Henderson & Levett, 2019). These functions are critical as research suggests that defendants lack a solid understanding of legal proceedings and the plea process (Daftary-Kapur & Zottoli, 2014; Zottoli & Daftary-Kapur, 2019), even after pleading guilty (Redlich & Summers, 2012). The combination of defendant ignorance along with the expectation that defendants accept plea convictions knowingly and intelligently requires that defense attorneys be effective educators as well as advocates. These requirements are further underscored by growing research highlighting the brevity of plea hearings during which judges are to evaluate defendants' knowingness and intelligence (e.g., Dezember et al., 2022; Redlich et al., 2022; Wilford et al., 2025). Judges presumably expect that defense attorneys have already educated their clients.

Additionally, defense attorney involvement improves client decision-making by allowing the client to be more involved and maintain greater decision-making autonomy (Fountain & Woolard, 2018). By preserving defendant autonomy, defense attorneys can provide a natural shield to the potential coerciveness of the plea process (Luna, 2022), though they could also exacerbate these feelings in scenarios in which their recommendations align with the prosecution. Interestingly, research has indicated a mixed effect of defense attorney recommendations on defendants' plea decisions. While some studies have found that defense attorney recommendations significantly influence defendant's decisions (Henderson & Levett, 2018; Henderson & Shteynberg, 2020; Lee et al., 2020), others have found no significant impact (Redlich & Shteynberg, 2016; Zimmerman & Hunter, 2018).

To reconcile these findings, Henderson et al. (2023) further examined the impact of attorney recommendation on defendants' plea decisions (using an interactive computer simulation) and observed a significant effect but noted that it was asymmetric. While mock defendants were responsive to a recommendation to reject the plea offer, they were less responsive to a recommendation to accept the plea offer (particularly while innocent). Thus, research regarding the impact of explicit plea recommendations indicates an effect, though its magnitude and the contexts in which it is observed are still unclear. Regardless, communications from defense attorneys are clearly valued by defendants, and even if they disagree with their attorneys' recommendation, most defendants still rely on their counsel throughout the plea process (Henderson & Levett, 2019). Yet, structurally, our system is not built to support quality attorney-client relationships, with public defenders expected to do the best they can with limited time and resources.

This research sought to further examine the communication between attorneys and their clients. By identifying what clients generally do not know and what information attorneys deem particularly important, we hope to provide useful strategies for resource-deprived attorneys to improve the efficiency of their client discussions and better ensure that subsequent decisions are made knowingly, intelligently, and voluntarily.

Current Study

To provide counsel about defendants' plea decisions (Redlich et al., 2016), defense attorneys consider a wide range of evidentiary factors (e.g., confession evidence), non-evidentiary factors (e.g., defendant's pretrial release status), and even characteristics of their client (e.g., drug and alcohol use), while operating with limited resources. Research has shown that defense attorneys have significant social influence in shaping their clients' decisions to accept or reject plea deals through the information they share. Defendants usually make plea decisions with the involvement of their attorney and with consideration of their attorney's recommendation (Henderson & Levett, 2018; Henderson & Shteynberg, 2019; Redlich et al., 2017). A defendant's attorney acts as their primary source of legal and case-related information as they navigate the plea-bargaining process (Fountain & Woolard, 2018; Henderson & Shteynberg, 2019), translating case-specific information, such as the strength of evidence against them and their probability of conviction (Henderson & Levett, 2019).

There are three distinct phases of the plea-bargaining process in which a defense attorney has optimal influence (Alkon, 2016): (1) case preparation (e.g., establishing a legal background), (2) negotiating

with the prosecutor on their client's behalf, and (3) counseling the client about a plea decision (e.g., advising the client of likely trial outcomes and answering questions). It is in this third phase where the attorney arguably has the greatest influence on their clients' decision-making (Henderson et al., 2023); thus, the current study focuses on communications pertinent to this third phase. In the above sections, we highlighted the importance of defense attorneys and structural issues that impact the quality and quantity of meetings between them and their clients (which is likely more pertinent to court-appointed attorneys than private criminal defense lawyers). This begs a series of questions about the content of these limited attorney-client meetings. In the current study, we survey current criminal defense lawyers from across the United States to address these questions.

Method

Recruitment & Participants

We recruited current criminal defense attorneys practicing in the United States. Potential participants were contacted primarily through email solicitations circulated via state attorney listservs and authors' professional contacts. In total, we recruited 292 practicing defense attorneys in the United States. All participants had to be 18 years of age or older and actively practicing as a criminal defense attorney.

