Psychology, Public Policy, and Law
2018, Vol. 24, No. 2, 192-203

https://doi.org/10.1037/law0000158

How Defense Attorneys Consult with Juvenile Clients About Plea Bargains

Erika N. Fountain and Jennifer L. Woolard
Georgetown University

Despite recent research attention, a lack of information still plagues the most common conviction process in the United States, the plea bargain. Further, even less is known about how juvenile defendants make plea bargain decisions. Juvenile plea bargaining is unique due to juveniles being considered independent minors while simultaneously being held to adult competency standards in court. Unfortunately, juvenile defendants are less likely than adults to have the necessary capacities for adjudicative competence. Given defense attorneys' role in the plea bargain process, it is possible that they may be able to increase their clients' knowledge and legal understanding. Additionally, defense attorneys may be able to facilitate meaningful client participation and better decision making. The current study takes an exploratory, qualitative approach to examine how defense attorneys prepare juveniles to make informed and autonomous plea bargain decisions in juvenile court. Data from interviews with juvenile defense attorneys suggest that juveniles are subjected to a quick decision making process and tend to base their decisions on immediate gratification. Attorneys reported using one of three specific consultation strategies with their young clients. Ultimately, plea bargain discussions were described as occurring quickly, focused on the immediate case facts and outcomes, with less time and attention reserved for discussions about rights, or long-term, collateral consequences.

Keywords: guilty pleas, plea bargains, juvenile defendants, attorney consultation, legal decision making

Psycholegal research has not focused on plea bargains until recently (Redlich, 2010), and even less has focused on juvenile cases, resulting in a dearth of research examining the most common conviction process in the United States' justice system. Plea bargains are not unique to the criminal justice system, as studies have found that juveniles accept plea bargains at similar rates to adults (Jones, 2004; Kaban & Quinlan, 2004). Juvenile plea bargaining presents a unique and potentially difficult situation for juveniles and their defense attorneys since they are expected to embody two potentially conflicting roles in the criminal justice system: as children *and* adults. During adolescence, individuals undergo many developmental changes and legally are viewed as dependent minors who require parental consent when making important decisions (Woolard & Scott, 2009). However, in a plea bargain scenario, adolescents are legally required to make *their own* legal decisions while being held to adult standards of competence (Scott & Grisso, 2005). While an in depth discussion of the relevant developmental differences between adults and adolescents is beyond the scope of this paper (for a review see Steinberg, 2009), research examining adolescent decision-making has shown that they are vulnerable to poor decision-making in certain legal contexts (Grisso, 1980; Grisso et al., 2003; Viljoen & Roesch, 2005; Viljoen, Klaver, & Roesch, 2005). One potential remedy for this is the fact that although adolescents are legally required to make their own decisions regarding whether to accept a plea bargain, they are also legally eligible to have the assistance of a defense attorney (*Gault,* 1967; Jones, 2004).

Legal scholars suggest juvenile defense attorneys may facilitate active participation and better decision making (Buss, 2000; Henning, 2005); yet, remarkably, no research has examined how defense attorneys advise juvenile clients or contend with their immature decisional capacities during the plea bargain process. We do know, however, that defense attorneys are aware of the unique decision-making capacities juveniles bring to court with them. In fact, some attorneys have expressed concern regarding how to properly advise juvenile clients to ensure they are making autonomous decisions (Tobey, Grisso, & Schwartz, 2000; Viljoen, McLachlan,

This article was published Online First December 21, 2017.
Erika N. Fountain and Jennifer L. Woolard, Psychology Department, Georgetown University.

This research was supported by the American Psychology-Law Society's Grant-in-aid for Students MacArthur Award, which was awarded to Erika N. Fountain. It has been presented at the American Psychology-Law Society's (AP-LS) conference in Seattle, WA in March, 2017 and as part of a doctoral defense in May, 2017. Otherwise, data from this article has never been published and is not under consideration in any other peerreviewed outlet.

Correspondence concerning this article should be addressed to Erika N. Fountain, who is now at Department of Psychology, University of Maryland, Baltimore County, 1000 Hilltop Circle, Math/Psychology Building, Rm. 315, Baltimore, MD 21250.

E-mail: efount@umbc.edu

Wingrove, & Penner, 2010). Another concern is that attorneys' effectiveness may be stymied by the various structural barriers that exist in today's court system (Fountain & Woolard, 2017). The current study aims to investigate the plea bargain process in juvenile court, the context in which juvenile plea bargain decisions are made, and how juvenile defense attorneys facilitate this process with their young clients.

Legal Requirements for Trial Waiver

To accept a plea bargain, or waive the right to a trial, a defendant must satisfy the legal requirements of competency to stand trial and must waive their right to a trial in a knowing, intelligent, and voluntary way (*Godinez v. Moran*, 1993). By highlighting that the waiver be knowing and intelligent, the Supreme Court emphasized the importance of understanding the consequences associated with the waiver as well as the significance of waiving the right to trial. For example, pleading guilty can prompt a host of collateral consequences (e.g., deportation, sex offender registration, difficulties with public housing, inability to own a handgun, etc.). Given these facts, it is critical that decisions to waive trial rights be made intelligently and with full understanding of the consequences. Finally, by requiring that a waiver be voluntary, the Supreme Court emphasized that this decision must be made independently and without undue inducements or coercion.

