Complex Decisions Under Short Time Constraints: Why Misdemeanor Defendants Proceed without Counsel[1]

Abstract: Millions of misdemeanor defendants resolve their cases without counsel each year, and limited prior research suggests the right to counsel is forfeited because misdemeanors are perceived as insignificant and not worth the added costs for lawyers they regard as untrustworthy. The current study builds on this prior research by engaging in extended, longitudinal interviews with defendants to examine their lived experiences, which shape and influence the decision to forgo counsel. We found that defendants made quick and complex cost-benefit assessments under significant pressure, and the high-pressure decisions were mainly influenced by their anxiety about going to court, distrust of public defenders, and misconceptions about how they thought the hearing would proceed. Broad recommendations drawn from the defendants' accounts will be discussed.

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A patchwork of estimates[2] suggests that even when entitled to counsel,[3] millions of defendants prosecuted in thousands of U.S. lower criminal courts[4] proceed without counsel.[5] Unrepresented defendants risk worse case outcomes and lowered perceptions of the criminal legal system.[6] In the criminal process, the array of reasons advanced to explain why individuals proceed without representation is as complex and diverse as the lower criminal courts themselves.[7] Some scholars ground the phenomenon in *systemic issues* relating to the lack of

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[2] Tom Rich & Kevin M. Scott, Data on Adjudication of Misdemeanor Offenses: Results from a Feasibility Study (November 2022), p. 1 (https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/damorfs.pdf)(Data on misdemeanor prosecutions, outcomes, and assertions of rights are limited because no systematically collected and reliable data on misdemeanor cases filed in state, county, or municipal courts exist.); Sixth Amendment Center (May 20, 2015), Actual Denial of Counsel in Misdemeanor Courts: Testimony to the United States Senate Judiciary Committee, p. 7, file:///Users/al595324/Desktop/Actual-Denial-of-Counsel-in-Misdemeanor-Courts.pdf (last visited, February 26, 2023); Sandra G. Mayson & Megan T. Stevenson, Misdemeanors by the Numbers, 61 B.C.L. Rev. 973, 1014-16 (2020) and Megan T. Stevenson & Sandra G. Mayson, The Scale of Misdemeanor Justice, 98 B.U.L. Rev. 731, 763-64 (2018) (Conducted a comprehensive study to estimate that 13.2 million misdemeanor cases are prosecuted annually.)

[3] Robert C. Boruchowitz, Judges Need to Exercise Their Responsibility to Require that Eligible Defendants Have Lawyers, 46 Hofstra L. Rev. 35, 35-36 (2018); Robert C. Boruchowitz, Malia Brink, & Maureen Dimino, Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts 14-15 (2009); Diane D. Price et al., Summary Injustice: A Look at Constitutional Deficiencies in South Carolina's Summary Courts, ACLU 8, 11-15 (2-16), https://www.nacdl.org/Document/SummaryInjusticeConstitDeficienciesSCSummaryCourts; Alisa Smith et al., Rush to Judgement: How South Carolina's Summary Courts Fail to Protect Constitutional Rights, Nat'L Ass'N Crim. Def. Lawyers 6-7, 17, 39-40 (2017), https://www.nacdl.org/Document/RushtoJudgmentSCSummaryCourtsDontProtectConstRight; Andrew Cohen & David Carroll (December 20, 2021). The Right to an Attorney: Theory vs. Practice, New York: Brennan Center, https://www.brennancenter.org/our-work/analysis-opinion/right-attorney-theory-vs-practice (last visited, February 26, 2023).

[4] The lower criminal courts comprise many different types referred to as misdemeanor, justice, summary, magistrate, and municipal courts. See e.g., Alexandra Natapoff, Criminal Municipal Courts, 134 Harvard L. Rev. 964 (2023), p. 974-991. The phenomenon of proceeding *pro se* is common (maybe more so) in civil cases. See Anna E. Carpenter, Colleen F. Shanahan, Jessica K. Steinberg, & Alyx Mark (July 18, 2022). America's Lawyerless Courts. American Bar Association, https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2022/july-august/americas-lawyerless-courts/ (last visited, February 26, 2023).

[5] Sixth Amendment Center, The Right to Counsel in America Today, https://sixthamendment.org/the-right-to-counsel-in-america-today/ (last visited, February 26, 2023); Emily Hamer & Caitlin Schmidt (February 2, 2023), 'America's dirty little secret': Thousands of misdemeanor defendants don't get attorneys. Lee Enterprises' West region Public Service Journalism, https://tucson.com/news/national/america-s-dirty-little-secret-thousands-of-misdemeanor-defendants-don-t-get-attorneys/article_08ed29a3-bb5d-5930-9cc7-58329543fdbd.html (last visited, February 26, 2023); Lauren Sudeall & Darcy Meals (September 21, 2017), Every year, millions try to navigate US courts without a lawyer. The Conversation, https://theconversation.com/every-year-millions-try-to-navigate-us-courts-without-a-lawyer-84159 (last visited, February 26, 2023).

[6] *See generally*, Andrew Davies and Kirstin A. Morgan, *Providing Counsel for Defendants: Access, Quality, and Impact*, in THE LOWER CRIMINAL COURTS (Alisa Smith & Sean Maddan, Eds.)(45-54), at 48-50.

[7] Jessica A. Roth, The Culture of Misdemeanor Courts, 46 Hofstra L. Rev. 215, 234 (2018); Drew A. Swank, The Pro Se Phenomenon, 19 BYU. J. Pub. L. 373, 378-79 (2005).

resources, high public defense caseloads,[8] legal deserts,[9] assembly-line procedures, and managerial process efficiencies.[10] Others identify *real-world obstacles* impeding defendant choice, including insufficient information about the legal right to counsel,[11] fees charged for applying for and using appointed counsel,[12] the personal costs incurred when cases have to be delayed to secure counsel, and defendants' interests in quick resolutions to their cases.[13] Many of these systemic and real-world barriers translate into community perceptions of public defense counsel as second-rate.[14] The present study adopts the theoretical framework that prior court experiences and perceptions shape attitudes and orientations, leading to *trust, communication, advocacy, and agency*[15] issues that mediate and motivate defendants' legal decisions to waive

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[8] Erica J. Hashimoto, The Problem with Misdemeanor Representation, 70 Wash. & Lee L. Rev. 1019, 1034-38 (2013); Lauren Sudeall, Public Defense Litigation: An Overview 51 Ind. L. Rev. 89 (2018).

[9] Lauren Sudeall & Darcy Meals (September 21, 2017), Every year, millions try to navigate US courts without a lawyer. The Conversation, https://theconversation.com/every-year-millions-try-to-navigate-us-courts-without-a-lawyer-84159 (last visited, February 26, 2023); Legal deserts threaten justice for all in rural America, Am. Bar. Ass'n (August 3, 2020), https://www.americanbar.org/news/abanews/aba-news-archives/2020/08/legal-deserts-threaten-justice/ (last visited, February 26, 2023).

[10] Malcolm Feeley, The Process is the Punishment: Handling Cases in a Lower Criminal Court (1979); Issa Kohler-Hausmann, Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing (2018); Ailsa Smith & Sean Maddan, Misdemeanor Courts, Due Process, and Case Outcomes, 13(9) Crim. J. Pol'y Rev. 1312, 1334 (2020).

[11] Alisa Smith & Sean Maddan, Three Minute Justice: Haste and Waste in Florida's Misdemeanor Courts (2011) (https://www.nacdl.org/getattachment/eb3f8d52-d844-487c-bbf2-5090f5ca4be3/three-minute-justice-haste-and-waste-in-florida-s-misdemeanor-courts.pdf).

[12] Marea Beeman, Kellianne Elliott, Rosalie Joy, Elizabeth Allen, & Michael Mrozinski, At What Cost? Findings from an Examination into the Imposition of Public Defense System Fees, Nat'l Legal Aid & Def. Ass'n (July 2022), https://www.nlada.org/sites/default/files/NLADA_At_What_Cost.pdf (last visited, February 26, 2023); Alisa Smith, The Cost of (In)Justice: A Preliminary Study of the Chilling Effect of the $50 Application Fee in Florida's Misdemeanor Courts, 30(1) U. Fla. J. L. & Pub. Pol'y 59 (2019).

[13] Alisa Smith, "It was Just a Little Situation." A Research Note on Proceeding Without Counsel by Misdemeanor Defendants, 59(2) Crim. L. Bull. 173 (2023); Erica J. Hashimoto, The Problem with Misdemeanor Representation, 70 Wash. & Lee L. Rev. 1019, 1032-34 (2013).

[14] Kelsey S. Henderson & Reveka V. Shteynberg, Perceptions about Court-Appointed and Privately-Retained Defense Attorney Representation: (How) Do They Differ? 23(3) Crim., Crim. J., L. & Soc'y 45, 46 (2022)(comparing perceptions on court-appointed and privately-retained counsel); *see* earlier studies: Jonathan D. Casper, Did You Have a Lawyer When You Went to Court? No, I Had a Public Defender. 1 Yale Rev. L. & Soc. ACTIN 4 (1971); Jonathan D. Casper, American Criminal Justice: The Defendants' Perspective, Prentice-Hall (1972).

[15] Marcus T. Boccaccini, Jennifer L. Boothby, and Stanley L. Bordsky, Client-Relations Skills in Effective Lawyering: Attitudes of Criminal Defense Attorneys and Experienced Clients, 26 L. & Psych. Rev. 97-121 (2022); Marcus T. Boccaccini, Jennifer L. Boothby, & Sandly L. Brodsky, Development and Effects of Client Trust in Criminal Defense Attorneys: Preliminary Examination of the Congruence Model of Trust Development, 22(2) Behav. Sci. & L. 197-214 (2004); Marcus T. Boccaccini & Stanley L. Brodsky, Characteristics of the Ideal Criminal

many of their constitutional rights. [16] Underexplored are the connections between the lived experiences, orientations, and attitudes of the "unnoticed, untapped, and underappreciated" misdemeanor defendants and their *un*willingness to assert their constitutional rights,[17] particularly the right to counsel.[18] Calls to reform the misdemeanor courts must account for unrepresented defendants' perspectives; otherwise, "changes to the system might be made for the wrong reasons or end up being ineffective."[19]

The present report, part of a larger study employing a mixed methods approach,[20] builds on limited prior research that shows defendants may forfeit their right to counsel because

Defense Attorney from the Client's Perspective: Empirical Findings and Implications for Legal Practice, 25 L. & Psych. Rev. 81-118 (2001); Marcus L. Boccaccini & Stanley L. Brodsky, Attorney-Client Trust Among Convicted Criminal Defendants: Preliminary Examination of the Attorney-Client Trust Scale, 20(1-2) Behav. Sci & L 69-87 (2002); Christopher Campbell, Janet Moore, Wesly Maier, & Mike Gaffney, Unnoticed, Untapped, and Underappreciated: Clients' Perceptions of the Public Defenders, 33(6) Behav. Sci. & L. 751-70 (2015); Heather Pruss, Marla Sandys, & Sara M. Walsh, "Listen, Hear My Side, Back Me Up": What Clients Want from Public Defenders, 43(1) Just. Syst. J. 6-25 (2022); Matthew Clair, Privilege and Punishment: How Race and Class Matter in Criminal Court 29 (2020); Monica C. Bell, Police Reform and the Dismantling of Legal Estrangement, 126 Yale L. J. 2054 (2017); Janet Moore, Vicki L. Plano Clark, Lori A. Foote, & Jacinda K. Dariotis, Attorney-Client Communication in Public Defense: A Qualitative Examination, 31(6) Crim. J. Pol'y Rev. 908, 926-30 (2020).

[16] Robert J. Sampson and Dawn Jeglum Bartusch, Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences, Law and Society Review, 32(4), 777-804 (1998); Tom R. Tyler, and Yuen J. Huo, Trust in Law: Encouraging Public Cooperation with the Police and Courts, (2002) (defining legitimacy as encompassing trust and confidence in the police, at 108-9); Tom Tyler et al., The impact of Psychological Science on Policing in the United States: Procedural Justice, Legitimacy, and Effective Law Enforcement, Psychology, Science, and Public Interest, 16, 75 (observing that negative police encounters, including disrespect result in perceptions of illegitimacy of the law and manifests in powerlessness, at 86); John Hagan, Bill McCarthy, Daniel Herda, and Andrea Cann Chandrasekher, Dual-Process Theory of Racial Isolation, Legal Cynicism, and Reported Crime, Proceedings of the National Academy of Sciences, 115(28), 7190-7199 (2018); Monica Bell, Police Reform and the Dismantling of Legal Estrangement, Yale Law Journal, 126, 2054-2150 (2017).

[17] Kathryne M. Young, Everyone knows the game: Legal consciousness in the Hawaiian cockfight, Law and Society Review, 48, 499-530 (2014), p. 499; Kathryne M. Young, Rights Consciousness in Criminal Procedure: A Theoretical and Empirical Inquiry, Sociology of Crime, Law and Deviance, 12, 67-95 (2009), p. 88; Nicole Gonzalez van Cleve, CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT (2016); Monica Bell, Police Reform and the Dismantling of Legal Estrangement, Yale Law Journal, 126, 2054-2150 (2017); Monica Bell, Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism, Law and Society Review, 50(2), 314-47 (2016).

[18] Christopher Campbell, Janet Moore, Wesley Maier, & Mike Gaffney, "Unnoticed, Untapped, and Underappreciated: Clients' Perceptions of Their Public Defenders." 33(6) Behav. Scie. & L. 751-70, at 751 (2015); Heather Pruss, Marla Sandys, and Sara M. Walsh, "Listen, Hear my Side, Back Me up": What Client's Want from Public Defenders, 43 Justice System Journal, 6-25, 6 (2022).

[19] Drew A. Swank, The Pro Se Phenomenon, 19(2) BYU J. Pub. L. 373, 374 (2005).

[20] The larger study gathered data through in-court observations, participant interviews—immediately after they resolved their misdemeanor cases and later, and misdemeanor court and administrative filings.

misdemeanors are perceived as insignificant, not worth the added personal, financial, and time costs for lawyers whom they largely regard as untrustworthy.[21] Here, we extend prior research by exploring defendants' accounts of their complex lived, situational, and community experiences that shape and influence the decision to forgo counsel in communities with access to public defenders. The central research question of this report was, *Why do misdemeanor defendants resolve their cases without counsel?* Extended and longitudinal interviews with unrepresented misdemeanor defendants were conducted immediately after they resolved their cases at arraignment, and then, they were interviewed one week, one month, three months, and six months later. The interviews were transcribed and analyzed with a critical, interpretive lens.[22]

From this, we found that misdemeanor defendants proceeded without counsel after engaging in a quick but complex cost-benefit analysis informed by three interrelated motivations:

1. Anxiety about returning to court, due largely to previous personal and vicarious negative experiences with police in their communities.
2. Distrust of public defenders while simultaneously minimizing the seriousness of misdemeanor charges and the need for private attorneys.
3. Misconceptions about how the hearing would proceed (when compared to their actual in-court experiences).

[21] Alisa Smith, The cost of (in)justice: A preliminary study of the chilling effect of the $50 application fee in Florida's misdemeanor courts. 30 University of Florida Journal of Law and Public Policy 59-98. (2019); Matthew Clair, Privilege and Punishment: How Race and Class Matter in Criminal Court (2020); Alisa Smith, "It Was Just a Little Situation." A Research Note on Proceeding Without Counsel by Misdemeanor Defendants, 59(2) Crim. L. Bull. 173 (2023); Mark C. Milton, Why Fools Choose to be Fools: A Look at What Compels Indigent Criminal Defendants to Choose Self-Representation, 54(1) St. Louis. U. L. J. 385 (2009).
[22] Simon Halliday, After Hegemony: The Varieties of Legal Consciousness Research, 28(6) Social and Legal Studies 859-878 (2019).

For many individuals, when they engaged in this cost-benefit analysis, they determined that the most efficient and, therefore, preferred outcome was to plead guilty without counsel, even if the participants believed they were innocent.