We included a single eligibility question inquiring whether the participant currently practices as a criminal defense attorney. Participants who answered "No" to this question were excluded. In this paper, we report data only from attorneys who answered at least one of the relevant questions, resulting in a sample of 137 defense attorneys. We excluded three more participants as their answers indicated they were appellate attorneys. Our final sample consisted of 134 current criminal defense attorneys from over 20 states, with the majority of responses (60.4%) coming from the Northeast region of the United States. Additionally, 17.4% of responses came from the West, 13.2% came from the South, and 9% came from the Midwest. Attorneys in our sample had been practicing law for an average of 18 years (*min* = <1 year, *max* = 50 years, *SD* = 12.71 years). Given our interest in keeping the survey brief (to encourage thoughtful responses to our open-ended questions), we did not record any other demographic data. Thus, we cannot comment on, for instance, whether our results differ by attorney's role in the public or private realm. That said, research has often found that private attorneys and public defenders produce similar case outcomes (e.g., Cohen, 2014; Stover & Eckart, 1975), though differences do more regularly emerge between public defenders and appointed attorneys.

Materials

The present study consisted of a two-part questionnaire. Attorneys were first asked questions concerning an educational simulation for juvenile defendants (being developed as part of a grant-funded project, see Wilford, Sutherland et al., 2021). The second part, on which the current paper focuses, examined how criminal defense attorneys communicate with and perceive relationships with their clients. This section of the questionnaire included a series of rating scales and open-response questions (included below).

We first began by asking defense attorneys three descriptive questions about client meetings and typical outcomes:

1. What proportion of your clients plead guilty rather than go to trial? Please indicate on a scale of 1-100.
2. How many meetings do you usually have with a client before their case is resolved?
3. What is the average duration of a meeting with your clients? Please indicate in minutes.

We then asked multiple open-ended questions regarding attorneys' perceptions of their clients' understanding of the legal process, meetings with clients, and overall communication.[1]

4. When you first meet clients, what information about the plea and trial process do they typically lack?
5. When you first meet clients, what are common misconceptions that they have about the plea and trial process?
6. Please list some facts or advice you think all your clients should know.
7. If a client was offered a plea deal, how would you convey your beliefs regarding whether they should accept or reject the offer? For instance, if you thought your client should plead guilty, would you tell them you think they should plead guilty or encourage them to do so by other means?

Procedure

The University of Massachusetts Lowell Institutional Review Board approved all study materials and the collection of these data. Participants were recruited primarily via email solicitations. The email invitations contained a brief description of the project and a link to the survey, which first directed participants to the informed consent document. After

answering a series of multiple-choice questions related to the design of an educational simulation (see Wilford, Sutherland et al., 2021 for asset examples), attorneys were directed to the questions presented here. On average, the full survey took 15 minutes to complete. Attorneys were not required to answer every question, but they were encouraged to do so. Thus, there were not responses on all the open-response questions from all 134 of the criminal defense attorneys that participated. A $5 donation was made to the National Bail Fund Network for each submission (https://www.communityjusticeexchange.org/en/nbfn-directory).

Results

Guilty Pleas

Defense attorneys (n = 124) reported that 68.3% of their clients (on average) plead guilty, rather than go to trial (SD = 26.9). Interestingly, two attorneys claimed that none (0%) of their clients plead guilty, and four more claimed that 10% or less of their clients plead guilty. Thirty-eight attorneys (30.6%) reported that 90% or more of their clients plead guilty, and eight-seven (70.1%) reported that the majority of their clients (more than 50%) plead guilty. Thus, less than one third of our sample reported a plea rate approaching that seen nationwide (i.e., 95%; Wilford & Bornstein, 2023), though importantly, that rate does not include those that get dismissed (which, in light of this data, could be a sizable proportion).

Attorney-Client Communications

We asked a series of open-ended questions about the attorney, their practices, and various elements pertaining to an attorney's communication with their clients. As attorneys were not required to respond to all questions, the sample sizes for each individual question varied (and are noted). Responding to the question about the number of meetings it typically takes for a case to be resolved (n = 128), 13.3% reported that the number of times they meet with a client is "case specific" or "varies." Those who provided a numerical response (or range) to this question (n = 111) stated that they meet with clients an average of 5.7 times (SD = 4.1) with a mode of 3 meetings. Several attorneys provided a range of numbers, with some as low as 1 – 4 or 2 – 3 meetings (n = 11). Others provided substantial ranges (e.g., "between 1 and 30—there is no usually"). They also reported that their meetings typically last around 44.9 minutes on average (n = 129, SD = 18.5), with a mode of 60 minutes.