Typically, defendants make plea decisions in consultation with a defense attorney[1]. The attorney is responsible for counseling juvenile clients regarding the possible outcomes associated with a plea bargain and their best assessment of the plea offered (Shepherd, 2001). According to Shepherd (2001), defense counsel "must be fully aware of the client's competency to understand what is being said and to make a considered decision about the plea" (p.47), while remaining cognizant of the developmental differences that exist between adolescent and adults. Therefore, attorneys should ensure youth understand the rights being waived as well as the short *and* long-term consequences of waiving those rights (Shepherd, 2001). While attorneys are not legally required to explain what collateral consequences may result (with the exception of potential deportation proceedings) (*Padilla v. Kentucky*, 2010), the American Bar Association recommends that attorneys also discuss these consequences with their clients (ABA, 2004). Finally, while attorneys may use their legal insight to give their clients advice, they should be careful to ensure their young clients are not overly acquiescent and are making their own decisions (Buss, 2000). Unfortunately, little research has examined how defense attorneys prepare juvenile clients to make plea bargain decisions.

Defense Attorneys Perceptions of Juvenile Defendants

Legal professionals in the juvenile justice system recognize that developmental immaturity may impact adolescents' level of competence (Viljoen & Wingrove, 2007). Tobey and colleagues (2000) interviewed defense attorneys concerning their perceptions of juvenile clients. Attorneys reported that compared to adult defendants, most youth were overly acquiescent to attorney recommendations regarding how to plead. As a result, attorneys reported feeling stress or anxiety regarding the fact that their clients were making long-term, consequential decisions in such a passive manner and questioned whether their young clients truly appreciated the implications of their decisions (Tobey, Grisso, & Schwarts, 2000).

While attorneys may be concerned by their young clients' capacities, what remains unclear is how these attorneys ultimately aid their clients to make independent, thoughtful, legal decisions. Viljoen and colleagues (2010) examined how approximately 200 juvenile defense attorneys responded in a typical situation when they believed a juvenile client may be struggling with competence. Attorneys were more likely to endorse spending additional time meeting with their client (89.8%) or explaining legal procedures (81.7%) than raising competence as an issue in court (53.2%). Viljoen and colleagues' (2010) findings suggest that attorneys may be opting to address concerns surrounding juvenile incompetence informally, on their own, by working to restore competence instead of seeking a competency evaluation. Unfortunately, while the leading strategy involved increasing time spent with clients, it is unclear how that additional time was spent. Additionally, twenty percent of attorneys who expressed difficulty with these cases worried they weren't sufficiently able to educate their clients and 11% of those attorneys expressed concern with regards to how much pressure they should exert when advising these clients (Viljoen, McLachlan, Wingrove, & Penner, 2010). Taken together, juvenile defense attorneys recognize they must contend with their clients' developmental capacities yet may be struggling to determine the most appropriate strategy. Fortunately, legal scholars have proposed developmentally appropriate strategies defense attorneys can use, outlining how to work to increase client understanding and to appropriately use their influence (Buss, 2000; Henning, 2005).

[1] We recognize that rates of representation by an attorney vary widely by charge and geography, among other factors, especially for juveniles (NJDC, 2017). In this paper, however, we focus on attorney perspectives on the plea bargain process with juveniles.

Identifying and Representing Youths' Expressed Choices

The National Juvenile Defender Center's (NJDC) (2013) guiding principles call for defense attorneys to follow an *expressed interest approach* by placing the client's final decision and wishes above their own; however, as Henning (2005) describes, within that approach attorneys can vary in how much influence they exert over their clients' decision making. Representing juvenile clients requires that attorneys not only inform their clients of the relevant legal factors (i.e., what rights are being waived and relevant consequences) but also that they account for the immature decisional capacities of their clients while doing so (Shepherd, 2001). Legal scholars have described multiple approaches to the expressed interest model that exert varying degrees of influence and control: one that is authoritarian, one that is purely client directed, and a collaborative model (Henning, 2005). Attorneys who are authoritarian are the "most coercive and least deferential to clients" (Henning, 2005, p.309). Attorneys who are more authoritarian believe the client should follow their legal recommendations due to their developmental incompetence. Authoritarian styles may not be purposefully aggressive, but may skew the client's decision by overemphasizing certain outcomes over others (Henning, 2005). Unfortunately, this approach results in little to no insight coming from the client and goes against recommendations to use caution when using force or manipulation (Buss, 2000). A purely client-centered approach allows the attorney to avoid giving their opinion by instead strictly informing clients of their options and carrying out their client's decision. However, offering no opinions could result in the juvenile client being left without critical legal insight that could help in weighing options. Finally, a collaborative approach, is described as the most appropriate to handle the decisional capacities of juvenile defendants. A collaborative approach allows attorneys to "educate adolescents on the short- and long-term consequences of all potential case-related decisions; patiently lead youth through the pros and cons of each option; and enhance the youth's ever evolving decision making skills and capacity" (Henning, 2005, p. 248-249). Attorneys focus on facilitating a good decision making process instead of focusing on motivating one particular decision (Buss, 2000). Unfortunately, this approach is also the most difficult to employ as it requires the most time and resources and may be difficult for defenders in offices overburdened by high caseloads (Henning, 2000). Therefore, while Henning proposes an ideal solution for attorneys concerned with how to appropriately counsel their juvenile clients, it is unclear how feasible this solution is given the structural barriers that exist in many public defender's offices (Jones, 2004). Little, if any, work examines how attorneys conceive of or describe their interactions with their juvenile clients. This study does not explicitly test any specific model or approach, but rather the underlying concepts – degree and nature of attorney influence over their client's decisions – were included in our inductive analysis strategy.