Theoretical Framework

Legal consciousness[23] and *cultural capital* [24] frames the present empirical research findings. Specifically, we focus on the question, "*Why do misdemeanor defendants resolve their cases without counsel?"* Proceeding without counsel is a social action that can be understood by an interview-based study with participants to understand how misdemeanor defendants interpret their direct and vicarious experiences with the law, constrained by their social disadvantages and influenced by their orientations to the law.

Rights assertion is influenced by people's legal consciousness, which includes their attitudes, perceptions, and orientations to the law. Sociolegal scholars advance that legal attitudes and perceptions are shaped and reproduced by personal experiences and by what others think and feel about the law[25] through shared meanings from community interactions and social networks.[26] Understandings of and interactions with the law are not static; individuals do not

[23] Silbey, 2001, p 8626 (defining legal consciousness by "the way in which law is experienced and interpreted by specific individuals as they engage, avoid, or resist the law or legal meanings.")
[24] Silbey, 2001, p 8626 (defining legal consciousness by "the way in which law is experienced and interpreted by specific individuals as they engage, avoid, or resist the law or legal meanings.")
[25] Kathryne M. Young, Everyone knows the game: Legal consciousness in the Hawaiian cockfight, Law and Society Review, 48, 499-530 (2014), p. 499 (Second-order consciousness describes "a person's beliefs about the legal consciousness of any individual besides herself, or of any group whether or not she is part of it.).
[26] Kathryne M. Young & Hanna Chimowitz , How Parole Boards Judge Remorse: Relational Legal Consciousness and the Reproduction of Carceral Logic, 56 Law Soc. Rev. 237, 242 (2022)("We can think of *relational consciousness* as an umbrella term referring to any way that Person A's legal consciousness is shaped by their relationships to another person or group. This might include group membership, family dynamics, culturally constructed beliefs, and so on. In contrast, *second-order legal consciousness* can be understood as a more specific term that refers to how Person A's legal consciousness is shaped by Person A's perceptions of Person B's or Group B's legal consciousness – not simply by Person A's relationships to a person or group generally.); Lynette J. Chua & David M. Engel, Legal Consciousness Reconsidered, 15 Ann. Rev. Law & Social Sci. 335, 344 (2019)(noting that "all legal consciousness research is and always has been relational"); Monica C. Bell, Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism, 50(2) Law & Soc'y Rev. 314-347 (2016).

hold a single legal orientation, attitude, or perception.[27] Instead, legal orientations fluctuate, including idealism, gamesmanship, resistance,[28] and alienation.[29] People's willingness to assert their rights is shaped by "connections from their past experiences—good or bad—which arise in part from the social positions they occupy—and [] these experiences shape their understanding of the law."[30] Asserting legality to solve problems closely aligns with how people understand the law, their rights, and how these have shaped their personal narratives.[31] The "common sense understanding of the way the law works"[32] is fluid, contextual, and situational. People's understanding of their rights shapes their willingness (or unwillingness) to assert their rights and use the law to solve their problems.[33]

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[27] Margaret Sommers & Christopher N.J. Roberts, *Toward a New Sociology of Rights: A Genealogy of 'Buried Bodies' of Citizenship and Human Rights*, 4 ANN. REV. L. SOC. SCI**.** 385, 407 (2008) (citing MERRY, at 247) (Defining consciousness as "a social process through which meanings and identities are collectively constructed' by experiences with social authority and hegemonic legal institutions."

[28] Patricia Ewick & Susan Silbey, *The Commonplace of Law* (1998); Rebecca L. Sandefur (2007). The importance of doing nothing: Everyday problems and responses of inaction. In P. Pleasence, A. Buck, & N.J. Balmer (Eds). Transforming lives: Law and social process (pp. 116-136). London, England: Stationery Office Books.

[29] Alienation can be further broken down into *cynicism* and *estrangement*. *See* Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (2018); Patrick J. Carr, Laura Napolitano, & Jessica Keating, We Never Call the Cops and Here is Why: A Qualitative Examination of Legal Cynicism in three Philadelphia Neighborhoods, 45 Criminology 2, 445-480 (2007); Robert J. Sampson and Dawn Jeglum Bartusch, Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences, Law and Society Review, 32(4), 777-804 (1998); Monica Bell defined legal estrangement as a "detachment and eventual alienation from the law's enforcers," reflecting "the intuition among many people in poor communities of color that the law operates to exclude them from society. Monica Bell, Police Reform and the Dismantling of Legal Estrangement, 126 Yale Law J. 2054-2150, 2054 (2017).

[30] Laura Beth Nielson, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment*, 34 L. & SOC'Y 1055, 1087 (2000); Kathryne M. Young & Katie R. Billings (2020). Legal Consciousness and Cultural Capital,54(1) L. & Soc'y Rev. 33 (2020).

[31]Sally Merry, Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans (1990), at 179–82; David M. Engel & Frank W. Munger, *Rights, Remembrance, and the Reconciliation of Difference*, 10 L. & SOC'Y 7, 46–48 (1996).

[32] L. B. Nielsen, License to harass: Law, hierarchy, and offensive public speech. Princeton, NJ: Princeton U Press, (2004) p. 7; Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (2018); Kathryne M. Young, Rights Consciousness in Criminal Procedure: A Theoretical and Empirical Inquiry, Sociology of Crime, Law and Deviance, 12, 67-95 (2009); Sally Merry, Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans (1990).

[33] Sally Merry, Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans (1990); Kathryne M. Young, Rights Consciousness in Criminal Procedure: A Theoretical and Empirical Inquiry, Sociology of Crime, Law, and Deviance, 12, 67-95 (2009), p. 69; Rebecca L. Sandefur, The importance of doing nothing: Everyday problems and responses of inaction. In P. Pleasence, A. Buck, & N.J. Balmer (Eds). Transforming lives: Law and social process (pp. 116-136) (2007); David M. Engle and Frank W. Munger, Rights, Remembrance, and the Reconciliation of Difference, 30(1) Law & Soc'y 7-54 (1996)(identifying how individuals with disabilities

Rights assertion is also enabled and constrained by people's cultural capital, which includes differences in economic, social, and cultural advantages and disadvantages.[34] Individuals with economic and social advantages[35] are more likely to make requests and demands of legal authorities, whereas those with fewer advantages are more vulnerable to authorities.[36] For example, advantaged individuals express entitlement, personal dignity, and agency in asserting their rights; in contrast, those with fewer advantages express futility in asserting their rights.[37]

Literature Review

In studying legal orientations in the criminal context, scholars observe that people hold complex perceptions of the police. They fluctuate between positive and negative expressions despite their cynicism and distrust.[38] Two studies are pertinent: Monica Bell's interviews with legally estranged mothers who still contacted the police for assistance and Matthew Clair's

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define and claim rights, and how these orientations affect their identities, even when they do not assert their rights); Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (2018).

[34] Sociologists refer to economic advantages and power in society as cultural capital; those with more cultural capital can use their resources to influence social actions. Pierre Bourdieu & Jean-Claude Passeron, Reproduction in Education, Society, and Culture (1977); Pierre Bourdieu, The forms of capital. In A.H. Halsey, H. Lauder, P. Brown, et al. (Eds.) Education: Culture, Economy, Society (pp. 46-58 (1997); Pierre Bourdieu, Cultural reproduction and social reproduction, In D.B. Grusky & S. Szelenyi (Eds.) Inequality: Class Readings in Race, Class, and Gender (pp. 257-71)(2006); Kathryne M. Young & Katie R. Billings (2020). Legal Consciousness and Cultural Capital, Law and Society Review, 54(1), 33-65 (identifying cultural capital as institutionalized and widely-shared cultural status symbols, as an important structural factor in how people asserted or did not assert their rights); Matthew Clair, Privilege and Punishment: How Race and Class Matter in Criminal Court (2020), p. 23 (observing that to understand how differences in power impact understanding and interactions with the law requires using cultural concepts, like cultural capital).

[35] Kathryne M. Young & Katie R. Billings (2020). Legal Consciousness and Cultural Capital, Law & Soc'y Rev., 54(1), 33-65 (characterized by institutionalized and widely shared cultural status symbols).

[36] Kathryne M. Young & Katie R. Billings (2020). Legal Consciousness and Cultural Capital,54(1) Law & Soc'y Rev. 33 (2020).

[37] Young & Billings, at 49–59. Additional research by Matthew Clair, Privilege and Punishment: How Race and Class Matter in Criminal Court (2020), demonstrated that attorneys and the legal system punished those lacking cultural capital who asserted their rights.

[38] Patrick J. Carr, Laura Napolitano, & Jessica Keating, We Never Call the Cops and Here is Why: A Qualitative Examination of Legal Cynicism in three Philadelphia Neighborhoods, 45 Criminology 2, 445-480 (2007); Monica Bell, Police Reform and the Dismantling of Legal Estrangement, 126 Yale Law J. 2054-2150, 2119 (2017); Elijah Anderson, Codes of the Street: Decency, Violence, and the Moral Life of the Inner City (1999).

examination of defendants' interactions with their criminal defense attorneys. Both observed nuances in how individuals navigated their relationships with the law, legal system, and legal actors. The individual accounts were not static; their frames, advocacy, rights assertion, and strategies were shifted by their situational and legal circumstances and experiences.[39]

Bell observed that mothers desired (an idealistic) procedurally just police who focused on actual crimes rather than harassing the community.[40] Even while holding cynical views about the police, the women explained calling for their help by employing an alternative lens of situational trust of individual officer exceptionalism or using the officers to navigate some other legal issue.[41]

Clair described minority and disadvantaged defendants who distrusted lawyers and self-advocated, asserting rights to their own detriment.[42] Clair observed differences in how the disadvantaged and advantaged navigated and succeeded in the criminal courts.[43] Prior lived experiences of minorities and the financially disadvantaged bred mistrust and contempt for the legal system and its actors. Yet, these marginalized individuals advanced their rights, advocating for themselves and resisting the authority of legal actors.[44] In contrast, the non-minority and economically privileged perceived the system and its actors more favorably, valuing cooperation and negotiation.[45] Some minority and financially disadvantaged defendants resisted legal and

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[39] Monica C. Bell, Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism, Law & Soc'y Review, 50(2), 314-347 (2016); Matthew Clair, Privilege and Punishment: How Race and Class Matter in Criminal Court (2020).
[40] Monica Bell, Police Reform and the Dismantling of Legal Estrangement, 126 Yale Law J. 2054-2150, 2119 (2017)
[41] Monica C. Bell, Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism, Law & Soc'y Review, 50(2), 314-347 (2016).
[42] Matthew Clair, Privilege and Punishment: How Race and Class Matter in Criminal Court (2020).
[43] Matthew Clair, Privilege and Punishment: How Race and Class Matter in Criminal Court (2020).
[44] Matthew Clair, Being a Disadvantaged Criminal Defendant: Mistrust and Resistance in Attorney-Client Interactions, 100(1) Social Forces 194-217 (2021).
[45] *Id.*

cultural norms by rejecting their attorneys' advice or demanding the exercise of their legal rights, and others resigned and withdrew, missing meetings and court appearances. Notably, the research shows the system punished both types of people who resisted the norms of the legal system.[46] By contrast, the privileged defendants who valued attorneys' expertise and delegated authority to them, trusting their advice, were rewarded.[47]

Fluctuations in legal orientations are produced by advantages, situations, and context and influenced by direct and vicarious experiences with the law, legal actors, and the legal system, which in turn inform the rights-assertion decision. However, we know relatively little about how people navigate, comprehend, and assert their rights,[48] including how they decide to resolve misdemeanor cases without counsel. Building on and extending prior research, the present study seeks to understand how personal and vicarious experiences with the law inform legal orientations and influence people's *un*willingness to assert their rights, particularly the right to counsel, in misdemeanor courts where access to public defense is available.[49]

Research Design and Methodology[50]

The present study is part of a larger mixed methods project, including analysis of data collected through court observations, administrative data analysis, and arraignment transcripts review.[51] This report focuses on the interview data, which provided insight into the complex decision-making by ordinary people not to assert their right to counsel. Drawing on legal

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[46] ID. .
[47] ID. 167-77.
[48] Kathryne M. Young & Katie R. Billings (2020). Legal Consciousness and Cultural Capital, Law and Society Review, 54(1), 33-65.
[49] Kathryne M. Young, Rights Consciousness in Criminal Procedure: A Theoretical and Empirical Inquiry, Sociology of Crime, Law and Deviance, 12, 67-95 (2009), p. 73.
[50] Smith, A., Mousa, N., & Stice, S. (March 2024). Studying Unrepresented Defendants in the Lower Criminal Courts: Methodological Lessons Learned. *Law and Method*. doi: 10.5553/REM/.000082
[51] Previously released reports examined the findings from the court observations and case study comparisons of the administrative data collected in both counties.

orientation concepts and prior studies identifying individual and systemic barriers to due process,[52] the current longitudinal, qualitative study captures the more nuanced and reflective lived, situational, and community experiences that shape attitudes and perceptions about the legal system and publicly appointed counsel, producing the decision to proceed without counsel.[53]

Study Site and Setting

The study was conducted in two Southeastern lower criminal courts in the United States. The research sites are adjacent, employing lawyers from the same prosecutor and public defender offices but in geographic areas with contrasting economic and demographic communities. In this state, appointed counsel is available but not free; defendants seeking representation must pay application and lawyer fees. Misdemeanor crimes and criminal traffic infractions range from petit theft, battery, and trespassing to driving with a suspended license or while intoxicated.

In both jurisdictions, cases begin when defendants are arrested, issued a summons, notice to appear, or civil citation (like a traffic ticket). Defendants issued a summons, notice, or citation are given a date to appear in court; defendants who are arrested may bond out of jail before their first appearance (typically scheduled within 24 or 48 hours of an arrest). If they do not post bond, arrested defendants appear before a judge, who reviews the initial charges by the police and determines both eligibility for counsel and eligibility for release. In this state, eligibility to receive appointed counsel means that an applicant's income must be equal to or below 200 percent of the then-current federal poverty guidelines (as prescribed by the household size). Individuals receiving temporary assistance for needy families or cash assistance, poverty-related veteran's benefits, or supplemental security income are automatically eligible. Conversely,

[52] See supra notes 7-13.
[53] Monica C. Bell, Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism, 50(2) Law & Soc'y 314, 323 (2016)("Interviews have the distinct advantage of capturing descriptions of events over long periods of time and are a powerful tool for understanding perceptions.")

individuals are presumed not eligible for appointed counsel if they own or hold equity in any intangible or tangible personal property or real property or the expectancy of interest in any such property with a value of $2,500 or more, excluding the value of their home and one vehicle (not exceeding $5,000).[54]

Some arrested individuals might bond out soon after an arrest if they can post bond. Bonds in the studied jurisdictions rely on a schedule that lists different amounts based on the degree of the charged crime.[55] Those initially arrested and incarcerated might also be released without bond or given special conditions, including monitoring when they come before the court for their "first appearance." This court hearing occurs within 24-48 hours from arrest. Some defendants may enter pleas at first appearance. If the defendant does not enter a guilty or no contest plea at their first appearance (and most do not), the prosecutor's office reviews the case and decides whether to file formal charges. If prosecutors decide to file formal charges, arrested defendants are required to return to court for an "arraignment hearing." The trial judge advises the defendant of the formal charges at that hearing. The arraignment hearing is typically scheduled for three to four weeks after an arrest, notice, or citation.

For those given a notice or citation or who bonded out before their first appearance, their first appearance in court is the arraignment hearing. At the arraignment hearing, the trial judge advises the person of their charges and determines how they want to proceed (entering a plea or not). If a lawyer was hired or appointed before the arraignment hearing, the lawyer can waive the

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[54] "More than 80% of American criminal defendants are indigent," making access to public defender representation and its quality essential for the legitimacy of the criminal justice system. Eve Brensike Primus, Defense Counsel and Public Defense. In Reforming Criminal Justice: Pretrial and Trial Processes, edited by E. Luna, 3, 121-145, p. 121 (2017)(citing Bureau of Justice Statistics, U.S. Dep't of Justice, Defense Counsel in Criminal Cases (Nov. 200), http://www.bjs.gov/content/pub/pdf/dccc.pdf.