Descriptive Responses

The following sections discuss the responses obtained to four open-ended questions. Responses for each question were generally coded using a content analysis approach wherein broad themes and patterns were identified within the data (i.e., no categories were defined a priori) and then refined through discussions among the authors. Two independent research assistants systematically coded responses for each question with adequate inter-rater reliability per code (k's 0.61 – 1.00). All disagreements were examined and settled via discussion among the authors before frequencies were calculated. Quotes have been lightly edited for readability. Throughout, we have underlined parts of attorney quotes that correspond to relevant themes.

Client Knowledge about Pleas and Trials

To explore defendants' knowledge regarding legal processes, we asked defense attorneys, "When you first meet clients, what information about the plea and trial process do they typically lack?" See Table 1 for an overview of codes, frequencies, and examples. Codes for this question were *not* mutually exclusive as multiple responses included content that belonged in more than one code. Ninety-four percent of the total sample (n = 126) responded to this question. Most defense attorney responses fell into two categories: Defendants lack a general understanding of the legal process (47.6%, n = 60), and defendants do not know anything about the trial and plea process (31.0%, n = 39). Of the former, many defense attorneys felt that defendants lack significant knowledge about certain elements of the courts and legal process (e.g., what is admissible as evidence, what certain legal terminology means, how likely they are to be convicted, the timeline of legal proceedings). Several of these attorneys also acknowledged the value of prior experience in understanding legal processes. For instance,

> *"Putting aside the ones who have extensive experience with the criminal legal system, I find that new clients tend not to understand the order of events or what might be considered a realistic timeline for resolution, especially in the COVID era. They seem to benefit from an explanation of what our next court event is, its purpose, what outcomes could result, etc., I also find, sadly, that many live with a constant fear that on the next court date, they are absolutely going to jail, even if—I try to get ahead of that by explaining the limited reasons why someone's custody status could change (bail revocation,*

Table 1: Perceptions of Defendants' Knowledge about Pleas and Trials: Categories, Percentage Referenced, and Example Responses

Category - *Definition*	Percentage (*n*)	Examples
Understanding the Process		
Lack significant knowledge of the legal process (i.e., court and trial processes)	47.6% (60)	*"What a continuance without a finding is. All the intermediate steps between arraignment and trial."* *"Timeline, order and purpose of standard/expected court events."* *"Collateral consequences of conviction. Not fully understanding the trial process since most client experience is with pleas."*
Lack significant knowledge of the plea process (e.g., how long the process takes, what rights they are waiving, benefits of the plea)	16.7% (21)	*"How the process really works, not what they heard at the jail. Like, no, you do not get three plea offers, and no, you can't ask for a bond reduction every 30 days."* *"Understanding what their rights are in the plea process and how different programs in probation work."*
Role of the Parties Involved		
Role of legal actors (e.g., attorney-client privilege, the judge's responsibility)	10.3% (13)	*"It depends on how often they have been in the system. Mostly the role and dedication of public defenders."* *"The respective powers of the prosecutor, the judge, & defense counsel, as well as how much control the defendant herself has of the process."* *"Understanding of which variables are controlled by the defendant, the prosecutor, and the judge."*
Role of their own personal circumstances (e.g., how their own experiences, demographics, actions, demeanor impact their experience)	26.2% (33)	*"It depends on their experience. I find most clients cannot understand much of the system until they experience it first-hand. Attorney explanations about the process often seem like someone trying to understand French while in France for the first time."* *"The answer depends on the client and their previous interactions with the criminal justice system. They may have aggrandized preconceived perceptions on the laws and application to the facts of their case. They may not appreciate the gravity of their situation. A lot of them deal with mental health issues compounded with substance abuse disorders so they don't appreciate the procedural process with the courts."*
Complete Lack of Knowledge		
"Don't know anything"	31.0% (39)	*"Most have no basic understanding."* *"Almost all of it."* *"They only understand what they have seen in movies or on TV. They generally only have a rudimentary understanding of how a trial works and not much else."* *"Some of them lack everything and some think they know more than you."*
Consequences of Conviction		
Direct consequences (e.g., incarceration, probation, fines)	12.7% (16)	*"An understanding of the adversarial nature of the process and how and why they will never 'explain to the judge' what happened. The tremendous potential ramifications of the case."* *"When a trial would happen. A lot of them think it will happen on the next court date for example. That just because a case carries a max sentence of for example 2 ½ that doesn't mean that a lesser sentence or probation isn't an option."*
Collateral consequences (e.g., loss of licensure, inability to vote, ineligibility for federal assistance)	14.3% (18)	*"Direct and collateral consequences – particularly gun rights and professional licensure implications."* *"Inadequate understanding of collateral consequences of a conviction/adjudication…"*

Note: Responses corresponding to the question: "When you first meet clients, what information about the plea and trial process do they typically lack?" Bolded text represents themes. For quotes with underlined text, only the underlined text represents the portion of the response relevant to the corresponding code as multiple codes applied to those responses.

admitting to or being convicted of an offense and taking a jail sentence) and emphasizing protections/strategies we have against something like that happening. In short, they lack an understanding of the rights they have and checks that exist on the system's power, leading to fear that at any time, they could find themselves incarcerated."