Structural and Developmental Challenges of Representing Juveniles in Plea Bargains

The extant literature shows clear and convincing evidence that juveniles struggle with legal decision-making (e.g., Grisso, 1980; Grisso et al., 2003). As a result, juvenile clients may need to depend more on their attorneys compared to other types of defendants. We also know that juvenile defense attorneys struggle with and have expressed concern over the decision their young clients make. Exacerbating the situation is the context in which plea bargain decisions take place. A combination of high caseloads, insufficient resources, and little time (Jones, 2004) can result in attorneys feeling rushed and unable to properly build rapport with their clients or investigate case facts (Fountain & Woolard, 2017). According to Wilson (2016), overburdened defenders with high caseloads and who lack sufficient time to familiarize themselves with the case and their client may struggle under cognitive load, which can result in the increased use of heuristics or "cognitive shortcuts" (p. 274). Time pressure also undermines clients' confidence, diminishes trust, and reduces satisfaction with the quality of representation. For example, juvenile clients are at increased risk of misunderstanding the parameters of defense attorneys' commitment to confidentiality and advocacy (Fountain & Woolard, 2017). Peterson-Badali & Abramovitch (1992) found that the majority of young adolescents (13 and younger) and almost half of middle adolescents (14-16) were unaware of confidentiality requirements, believing defense attorneys share information with the judge. Juvenile clients are also at greater risk of misunderstanding the court process, which itself is associated with reduced trust in attorneys (Pierce & Brodsky, 2002). Spending the time to build trust and respect is key to achieving an effective working relationship and strengthening youths' broader legal socialization about the legitimacy of the legal system (e.g., Sprott & Greene, 2010; Tyler, 2015). Unfortunately, as Buss (2000) notes, without "a serious commitment of time" (p. 256) lawyers likely will struggle to build a working relationship with their young clients; a relationship that may aid attorneys in recognizing their clients' capacities.

Current Study

Currently, very little is known about juvenile plea bargains and even less is known about how juvenile defense attorneys facilitate the plea bargain process. Prolific research on adolescent development asserts that juveniles' decisional capacities leave them vulnerable to poor decision making in emotional and high stakes contexts (e.g., Blakemore & Robbins, 2012; Cauffman, Shulman, Steinberg, Claus, Banich, & Woolard, 2010; Figner, Mackinlay, Wilkening, & Weber, 2009; Steinberg, Graham, O'Brien, Woolard, Cauffman, & Banich, 2009). Legal scholars have theorized about how certain counseling strategies may be developmentally appropriate and effective at facilitating a good decision making process (Buss, 2000; Henning; 2005); the main dimension being the nature of the relationship between the attorney and client and how directive attorneys should be. Though Henning (2005) developed a taxonomy of approaches to developmentally responsive client consultation, it is not clear what approaches are used in practice. Thus, the current study is the first of its kind to investigate attorney reports on strategies they utilize while consulting with juvenile clients on plea bargains. Rather than testing any model specifically, we approached this inductively to determine what emerges from the attorneys' descriptions of their behavior. The current study uses qualitative interviews with juvenile defense attorneys to examine their perspectives of what happens off the record, *before* juvenile defendants enter the courtroom, in preparation for making a plea decision.

Attorneys who represent youth in plea bargain proceedings face a complicated task –interacting with their clients in a developmentally responsive manner that enables informed decision making about constitutional rights. How much time do attorneys report spending discussing the plea bargain with their clients? How do attorneys inform their clients, specifically their juvenile clients, to make this difficult decision? While these conversations are off the record and protected by attorney client privilege, it is during these discussions that defendants are informed of the rights they are being asked to waive, the consequences of waiving those rights, and the potential terms of the plea being offered.

In the current study, we focus specifically on these conversations between attorneys and their clients by speaking directly to juvenile defense attorneys about how they prepare their juvenile clients to make knowing, intelligent and voluntary plea bargain decisions in juvenile court. As Gergen (2014) notes, our goal of understanding the experiences of defense attorneys, rather than prediction and control of their experiences, is best met with a qualitative rather than quantitative design. Semi-structured qualitative interviews with juvenile defense attorneys were conducted to understand more about the plea bargain process, how clients were prepared to make plea bargain decisions, and how attorneys chose to handle difficult situations with their juvenile client. With the lived realities of attorneys as our focus, we were interested in understanding their experiences with the following phenomena in juvenile court:

1. Attorney reports of how the juvenile plea bargain process unfolds.
2. Attorneys' perceptions of the juvenile plea bargain process.
3. How attorneys report preparing their juvenile clients to make plea bargain decisions.
4. Attorneys' perspectives on why young clients accept plea bargains.
5. How attorneys report responding to clients' poor decision making.

Methods

Participants

We used a purposeful sampling strategy targeting attorneys from a large urban court district with significant volumes of cases. Because we were interested in studying variation in the phenomenon of representing juvenile clients in the plea bargain process, we chose to focus on a single office of juvenile public defense attorneys in an urban jurisdiction on the East Coast. This choice enabled us to keep constant several key structural characteristics of jurisdictions that affect defense attorney experiences, including average caseload, time and financial resource constraints, and court culture (Jones, 2004). This office practices vertical representation, in which a single lawyer follows a juvenile's case throughout the entire court process. Attorneys average between 40 and 50 cases at any given time in a juvenile division that opens several thousand cases each year. This jurisdiction is located in a state that allows a number of juveniles to be charged as adults and prosecuted in criminal court, although those cases are handled by a different division of attorneys in the office.

Flyers for this study were made available to all attorneys in the office. The flyers invited defense attorneys to participate in a one-hour interview about juvenile plea bargains and offered $75 as compensation. Office supervisors were aware of the study but did not encourage or discourage attorneys from participating. Instead, attorneys were invited to respond to the flyer on their own by contacting the researchers directly. A majority of the office participated in the study.

Saturation was used to guide sample size. Eighteen of the twenty-three attorneys interviewed focused the majority of their time on juvenile defense and comprise the final

sample[2]. They were primarily white (78%; Black: 11%; Asian: 11%), female (72%), and approximately 40 years of age (M = 39.9 years; SD = 8 years). They reported an average of 11.4 years (SD = 7.2 years) of legal experience and estimated their caseloads (i.e., total number of cases they were actively overseeing) to be approximately 46 cases (M = 46.1 cases; SD = 17.7 cases).