[55] At the time of data collection, individual county courts had the discretion to craft bond schedules. Beginning in 2024, the state passed legislation to standardize bond schedules across the state, increasing bond amounts and requiring more defendants to remain in custody until their first appearance, when the trial judge could modify individual bond amounts.

client's appearance at the arraignment and act to negotiate and resolve cases for them. If the defendant is not currently represented, the court also uses this hearing to address issues of representation by counsel. Specifically, at the arraignment, the trial judge will determine if the defendant wishes to apply for court-appointed counsel (and, if so, whether they are eligible for representation) or if they need time to hire an attorney. At this stage, defendants might also choose to represent themselves in the lower court. All participants in our study were unrepresented and resolved their cases at arraignment.[56]

Data Methods and Procedures of Data Collection

Defendants were approached and recruited for the study after they left the courtroom. Research assistants only approached those who had resolved their cases without attorneys[57] and identified themselves as working on a research study to understand the decision to proceed without counsel, further explaining that they did not work for the courts, police, prosecutors, or public defenders' offices. Research assistants used a conversational approach, formulating individualized questions based on participant responses, drawing out stories, and asking questions to clarify meaning.[58] During the initial and later interviews, they used a guide with

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[56] Six research assistants observed arraignment proceedings for over ten weeks in the larger and six weeks in the smaller courts. During the court observations, the research assistants attempted to interview any misdemeanor defendants who resolved their case at arraignment (by plea) without counsel. (Note, one study participant was offered pretrial diversion and completed that program in court by watching a video during the court. When he was recalled, his case was dismissed because he completed his diversion program; he was interviewed for the study because he resolved his case without an attorney). The research assistants observed arraignment proceedings by twelve different judges in the larger courts and two in the smaller courts. There was variation in the number and type of cases heard in the courts.

[57] Only adults (over the age of 18) and English speakers were recruited to participate in the study. The study's observational and interview protocols received human subjects' approval from Pearl IRB (https://www.pearlirb.com/) (last visited on March 6, 2023). The research assistants were walked through the IRB forms, requirements for voluntary participation and confidentiality, and the importance of assigning each participant a pseudonym of the participant's choice. For a detailed description of the methodology, interview process, difficulties, and resolutions, see Alisa M. Smith, Natalie Mousa, & Sarah K. Stice, Studying Unrepresented Defendants in the Lower Criminal Courts: Methodological Lessons Learned. *Law and Method* (March 2024)..

[58] Kathryn Roulston, Reflective Interviewing: A Guide to Theory and Practice (2010); Svend Brinkmann, Introduction to Qualitative Interviewing, Qualitative Interviewing, 1-44, (2015). https://doi.org/10.1093/acprof:osobl/9780199861392.003.0001

lead-off questions and a list of possible follow-up questions but were directed to create their own, depending on the conversations. This flexible approach was intended to encourage participants to offer rich, detailed responses akin to a structured conversation.[59]

Approached individuals were asked if they would be willing to participate in a brief and recorded interview about their court experience.[60] Initially, the post-arraignment interviews were short (ranging from 3-5 minutes), intended to capture preliminary information and recruit participants for longer, compensated telephone interviews, and requested contact information (after explaining confidentiality). Participants were asked to reflect on their court experience and describe what happened in court, what influenced their decisions to proceed without counsel, and their prior interactions with attorneys and the courts.

Low recruitment rates changed the initial interview process.[61] Since individuals were more willing to participate in the initial, post-court interviews than the later telephone interviews, as the project unfolded, the research assistants transitioned to asking more follow-up questions and extending the initial interviews to 15-30 minutes. The result was that they obtained more detailed answers and stories about the participants' current and prior experiences, how they prepared for their court hearings, and the factors that influenced their decisions, and particularly their decision to enter a plea without counsel.[62]

For those participants who agreed to a later telephone interview, their best method and time of contact were obtained during the initial interview. The same research assistant who conducted the initial arraignment interview telephoned the participant and conducted the later

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[59] David M. Fetterman, Ethnography. In Lisa M. Given (Eds). THE SAGE ENCYCLOPEDIA OF QUALITATIVE RESEARCH METHODS (Vol. 1, pp. 288-292) (2008), at 290-91.
[60] The research assistants recorded every participant's informed consent and obtained verbalized consent.
[61] Nine interviews were conducted with the original protocol; the remaining 21 were conducted with the new protocol.
[62] Participants were asked to identify a pseudonym for use in publications and reports. Their selected names are used in this report.

interviews.[63] The research assistants used a guide for later telephone interviews, but, similar to the initial interview, they also constructed individualized questions based on the specific experiences and backgrounds of the participants. The general guide prompts included asking participants to describe (1) how the misdemeanor case affected their lives (including employment, family, and unexpected consequences), (2) how they might handle their case today (or if they had another case, would they use an attorney, and why), (3) how they perceive and experience the legal system and actors, and (4) how they resolve conflicts or disagreements, and if they might consider involving the legal system in the future. The authors also read through the early interviews and wrote individualized follow-up questions where more details were needed. (See Appendices A and B for example, Interview guides. [64]) The analysis focuses on the interviews with the participants (immediately after resolving their cases and later telephone interviews one week, one month, three months, and six months after resolving their cases).

Fewer individuals participated in the follow-up interviews than we had hoped. Some participants did not return calls, their phones were disconnected, or their phone numbers changed. Gathering follow-up interview data was difficult, but we did have long and rich conversations with several participants. Thirty-two defendants participated in the post-arraignment interviews, and seven participated in one-week interviews.[65] Four participated in one-month interviews, five participated in three-month interviews,[66] and three participated in

[63] There were only a couple of exceptions when research assistants were unable to continue working on the project, and another research assistant conducted later interviews. The initial research assistant introduces the new interviewer to the participant to ensure rapport and trust.

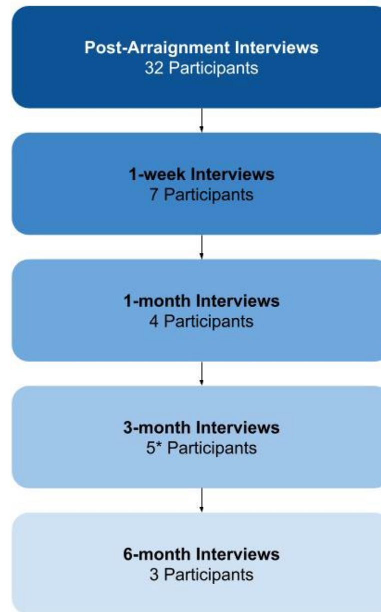
[64] Research assistants' reflections on their observations and interviews informed the ongoing research process, highlighted concerns, and contributed to the data analysis. See Sara Stevano, & Kevin Deane, The Role of Research Assistants in Qualitative and Cross-Cultural Social Science Research, in (Pranee Liamputtong, Ed.), Handbook of Research Methods in Health Social Sciences (2017), at p. 10. (http://dx.doi.org/doi:10.1007/978-981-10-2779-6_39-1).

[65] One interviewee did not participate in his post-arraignment interview but began participating one week after resolving his case.

[66] One participant skipped the one-month interview but participated in the three-month interview.

six-month interviews. All three- and six-month participants had previous experiences with the criminal legal system. Each, except one who was a former lawyer, had a prior criminal history. The breakdown of the interviewees is shown in Figure 1.[67]

FIGURE 1: Defendants' Longitudinal Interviews



*One participant skipped the one-month interview, but participated in the three-month interview.

Methods and Procedures of Data Analysis

Interviews were digitally recorded and automatically transcribed using Rev.com.[68] The transcriptions were manually edited and updated by the interviewers. [69] The interview transcriptions were uploaded, housed, and analyzed in ATLAS.ti (version 23) data management software.[70] We (the coauthors) read and coded the data in multiple phases, proceeded separately

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[67] Most of the interviewees identified as male (n=29; 91%), black (n=16; 50%), and Hispanic (n=12; 38%); more than half had prior criminal histories (n=19; 59%).
[68] Rev.com (last visited March 15, 2024).
[69] Only on several occasions was an interview edited by someone other than the interviewer.
[70] https://atlasti.com/.

in coding,[71] and later compared and agreed on meanings and interpreted broader concepts.[72] During the first cycle of eclectic coding,[73] coding methods (affective, emotional, evaluative, value, versus, and descriptive) were employed to capture participant emotions, values, and experiences.[74] We coded the data separately, identifying broad categories and potential sub-coding (e.g., emotions with subcodes of anxiety, uncertainty, embarrassment, fear, frustration, etc.). Periodic negative case analyses, discussing coding at varying stages, and observing emerging explanations and contradictory data were practiced. The coding was revised to account for and meet the standards of negative case analysis, and detailed audit trails were maintained during the process.[75] The early grouping resulted in fifteen initial codes[76] with many sub-categories.[77]

In deepening our engagement with the data, we took a phronetic-iterative approach, tagging back and forth between emergent qualitative findings and coding for relevant existing theories.[78] Cycling back and forth between the data and theories, we drew on "positional reflexivity," bringing "distinctive perspective[s]" and adding "strength to cogenerate[ing] themes and theory."[79] Working separately and independently, then collaborating and cooperating, we

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[71] J.W. Creswell (2007). Qualitative inquiry & research design: choosing among fie approaches (2nd ed). Thousand Oaks, CA: Sage.
[72] Matthew B. Miles, A. Michael Huberman, & Johnny Saldana (2020). Qualitative Data Analysis: A Methods Sourcebook, 4th Ed., Sage; Johnny Saldana (2016). The Coding Manual for Qualitative Researchers, third edition. Sage.
[73] Johnny Saldana (2016, p71), The Coding Manual for Qualitative Researchers, 3rd Ed. Sage.
[74] Johnny Saldana (2016). The Coding Manual for Qualitative Researchers, third edition. Sage.
[75] Yvonne S. Lincoln & Egon G. Guba, Naturalistic Inquiry (Sage, 1985).
[76] Preliminary main codes: Authority, Charge, Consciousness, Counsel, Court Messaging/Symbolism, Court Personnel & Process, Dignity, Emotional Response, Expectation, Judge, LEO Effect, Lived Experience, Outcome/Consequences, Perception/Focus, and Trust/Distrust.
[77] Example preliminary sub-codes included: Consciousness had five original sub-codes of avoid, harass, ideal, innocent, resigned, and unaware.
[78] Sarah J. Tracy (2018). A phronetic iterative approach to data analysis in qualitative research, Journal of Qualitative Research, 19(2), 61-76, p. 63. The second author, who was unfamiliar with the literature, named "voice" and "being heard" during the coding, which speaks to the theoretical frameworks of procedural justice and legal consciousness.
[79] Ross C. Anderson, Meg Guerreiro, & Joanna Smith, Are all biases, bad? Collaborative grounded theory in developmental evaluation of education policy. Journal of Multidisciplinary Evaluation 12(27), 44-57, p. 44. (2016).

produced "joint interpretations allowing for greater dimensionality"[80] and more meaningful thematic codes. We narrowed the codes to explanatory and emergent themes and meta-codes.[81]

The categories and sub-themes often represented complex and contradictory assertions, so we adopted a simultaneous coding technique, recommended by Johnny Saldaña in *The Coding Manual for Qualitative Researchers*, to capture complicated experiences and interactions. [82] For simultaneous coding, "two or more different codes [or sub-codes]" were applied "to a single qualitative datum."[83] This coding approach allowed us to capture and code participants' complex and contradictory observations, stories, experiences, and perceptions that were not presented in neat "coherent patterns."[84] Using this analytic method, we identified "umbrella codes" that weaved together several codes and synthesized the intricate and often contradictory assertions about the legal system and the decision to proceed without counsel.[85]

Thematic co-occurrence analysis was also employed because it offered a useful analytic approach for synthesizing thematic coding and identifying relationships between themes.[86] Co-occurrence allowed us to identify how often codes appeared together, interpreting and identifying "dynamic interrelationships in and across themes."[87] Contradictions illuminated

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[80] Mai S. Linneberg & Steffen Korsgaard, Coding qualitative data: A synthesis guiding the novice. Qualitative Research Journal, 19(3), pp 259-270
[81] Matthew B. Miles, A. Michael Huberman, & Johnny Saldana, Qualitative Data Analysis: A Methods Sourcebook (2014), at p. 79 ("Pattern codes are inferential or explanatory codes, ones that identify a "bigger picture" configuration. They pull together a lot of material from First Cycle Coding into more meaningful units of analysis. They are a sort of meta-code."); Johny Saldana, The Coding Manual for Qualitative Researchers (2016), p. 236 ("Pattern codes are explanatory or inferential codes, ones that identify an emergent theme, configuration, or explanation.").
[82] Johnny Saldaña, *The Coding Manual for Qualitative Researchers*, Third Edition (2016), p. 297 ("when the content of the data suggests multiple meanings (e.g., descriptively and inferentially) that necessitates and justify more than one code.")
[83] Johnny Saldana (2016). The Coding Manual for Qualitative Researchers, third edition, at 297.
[84] Kristina M. Scharp, Thematic Co-occurrence Analysis: Advancing a Theory and Qualitative Method to Illuminate Ambivalent Experiences. Journal of Communication, 71(4), 545-571, 546 (2021).
[85] Johnny Saldana (2016), at 297.
[86] Scharp, p. 566.
[87] Scharp, p. 549.

meaningful meta-codes that underscored the complexities of how people's lived, situational, and community experiences influenced their legal orientations and encouraged their decision to eschew counsel.[88]

Our final thematic codebook comprised three overarching categories: *Police Encounters, Public Defenders,* and *Expectations*, which in our findings came to be called, respectively, *Anxiety about Police*, *Distrust of Public Defenders*, and *Misconceptions about the Court Experience*. We named *Cost-Benefit Analysis* as the theme that encapsulates all other themes. All codes from previous rounds of coding were sorted within these three categories, such that all codes were subsumed under one of the assertions (see Appendix C: Codebook).

Findings

Answering the question, "*Why do misdemeanor defendants proceed without counsel?*" we found that defendants assess the costs and benefits that privilege efficiency over returning for a trial. The defendants' assessment during post-arraignment interviews seemed consistent and straightforward: They expressed an idealism about their abilities to represent themselves, reasoning that the cost of attaining counsel and returning for a trial was greater than the consequences of pleading guilty and paying court fines. The 35 interview participants voiced anxieties about being in court, practical challenges that inhibited returning to court, and doubts that the misdemeanor charges were serious enough to worry about. This explicit cost-benefit analysis will be described below, but the longitudinal interviews revealed deeper motivations rooted in participants' prior experiences and legal consciousness.

[88] Miles, et al., Qualitative Data Analysis: A Methods Sourcebook (2014), p. 79-83.

Cost-Benefit Analysis in Initial Interviews

If the defendants pleaded guilty, they were usually issued court fines between $200 and $400.[89] They could pay the total amount that same day or start a payment plan. Defendants expressed how easy paying the court fines would be compared to returning to court or doing pretrial diversion. For example, Natalie described her decision to plead guilty despite believing in her innocence:

> *It was just the court costs. It was pretty much to get it over with, um, you know, they resolved it that, you know, that day, um, and it wasn't a ridiculous amount of things to do, you know, just pay this and da, da, um, and the main thing was just to resolve it.*

Sabrina, another participant, was surprised by how high the court fines were, yet she still emphasized that the consequence "was nothing but a fee," so she decided, "I'll just pay it."

Dede contrasted the ease of paying one-time court fees with the compounding costs of going through pretrial diversion:

> *Well, they did what I wanted them to do – That we just pay like the one fee of the $274, instead of me going through like the whole pretrial diversion program again. Cause that's a lot of expenses. Like they had me paying $300 for the community service hours, then I had pay $50 to the courthouse. Like it was just money outta nowhere. So, I'm glad they didn't let me do that again. Instead, they just had me pay a whole $274 for my cases.*

Pleading not guilty, on the other hand, required the inconvenience of returning to court on a later date to be determined, the costs of returning with either a public defender (a $50 fee) or a private attorney, and the risk of receiving jail time.