Similarly, another third of defense attorneys (31.0%) indicated that defendants do not know anything, period. Rather than lacking knowledge about certain elements of the legal process (such as above), these clients simply lack knowledge about everything related to trials and plea-bargaining. These responses tended to cite more general ignorance of everything or almost everything. For example, one attorney replied,

"Almost all of it. Most think that by being charged they are assumed to be guilty. Even experienced criminal clients feel and act this way."

The remaining responses centered around defendants not understanding direct and/or collateral consequences, the role of legal actors, the role of their own personal circumstances, and the plea-bargaining process (see Table 1).

Client Misconceptions Regarding Legal Processes

A lack of information is one challenge to attorney-client communication. Defendants' misconceptions regarding aspects of their case and the system can exacerbate these issues further, requiring attorneys to educate their clients, and actively counteract preconceived inaccurate notions. To explore defendants' misconceptions concerning legal processes, we also asked defense attorneys, "When you first meet clients, what are common misconceptions that they have about the plea and trial process?" See Table 2 for an overview of codes, frequencies, and examples. Codes for this question were again *not* mutually exclusive as multiple responses included content that belonged in more than one code. For this question, 88.8% of the total sample (n = 119) responded, and most defense attorneys reported that defendants possessed broad misconceptions regarding legal procedures (63.9%, n = 76). For example,

"They think they have more rights than they really do."

"That they actually do have a choice in the process (even if it doesn't feel like it sometimes)."

Defendants having misconceptions concerning legal processes was the most common response, as well as a broad category that encompassed a wide range of areas. Other responses were more nuanced and less common. For example, roughly one-quarter of defense attorneys (23.5%) indicated that defendants have misconceptions about the role of legal actors (e.g., misconceptions about defense attorneys' abilities to dismiss cases), and an additional quarter (21.8%) indicated that defendants have misconceptions about the plea process, specifically (e.g., misconception that pleas always come with better outcomes).

Most Important Advice Attorneys Can Offer Clients

To examine the information defense attorneys perceived as particularly important when communicating with clients, we asked, "Please list some facts or advice you think all your clients should know." See Table 3 for an overview of codes, frequencies, and examples. Codes for this question were again *not* mutually exclusive as multiple responses included content that belonged in more than one code. For this question, 81.3% of the total sample (n = 109) responded, and over half reported that their discussions concerning the case resolution process were the most important (57.8%, n = 63). Examples include the following responses:

"Your chances at trial are very small, even in the best case. If you did not do what you are charged with, you will have to prove that to a greater or lesser degree. You are not in control of a great deal of your own life once you are charged."

"Many things are out of my control."

"The prosecutor has to prove EVERY element of the crime in order to convict you."

The overlap in codes across responses demonstrates the breadth of information that attorneys feel is essential to cover in their conversations with clients. Responses to this question, more so than the two prior questions, overlapped across codes. Here is one particularly compelling example:

"1. Anything you say to anyone other than me is likely to come back and bite you.
2. The prosecutor does not have your best interests in mind.

3. Not all cases can be won. Sometimes the facts are the facts and they can't be avoided.
4. A negotiated plea with a favorable outcome is often the best you can do.
5. Making decisions about the case based on principle rather than on the law and the facts is all well and good but is often foolhardy.
6. Regardless of what you've heard from other people about other lawyers, whether we go to trial or negotiate a deal is entirely up to you. I'll give you my honest opinion about the relative wisdom of the options, but the decision is yours. I've spent a lot of years doing this and I've never had a client say that I 'made them' take a deal or 'made them' go to trial. I'm not going to start with your case."

Roughly one-quarter of responses (24.8%) from defense attorneys noted that the most valuable piece of information they can give clients is to not talk with anyone other than their attorney. As one attorney succinctly stated, "*Don't trust anyone but me."* Along these lines, roughly one-third of responses (32.1%) demonstrated that defense attorneys wished all defendants were aware of the role of their defense attorney and that they spent considerable time educating clients on the nuances of the attorney-client relationship (e.g., confidentiality).