Procedure

All protocols and procedures were approved by Georgetown University's Institutional Review Board. Attorneys participated in a one-hour, audio-recorded, semi-structured interview on the juvenile plea bargain process. While all interviews followed the same sequence and format, the semi-structured nature allowed participants to speak freely and elaborate on specific points while the researcher used follow-up questions and clarifications to maintain an overall focus on the research questions (Willig, 2013). Interviews took place at a location convenient to the participant, usually in their office or conference room, where informed consent was obtained.

Additionally, attorneys answered questions about demographics and their professional experience. Finally, participants were debriefed and paid $75.00 for their time[3].

Measures

We chose a semi-structured interview for our methodological approach for several reasons. First, our purpose was exploration – to uncover the experiences of attorneys themselves. Second, the interview generates data both about the phenomenon of interest itself, i.e., juvenile plea bargains, as well as the ways in which the participant makes meaning of that reality (Miller & Glassner, 2016).

Semi-structured interviews. The interview was divided into three parts: the general process of pleas, attorneys' experiences with their most recent juvenile client, and general questions about working with juvenile clients. The general process section included questions such as, "How does a plea offer usually come about?" and "How, if at all, do juveniles participate during a plea hearing?". The specific case section of the interview, which comprised the majority of the interview time, focused on how the plea bargain process unfolded with their most recent juvenile client. Attorneys were asked to think of their most recent case that resulted in a juvenile accepting a plea bargain. Then, attorneys were asked questions that covered the decision making process (i.e., "Approximately, how much time did you spend discussing the plea with your client?"; "What did you talk about with your client when you discussed the plea offer?"); preparation for the plea hearing (i.e., "Before the hearing, did you talk with your client about the plea hearing?"; "What was discussed in preparation for the plea hearing?"); their client's rationale for accepting/rejecting the plea offered (i.e., "Did your client ever express why they decided to take or not take the plea?" If yes: "What was their reason?"). Finally, in the section on working with juvenile clients generally, attorneys were asked how the attorney managed a situation when they believed a juvenile client was making a poor decision (i.e., "I'm sure some juveniles make bad decisions or decisions you don't agree with. How do you deal with situations where you think your juvenile client is making a bad decision?").

Demographics questionnaire. All participants filled out a demographics questionnaire where they provided details about their age, gender, race/ethnicity, and their legal experience.

Data Analysis

All audio-recorded interviews were transcribed by one of two research assistants before being stored and analyzed using Dedoose. Dedoose is a secure, web-based, qualitative analysis software program that facilitates data management, organization, and analysis (Dedoose, 2016; Silver & Lewins, 2014). Specifically, qualitative analysis software programs such as Dedoose allow researchers to import various forms of qualitative data (e.g., text, video, audio, and images) and categorize data by user-defined attributes (Silver & Lewins, 2014). Therefore, while qualitative analysis software programs do not analyze the data, they simplify the process of exploring, coding, and synthesizing the information.

Qualitative data can be analyzed from different theoretical perspectives. Most broadly, we approached this study inductively. More specifically analysis of the transcribed interview data takes a *direct realist* approach to interpreting the data (Willig, 2013). This theoretical approach allows the researcher to take participant statements at face value and assume those statements reflect reality. Further, any analysis of those statements should not require the researcher to interpret beyond what study participants say (i.e., the researcher should not attempt to read between the lines) (Willig, 2013). Taking a *direct realist* approach to qualitative analysis is ideal while conducting exploratory research because it allows the researcher to

[2] Of the five attorneys who were excluded due to a lack of focus on juvenile defense: two attorneys worked specifically with youth tried as adults in the criminal justice system; two attorneys held supervisory roles resulting in low caseloads; one attorney no longer worked primarily with juvenile defendants.

[3] Participant payments were funded through the American Psychology-Law Society and the MacArthur Foundation's Grant in Aid for Students MacArthur Award.

build a concrete narrative based on the participant's own experience of a phenomenon. In line with this theoretical approach to data analysis, a qualitative analytic method known as *thematic analysis* was used to code data and explore for themes. More specifically, data coding was conducted using an *inductive* and *semantic* approach to thematic analysis (Braun & Clarke, 2006). Thematic analysis as defined by Braun and Clarke (2006) involves a six-phase process of coding the data to explore for themes. Inductive and semantic approaches refer specifically to how themes are identified (inductively) and at what level themes are coded (semantically) within thematic analysis. Taking an *inductive* approach to thematic analysis allows theme and code creation to be data-driven instead of based on a theoretically driven coding plan (Boyatzis, 1998; Braun & Clarke, 2006). An inductive approach is ideal when exploring an understudied process or phenomenon to ensure no data is overlooked or undervalued. Taking a *semantic* approach (Braun & Clarke, 2006) allows themes and codes to be identified at the semantic, or explicit, level as opposed to at a more latent or interpretive level (underlying the fact or experience) (Boyatzis, 1998). Taking a semantic approach allows a *direct realist* perspective to be maintained throughout data analysis.

Following Braun and Clarke (2006), research questions were coded separately through an iterative coding process, after which themes may be identified and refined. The first author read through each of the transcripts to get a sense of the whole interview, then reread each transcript and began inductively identifying codes and themes, using the key research questions as a guide. Some of those codes were derived from the existing literature. For example, the code "right to a trial" referred to any discussion of the right to trial, which is waived when one accepts a plea agreement. Other codes were inductively derived from the transcripts themselves. The second author read through all transcripts as well. In regular meetings, the authors discussed codes and emerging themes from the transcripts that were coded that week and their potential meaning. Then, the first author organized the codes to create broader categories which were then used to identify broader themes. This iterative process continued until all of the transcripts were coded and analyzed, and the two authors came to a consensus about the themes that emerged across the interview cases. Throughout this process, the coder wrote down impressions, ideas, and memos about the categories and themes that were emerging. Once themes were identified, the first author quantitized theme presence/absence. Frequencies, averages and standard deviations were calculated for characteristics of the plea bargain process (e.g., length of conversation).