Practical Challenges. Arriving at court is difficult for those with financial challenges. People with children must find or pay for childcare. Individuals without cars or with suspended licenses must find transportation to the courthouse. Those working in blue-collar jobs must take time off, usually without pay. The obstacles to just showing up abound.

[89] See *OffStage and Off-Script: Performing Bureaucratic Due Process and Waiving Counsel in the Misdemeanor Court* (xxxx); Smith & Maddan report.

Chris, who had a suspended driver's license, walked to court for his hearing. He referred to his arrest and the court hearing as "an inconvenience." He would do "whatever just [to] get it over with." He explained in greater depth:

> *Cause my mindset right now is just get it over it with so I can get to what's really important and that's getting my life together and getting, paying my bills and all that stuff. Like I ain't trying to be caught up in no court system and all that and fighting a case for months and months, and I'm trying to resolve it and get going. Okay. Important stuff.*

Returning to court would be a hassle, an impediment to dealing with what really mattered in Chris's life, like paying his bills.

Even when defendants thought that a lawyer could have gotten them a better outcome, they still valued efficiency over that potential benefit. Participant Lergios admitted that his outcome probably would have been different if he had hired an attorney, but he didn't "want to prolong" his time in court. As he explained, returning to court "costs the same money" as the court fines associated with pleading guilty "because you lose the day of your life at work and then you lose money."

Anxieties. Attending court is demanding, time-consuming, and stressful for anyone. In the post-arraignment interviews, defendants clearly and consistently expressed their driving motivation to resolve their case without counsel to minimize their anxiety: They did not want to return to court, so they took the path of least resistance. Numerous participants described the state of anxiety they felt leading up to their arraignment hearing and being in the courthouse. Johnny's explanation sums up what many participants said:

> *INTERVIEWER: Okay. Well, what influenced your decision to proceed without an attorney?*
> *Johnny: Um, I just didn't wanna prolong this whole situation cause, you know, it was gonna be on my mind, make me nervous. I just wanted to get it over with.*[90]

[90] Direct quotations from interview transcripts have been simplified for clarity, but the meaning has been preserved.

From these early interviews, it seemed that the defendant would choose whatever was most efficient. For our participants, that meant proceeding without counsel and pleading guilty, even when they believed themselves to be innocent.

By all accounts, attending court is stressful. The anticipation of the unknown affected how defendants approached the proceedings and the offer of a quick plea. Most expressed relief when they were offered the opportunity to pay a fine and court costs as long as they did not have to return to court or serve jail time. Ron, who had no prior criminal cases, described the overall experience as "scary." Ross, a former attorney, described the process as "frightening and stressful" because he was "in a different atmosphere that is absolutely foreign to anything else [I've] ever been in." His prior experience led Ross to believe that "you essentially do need an attorney to help you through the avenue of getting something reasonable and worthwhile out of your experience," yet he chose to proceed without counsel and plead guilty.

Similarly, Natalie described her state of anxiety as follows:

> *So I was really nervous. Um, cause I really not, I haven't really been through that. So, when I went up to the podium to talk to the judge, pretty much like was scared. Like I was scared, so whatever she [the judge] offered, <laugh> it sounded good. I was gonna take it. But now, you know, um, I'm adjudicated guilty of something, so that kind of sucks. . . . I honestly think that my charges should have been dropped. So, um, but then again, they weren't too harsh on me, you know, so I do, and I don't. . . . Um, I don't think that we should have to go up there by ourselves like that. You know, I, I feel like that, um, an attorney should be present for us, you know? Um, yes, I, I wish I did have an attorney at the, at the time…*

Because of her anxiety about standing before the judge, Natalie accepted "whatever [the judge] offered," even if that meant pleading guilty when she believed her charges should have been dropped.

Minimized Seriousness. At post-arraignment, the prevailing view was that a lawyer was unnecessary for such a "minor" situation.[91] Participants consistently downplayed the seriousness of their charges and the obvious outcomes of pleading guilty,[92] and described their misdemeanors as simple or easy. By contrast, they indicated they would hire a private attorney if they were going to trial, they believed they were innocent, or they faced felony charges, mentioning violent crime and murder. The logic around hiring an attorney was fairly straightforward: If the charge and consequences seem minor, an attorney is unnecessary; if the charge and consequences seem serious, only a private attorney will do. Throughout the post-arraignment interviews, participants consistently minimized the seriousness of having a misdemeanor charge on their record. Table 1 illuminates the differences in how they connected seriousness and the necessity of counsel.

Table 1. Minimizing Misdemeanors and Describing Situations Deserving of Counsel

	How would you describe your experience today?	**Could you describe a situation where you would hire an attorney to assist you?**
Jose	I didn't think I needed [an attorney today] because [the charge] was something simple.	If I were to go to trial, then I would've been different or plead not guilty on the, on the speeding ticket, then I would've definitely gone with an attorney. [Or if I were charged with] probably assault, maybe, I mean obviously like a murder, something like that.
Butter	Today it was easy. Yeah, that was nothing.	If, if it's a felony, if I get a felony, then I would hire an attorney to get that dropped.

[91] Alisa Smith, "It was Just a Little Situation." A Research Note on Proceeding Without Counsel by Misdemeanor Defendants, 59(2) Crim. L. Bull. 173 (2023).
[92] Yet, the consequences for a misdemeanor can be significant. See the Consequences paper (debunking the idea that "just paying court fines" is a minor consequence, noting the cascading effects of not paying fines). See also Eisha Jain, Proportionality and Other Misdemeanor Myths, 98 Boston U. L. Rev. 953, 956-960 (2018)(summarizing the consequences of misdemeanors and the myth that the "stakes are small"); Irene Oritseweyinmi Joe, Rethinking Misdemeanor Neglect, 64 UCLA L. Rev. 738 (2017)(observing the approach to misdemeanors is misguided because they are not as harmless as presumed); Taylor Needham, Abena Subira Mackall, & Becky Pettit, Making Sense of Misdemeanors: Fine Only Offenses in Convivial Court Room, 63(6) Soc. Perspectives 962 (2020)(noting confusion about the causes and consequences of low-level misdemeanors, even in fine-only cases).

Tay	Um, I thought it was gonna be way... I don't know. It just, it was smooth. I don't know, it was smooth today. Okay. It usually, it is usually longer and I don't know, slower. I feel like. [I was surprised by] how fast it was. Um, I thought it was gonna be way longer, but they called everybody in line and stuff like that, so it went by really fast.	If I was in a felony case [I would hire an attorney]. And I felt like I, I needed, and I knew I was innocent for sure deal.
David	I would describe [today's experience] as beautiful. Cause, no, um, the only reason, um, he imposed the minimum fine allowed by law and minimum court costs.	[If] I kill somebody
Anthony	If it's just like something that I understand, like I don't need a public defender to explain something to me and I understand it. I'll just handle it myself.	It depends if, if they're offering me like something crazy and it is jail time and all that, I probably talk to a lawyer or public defender.

In the examples above, defendants felt that the misdemeanor plea process was "simple" (Jose), "easy" (Butter), "smooth" (Tay), and "beautiful" (David), which meant that a lawyer was unnecessary.

In contrast, these defendants were adamant that if they faced felony charges and the resulting prison time, they would only hire a private attorney. When asked about a situation in which he would hire an attorney, Dan attested,

> *Oh, like a felony…like if we end up fighting or, you know, God forbid shooting somebody for messing with your family or something… when you got a felony, you looking at some years in prison or whatever. Yeah. You need to hire an attorney, a private attorney.*

He was very clear that by "attorney," he meant "private attorney." And when pressed by the interviewer, *And would you hire a public defender for a felony?,* his response was simply, *No.* In the same way, Natalie clarified that public defenders are not lawyers in her eyes: "I guess I stopped trusting in the fact that lawyers will help you. I stopped trusting the fact that public

defenders, mainly public defenders, not lawyers, because, yes, mainly public defenders." She felt that private attorneys could be trusted, but not public defenders.

Similarly, Kevin made the same generalization that private attorneys can be trusted to get the job done more than public defenders can, even if the public defender is well-intentioned:

INTERVIEWER: What influenced your decision to proceed without an attorney?

Kevin: No money.

INTERVIEWER: Okay. Uh, did you think about, uh, maybe, uh, applying for the public attorney's office?

Kevin: Uh, no. Uh, I didn't, um, here again, getting an attorney and getting a public defender are totally different. You know, you get an attorney half the time, you don't even have to show up. I mean, that's why they make the big money, you know. Public defender they're, gotta love 'em, you know, they're, they're doing their job, they're trying to do their job, but they're, they don't seem to get the job done, you know, they seem to, I don't know. Uh, I'm not really sure, but I've had a couple public defenders and it wasn't, it wasn't good.

This exchange reveals a couple of important details. First, when asked why he decided to proceed without an attorney, the word "attorney" immediately registered as "private attorney" with Kevin, which he clarified when he said, "getting an attorney and getting a public defender are totally different." The appeal and perceived advantage of getting private attorneys is that "you don't even have to show up." Though Kevin does not seem to harbor any hard feelings towards public defenders, he shares in vague terms that he has prior experience with public defenders in which they couldn't "seem to get the job done."

The post-arraignment interviews overwhelmingly reflected the impression that misdemeanor cases and the penalties (primarily financial obligations) were not serious enough to warrant hiring an attorney or using a public defender. As expressed bluntly by Anthony when asked about what factored into his decision not to use an attorney: "Because I'm, it wasn't that serious. So, and I'm not a lawyer now, but I do understand the law a little bit, so I know what's what, and I really just felt like it wasn't necessary." Since it was not serious, many unrepresented

defendants believed they were sufficiently competent to represent themselves. As Anthony explained:

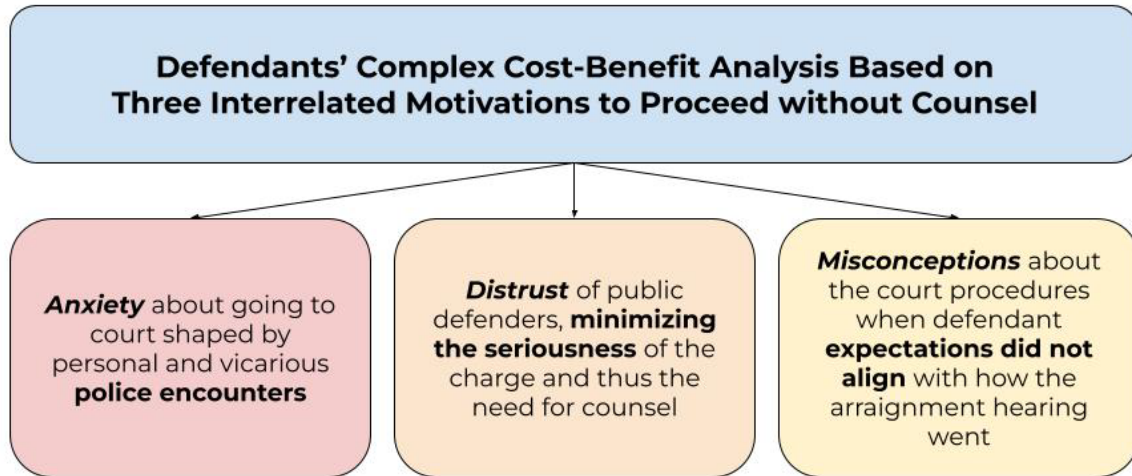
> *I'm not in a law school or nothing like that, but, but like I'm, I'm not illiterate either. I know how to read, write, I can understand. So when it's, when it's a misdemeanor, like I really don't feel like I need a lawyer because I can understand what's going on. But when you talking about a felony case where you can go away for years and it, and the outcome could change your whole life, uh then I got, I gotta get a lawyer because then they go to top law school and I don't understand everything. So, I will have to get an attorney for that.*

Idealistically, participants downplayed the seriousness of their cases, and simultaneously, they were resigned to the inevitability of pleading guilty and paying fees, fines, and costs.

Complex Motivations in Ongoing Interviews

While the cost-benefit analysis described above is reasonable, the initial interviews did not provide the full story of why misdemeanor defendants proceed without counsel. The defendants' underlying motivations proved more complex. The later interviews captured the complexity of the *emotions and legal consciousness* shaping defendants' assessments in deciding to resolve their cases without counsel. Our interviews unearthed three interrelated motivations that led to the defendants' complex cost-benefit analysis: anxiety, distrust, and misconceptions (see Figure 2).

Figure 2. Assertions: Defendants' Motivations and Complex Decision-Making



As detailed below, first, defendant anxiety about going to court was shaped by personal and vicarious experience with the police, especially arrest interactions, which made defendants want to get out of court as quickly as possible; positive interactions with court personnel (e.g., judges, bailiffs, public defenders) did not override the defendants' visceral response to the police presence in court. Second, their distrust of public defenders was rooted in pervasive negative perceptions of "public pretenders" based on personal and vicarious experiences not diminished by positive stories of success with public defense. Third, misconceptions about the court procedures resulted when the defendant's expectations did not align with how the arraignment hearing went, in positive and negative ways, such that defendants were not prepared to make an informed decision at their hearing. Because of these three interrelated motivations, defendants made a complex cost-benefit analysis in a short amount of time under significant pressure to decide how to plead: They minimized the seriousness of their charges and the consequences of pleading guilty compared to the high emotional, financial, and legal costs of returning to court to fight their charges – *even when they believed they were innocent.*

The short interviews oversimplified the defendants' motivations and decision-making processes. However, the longitudinal interviews (one to two hours long, at one week, one month, three months, and six months post-arraignment) revealed much more complexity to misdemeanor defendants' motivations and decision-making processes. The following will explore how our understanding of the defendant's motivations was deepened throughout the longitudinal interviews.

Motivation 1: Anxiety about Police Presence

Many of the misdemeanor defendants we interviewed proceeded without counsel because they were anxious about appearing in court and, by extension, returning to court. Their goal was thus to resolve their cases as efficiently as possible and to avoid return, which often meant accepting a plea bargain without counsel instead of pleading not guilty and obtaining counsel. Our understanding of defendant anxiety was deepened by the longitudinal interviews. These interviews revealed how their anxiety about appearing in court was rooted in their recurring negative experiences with the police in their communities, as well as their own personal experiences with the police surrounding their arrest. The police presence at the courthouse, including the uniformed court bailiffs, made the court space feel less safe for them. Unrepresented defendants reported damaging and negative interactions with police that resulted in an estrangement from the legal system, undergirding their decision to proceed without counsel. A few stories about interactions with the police and their effect on their legal orientation emerged during the brief arraignment interviews. Later interviews magnified the stories of personal and vicarious experiences with law enforcement, showing how negative interactions with law enforcement shaped distrustful views that transferred to the criminal legal system. Their experiences alienated and estranged them from the legal system, and they lost faith that the

system worked for them. These experiences were exacerbated by the overwhelming police presence in some courtrooms,[93] which were not alleviated by their interactions with pleasant and reasonable judges.

Police Anxieties. Unrepresented defendants reported many previous personal and vicarious negative experiences with law enforcement. Their experiences manifested in distrust, alienation, and cynicism, culminating in feeling estranged from the legal system and avoiding legal counsel. Natalie explained her distrust in the context of her current arrest. She resolved her case without counsel, even though she described that she was innocent and falsely arrested:

> *… so instead of maybe just writing me a court date, he [the arresting officer] didn't know what to even charge me with. That's why I think they charged me with the wrong thing. Cause they didn't even know what happened. <laugh> I, he came out there just wanting to arrest everybody. So, there was no justice there, you know, um, it was about money. And then the crazy thing is, is that when I'm on the way to the, to the, uh, jail, the cop told me, this is the most, you know, sorry to say, he said it just like this, "This is the most BS case I've ever had to arrest somebody on. I could have given you a court date, but I didn't want to." And I'm like, Okay, <laugh>, you know?*

Interwoven details arise in this narrative: According to Natalie, the police officer didn't know or attempt to find out what happened at the scene of the crime, pressed the wrong charges, and admitted to a desire to arrest her and to press charges when it was not necessary. Furthermore, Natalie believes the police officer was motivated by money and ultimately wanted to arrest everyone at the scene of the crime. At the core of her experience, "there was no justice." Her personal experience shaped her cynicism that those entrusted with the law would enforce it justly, not just in the streets, but also in the courthouse.