How Defense Attorneys Advise Plea Decisions

To examine how defense attorneys convey their opinions regarding a plea offer, they were asked, "If a client was offered a plea deal, how would you convey your beliefs regarding whether they should accept or reject the offer?" Codes for this question

Table 2: Perceptions of Defendants' Misconceptions about Legal Processes: Categories, Percentage Referenced, and Example Responses

Category - *Definition*	Percentage (*n*)	Examples
Misconceptions of legal procedure (e.g., un/necessary steps in the process)	63.9% (76)	*"They think they have to testify."* *"They misunderstand what is evidence and what isn't."* *"That they have to defend their case, when the prosecution must prove the case."*
Role of legal actors (e.g., confusion concerning the abilities or functions of attorneys, judges)	23.5% (28)	*"The biggest misconception I see is that clients believe the defense lawyer can just wave a magic wand and make the case disappear just because they say they are innocent. They often don't understand that is what a trial is all about, the jury decides what the evidence is and who is telling the truth. Clients also believe that if the police did not read them their Miranda rights at the time of arrest, that somehow invalidates the charges even if the police did not question them."* *"They often think that the prosecutor is required to offer an agreement and required to offer one they are willing to accept."*
Misconceptions of plea process (e.g., purposes or outcomes of guilty pleas)	21.8% (26)	*"That they will get a better outcome if they plead."* *"Pleas are admissions."* *"They have a hard time understanding conditions of release, probation and sometimes the colloquy is said (by the judge) in a very sophisticated way. It should be in a more colloquial way."*
Direct and collateral consequences (e.g., misunderstandings regarding the permanence of case impacts)	12.6% (15)	*"They don't realize how much money it can cost to be on probation."* *"That when the case is over it will somehow vanish from their record. The gravity of their circumstance."*
Misconceptions of justice system (e.g., false beliefs in fairness)	10.9% (13)	*"That it is in any way dependent on justice! EXTREMELY IMPORTANT"*
Lack of knowledge (i.e., defendants lack the knowledge to have misconceptions)	7.6% (9)	*"They don't understand the process at all."* *"It's more a lack of knowledge than misconceptions."*

Note: Responses corresponding to the question "When you first meet clients, what are common misconceptions that they have about the plea and trial process?" For quotes with underlined text, only the underlined text represents the portion of the response relevant to the corresponding code as multiple codes applied to those responses.

were mutually exclusive, meaning they only fit into one code. For this question, 84.3% of the total sample (n = 113) responded. Interestingly, over half of attorneys reported that they would focus on presenting the pros and cons of accepting or rejecting a plea offer (54.0%, n = 61), deemphasizing an explicit recommendation. Attorneys in this condition focus on informing their clients about factors affecting their case (i.e., parameters of the plea, risks and benefits, the costs of trial, and associated consequences). In other words, the majority of defense attorneys believed that their advice should center on the relative advantages or disadvantages of accepting an offer while encouraging the client to make their own decision.

> *"I first go through the pros and cons of a plea agreement as compared to pleading without a plea agreement or going to trial. I list the options. I am happiest when my clients come to their own conclusions. If asked, I will express my opinion as to which option is best for them, and explain why. I will reiterate that it is always their choice about how to proceed, and I will respect their decision whatever it is."*

Table 3: Most Important Facts or Advice: Categories, Percentage Referenced, and Example Responses

Category - *Definition*	Percentage (*n*)	Examples
Discussion of case resolution process	56.0% (61)	*"There are risks to taking a case to trial."* *"That it is a bigger deal to give up one's rights to a trial and plead guilty than it is to maintain innocence and force the government to prove its case."*
Attorneys' roles	32.1% (35)	*"Your attorney, if court appointed, is usually carrying a very heavy caseload. It may take time for your requests to be answered. NEVER write the judge or prosecutor."* *"This is their case and their life, so they make the decisions. My job is to explain and advise, theirs is to decide."*
Impacts of conviction (e.g., direct and collateral consequences)	29.4% (32)	*"Probation usually means if you get arrested before your probation ends, you're going to jail for some period of time."* *"Implications of convictions on federal programs (SNAP, ADC, Pell Grants, etc.)."*
Do not talk to anyone	24.8% (27)	*"BE QUIET."* *"Don't talk to the police without an attorney present, even if you are completely innocent."*
Elements of the case	24.8% (27)	*"That each case is different based on the facts/evidence. Evidence, or lack thereof, is one of the main driving factors behind the decision to go to trial or take a deal. The general flow of a case (procedure – to include appellate process)."* *"How the facts of the case may apply to the law and the other way round. Possible v. potential sentences—that every case should be prepared as if it is going to trial even though most don't."*
Defendants' rights	22.0% (24)	*"All my clients should know about attorney-client privilege, and how to protect it throughout a criminal case. All my clients should also know about their right to remain silent and not self-incriminate."*
Defendant's prior experience and behaviors	12.8% (14)	*"The number of cases that actually go to trial is relatively small when compared to the number of cases filed, and that your prior history can be used by the state when deciding what to offer in terms of punishment in the new case."* *"Consider the court a theater; you are in a one person show; your audience is, variously, one person, 6 people, or 12 people. You need to groom, dress, move and speak with those people in mind."*