Results

How the Juvenile Plea Bargain Process Unfolds

Our sampling strategy enabled us to hold constant the contextual factors of the court system and defense attorney office, which we expected would keep the basic plea bargain process somewhat constant as well. We were particularly interested in the timing of the plea offers, client conversations, and decisions. Attorneys described how the plea bargain process unfolded in their most recent juvenile case where their client agreed to accept a plea bargain and waive the right to trial. These cases included theft, drug crimes such as possession with intent to distribute, property crimes such as motor vehicle theft or burglary, and person offenses such as armed robbery and sexual assault. Generally, descriptions of the plea bargain process revealed that attorneys' practices can vary but the onset of the plea bargain process remained consistent across attorneys.

Timing of the offer, consultation, and decision. The plea bargain process typically began once the state's attorney relayed the plea offer to defense counsel; this overwhelmingly occurred on the morning of trial (n=13; 72.2%). Eighty five percent (n=11) of those attorneys who received the offer on the morning of trial also initiated plea discussions with their clients on the same day; only two attorneys had met with their clients previously to discuss a potential plea bargain. These discussions vary greatly in length, indeed the estimated time spent discussing pleas ranged from 5 minutes to 150 minutes; on average discussions lasted an estimated 46 minutes (M = 45.9 minutes; SD = 35.2 minutes) and sometimes across multiple days. For those attorneys who only discussed the plea on the day of trial (n=11; 61.1%), they estimated their conversations lasted approximately 38 minutes (M = 37.7 minutes; SD = 24.1 minutes).

Perceptions of the Process: Attorneys Report Difficulty Navigating Time Constraints

A common theme that emerged across attorney accounts was their concern that they were not provided with enough time to explain information and evaluate decisional competence. At the end of the interviews, all attorneys were asked if there was anything additional they thought would be important to cover regarding plea bargains generally. Of those who answered this question (n=14), a third (n=5; 35.7%) spontaneously reported they needed more time with their clients because the lack of time made it difficult to truly ascertain whether their clients were indeed competent to make this decision.

> "It's hard to evaluate a child's competency on the fly…you know you have to be very careful about how you're explaining things to them because they'll just parrot it back or they'll just say 'yes, yes I understand'. Well, really, do you?"- Attorney #13

Attorneys also described this time constraint as having negative effects on their ability to properly inform their clients about the process and negotiate on behalf of their clients.

> "We don't have a lot of time, they're asked to make it quickly. They can't take time to really think about it in advance. There's not a lot of time for me to really think about it and go back with counteroffers if my kid has concerns or questions." – Attorney #5

Preparing Juvenile Clients to Make Plea Bargain Decisions

To examine how attorneys facilitate knowing and intelligent plea bargain decisions, attorneys were asked to describe the discussion they had with their most recent juvenile client regarding the plea offer. When attorneys prepared their most recent juvenile client to make the plea bargain decision, anywhere between 1 and 21 topics were covered. Three topics of discussion stood out.

Plea conversations focused on disposition, charges, and evidence. Within that specific conversation, the most common topics mentioned by the attorneys were the disposition or sentence the client would be facing (n=15; 83.3%) what charges the client was being accused of (n=10; 55.5%), and what evidence the state could use against the client in trial (n=8; 44.4%) For example,

> "…I said um you know they're gonna have police officers testifying Joe (defendant's name changed) and they have multiple police officers testifying and they actually have video of you when the police stopped you and put you you know handcuffed you…So I said so um you know the state's gonna make you an offer… I said, you know um is that something you'd be interested in doing, admitting to lesser charges to avoid the bigger ones and he said yeah I can do that. ...And you know we went through the charges and he understood and I said generally what happens is if it's a motor vehicle theft they'll usually offer unauthorized use and that means you borrowed someone's car without permission…um it's a misdemeanor and it's what they're most likely to offer. Would it be OK if I went to them and asked them for that? And you know he agreed to that and then we talked about um possible consequences." – Attorney #13

Ensuring understanding of rights waived. Seven (38.9%) attorneys mentioned that they reviewed the rights their clients would have to give up to plead guilty and five attorneys alerted their client to the fact that the judge did not have to accept the plea. However, nearly all (n=17; 94%) attorneys believed their clients understood that they were giving up their trial rights (e.g., right to trial, to confront witnesses, etc.) when asked about their client's understanding. Therefore, given the discrepancy between how many attorneys reported their clients understood the rights being waived and how few of them actually acknowledged this as part of the plea discussions with their clients, we expanded our analysis to include information attorneys reported about preparing their clients for the plea hearing once the client had decided to accept the plea (i.e., the hearing in court where the plea colloquy is read before the judge). Indeed, by examining this post-decision discussion too it became apparent that most (n=13; 72%) defense attorneys did report reviewing what rights would be waived if defendants accepted a plea bargain. Interestingly, two of the attorneys who had originally reported reviewing the waiver of trial rights spontaneously added in this portion of the interview that this occurred after their client had agreed to accept the plea. As a result, many of the 13 attorneys (n=8; 61.5%) who explained what rights the client must waive acknowledged that they waited until *after* the client had decided they wanted to accept a plea bargain to explain rights waivers.

> "Usually I don't go over all the ins and outs of giving up, you know, your rights to the pleas until, until my client has said he wants a plea deal and I'm sure that's what he wants" – Attorney #9

In this example, the attorney describes this process as a practice to ensure the client can successfully be qualified to accept the plea in court (i.e., the plea colloquy).