[93] Cite observations report

Similarly, Chris explained his distrust in the legal system, stemming from his vicarious experiences through friends and acquaintances:

> *Well, my distrust in legal system is, cause I've been seeing how unfair they [the legal system] done did a lot of other people. And it still doesn't sit right with me to this day. A lot of people that I knew it's like, they were just at the wrong place at the wrong time, but they got messed up. . . . They still in, they still in there [prison] for like years.*

Repeatedly, he claimed that unjust arrests, charges, and sentences were given to people in his community. Being in "the wrong place at the wrong time" indicates Chris's belief that his friends were innocent but taken in by officers eager to make arrests, in the same way Natalie said her arresting officer "came out there just wanting to arrest everybody." The participants' vicarious experiences led them to disillusionment with and distrust of the legal system.

Disillusionment. These negative personal and vicarious arrest experiences shaped defendants' legal orientations, such that distrust in the police translated to distrust in the legal system. Dan clearly illustrated that connection when he described how the prosecutor bases the charges on the police report without gathering any further evidence, and the judge offers a plea bargain based only on the police report:

> *When they [prosecutors and judges] are like, like they be trying to lie on you and stuff, and they're dying to give you all this time and they don't even know what's really going on. They just go by what the police said or wrote on the report or whatever. And then they just wanna charge you accordingly. You know what I'm saying? When they make it, like, things look so bad and, and nothing wasn't even like that, you know what I'm saying?*

Dan provided an example of connecting vicarious distrust and misconceptions to individual cases, perceiving that members of the legal system will believe the police, suggesting that there is no point in hiring an attorney or fighting the charges in court.

The participants frequently felt that the police report did not accurately represent what happened. They expressed that it was important that the judge listen to the defendant's side. However, the participants did not seem to understand that the way to refute the police report was to plead not guilty, take their case to trial, and be represented by an attorney. They wanted the arraignment hearing to be the trial, and they wanted to represent themselves.

The one consistent connection between community members and the legal system is the presence of law enforcement. The previous personal and vicarious experiences with the police connect to the legal system through the overwhelming presence of law enforcement at the courthouse and inside the courtrooms. Defendants rarely interact with lawyers or judges in their communities, but they do regularly report interactions with the police.[94] The police presence at the courthouse and in the courtrooms had a direct emotional effect on the defendants' legal orientation and their decision to resolve their cases as quickly as possible, which meant without asking for counsel.

For example, in a post-arraignment interview, Tay expressed that the police presence in the courthouse was overbearing:

> *I think the officers be overly doing their job…They be like doing it too much. Act like they don't care about nobody. Like nothing. It's just weird. It is weird how they act. I don't know. Yeah. That's just how I feel like [they treat] everybody [like a] criminal.*

Chris similarly described visceral reactions to the police presence[95] in the courtroom in a longitudinal interview:

> *I already don't like being around officers and all that kinda stuff. Like I, I don't like being around 'em. So it, it made feel some type of way being around 'em and being around 'em for a whole hour, hell nah I ain't trying to be around them…*

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[94]Lauren Sudeall & Ruth Richardson, Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs, 52 U. Cal., Davis 2105 (2019)(noting criminal defendants familiarity with criminal lawyers, but lacking awareness about civil legal problems); Frances Kahn Zemans, In the Eye of the Beholder: The Relationship between the Public and the Courts, 15(2) J. Syst. J. 722, 726, 730 (1991).

[95] As many as eight officers were observed in the urban courtroom, see [Observations Report].

> *Well, with all, with all of 'em [the police in court], I feel like the way they feel like they, I feel like they look at everybody like criminals until proven not so it's* like *the way they talk to and approach you and treat you sometimes you'll feel like you already in jail, but you ain't in jail yet.*

Tay and Chris both felt anxious because of the police presence in the courtroom, but Natalie went a step further to say that she did not discuss her charges with a public defender because she was intimidated by the police presence. She felt intimidated by the presence of the police, who interacted with the individuals there for arraignments and handed out the public defender affidavits and plea waiver forms:

> *I really didn't speak to anybody sitting in there. The sheriff was the only person before the judge, and he was very intimidating; he was like, "Okay if you don't fill this out right, you have to go to jail for 10 days. You're gonna have to fill it out." Or, you know, just, I don't know. He just, he was very intimidating, but I didn't really speak to anybody at all.*

For these defendants, negative experiences with police outside of courts shaped their perception of the bailiffs in court and shaped their perception of the justice system as a whole: That they would be treated as guilty until proven innocent.

Solidified Perceptions. What surprised us during data analysis was that even with reasonable and pleasant judges, the police presence had an overshadowing effect on defendants' experiences that produced waivers of counsel and quick pleas. The perceived fairness of the judge did not ameliorate the effect of the outsized police presence in the courtroom.[96] Many defendants reported being treated fairly by reasonable, even kind judges.[97] However, expressed perceptions of procedural justice did not result in rights assertion. Defendants still opted for quick resolutions without legal counsel, as Devon's representative experience demonstrates:

INTERVIEWER: Can you describe in the ways that you were treated fairly?

[96] Cite observations report

[97] Nine of the 32 post-arraignment interview participants described the hearing and/or judge as treating them fairly; however, this is not a quantitative report, and the lack of language around "fairness" in the other 21 interviews does not necessarily mean that participants did *not* think the judge / hearing was fair.

> **Devon:** [The judge] gave me a chance to talk and, he let me know my rights and basically, he was a reasonable judge.
>
> **INTERVIEWER:** Do you think that the outcome might have been different if you did have an attorney today?
>
> **Devon:** Yeah, it, it would've. . . . What they wrote in the police report. That's why I think it would've been better if I had a [lawyer], cuz some of it what they wrote in it, wasn't true. So -- . . . But yes, when I came here, I did thought they were gonna send me to jail, but I was treated fairly.

Even with a fair and reasonable judge and a belief in their innocence, defendants' negative perceptions of the legal system, like Devon's, were shaped by negative personal experiences with the police. Table 2 shows side-by-side quotations in which participants expressed positive views of the judge at the arraignment hearing and negative views of the bailiffs.

Table 2. Participant Perceptions of the Judge and the Police in the Courtroom

	Perceptions of Judge	*Perceptions of Police*
Chris	Well, the judge…he was a pretty cool guy. Like when I say cool, in my definition, he's more realistic. He ain't gonna be too hard on you. But he know when to be hard. But the way he, cause the way he speaks to people will be respectful until you get disrespectful. Like say, if he talking and you start talking before that, he'll be like, nah, nah you need to stop asking, I'm talking. Ya feel me? But if you're disrespectful and shit. But like some judges they just…have no sympathy for you. They just look at, they don't even look at the case.	I already don't like being around officers and all that kinda stuff. I don't like being around 'em. So it, it made feel some type of way being around 'em and being around 'em for a whole hour [during the arraignment], hell nah I ain't trying to be around them. Well, with all, with all of 'em [the bailiffs in court], I feel like they look at everybody like criminals until proven not, so it's like the way they talk to and approach you and treat you sometimes you'll feel like you already in jail, but you ain't in jail yet.
Dan	She [the judge] seemed pretty cool. You know, I haven't seen her mad, but you know, when they get mad, it's a double different story. Or, you know, but she seems pretty cool and fair….	**Interviewer:** And then how about the sheriffs in the courtroom? Any thoughts on them? **Dan:** All right. I guess I don't mess with police too much.

	She seemed pretty down to earth. You know, like somebody that would listen to you, you know, to what you had to say and stuff, instead of not letting you talk or whatever.	
Tay	I, I think the judge is a… equal person. Like I think she's equal. She don't care what color you are or whatever. And she's a good judge. I think she's a good judge. Like from what I seen.	I think the officers be overly doing their job…They be like doing it too much. Act like they don't care about nobody. Like nothing. It's just weird. It is weird how they act. I don't know. Yeah. That's just how I feel like [they treat] everybody [like a] criminal.

Of the examples above, Dan and Tay held generally positive views of the judge, nondescript views of the other court personnel, and a clear aversion to the bailiffs. When asked about the public defender, the prosecutor, and the clerks, Dan did not give them much thought: He didn't interact with them, didn't pay attention to them, and felt they were "just being civil, too, I guess. I don't know." Similarly, Tay was uninterested in the prosecutor, "I guess he's just doing his job. I mean, I don't know. He didn't really speak to me much… So, I don't know, he just doing his job, I guess. I don't know what to say about him." But when asked about the bailiffs, Dan was averse to their presence: "I guess I don't mess with police too much." And Tay offered up his strong opinions about the bailiffs unprompted when the interviewer had only asked generally about the "other people in the courtroom." The judge, with whom the defendants primarily interacted, was kind enough, and the other court personnel were generally nondescript, but the bailiffs were still just police to the defendants, unjust enforcers of the law who were to be avoided.

Thus, the preliminary interview data demonstrated that anxiety was a driving motivator for defendants to proceed without counsel and resolve their cases at arraignment, with the desire to leave the courtroom as quickly as possible and not to have

to return. The longitudinal interviews enriched our understanding of the defendants' anxiety, revealing that it was rooted in their personal and vicarious experiences with the police. These negative interactions led them to believe that the legal system was corrupt, eager to make arrests and press charges for minor offenses, and unwilling to look at the case beyond the police report. These experiences influenced defendants' perceptions of the legal system, created anxiety, and perpetuated distrust, leading to feelings of alienation and estrangement from the legal system.

In addition to anxiety about police, participants shared their feelings of distrust for public defenders. They described personal and vicarious experiences of negative experiences with public defenders, and even positive experiences were discounted. For defendants who minimized misdemeanors or could not afford to hire counsel, the distrust of public defenders often led to the decision to plead guilty without counsel.

Motivation 2: Distrust of Public Defenders

The fact that distrust of public defenders persists in certain circles is not new,[98] and the present study found that defendants resolve cases without counsel because they do not believe a public defender is worth using. In the longitudinal interviews, participants shared stories of personal and vicarious experiences with public defenders that shaped the pervasive negative views of public counsel.

Negative Prior Experiences with Public Defenders. Butter gave a glimpse of how a specific prior experience created a negative perception of public defenders:

Butter: I've had previous, so back when I was 19, I was charged with, uh, marijuana. So, I went to court back then, but that went to [a pretrial] diversion program. We got that sealed…

[98] Janet Moore, Ellen Yaroshefesky & Andrew L. Davies, Privileging Public Defense Research, 69 Mercer L. Rev. 771, 773-774, n. 28 (2017-2018); Cara H. Drinan, *The National Right to Counsel Act: A Congressional Solution to the Nation's Indigent Defense Crisis,* 47 HARV. J. ON LEGIS. 487, 493 (2010); Jonathan D. Casper, American Criminal Justice: The Defendant's Perspective (1972), at 101.

but see, this is where, like, it really was disappointing because I had a public "pretender" and, uh --

INTERVIEWER: Not a public defender?

Butter: A public "pretender." And they tried to give me 60 days in jail. And then I was like, I was like, whoa. I mean, I had a lot of weed on me, but, um, but anyways, but my point is I paid two grand to get a [private] lawyer. Right. And then, and then there was a diversion program I could have just gone a diversion program the whole time. Got it sealed. But my, my public "pretender" didn't tell me that, you know?

In Butter's experience, the public defender did not share all the information available (the option of a pretrial diversion program) or fight to reduce or eliminate jail time. By contrast, her private attorney was perceived as better able to represent her interests. She felt so strongly about this negative experience that she adopted the well-worn and derogatory "public pretender" moniker in referring to public defenders.[99]

Negative prior experiences with public defenders frustrated the defendants, particularly by the lack of communication. Natalie shared a story of her experience working with a public defender:

> *Oh my God. It was terrible. I was sitting in the holding cell, waiting for court. There was like a little hole through the bar where they put like food in, I guess the food tray. And she's like, "Natalie," and slapped my folder down and was like, "This is the deal." She was very rude. "This is the deal. Take it or leave," like that. And I'm like, "What do you mean?" And the deal was so outrageous. I was like, "I'm not taking that." And she's like, "You wanna come back? You wanna sit in jail and come back to court for this?" And I'm like, "Can we do something about getting my bond lowered? Or can we do something about maybe probation or something like that?" And she was just like, "I see" and walked away. And I was still in the middle of talking to her and she just walked away on me.*

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[99] The stereotype and moniker have a long but murky history. See Janet Moore, Ellen Yaroshefesky & Andrew L. Davies, Privileging Public Defense Research, 69 Mercer L. Rev. 771, 773-774, n. 28 (2017-2018) (citing, e.g., Cara H. Drinan, *The National Right to Counsel Act: A Congressional Solution to the Nation's Indigent Defense Crisis,* 47 HARV. J. ON LEGIS. 487, 493 (2010) (quoting federal Congressional hearing testimony of exoneree Alan J. Crotzer regarding the use of the "Public Pretender" label in Florida)). The idea that public defenders were less competent preceeds the moniker. In Jonathan D. Casper's seminal work, he asked a criminal defendant if he had a lawyer when he went to court, and the interviewee responded: "*No. I had a public defender*." American Criminal Justice: The Defendant's Perspective (1972), at 101.

There were a few reasons Natalie particularly disliked this treatment. As stated above, she was hurt that the public defender left in the middle of the conversation, not taking the time to listen to her wishes. She went on to explain that she felt like she was being treated "like I was nothing," as though she were "guilty already" when she had not had the chance to fight her charges yet. Natalie sensed that the public defender did not like her job: "If you don't like your job, then give it to me…or don't do it." She suggested that, instead, public defenders need to have "a passion for [the job]."

The negative experience continued for Natalie on the day of her trial:

> *When I went out there, she actually, the judge was trying to help me more than my public defender was. My public defender actually, like didn't agree with the judge giving me probation. She was like, uh, and this is what I asked her for. So she was like, "No, sir, I feel like it's better if she sits in here, um, and does 210 days on, on, on top of her 180 days that she's been in here" or whatever. And the judge was trying to release me on probation, and the probation was four months or something. So, I'm like, you know, like she literally was trying to get me more time and for me to remain to jail <laugh> and I'll never forget that I was like, oh my gosh, <laugh> I thought the judges usually do that or the prosecutors, but here she is, you know?*

As a result of this experience, Natalie lost trust in public defenders.

Chris similarly lost trust in public defenders when he had one for a previous charge. Chris was convicted and spent time in jail, blaming the public defender:

> *I felt like the public defender really wasn't on my side cause they, per se, but then again, if it benefited the public defender being on my side, I felt like they would, but um, I still got charged with what I got charged with. So, I was like, you ain't really help.*

Poor communication was an issue for Chris as well. He shared, "You had to call them, all the types of stuff, or they didn't even called me to find out like information about the case." This posed an issue because the public defender only knew "what's on the white and black paper," the evidence from the police report, rather than the details from Chris's

experience at the time of arrest: “They don’t know what I think or what I gotta say.” And in a vicarious experience, Chris saw a friend use a public defender and end up with jail time. The friend “had got a public defender and it’s like the, the PD didn’t really like, I don’t know. It’s like the PD just made everything worse for him.”

Anthony expressed the same frustration that there was little communication with his public defender on a prior charge. In his words, “My experience with public defenders usually isn’t good… For the most part, they usually don’t care.” This was evidenced by the fact that “they usually don’t let you know nothing until like a day or two before so that when you go to court, they can tell the judge they notified you, even though it was only a day or so, but they can say for them, that they notified you without being a liar.” Anthony sensed that the public defenders were checking the boxes without actually following the spirit of the law by communicating thoroughly with the defendant.