Note: Responses corresponding to the question "Please list some facts or advice you think all your clients should know." Underlined text represents the portion of the response relevant to the corresponding code as multiple codes could have applied to responses.

> *"I would say the final decision is yours, however you will be judged by a group of 12 (or 6) people, now put yourself in one of those juror chairs and after hearing all the evidence, how would vote: Guilty or Not Guilty."*

> *"It is always the client's decision. I can lay out the challenges of the case, etc., but ultimately, it's their decision. I go home if we lose; it's not the same for them."*

Roughly one-third of attorneys (29.2%, *n* = 33) reported that they do provide explicit recommendations to their clients as to whether they should accept or reject a plea offer. Their reasons for doing so included wanting to be direct and honest with their clients and wanting to provide their expert opinion regarding the quality of the offer (given their more advanced legal knowledge).

> *"Yes. Often, I tell them they are free always to decide what to do, of course. I remind them they are free to fire me and ask for fresh counsel. But if I think they ought to plea and they ask my opinion, I do tell them what I think given my years of experience and I often put it like this: IF I were telling my brother/husband/son what my opinion was of his odds at trial versus the offer on the plea, I would tell him that he's better off in this situation with a plea and here is why I think so. And then I list the factors I have considered in coming to my opinion."*

> *"I would tell them to plead guilty and explain why I thought it was the best option in the case—speak about the exposure otherwise faced at trial; why the deal was good; charges they were otherwise avoiding; why I wouldn't be successful if I took the case to trial, etc."*

> *"I tell them after all the analysis if I were in their shoes what I would do, if that is take the deal, then its take the deal, if its take it to trial then you take it to trial."*

A smaller number of attorneys (15.0%, *n* = 17) reported that they generally avoid providing any explicit plea recommendations to their clients. Attorneys in this group exhibited a strong reluctance to provide direct opinions primarily as a means of protecting their clients' autonomy. This theme differs from the "Pros/Cons" theme in that attorneys clearly noted that they generally refuse to provide an explicit recommendation to clients.

> *"No, I lay out the facts, predict the likelihood of conviction, and leave the choice to the client. I don't try to engineer pleas."*

> *"Never express an opinion. Bring all of the relevant factors to the attention of the decisionmaker, and let them decide."*

> *"I don't put my opinion into the mix. I explain the legal implications to the best of my ability, and clearly explain to them that this is one of the phases of the case over which the client has exclusive control."*

Overall, responses to these questions demonstrate an immense amount of variability in attorney-client communications. Defense attorneys differ in the information they believe clients possess, the misconceptions they observe among clients, the information they prioritize in discussions with clients, and the method by which they should communicate optimal outcomes. Granted, responses to this survey were recorded nationally. Thus, it is possible that some of the differences we observed are due to jurisdictional variations. That said, these results illustrate some shared fundamental issues across the United States as well. Numerous defense attorneys believed that their clients know relatively little about the legal system and legal processes unless they have already faced prior accusations/convictions. This theme regarding defendants' general lack of knowledge about the system and often accompanying misconceptions cut across multiple questions. There was also substantial agreement regarding the most important advice attorneys can offer criminal defendants: focusing on methods of case resolution (pros and cons), the importance of defendants invoking their right to silence, and describing direct and collateral consequences of conviction. Finally, many attorneys shared a reluctance (and some even outright refused) to explicitly advise their clients as to whether they should accept or reject a plea offer; rather, it seems defense attorneys prefer to explain the pros and cons and leave the ultimate decision to the client.