> "Yes. So once he decided to take the plea then I go through exactly what happens in the plea hearing. And so going through, cause all, you have to ask them a laundry list of questions to make sure they understand what... So the judge knows they understand all the rights that they're waiving um and the plea that they're entering into. So it's like do you understand you have the right to a trial? And do you understand you have the right to call your own witnesses?" – Attorney #7

Even after considering the preparation for the plea hearing, there were still some (n=5; 27.8%) defense attorneys who did not describe reviewing what rights would be waived with their clients before listing them on the record in the plea hearing. Of course, it is unclear if these five attorneys did not discuss this with their clients or if they simply did not think it important to mention. Nevertheless, it was clear that eight (44%) attorneys described this conversation as taking place *after* their clients had agreed to accept the plea while five (27.8%) reported having this conversation *before* the plea was agreed to.

Discussing collateral consequences. Also, five (27.8%) attorneys discussed reviewing what collateral consequences could result from pleading guilty.

> **"**Um well what it means to give up your right to a trial first. What the potential consequences are and that the

> court doesn't have to accept the plea. That it's just between us and the state. Uh what uh the consequences- the collateral consequences could be especially in a case like that. That was pretty much the crux of negotiation was really what charge because of registry... Whether confidentiality is preserved as far as court records are concerned, who else is gonna know about this, what to expect in treatment, what kind of treatment he'd be getting, what probation means, um... Gosh. All of those. I mean and the risk of competency issues, there weren't but my evaluation as to what he understood before we actually got into the plea." – Attorney #3

This example highlights the importance of considering known collateral consequences, such as the risk of the client being placed on the sex offender registry (i.e., certain charges disqualify the defendant from being registered as a sex offender). Unlike the very concrete consequence of placement on a sex offender registry, collateral consequences can also be more abstract and probabilistic. For example, convictions on some juvenile charges can increase the penalties that accrue if charged criminally as an adult.

> "What's going to happen for disposition, what's going to happen for collateral consequences in the future. So I think it's our job to protect young people as best we can while they are with us in the building, but also I think we have a greater duty to try to protect their rights as they get older. And so talking with young people about what's your game plan after this? Like after this is all done and school is done, like what are you thinking about? Because if they're thinking about um military or if they're thinking about college, if they're thinking about anything where a delinquency might impact, we talk about it. And we talk about it in general anyway, but if they have a specific issue, 'I want to go into the air force' I know that they can't have any delinquency record whatsoever. So in that instance I might try that case and hope to get lucky on um an officer doing something stupid on the stand. Ya know?" – Attorney #11

Why Juvenile Clients Accepted Plea Bargains

The most common themes from attorney reports of the reasons their clients accepted a plea revolved around avoiding some potential result. During the interview, attorneys were asked to reflect on their most recent juvenile case and recall if their client ever expressed why they wanted to take the plea deal. While all attorneys reported at least one reason, attorneys reported an average of two reasons (*M=1.9; SD* = 0.99) for why they believed their clients decided to take the plea. We report the most commonly identified reasons here.

Avoiding incarceration and going home. Most commonly, attorneys recalled their client's decision to accept the plea bargain being influenced by the potential disposition (n=10; 55.6%); specifically, how the plea bargain would allow their client to go home and not be incarcerated. For example, accepting a plea bargain with a disposition of probation would enable a youth to serve their sentence in the community while living at home rather than a secure facility.

> "He took the plea because it was going to allow him to go home. If he had had a trial, the likelihood that he was found not guilty when they had the police officer who saw him driving the stolen car and everything…and so it would have been open season. But with the deal, he had the magistrate promising not to lock him up." – Attorney #9

or

> "The most important thing is they get home; they get off the box [electronic monitoring] and they have to be put on probation to do it. Then that's what they're going to do." – Attorney #7

Avoiding witness confrontation at trial. The second most common reason was the client's desire to avoid trial (n=7; 38.9%). Specifically, youth did not want to see witnesses testify against them.

> "He did express like; oh, no I don't want the witness to come here and say all what happened and point me out in the courtroom. Um I'd rather just take the plea." – Attorney #7

Avoiding prosecution as an adult. Four attorneys (22.2%) mentioned their clients wanted to avoid being tried in the adult system. In these cases, transfer from the adult criminal court to juvenile court, or vice versa, was negotiated as part of the plea agreement.

> "Yeah, to get back to juvenile court! Her reason for taking it was very largely because we weren't going to win at trial and we had a lot to gain, she had a lot to gain from going to juvenile court...As a broader issue, I think it renders the plea kind of involuntary, frankly…On the one hand, any way you can get them back to juvenile court is a good thing, on the other hand it's hard not to look at this situation and say, 'That is a coerced plea'." – Attorney #10

Avoiding the time a trial would take. Four attorneys (22.2%) noted that their juvenile clients wanted to leave court or just get the process over with as quickly as possible.

> "I was like 'I think we're gonna lose but let's make them prove it', um and by that time he was like 'this is gonna take forever, I have places to be'. That was -

that's the number one reason my kids take a plea, it's because they want to leave." – Attorney #14

Responses to Clients' Poor Decision Making

Attorneys responses to situations when clients rejected their advice about a plea-related decision fell into one of three inductively identified categories. For this particular question, attorneys did not have to discuss their most specific case but rather were asked to think about how they handle these situations generally. None of the attorneys described overriding a client's wishes, but they varied in the manner and degree to which they questioned their clients' choices and/or made their own views known. Typical attorney strategies seemed to fall into one of three themes: (1) *Developmentally Informed Structured Reflection*; (2) *Acceptance of Client's Decision*; (3) *Explicit Disagreement and Acceptance of Client's Decision*. Overall, the strategies vary by how client-centered and influential attorneys acknowledged being.