This affected Anthony’s future decisions because, though he would hire a public defender again, “the moment I can’t get ahold of him…if I called his office, once I don’t get ahold of him, [I’d] be mad. But if I’m steady trying to get ahold of him, all in, having somebody call or on just any type of contact and he's not in contact with me, then I’d hire a private attorney.” For these participants, the overarching negative quality of public defenders was a lack of communication: Public Defenders do not share information well enough in advance, and they do not listen to the defendant’s side of the story.[100]

What was surprising, however, was that even when participants could tell stories of positive experiences with public defenders, they still held persistent, negative views of them. Using public defenders was not an option because they were perceived as

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[100] Heather Pruss, Marla Sandys, & Sara M. Walsh, “Listen, Hear my Side, Back Me up”: What Clients Want from Public Defenders 43(1) Just. Syst. J. 1-20 (2021).

untrustworthy, uncaring, and less competent than private attorneys, even among people who had no direct experience with public defenders and those who had positive experiences with them. The overall negative perceptions of public defenders were so palpable that even when participants had good experiences with caring public defenders, the previous experience was attributed to luck.

Positive Experiences with Public Defenders. Positive experiences did not balance a negative conception of public defenders. Good public defenders existed; some participants reported having positive experiences, but they attributed that assignment to chance, which is summed up in Dan's metaphor: "If you get a public defender, then you, you playing Russian roulette there." The idea that some public defenders are good, but most are not, came across in multiple interviews:

Participant	Odds of finding a good public defender
Dan	"I got some good public defenders though. That'll fight for you. But some of them don't."
Anthony	"It's all luck of the draw, really"; "For the most part? Um, my experience with public defenders usually isn't good. I mean, I've had one or two that were alright, but for the most part, they usually don't care"; "It's just like everything else in life. You got some that are good. Some that are just bad."
Natalie	"There's just some out there that really respect and do their job. And then I guess there's just some out there that just don't have the time."
Chris	"Like I said before, like it might be one, one out of a million public defenders actually care about your case… and then that's a slim chance you gonna find them. You losing that case for a public defender, they ain't gonna care about your case."

Generally, the defendants who proceeded without counsel felt that public defenders could be good, but the gamble was not worth taking. A good public defender was one who kept in touch with defendants and cared.[101] For example, Natalie's brother had an "awesome" public defender

[101] Heather Pruss, Marla Sandys, & Sara M. Walsh, "Listen, Hear my Side, Back Me up": What Clients Want from Public Defenders 43(1) Just. Syst. J. 1-20 (2021)(identifying client expectations for effective communication,

who "went out of his way for him." Specifically, Natalie described how this public defender "would stay in contact with [my brother], like every week… He would call just to ask him how he was doing, how he felt about the case, where his head was at with the case." On the day of the trial, "The way that he spoke to the judge was like, he showed that he was not gonna give up until he got what he wanted for my brother," arguing that "the kid deserves another chance." The goodness of this public defender was a shock to Natalie and her mother, who had "never seen that before." Despite Natalie's negative perception of public defenders, she can tell the story of a positive experience with a public defender.

Likewise, Chris, who was persistently negative about public defenders' capabilities, shared a positive story about a public defender who represented his friend with the same ethics of care.

> *That public defendant cared about his case, like actually sat there and listened to him. [My friend] got the public defendant that went above and beyond to beat this man's case, like he got both of the gun charges dropped and time credit… and [my friend] got out the same day. He got out the same day. As soon as the public defender helped him beat the case.*

Chris also shared advice he received from a friend about the possibility of being appointed a caring public defender:

> *My friend told me like the only way you could win with a public defender is if that public defender actually like cares, like actually cares about what you done went through like, like actually give a fuck about, okay, you went through this or I feel for him. They have a little sympathy for you. So, so they'll actually give, give it a, give it a time and trying to beat the case for you. Other than that, man, you fucked with a public defender. They give you a public defender you better hope you better pray to God. You better pray to God that, that part of the defender help you. Other than that, there ain't gonna be no help to you at all. They just gonna be basically somebody ringing some paperwork to the judge and then you get sentenced. <laugh>*

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investigation, and advocacy); Kelsey Henderson & Reveka Shteynberg, Perceptions about Court-Appointed and Privately-Retained Attorney Representation: (How) Do They Differ?, 23(3) Crim., Crim. J., Law & Soc'y 45-58 (2022)(finding that attitudinal differences were grounded in perceptions about available resources, questions on adversarial allegiance, and sentiments about respect and altruism, concluding that negative attitudes about court-appointed attorneys were "somewhat ingrained.").

Anthony also was surprised by a positive experience with a public defender: "I'm not gonna lie; he's actually good." When pressed, Anthony's reasoning was that,

> *Usually, it's hard to get in touch with public defenders and all that. And he got in touch with me. He's been keeping in contact with me. I ain't even had to go out my way and try to call them all day and leave a thousand messages and all that. He emails me and calls me, make sure that I'm kept up to date with everything.*

So, for these participants, good public defenders communicated proactively with defendants, listening to their stories, caring about them, and, of course, winning their cases.

Systemic Failings. The perceived poor performance of public defenders was often attributed to collective economic and cultural observations that they are not paid enough, and their pay comes from the State. In the words of participant Khalif, "You get what you pay for." Participant Deal considered that:

> *the public defender only goes so far…They only can push so far, unlike an attorney, they can get in it. Cause you paying them. Public defender, they doing their job. They're getting paid, but not as much as actual attorney, you know, that's what they do. That's what you paying them big bucks for.*

Chris also felt that how much attorneys are paid directly affects whether or not they fight to win the case: "Public Defenders not gonna care about your case. Cause that ain't getting paid from you. A lawyer that's getting paid, he gon' care about your case more than that." He went on to explain, "That's why most people, they rather just pay somebody cause money gon' money, talk and gon' get it done regardless of feelings."

While not getting paid enough was identified as a central problem, Chris made the connection that the source of the funding was also problematic:

> *Cause I felt like the PD … ain't, uh, obligated to make you win, low key. We ain't really paying them. They getting paid by the State. So I feel like they gonna be in the favor for whoever's paying them. And for, in case for a lawyer, you actually paying, you actually paying that lawyer. He gonna care about your case. You gonna make sure you get there. He gonna make sure, oh yeah, right or wrong. He gon get you out of there right or wrong. Cause he getting paid <laugh>. PD ain't gonna give, give a hell unless they*

> *actually care, care about what you said or they a nice person or whatever. Other than that, yeah. You got PD, they ain't gonna save you. You got a PD, you gonna lose that case.*

Along the same lines, Dan contrasted good public defenders who "fight for you" with those "working with the State." Andrew also felt that "public defenders work with the judge." He asserted that they could improve by being "on the person's side instead of trying to work with the State and trying to help the State; they need to really work with the person that they're hired to work with more." For these participants, the public funding caused a conflict of interest, in which the public defender's loyalty is to the State, not the defendant. Over and over, the interviewed participants were influenced by the hierarchical notion of private lawyers' willingness to fight and care because they were being paid compared to public defenders who were unwilling and uncaring.

In addition to anxiety about police and distrust of public defenders, the participants also shared misconceptions about the arraignment hearing that often led to the decision to plead guilty without counsel. Defendants holding these misconceptions ultimately regretted the decision.

Motivation 3: Misconceptions about Court Proceedings

Misdemeanor defendants proceeded without counsel when their expectations did not align with the reality of the hearing (see Figure 3).[102] Sometimes, the defendants were pleasantly surprised that the hearing went better than they expected, and they were pleased with the outcome of their case, even if they had pleaded guilty and now owed court fines. Other times, the defendants were disappointed that the hearing went worse than they expected, and they were

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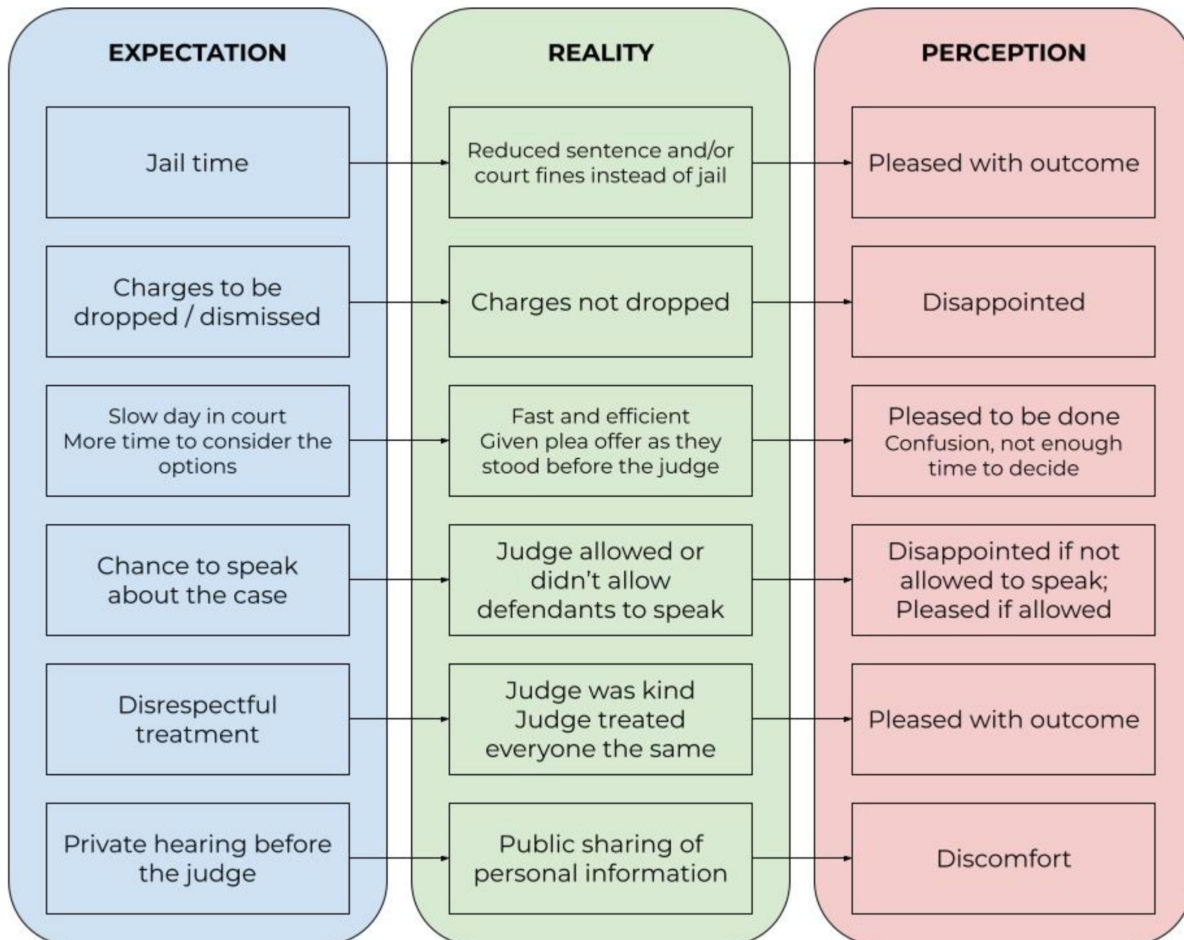
[102] Frances Kahn Zemans, In the Eye of the Beholder: The Relationship between the Public and the Courts, 15(2) J. Syst. J. 722, 726, 730 (1991)(noting the public's misunderstanding about the courts and legal system); Sally Merry, *Getting Justice and Getting Even, Legal Consciousness Among Working-Class Americans* (1990)(observing the disconnect between expected treatment and treatment in the courts).

displeased with the outcome of their case. *Regardless of whether the hearing went better or worse than expected, these misconceptions caused defendants to proceed without counsel.*

FIGURE 3. Expectations, Reality, and Perception of Defendants



Better than Expected. A few defendants with prior charges and experience in the courts expected to receive jail time but were pleased to discover that they were offered a reduced sentence of only having to pay court fines. As discussed above, defendants only considered defense necessary for "serious" crimes that would result in jail time; the reduced sentence was not considered serious enough to justify consulting a public defender.

For example, individuals with prior court experiences, such as Mike, Matt, Devon, and Kevin, learned as they stood before the judge that their sentence had been reduced, so they

pleaded guilty and accepted the known consequences of court fines, relieved that they would not have to spend time in jail. In Mike's interview, he defined this treatment as fair:

Interviewer: So, you thought that you would…?
Mike: Probably be on probation or do some jail time.
Interviewer: And what was the outcome of your case?
Mike: Just fine.
Interviewer: Do you think you were treated fairly?
Mike: Oh, yes, definitely.

Matt's evaluation of fairness was similar:

> *But honestly, from my experiences, I feel like I was treated fairly. And I feel like it kind of, it couldn't have gone any better today… I was supposed to do 60 days in jail and six months' probation, and they ended up giving me $50 in court costs on top of the $50 fee and $300 in court costs. So, I ended up paying $300 instead of going to jail.*

In the same way, Kevin "was thinking about maybe doing the jail time, um, if they offered it, and they did offer," but then, considering that he was currently employed, he decided he could not risk jail time. Knowing that he had a warrant out for his arrest, he was relieved that "they didn't arrest me on the spot." This sense of relief was experienced by Devon as well, who had a similar turn of events but was confused about how his sentence was changed: "[Today went] better than I thought it would…[I thought] they was gonna send me to jail because it was a second, uh, second-degree misdemeanor. That's why. I didn't know what it meant it meant, so."

Worse than Expected. Other defendants had high expectations that their charges would be dropped or dismissed, as had happened in their prior experiences, but were greatly disappointed that their charges were not dropped. Some defendants had prior experiences with their arrest charges being dropped by the prosecutor; thus, they expected that the same would happen at the current arraignment hearing. The defendants attributed their prior charges being dropped to poor behaviors by the arresting officer. This was, however, an assumption. The prosecutor or judge did not give the participants specific reasons for their previous charges being

dropped. When, at the most recent arrest, they received treatment from the police that they believed to be out of line, they expected the prosecutor to drop the charges once again. When they showed up on the day of the arraignment hearing, they were shocked that the State was still pressing charges, so they took the path of least resistance and pleaded guilty for the abovementioned reasons.

Here's how participant Chris explained the advice he got in preparing for court, which laid the groundwork for his expectations:

Interviewer: And so, after that situation occurred, and they charged you with resisting. Did you think about speaking to an attorney or speaking to somebody about the situation? What happened that day?

Chris: Well, I spoke to my friends and family saying that done went through that shit, and they told me how, how, how, how, how, how they took, they gave me some advice and basically told me, "Man, you ain't even gotta worry about that case. Like they ain't gonna charge you too seriously or they ain't." That's why I wasn't really worried about getting a lawyer on that 'cause I know it wasn't gonna be that serious, but at the same time, them adding more money to my bills made it even harder for me.

In another interview, Chris explained that the charges "should have been dropped like that, like that same day they even looked at it like they should like that same day of court." Based on his own experiences and the stories and advice of his family and friends, Chris's expectations for how his arraignment hearing would proceed turned out to be far from accurate – but still based on the concrete reality of personal and vicarious experiences. He had valid reasons to believe that the prosecutor would drop his charges, as they had been before, so he felt unprepared to defend against the charges at his arraignment.

Another participant, Natalie, had a very similar experience with what she believed was an unjustified charge. Charged with petit theft, Natalie asserted, "I didn't steal anything. So why was I charged with that?" Like Chris, she believed "that my charges should have been dropped." In hindsight, she wished that she had "hired an attorney or got my public defender and took it to

trial" as soon as she realized her charges would not be dropped. Natalie explained in a later interview,

> *I was surprised, like, I didn't think I was going in there to plea. I didn't think that I was going in there to, even talk about my case. I really just thought I was going in there to be offered a public defender and then move on…That kind of bothered me cause, um, I feel like that's what they should do, you know?*

Her expectations that the charges would be dropped or that she would be assigned a public defender meant that Natalie was not prepared to make an informed decision about her charges when she stood before the judge. She needed counsel, better information, and a clear understanding of what would be offered before she was called before the judge. After reflecting on how the arraignment hearing ended, Natalie expressed her disappointment in her decision to take the plea offer. This sentiment only became clear in the longitudinal interviews.