Discussion

These survey data paint a complex picture regarding America's "system of pleas." First, describing our system as one of pleas might be hyperbolic, or at least oversimplistic. Defense attorneys reported an average plea rate of 68.3%, with

only 30.6% of respondents citing plea rates that approach those reported in nationwide adjudication rates (Wilford & Bornstein, 2023). While this variability could reflect self-selection biases in that the defense attorneys who have the bandwidth to respond to surveys also have more resources to take cases to trial, it could also indicate the importance of recognizing other potential case outcomes aside from plea or trial conviction—namely, dismissal or acquittal (Abrams, 2011). That is, this differential could be due in part to responding attorneys estimating their plea rates across all assigned cases, whereas general plea rates exclude dismissed cases, as well as those that go to trial and result in acquittal (as they reflect the proportion of convictions resulting from guilty pleas). By de-emphasizing, or even ignoring, these alternative case outcomes, we could be masking other ways in which defense attorneys (and other legal actors) can influence this process and its outcomes.

We also observed substantial variability in the frequency and duration of client meetings, though responses generally converged on a 3 to 6 range, with an average duration of 45 minutes. These responses paint a rosier picture than past research citing brief (~15 minute) meetings most commonly occurring immediately before court appearances (Nugent-Borakove et al., 2017; Zottoli & Daftary-Kapur, 2019). Further, many attorneys acknowledged the importance of being flexible regarding what each case or client might require, with 13.3% reporting that the number of meetings will vary by case.

Addressing Information Deficits & Misconceptions

While attorneys provided diverse responses regarding the types of information deficits that criminal defendants possess, there was broad agreement regarding the depth of these deficits. Some of these deficiencies were case or jurisdiction-specific, but many pertained to nationwide procedural and legal concepts (e.g., due process, constitutional rights). Attorneys regularly cited misunderstandings regarding general legal procedures (63.9%), the role of legal actors (23.5%), and the plea process itself (21.8%). While some defendants seemed to overplay the role of defense attorneys (e.g., they can make a case disappear), others appeared to undermine the role of their attorney (or treat them with skepticism). Defendants also possessed misconceptions regarding what a guilty plea is, what it means, and how it occurs. It seems that in addition to the cornucopia of unique cases with which defense attorneys must contend, they also face unique defendants who engage the attorney-client relationship with their own expectations and assumptions regarding the legal system and its actors.

Consequently, it appears that attorneys are having to play the role of educator, as well as adviser. Given the limited resources and time that attorneys have available (Backus & Marcus, 2018), covering rudimentary information on basic legal processes (e.g., pretrial hearings) and fundamental rights (e.g., presumption of innocence) does not seem to be the most effective use of that time. Perhaps the U.S. Department of Education should prioritize the teaching and assessment of elementary legal knowledge. Such information would be invaluable not just to future criminal suspects but to future jurors. Research has long demonstrated that jurors perform poorly in comprehending and recalling legal instructions (Reifman et al., 1992). Perhaps increasing basic legal knowledge could provide future jurors with a stronger foundation from which to evaluate the relative merits of the cases they are asked to judge (Ellsworth & Reifman, 2000). This would be a valuable fringe benefit to additionally ensure that criminal attorneys are advising clients with an elementary understanding of legal procedures and fundamental rights at a baseline level. Further, attorneys should be provided with additional resources (e.g., teaching tools, online modules) to educate their clients, reducing their burden as teachers and returning them to the role of advisers.

Important Facts or Advice

At no other point did we observe as many all-caps or expletive-filled statements as when nearly a quarter of attorneys (24.8%) were underscoring the importance of silence (e.g., "SHUT THE F**K UP [sic],"). Defense attorneys' fears of their clients talking with law enforcement, as evidenced in this study, are consistent with research on *Miranda* waivers wherein criminal defendants are often willing to waive their constitutional right to silence (Domanico et al., 2012; Feld, 2006; Kassin et al., 2007). These same waiver concerns are referenced by defense attorneys who advise and represent juvenile clients (August & Henderson, 2021). Further research is needed to examine why individuals are so willing, and even eager, to waive their right to silence (e.g., Kassin & Norwick, 2004; Rogers et al., 2011; Scherr & Madon, 2013). And more importantly, what system protections can be implemented to prevent innocent suspects from accidentally incriminating themselves (e.g., requiring juveniles to meet with their attorney before waiving their rights).

Defense attorneys also regularly underscored the importance of reviewing the impact of a conviction on their clients (29.4%). Unfortunately, other research has indicated that even after accepting a plea, defendants often lack a complete understanding of the consequences of their conviction (Redlich & Summers, 2012), especially the myriad of collateral consequences often attached to a conviction

(https://niccc.nationalreentryresourcecenter.org/). Research also finds that certain proximal (immediate) consequences (e.g., pretrial detention) can overshadow any concerns of collateral consequences even when they are disclosed (Edkins & Dervan, 2018). Future research needs to disentangle whether these deficits stem from how defense attorneys are communicating relevant information or how defendants are reacting to and processing that information.