"Developmentally informed structured reflection". One third (n=6) of the attorneys took what could be described as a developmentally informed approach to counseling their clients. Specifically, attorneys identified several known developmental factors as justifications for their decision to spend extra time with the client, expand their discussion of the future consequences of their decisions, or hold back on pushing their client in any direction. These developmental factors included references to the myopic nature of adolescent decisions or the increased likelihood that adolescents (compared to adults) would give in to the pressures of authority figures or would be "easily subverted".

> "So it's very very hard and it takes a lot of conversation…and I always say, "I'm not trying to convince you either way.. I'm your attorney, I'm just trying to make sure you understand all the possibilities and all the options."… So it's just like really breaking it down and explaining to them, and I always if I think that they're making, if I have time and I think that they're making a bad decision, I'm always like, 'Ok let's take a break. You think about it. I want you to think about it. Write down pros and cons of each if we need to and we can talk about it a little bit more. But, I don't want you to just make this decision immediately because you-that's that's what you think is going to get you to go home or it's just gonna get the case over with. Let's think about this. This is an important decision that's going to affect your life.'" – Attorney #7

In this next example, the attorney acknowledges that they often struggle to balance helping their clients make what they believe is the right legal decision and pushing them too hard to make a decision the juvenile does not initially want to make. Here the attorney indicates they believe juveniles specifically can be easily coerced into making a decision that is not their own.

> "It is [hard] like cause you, and then you push him but you don't want to push him too hard right? And so I think I think a lot of us question ourselves sometimes. "Are we pushing too hard? Are we not pushing enough? And I think that's very inherent in juvenile work specifically. Um because we can just sometimes just subvert our clients will so easily. Yeah, you have to be very careful. Kids aren't very forward thinking. So it's hard because you know they're making their decision based on the very immediate factors that maybe they're not thinking three, six, nine months ahead. Yeah and how this might affect them later on. So yeah. And that's always hard." – Attorney #5

"Acceptance of client's decision". A second group made up of five (27.8%) attorneys described their reluctance to try and change their client's mind. Some of these attorneys also made sure to note that they did not believe in a model where the attorney decides what is in the best interest of the juvenile defendant. In other words, if after their explanation of the client's options and potential outcomes their client still chose something that did not align with what the attorney thought was the best legal decision, attorneys would not attempt to convince their client otherwise.

> "If a young person is making a truly bad decision, that I think is a bad decision, but um is something that is within the realm of possibilities, they are entitled to make that bad decision. They are the ones that are running, this is direct representation, this is not best interest. And so, even against my, ya know, better judgement. And usually that example is like, if I think I can win something at trial when the kid's like 'ugh I don't want to do that, I don't want to be here, I'm not staying, I'm not doing it'. And I think I could probably win, and it's like really? You'd rather go on probation? And they say 'well that's going to happen anyway'. It might, it might. But, it, at the end of the day it's direct advocacy. So what they want, unless they tell me what they want includes harming themselves or harming someone else, it's pretty much it." – Attorney #11

In the following example, the attorney explains that their client is the expert of their own life and as such may in fact be making the right decision.

> "They're the ones that have to live with it. And it's entirely possible that they know things about the circumstance about their lives, that that make the decision that they're making more rational than it might seem to me." – Attorney #10

"Explicit disagreement and acceptance of client's decision". The last strategy described by seven (38.9%) attorneys is similar to the others insofar as the attorneys

agree this decision is up to their clients. However, it differs because this group of attorneys all identified that they wanted their clients to know they believed the client was wrong; some making this belief known on the record, in open court.

> "Generally speaking I let them know I think they're making a bad decision. A lot of them make it for short-term gain, like I just want to go home today… I just want to do this today... I'm very clear with the child and the parent, I think you're making a bad decision as your attorney, I disagree with it. I understand why you're making it. I don't feel that that's a good reason to make it, but ultimately, it is your decision and if that's what you're choosing to do, my job as your attorney is to do what my client asks me to do. That's how I handle it. And if it's really egregious, I'll even make a comment on the record." –Attorney #17

These attorneys were also different from the other groups because they described trying to convince their clients to make different decisions, for example,

> "I advise them strongly, um to make a decision that's not what they're trying to do." – Attorney #2

or,

> "Umm if I think a juvenile client is making a bad decision I usually tell them. And then you know I'll do my best to try and change their mind, but ultimately whether or not they take the plea is their decision." – Attorney #18

Interestingly, the attorneys whose strategies were aligned with the "Developmentally Informed Structured Reflection*"* theme were the ones with the least amount of legal experience (no more than 6 years). Attorneys who identified with one of the two other consultation strategies were more likely to have more legal experience (an average of 15 years).

Discussion

For a defendant to make a knowing and intelligent decision, they must not only (a) have the capacity to do so, but they must also (b) have enough information needed to make the decision, and (c) actually understand the information provided to them (Redlich, 2016). According to Bibas (2011), one of the largest concerns that exists when determining the validity of a guilty plea is that defendants are making these decisions without sufficient information. This study expands the literature on plea bargaining by focusing on the person most likely to provide information and best situated to determine whether adolescents understand it – their attorney. For these attorneys, the plea bargain process is ultimately a quick one that typically involves consultation with the client on the day of trial. The amount of information provided to clients varied across attorneys but ultimately focused on the facts of the case. Discussions regarding what rights were being waived were often deferred until after the child had agreed to the plea offer; collateral consequences were rarely discussed. Attorneys recalled their juvenile clients often made plea bargain decisions for short-term gain such as to go home, to avoid listening to witness testimony in court, or to get the process over with. Additionally, and unique to juvenile defendants, was the added threat of being tried as an adult, which was cited as another factor that motivated juvenile plea decisions. Finally, three distinct strategies were identified to handle disagreements between attorneys and their juvenile clients. These strategies varied in how forceful the attorney was in motivating their preferred legal decision while all ultimately agreeing the decision was the youth's to make.