Unfortunately, Chris and Natalie believed that they were innocent and that the prosecutor would drop the charges in the name of justice. However, their belief in their innocence did not immediately lead to a plea of not guilty or assertion of their right to counsel. In addition to their anxiety about returning to court and distrust in public defenders, these defendants felt rushed to decide after a shocking revelation from the judge that their charges would not be dropped. The resulting misconception was to the defendants' detriment and resulted in a decision they ultimately regretted.

Expected More Time. Regardless of whether they expected better or worse charges and penalties than they received, many participants were not informed of their formal charges and the state offer until they stood before the judge. In some courts, defendants were informed of their charges during the pre-hearing procedures,[103] allowing them time to consider their options,

[103] See observations report.

consult with a public defender, or process with accompanying family and friends. Others, however, expressed confusion over the procedures, regret that they had not made a different decision, and disappointment that they had not had a chance to discuss their case with anyone. Though the defendants were happy to have the hearing behind them, some (especially those with no prior court involvement) felt they did not have enough time to decide how to proceed.

They felt rushed to decide and pleaded guilty to avoid returning, as discussed above. Anthony put it succinctly:

INTERVIEWER: Something that surprised you when you were, uh, in court.

Anthony: That they wouldn't let me have no time to, uh, think about what I wanted to do and told me that if I didn't take the deal, that it would get put off the table.

INTERVIEWER: Okay. And how did that make you feel?

Anthony: I mean, it's not right. 'Cause we come in and we don't know what, what what's gonna be, what, and then they just throw an offer at you and expect you to make mind up in two minutes.

John also described his arraignment hearing as "pretty quick," struggling to give any more details because "I don't really know [what happened] 'cause I mean, this is my first time." Sabrina, who also had no prior court experiences, explained, "really, I don't [know what I expected]; this is my first time, so I really had no expectations." Though the present court appearance was not her first, Dede reflected on the first time she ever appeared, "When I first got there, I thought I was in the wrong room. 'Cause I was like, I asked when I first walked in, like if I was supposed to be in this courtroom. 'Cause I didn't know, like I said, I didn't know."

Expected to Defend Themselves. Defendants were shocked that they could not speak about their charges to the judge. They expected their hearing to be a trial in which they could

represent themselves. In contrast, the judges typically admonished defendants not to speak about their cases in court. If they needed advice, judges urged defendants to plead not guilty and either hire counsel or request public defender representation. Just as importantly, the research assistants observed that when an individual defendant did attempt to share their story, they were reprimanded by the court. Defendants perceived this silencing measure as an affront to their rights of self-advocacy,[104] advantaging those with counsel to speak on their behalf. [105]

First-time defendant John, unsure of what to expect during the hearing, was shocked that the process felt "like it's automated, like just keep going, keep going." He expected "the judge would have a little bit more sympathy," and he surmised that the outcome would have been different "maybe, if I explained the situation, like what happened before? Like what led up to that." But instead, he lamented, "I didn't really get to explain myself."

Natalie explained that if she could change anything about misdemeanor courts, it would be that the judges "have a little more leniency on [defendants] speaking and talking before they cut you off or get mad and just *bam*, slam their gavel down and give you whatever the hell they want." Andrew explained, "I had no reason to get an attorney, so I'm speaking for myself," but then he was upset because the judge "didn't even let me speak. She was just like, 'Well, this is what it is…Get outta here.'"

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[104] These findings reflect similar experiences of represented defendants who experienced disadvantages and punishments for advocating for themselves in Matthew Clair's study, *Privilege and Punishment: How Race and Class Matter in Criminal Court* (2020).
[105] *Id*.; Alexandra Natapoff, Speechless: The Silencing of Criminal Defendants, 80 N.Y.U. L. Rev. 1449 (2005)(describing the harm of the silencing phenomena in the criminal legal system).

Procedural fairness.[106] Defendants often described the trial judge as fair and reasonable when they felt they were treated like everyone else in court and received the same fines. The instrumental effect of perceived fairness functioned to encourage case resolution without counsel, serving the system's overriding goal of quick resolutions and efficiency.[107] For example, Roger, who has had other court cases before, explained that he was treated fairly because "I was treated like everybody else." Defendants seemed to expect to be treated disrespectfully by the judge and were pleasantly surprised if the judge treated them with kindness or at least treated everyone the same. Mike, Matt, and Kevin all described their experiences in which being treated the same as everyone else equated to fairness.

Participant	***Procedural Justice***
Mike	"[I was treated] with respect. You know, called by my name. They handled their business and everybody had to do what everybody had to do"
Matt	"[Today] was a little different than usual. It was more calm, a little bit less stressful, but I felt like I was actually treated, treated a little fairly"; "everybody was nice"; "but I feel like this time was just more fair. They were more open and more lenient I guess"
Kevin	"They didn't treat me by biasedly in any such, such way. They treated everybody the same, so."

When judges allowed defendants to talk about their experiences or treated them with simple dignity, these individuals also felt happier. Natalie details how a previous judge treated her fairly because he listened. She was being emancipated from foster care, and the judge showed care and concern, asking her if she was ready to return home:

> *A foster home judge, like a family court judge. I actually was in foster care for a long time, and I was trying to get emancipated. I could be at the age I could get emancipated or just go home. And, he pulled me into the back of the judge's*

[106] Treating people with dignity and respect as they participate in the criminal justice system and perceiving neutral decision-makers are making case outcomes. See Tom Tyler, Why People Obey the Law (1990); see also https://www.innovatingjustice.org/publications/tom-tyler-phd-professor-yale-university (2011).
[107] Dorian Schaap & Elsa Saarikkomaki, Rethinking police procedural justice. 26(3) Theoretical Criminology 416-33 (2022); Robert J. MacCoun, Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness, 1 Annu. Rev. Soc. Sci. 171-201 (2005).

> *chambers by myself and was like treating me like a daughter, telling me, listen, you know, you tell me are you ready to go home? So he treated me like his daughter, you know, he was like, come back here. And he was like, are you ready to go home if this happens again? Are you, um, you know, would you defend yourself? What would you do? Would you call the police? And I explained everything. He said, I believe you. I'm sending you home.*

It was Natalie's only positive experience with the legal system; she contrasted it against her current and more typical experience, where defendants are admonished not to speak in court:

> *That was the only judge. You know, like when you go up to the podium and you don't have a public defender or an attorney, do you know the first thing they say to you? Don't speak to the judge, even if you like, like, let's say you're in inside court, in jail. Right. And, um, you're trying to get out, or you're trying to explain your situation or whatever. Don't speak to the judge. Why? I mean, I, you know what I mean? I don't understand that unless he, like, they like don't speak to the judge unless, um, he asks you a question. You are only to answer the question.*

As illustrated here, defendants often expected to be able to speak about their cases to the judge. They were disappointed when they were silenced and pleased when they were allowed to tell their story; however, they did not request trials in these situations. Their perceptions of fairness were shaped by limited information.

A myopic definition of equality emerged by comparing case outcomes and treatment against others also appearing in the same misdemeanor arraignment court. Perceived fairness was forced through a narrow lens of the in-court experience with its heightened concerns for efficiency that rewarded defendants for quick resolutions. First, the same financial penalty, regardless of individual circumstances, may be equal, but it is not equitable as the impact or effect of these fines differs based on one's financial circumstances. Further, their observations of equality (and, as a result, fairness) do not take into account the fact that some people retained counsel and were not required to come to court, while those without lawyers are required to appear personally.

Discussion

Everyday experiences shape and construct ordinary citizens' attitudes and perceptions of the law and legality,[108] influencing how they assess the costs and benefits in deciding to plead guilty and proceed without an attorney. The three motivations above –anxiety about the day in court and especially the police presence, distrust in public defenders, and misconceptions about court proceedings – combined to form a complex cost-benefit analysis in which defendants evaluated that *pleading guilty, waiving counsel, and paying court fines was better than returning to court another day to fight the charges.*

All the defendants we spoke with were eager to avoid jail time, even if that meant not asserting their rights to an attorney or trial, pleading guilty, and paying court fines. They downplayed the necessity of counsel and the short- and long-term consequences of pleading guilty compared to the benefits of not returning to the courthouse and not being sentenced to jail.

In the few minutes that the defendants stood before the judge, our participants were asked to assimilate their prior lived experiences and information they had gathered from family and friends before coming to court, to make a complex decision regarding the plea being offered in their case. They assessed the *quick resolution* of a *seemingly* small financial obligation through the lens of their anxieties and the gamble of returning to court on another day, the exorbitant costs of hiring private counsel, the unlikelihood of being appointed caring public defense counsel, their misconceptions about the legal system, and their assumptions about how their cases might unfold in the future.

Immediate views of the law, legal system, and legal actors galvanized in these individuals deciding not to assert their right to counsel (or their right to a trial). Themes developed around

[108] Patricia Ewick & Susan Silbey, The Common Place of Law 38-39 (1008); Sally Engle Merry, Getting Justice and Getting Even 161-162, 170-71, 179-81 (1990).

their anxieties about being in court and their case outcomes coupled with their idealistic[109] and empowered views about their capabilities in representing themselves.[110] These visions often proved illusory, as they found their expectations for the hearing did not align with the reality of what occurred in court.

Later interviews deepened our understanding of their quick decisions, rooted in their legal orientations about the law arising from "fluid, dynamic processes between individuals' attitudes, beliefs, and identity, social inequalities, authorities' behavior, black-letter law, and the legal and social culture in which rights exist."[111] We found that individuals' rights and legal orientations, framing misdemeanors as unimportant, were grounded in everyday experiences and reinforced by their personal and vicarious experiences and interactions with the police, public defenders, and the lower criminal courts. Expressed anxieties about being in court, and especially about encounters with the police there, featured as strong motivators for both first-time and more experienced defendants desiring to resolve their cases immediately. Furthermore, their distrust of public defenders, whom they perceived as uncaring and less competent than compensated private attorneys, discouraged representation. Our participants were well aware that those with financial advantages benefited from hiring private attorneys.[112] Participants' expectations for the legal

[109] Patricia Ewick & Susan Silbey, The Common Place of Law 38-39 (1008); Sally Engle Merry, Getting Justice and Getting Even 161-162, 170-71, 179-81 (1990).
[110] Kathryne M. Young, Rights Consciousness in Criminal Procedure: A Theoretical and Empirical Inquiry, 12 Soc'y Crime, L. & Dev., 67, 83 (2009) (finding in the Fourth Amendment context, and by surveying individuals, that "in deciding whether to invoke rights an how to interact with authorities, people's actions may often be based on erroneous beliefs.")
[111] Kathryne M. Young, Rights Consciousness in Criminal Procedure: A Theoretical and Empirical Inquiry, 12 Soc'y Crime, L. & Dev., 67, 73 (2009).
[112] Kathryne M. Young & Katie R. Billings, Legal Consciousness and Cultural Capital, 54(1) Law and Society Review 33 (2020); Matthew Clair, Privilege and Punishment: How Race and Class Matter in Criminal Court (2020).

actors and the system, coupled with the reality of how their cases proceeded, reflected and reinforced their sense of cynicism, alienation, and estrangement.[113]

Defendants' anxieties, distrust, and misconceptions were not alleviated by kind, compassionate, or even procedurally fair judges, nor did perceptions of fairness manifest in rights assertion. In fact, the opposite was true: defendants' perceptions of fairness based on judges imposing the same penalties on everyone (usually fines) undermined rights assertion motivated by anxiety about expected unjust penalties such as jail time. Because positive interactions with individual judges, public defenders, and police did not reverse our participants' legal cynicism, our recommendations will focus on systemic changes rather than the efforts that could be made by individual legal actors.

Implications and Recommendations

Refusing counsel and waiving trial is not always the wrong choice for misdemeanor defendants. That choice, however, should be fully informed rather than motivated by the defendants' personal, vicarious, and largely negative experiences with the police, public defenders, and the legal system. When the decision to waive foundational constitutional rights is shaped by repeated experiences, exposures, and narratives of systemic failures and injustice, the legal process perpetuates those inequities that suppress rights assertion. As a result, our recommendations are centered on practices that will reduce the pressures that motivate defendants to plead guilty without counsel. Our proposed reforms for the police, public defenders, and court procedures are summarized in Figure 4.

[113] See Monica C. Bell, Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism, 50(2) L. & Soc'y 314, 323 (2016); Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (2018); Patrick J. Carr, Laura Napolitano, & Jessica Keating, We Never Call the Cops and Here is Why: A Qualitative Examination of Legal Cynicism in three Philadelphia Neighborhoods, 45 Criminology 2, 445-480 (2007); Robert J. Sampson and Dawn Jeglum Bartusch, Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences, Law and Society Review, 32(4), 777-804 (1998).

Figure 4. Policy Recommendations

ASSERTIONS	RECOMMENDATIONS
Defendants proceed without counsel because they are anxious about their time in court, especially the police presence.	Improve police-community relationships to build positive views of the legal system. Decrease overt and excessive police presence in misdemeanor courts.
Defendants proceed without counsel because they distrust public defenders.	Build out-of-court relationships between public defenders and community members. Provide free access to counsel following arrest and at initial appearance.
Defendants proceed without counsel because of misconceptions about the proceedings and consequences of pleading guilty.	Create community-based workshops to educate about the legal process. Provide neutral assistance for people preparing to attend hearings.

Our proposed changes are not expected to completely eliminate the decision to resolve cases quickly and without counsel; but alleviating unnecessary anxiety, distrust, and misconceptions perpetuating rights waivers is essential for preserving the legitimacy of the courts and ensuring due process of law.

Reduce anxiety. General anxieties about the day in court can be alleviated by campaigns to educate individuals and communities about their rights, which will be discussed further below. But there is also a need to address specifically the anxiety surrounding the overt police presence in courts. Some study participants reported anxieties perpetuated by police interactions that contaminated their perceptions of the legal system.[114] Recommendations for improved police-community relationships have been made elsewhere,[115] and we support continued attempts to

[114] Our recommendations are a beginning. Dr. Monica Bell, in Police Reform and the Dismantling of Legal Estrangement, 126 Yale Law J. 2054, 2126-49 (2017), points to the need for structural reforms to alleviate legal estrangement, including reducing over-policing, curtailing unnecessary police stops, improving transparency, and shrinking the role of the police.

[115] Bell, at 2121-31; See generally, Importance of Policy-Community Relationships and Resources for Further Reading. US Dept. of Justice (undated)(https://www.justice.gov/crs/file/836486/dl); Final Report of The President's Task Force on 21st Century Policing, Office of Community Oriented Policing Services (May 2015) (https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

reduce "quality of life" or "broken windows" policing and harassment, such as relying on citations in lieu of arrests, building on initiatives that promote the use of civil citations in place of criminal warrants, decisions not to prosecute nonviolent misdemeanors,[116] and collaborating with social services to address structural inequities and social issues.[117] In the misdemeanor courts, we recommend lessening the overt presence of police[118] and educating the police on how interactions in the community and the courts shape public perceptions of the police and the legal system.[119]

Reduce distrust. Our findings also illuminate how personal and vicarious experiences with public defenders produce distrust, resulting in deleterious effects on rights assertion. Given the entrenched negative views of public defenders among our participants that even positive experiences did not derail, the efforts of individual public defenders to build positive relationships alone will not be sufficient. Instead, we encourage efforts to improve public representation's overall image by building out-of-court relationships between public defenders and the communities they serve.[120] Providing opportunities such as workshops that educate people on their constitutional rights offers the chance for individuals to engage with public

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[116] Amanda Y. Agan, Jennifer L. Doleac & Anna Harvey, Misdemeanor Prosecution, 138(3) The Quarterly J. of Economics 1453 (2023); *See generally,* https://civilcitation.com/.

[117] Alexandra Natapoff, Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal, 231 (2018).

[118] see Observations Report

[119] See generally, Emilee Green, Brian Kuczynski, Morgan McGuirk, & Jessica Reichert, The Effectiveness and Implications of Police Reform: A Review of the Literature (October 27, 2022)(https://researchhub.icjia-api.cloud/uploads/fullreport%20-%20police%20reform-221027T15592678.pdf).