Indirect Advice

We also observed a strong reluctance (54.0%) and even outright refusal (15.0%) among defense attorneys to provide defendants with explicit advice regarding plea offers. This finding has important implications for research examining the influence of attorneys on plea outcomes wherein advice is often manipulated explicitly (e.g., Henderson & Levett, 2018; Henderson et al., 2023; Zimmerman & Hunter, 2018). Our results indicate that this type of advice could be relatively rare. Instead, attorneys might be more likely to provide general evaluations of the plea offer (similar to, for instance, Lee et al., 2020; Redlich & Shteynberg, 2016; Tor et al., 2010) or the probability of conviction (e.g., Helm et al., 2018a; Wilford, Sutherland et al., 2021; Wilford, Wells, & Frazier, 2021) or to give a more neutral, educational assessment of the plea and trial options (e.g., Henderson & Levett, 2018). Thus, future researchers interested in examining the impact of defense attorneys on plea outcomes should consider these findings when determining how to operationalize attorney advice.

Recent Supreme Court decisions expanding the definition of effective assistance of counsel in plea contexts (e.g., *Lafler v. Cooper*, 2012; *Lee v. United States*, 2017; *Padilla v. Kentucky*, 2010) could have also played a role in attorneys' reticence to provide explicit advice (though none of the attorneys mentioned this as a reason for their response). It is possible that attorneys are more anxious about the possibility of a client claiming ineffective assistance of counsel due to advice that did not pan out. By simply presenting the pros and cons of the decision, attorneys can accept less direct responsibility for the choice their client makes. It is also possible that there is no fundamental difference between weighing the pros and cons of a deal and offering an explicit recommendation. Research on phenomena like pragmatic implication has consistently found that people are often able to intuit the direct meaning behind indirect statements (e.g., Kassin & McNall, 1991). These are all questions in need of more research.

Future Directions & Limitations

While the current findings provide several insights regarding attorney-client interactions, there are limitations. Most notably, it is possible that the type of defense attorney interested in participating in research surveys of this nature differs from the average defense attorney. Future researchers should think creatively regarding ways of attracting attorneys who might not be naturally inclined to participate in surveys of this nature. Relatedly, to maximize participation, we used a snowball sampling recruitment strategy, which bars us from estimating our rate of participation (i.e., the number of attorneys who received the survey invitation) and whether participation rates differed in any meaningful ways. Further, to keep the survey sufficiently brief, we omitted many potentially interesting demographic variables. Follow-up research should incorporate more demographic measures to illuminate potential differences in the themes observed here. For instance, do private attorneys report different client misconceptions compared to public attorneys? Such research could also incorporate follow-up questions for attorneys falling at the fringes of some of these measures (e.g., Do attorneys with client plea rates of less than 10% differ in some observable way from other attorneys?). Finally, we cannot draw any conclusions from our data regarding how much attorney respondents believed they helped their clients. Specifically, do attorneys believe they successfully correct their clients' common misconceptions? In addition, we are unable to test the accuracy of the attorneys' perceptions. Future researchers should consider a dyadic design—recruiting attorneys and their clients. Such studies could illuminate the (as)symmetry across the themes we observed (e.g., whether common client misconceptions match what attorneys observe), and whether deficiencies are successfully addressed via attorney-client communications.

Conclusion

The plea process is complex, and defense attorneys play a critical role in this process. The current work highlights how that role has potentially evolved—moving from adviser to educator and evaluator. More qualitative data collection like this is needed to illuminate *how* attorneys influence defendants' decision-making rather than just whether they do and by how much (see also Helm et al., 2018b). This type of research on "expanded criminal defense lawyering" often goes above and beyond typical outcomes (e.g., convictions), and instead focuses more on the process, such as plea negotiations

and effective attorney-client communication, and often incorporates the defendants' perspectives (Wright & Roberts, 2023). Such studies will inform future avenues for research and how best to operationalize attorney-client communication. Additional research is also needed on better mechanisms (besides relying on attorneys) for educating criminal defendants on the legal process and their rights. We need to reduce the burden on defense attorneys by making it easier for them to ensure that their clients are meeting the knowing and intelligent requirements for plea decisions.

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Endnotes

[1] Attorneys were also asked, “Is there any information or legal facts that you share with all (or at least the majority) of your clients?”; “What are some of the most common questions that you ask your clients throughout the plea process?”; “What are some of the most common questions your clients ask you throughout the plea process?”; and “What do you believe are the most important collateral consequences stemming from a criminal conviction (or a juvenile adjudication)?” Responses to these questions were coded and analyzed, but given the overlap in the data (between these and those presented), we have excluded that data here for brevity.