[120] Holistic public defense, partnering with community organizations, and educating the public on rights and the legal system have been instituted in some jurisdictions. *See, e.g.,* Melanca Clark & Emily Savner, Community Oriented Defense: Stronger Public Defenders, Brennan Center for Justice (2010) (https://www.brennancenter.org/sites/default/files/legacy/Justice/COD%20Network/Community%20Oriented%20Defense-%20Stronger%20Public%20Defenders.pdf); Alexis Hoag-Fordjour, Community Responsive Public Defense, 92 Fordham Law Rev. 1309 (2024).

defenders in non-adversarial settings and situations.[121] In addition, financial and other barriers to accessing public defense services[122] should be eliminated. Defenders should explore opportunities to establish offices or otherwise make their services available in settings outside the courthouse, including in community spaces.[123]

Research has demonstrated that providing counsel at first appearance effectively increases representation and reduces downstream negative effects.[124] Public defense lawyers should be present at initial appearances and arraignments. Access to their assistance should be free, and the lawyers present should be proactive, offering assistance to everyone facing a misdemeanor charge. Every defendant should have the opportunity to have a meaningful, confidential conversation with counsel before any hearings start.[125] Building on programs currently providing access to free legal advice upon arrest by phone to youth, courts can also

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[121] E.g., Maxwell Evans, Cook County Public Defender Launching Far South Side Legal, Social Services Center, Block Club Chicago, August 18, 2023 (https://blockclubchicago.org/2023/08/18/cook-county-public-defender-launching-far-south-side-legal-social-services-center/).

[122] Marea Beeman, Kellianne Elliott, Rosalie Joy, Elizabeth Allen, & Michael Mrozinski, At What Cost? Findings from an Examination into the Imposition of Public Defense System Fees, Nat'l Legal Aid & Def. Ass'n (July 2022), https://www.nlada.org/sites/default/files/NLADA_At_What_Cost.pdf (last visited, February 26, 2023).

[123] Models for these approaches include the efforts of the Cook County public defenders work in the community to build relationships and coalitions with outreach programs (https://www.cookcountypublicdefender.org/news-and-community-engagement/community), and policy recommendations by the National Legal Aid & Defender Association (https://www.nlada.org/community-oriented-defender-network) and the Brennan Center (https://www.brennancenter.org/sites/default/files/legacy/Justice/COD%20Network/Community%20Oriented%20Defense-%20Stronger%20Public%20Defenders.pdf) in promoting client-centered and community-oriented defender programs to enhance defender practices, educate citizens, and legal support.

[124] *See generally*, Michael Mrozinski & Claire Buetow, Access to Counsel at First Appearance: A Key Component of Pretrial Justice, National Legal Aid & Defender Association (2020) (https://www.nlada.org/sites/default/files/NLADA%20CAFA.pdf); Alissa Pollitz Worden, Reveka V. Shteynberg, Kirstin A. Morgan, & Andrew L.B. Davies, The Impact of Counsel at First Appearance on Pretrial Release in Felony Arraignments: The Case of Rural Jurisdictions, 31(6) Crim. J. Pol'y Rev. 833 (2020).

[125] Empirical research has shown promise in reducing negative outcomes for misdemeanor defendants provided counsel at first appearance, *see* Alissa Pollitz Worden, Kirstin A. Morgan, Reveka V. Shteynberg, & Andrew L.B. Davies, What Difference Does a Lawyer Make? Impacts on Early Counsel on Misdemeanor Bail Decisions and Outcomes in rural and Small Town Courts, 29(6-7) Crim. Justice Pol'y Rev. 710 (2018), and the negative consequences of no-lawyer courts, *see* Thomas B. Harvey, Jared H. Rosenfeld, & Shannon Tomascak, Right to Counsel in Misdemeanor Prosecutions After Alabama v. Shelton: No-Lawyer-Courts and Their Consequences on the Poor and Communities of Color in St. Louis, 29(6-7) Crim. Justice Pol'y Rev. 688 (2018).

offer access to legal advice at arrest.[126] Free, accessible, and early advocacy should include allowing counsel, with the defendant's consent, to negotiate with the prosecutor, arguing for relief such as declining the filing of charges, reducing charges, or negotiating alternative outcomes.[127]

Reduce misconceptions. Finally, misconceptions about the criminal legal process should be addressed through community-based approaches.[128] Building on "Know Your Rights"[129] and other community partnership programs,[130] workshops promoting public education about the misdemeanor legal process, the role of legal actors in the system, and the potential collateral consequences of misdemeanor convictions and nonpayment of financial obligations would allow for open exchanges and answering questions for improved understanding of the significance of misdemeanors. Public defenders could provide community-based, neutral assistance for people preparing to attend criminal misdemeanor hearings, helping them to understand the criminal legal process and their constitutional rights, including how and when charges might be dropped and the direct and collateral consequences of misdemeanor convictions and punishments. Outreach by public defenders could educate and improve in-court communication about charges and plea offers, at least before defendants are standing at the podium with the judge.[131] Also, if

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[126] Currently, a robust movement toward providing free access to counsel for youth facing interrogation is underway. *See generally,* Kate Bryan, Recent State Laws Strengthen Rights of Juveniles During Interrogation, National Conference of State Legislatures (January 10, 2024)(https://www.ncsl.org/state-legislatures-news/details/recent-state-laws-strengthen-rights-of-juveniles-during-interrogations); Fair and Justice Prosecution: Promoting Justice Through Leadership and Innovation (January 2022)(https://fairandjustprosecution.org/wp-content/uploads/2022/01/FJP-Juvenile-Interrogation-Issue-Brief.pdf).
[127] https://www.fairtrials.org/campaigns/the-right-to-counsel/
[128] Public Defender Offices engage with their communities, but no single location or clearinghouse captures the various programming. Creating a clearinghouse along with evidence-based evaluation studies is necessary for robust and effective duplication of these kinds of innovative programs.
[129] https://justicepower.org/know-your-rights-programs/
[130] Philadelphia's community partnership programs to engage participatory defense, education, and pretrial support (https://phillydefenders.org/community-partnership/);
[131] see Observations Report

cases are declined or dismissed, public defenders, prosecutors, or even the judges should explain why that happened, reducing the mystery surrounding court proceedings and resolutions.

Conclusion

The proposed police, public defender, and court reforms were informed by the accounts of those who forfeited their rights to counsel and to trial. Misdemeanor defendants who eschew legal representation and other constitutional rights are cynical about and alienated from the criminal legal system. The proposed reforms advance a multi-faceted approach critical to confronting structural and procedural inequities that perpetuate and reproduce the tiered system of justice that benefits those with cultural capital and disadvantages those without. Superficial changes to the legal system grounded in procedural justice to improve "satisfaction" with the judge or other legal personnel are insufficient in altering the deep distrust, cynicism, and alienation described by the participants, which suppresses rights assertion and perpetuates the cycle of anxiety, distrust, and misconceptions about the criminal legal system.

The proposed changes are structural – reimagining how police interact with citizens, improving trust and engagement with public defenders, educating citizens about the criminal legal system, and making the criminal courts more accessible and user-friendly. Reducing unnecessary arrests and the negative presence of law enforcement in the community and their visibility in the lower criminal courts, providing outside-of-court access to trusted and competent lawyers for guidance and education, and offering misdemeanor defendants the tools for informed self-advocacy and improved legal decision-making are necessary to diminish the inherent and systemic inequities long ignored by procedural justice measures. Changing perceptions of those interacting with the lower criminal courts, particularly in arraignment hearings, must be vigilant – isolated positive interactions with judges, public defenders, or even the police did not alter

participants' legal orientations. The lower courts must be re-envisioned and re-imagined so that procedures themselves are not punishing, and public defenders and judges do not appear as rubber stamps for the police, and the disparity in equity and benefits of private over public counsel are bridged. Due process requires more. Unrepresented defendants must have the opportunity for real advocacy, not procedurally superficial voice and they need time to digest their rights to make informed legal decisions about how to proceed. These are the minimums necessary to thwart alienation and resignation that asserting rights is simply not available for everyone.

Appendix A. Post-Arraignment Interview Guide

Proceeding without Counsel in the Misdemeanor Courts: Post-Arraignment Interview

After informed consent is read, and the participant agrees to participate: Begin recording, provide a copy of the informed consent to the participant, and test recording device. Then re-ask the following at the beginning of the recorded interview:

Now that you have been read this document and told of the risks and benefits, do you have any questions? Do you voluntarily agree to join the study and know that you can withdraw from the study at any time without penalty? Do you agree to the interview being recorded?

I. Defendant/Participant Interview Protocol/Guide

Topic domain: Perceptions and Understanding of Court Experience

Leadoff question: Think about your court experience; how would you describe what happened today?

Possible follow-up questions:

a. How did your experience in court today measure up against how you thought it might go?
  1. Can you describe something that surprised you?
  2. Describe what you thought might happen today in court?

b. What were your charges? What was the outcome of your case today?
  1. Do you think you were treated fairly? Can you describe in what ways you were treated fairly or not?
  2. What do you think happens next, if anything, with the results of your case? Any effect on your life?
  3. Did anyone notify you of potential future consequences of resolving your case today?

c. What were the reasons that influenced your decision to proceed without an attorney?
  1. What life experiences or interactions prepared you for court today?
  2. -- to represent yourself?
  3. Can you describe a situation where you might hire an attorney to assist you?
  4. – or use a public defender or free attorney?

d. Have you had any prior experiences with _________. If so, please describe.
  1. attorneys
  2. courts or judges

II. Follow-Up Interview Request

As I mentioned, we would like you to participate in follow-up and recorded interviews. It would be helpful to our project and understanding legal decision-making. The follow-up interviews are expected to be longer, but no more than one hour. We have funding for those longer interviews, and we will pay people who participate $20 for each follow-up interview. The first follow-up interview would be next week, then in six months, 12 months, and the last one would be 18 months from now. The payments would be given to you in person for in-person interviews, mailed to you, or sent electronically after each interview. The interviews are voluntary, and you may withdraw your consent to participate. Would you be willing to speak with us again next week?

[**Recording Concluded**, and **make sure the participant knows that you are no longer recording them**]

Thank you, and if you could please provide me with the information to contact you [and write down this information for our records and to make future contact and payment]:

1. What is your name, and the best way to reach out? (Phone, email, letter)
2. Do you have an alternative way of reaching you? Phone number, or email, address?
3. When is the best time to reach out to you next week for an interview?
4. For this research, we will not use your real name. Do you have a fake name that you would like us to use in future reports and publications?
5. Finally, to pay you for the later interviews, we need: address for mail, email for e-gift card, or we will connect you with NACDL accountants with bank information for electronic payment.

Appendix B. Example Telephone Interviews (one week – six months)

Follow-Up Interviews.

Telephone Introduction: Hello, may I speak with ________? My name is [Research Assistant Name], and I'm working on the court study. We spoke at the courthouse after your misdemeanor case was over. You provided me with your contact information, and we hope you can answer a few more questions. If you are willing, I need to re-review some information to be sure that you are participating voluntarily and agree to be recorded. [Review the informed consent.]

Are you still willing to answer a few questions?

The later interviews will be particularly individualized and build on participants' previous interviews and referenced experiences.

I. Protocol

Topic domain: Misdemeanor Consequences
Leadoff question: Could you describe how your misdemeanor case has affected your life.

Possible follow-up questions
1. Employment, or schooling?
2. Family?
3. Any other aspects of your life?
4. Any unexpected consequences?

Topic: Reflection on Experience
Leadoff question: If you could go back in time, how would you handle your case?

1. Today, if you were arrested for a misdemeanor, would you use an attorney? Explain?
2. How would you describe our criminal justice system to someone who was unfamiliar?

Possible follow-up questions
1. What are your perceptions of the criminal legal system? Attorneys? Judges?
2. Today, if you were arrested for a misdemeanor offense, would you hire an attorney or ask for a public defender to represent you? Why, or why not?

Topic domain: Other experiences
Leadoff question: Since your experience with the misdemeanor system, could you describe any other experiences with the courts?

1. police?
2. lawyers?

Topic domain: Legal Consciousness

Leadoff question: Could you describe a recent conflict with a person, an organization, a store, or any other recent conflict or disagreement?

1. How did you resolve that conflict or disagreement?
2. Could you describe a conflict or disagreement where you might involve the legal system?

Topic domain: Covid
Leadoff question: How has Covid affected your life?

Possible follow-up questions
1. If you had not been arrested and prosecuted, would Covid have affected your life differently? How?

II. Ending each interview [Recording Concluded]

- Thanking the respondent
- (Noting the time at which the interview has ended)
- Offering the respondent to send a summary of the research report once finalized (if so, noting contact details)
- Re-offering the respondent the interviewer's professional contact details in case of later questions
- Confirm the information for the mailing of the payment.
- For all but the last interview: Ask if we might schedule a follow-up interview or if we run out of time to continue the interview for follow-up questions.

Appendix C. Codebook

Assertion 1: Misdemeanor defendants choose to proceed without counsel because their (pervasive, negative) personal and vicarious experiences with the police shape their legal/rights consciousness — such that they've lost faith in the system to work for them.

Pattern Code: Police Encounters

- subcode: bailiff interactions in the courtroom
- subcode: personal experiences
- subcode: vicarious experiences (including community, hypothetical, and media)
- subcode: judges (the police encounters dominate their consciousness, whereas interactions with judges don't change their perception of the legal system); positive interactions with judges do not make the participants feel empowered to assert their rights [negative case analysis]
- subcode: police meddling in "minor" affairs and not dealing with "major" issues in their community (does shape their legal / rights consciousness)

Assertion 2: Misdemeanor defendants choose to proceed without counsel because public defenders are not trustworthy / don't care / aren't the same quality as private attorneys.

Pattern Code: Public Defenders

- untrustworthy, uncaring, unheard, less competent
- subcode: ethics of care / being heard
- subcode: payment coming from the state — PDs don't care if I win, because they're paid by the state either way
- subcode: contrast with private attorneys
- subcode: powerlessness / getting a public defender does not make the participants feel empowered (the way we might expect it to); a private attorney *would* fight for me, would listen to my story

Assertion 3: Misdemeanor defendants choose to proceed without counsel because their expectations for how the court experience would go did not align with how it went and undermined their rights assertion. - [misunderstanding]

Pattern Code: Expectations

- subcode: prior charges being dropped
- subcode: thinking the arraignment *is* the trial and they'll get a chance to speak, that the judge will hear their side of the story *today*
- subcode: misremembering details, the multitude of court experiences merge together
- subcode: judge advises participants to just take the plea offer and resolve today
- subcode: they didn't know what to expect, so they felt anxious (watching other people's cases, standing in front of the judge, their privacy being violated in front of others)

Assertion 4: Misdemeanor defendants choose to proceed without counsel because their cost/benefit analysis reveals that taking the plea offer is in their best interest, *even if they believe they're innocent.*

Pattern Code: Cost / Benefit Analysis

- subcode: cost of returning to court (money, time, childcare, day off work, transportation, getting up early)

- subcode: cost of potentially missing the court date / being late (policy change: there has to be some better way to communicate with defendants!)
- subcode: cost of *maximum sentence* if they lose their trial (literature: trial penalty — mostly in felony world, but for our participants, there's overlap)
- subcode: cost of private attorney is *way* more than the court fines
- subcode: even if they can afford a public defender, they're highly unlikely to win their case because they believe the public defender will do his job
- subcode: emotional cost of returning to courthouse (it's there — how do we capture that?)
- subcode: minimizing seriousness (a misdemeanor is not serious enough to warrant a lawyer and fighting the charges; a felony and/or jail time would be worth it)
- subcode: other defendants' cases were resolved the same way (pled guilty, didn't get a lawyer, got the same court fines), so this must be what justice looks like (everyone got the same court fines, so this is normative) — our participants aren't seeing the people who hired lawyers or got pretrial diversion; they're only seeing others in poverty like themselves
- subcode: belief in innocence (Even if they believe they're innocent, misdemeanor defendants still think the benefit of pleading innocent does not outweigh the costs of returning to court.)