The Plea Bargain Process Happens Quickly

Conversations with defense attorneys regarding how the plea bargain process unfolds revealed that most of this process occurs on the day of trial. Most commonly, plea offers are made by the state's attorney on the morning of trial at docket call. Docket call occurs when the judge or magistrate views their calendar, assesses who is ready for trial, and organizes hearings for the day. Ultimately, if the plea is accepted, a plea hearing is held on that same day. Therefore, any conversations regarding whether the child should accept a particular plea are constrained to take place during the time between docket call and trial. We do not have specific details about how much time passes between docket call and the plea hearing, but interviews suggest that this is no more than a few hours. During that time, the defense attorney will convey the plea to their clients and may negotiate the plea with the state. Conversations with the client and their family about the plea offer and the plea hearing were estimated to take less than 40 minutes on average. Similar time estimates have been given by adolescents tried in adult court (Zottoli, Daftary-Kapur, Winters, & Hogan, 2016). Specifically, in interviews with juveniles tried as adults, Zottoli and colleagues (2016) found that approximately half of the juveniles interviewed felt they had less than an hour to make a plea bargain decision. Therefore, the time constraints that exist in the criminal justice system may not be unique but might also extend to juvenile courts as well.

The way in which the plea bargain process unfolded left attorneys with little time to evaluate their cases and their clients' abilities, which Wilson (2016) suggests could lead attorneys to be overburdened and pressured by cognitive load. Indeed, defense attorneys described the process as "rushed" and led to their inability to truly evaluate their client's competence, negotiate on behalf of their client, and properly inform their client about the process.

Attorneys also found this time constraint was even burdensome for them and did not allow them to fully consider the consequences of the child's decision. If attorneys suggest they lack time "*to really think about it*", how can the adolescent defendant have sufficient time to consider their options? Adolescents are already known to make riskier, more impulsive decisions (Steinberg, Albert, Cauffman, Banich, Graham, & Woolard, 2008) that are more heavily influenced by immediate and positive consequences of their actions (Steinberg et al., 2009). It is possible this time limitation exacerbates an already emotional situation, creating the type of "hot context" in which adolescent decisional capacities are more easily undermined than adults (Blakemore & Robbins, 2012). Adolescents are more likely to prioritize the short-term, positive consequences of their admission (i.e., "get it over with") and place a lesser value on the long-term consequences (e.g., having a delinquency on your record), but some attorneys believe they could help mitigate those tendencies if they had more time. One study provides promising results suggesting this might be true (Viljoen & Roesch, 2005). Their results showed that when juvenile defendants spent time with their attorneys they performed better on measures of adjudicative competence; this was true especially for those with poor cognitive abilities. Attorneys in this study expressed that additional time would at least allow attorneys to identify more of the relevant consequences and more effectively assess their client's competence and understanding. Would providing attorneys with enough time to investigate the plea, negotiate the plea, advise their clients about the plea, and avoid having them evaluating their client's competency "on the fly" reduce cognitive demands for both attorneys and youth, producing better plea decisions? Attorneys believe it would; future research should examine if this is indeed the case.

Important Omissions During Plea Bargain Discussions

Our findings indicate that defenders may not have the time to provide all the relevant information and assess whether their juvenile clients understand it sufficiently. When attorneys described their conversations with their juvenile clients, most of them focused on disposition, charges, and evidence. These topics are essential to the plea bargain and if not discussed would likely leave their client uninformed. However, as Bibas (2011) notes, there are additional complex factors that should also be included when considering how to proceed when faced with a plea offer; factors that the attorney should inquire about to ascertain the best defense strategy (e.g., potential employment consequences).

Attorneys described conversations that focused on the facts of the case and terms of the plea, rather than the rights that are waived and collateral consequences risked by pleading guilty.

Collateral consequences for juveniles can include enhanced penalties as an adult defendant, deportation, sex offender registration, inability to own a hand gun, inability to join the military, barriers to employment, difficulty enrolling in university or securing federal funds, and even removal from school or public housing (see Henning, 2004). Given the developmental limitations in juvenile capacities and the sheer amount of information to be conveyed in a short time, it is perhaps understandable that defenders prioritize direct consequences over collateral ones. Except for deportation (*Padilla v. Kentucky*, 2010), defenders are not legally required to inform clients about collateral consequences. Moreover, misinforming clients about potential collateral consequences could result in a violation of due process and allow the client to argue ineffective assistance of counsel (Roberts, 2009), creating an unintended incentive for attorneys to avoid discussing them at all. Given that compared to adults, juveniles tend to value short term consequences over long term ones (Steinberg et al., 2009), by completely ignoring collateral consequences these discussions fail to provide the scaffolding that increases the likelihood that youth might at least learn about them, if not also value them.

The content and timing of attorneys' conversations about the rights that are waived by pleading also raises some concerns. Some attorneys never mentioned discussing what rights were being waived with their client before the plea hearing itself; others reported discussing them only after their client verbally agreed to take the plea. Theories about sunk costs suggest waiting to discuss some consequences until after committing to a decision may undermine their full consideration. Bibas (2011) explains that defendants need this information when they are actually weighing alternatives before making a decision. Otherwise, waiving one's rights may be perceived as a *sunk cost* and not worth the time and effort of restarting the entire plea decision making process. With research demonstrating that adolescents are both more likely to rely on heuristic processing when making decisions, particularly in emotional and stressful "hot" contexts (Albert & Steinberg, 2011), delaying discussion of rights waived may have a significant impact on the quality of adolescents' decisions.

Plea Bargains Were Accepted for Short-term Gain and to Avoid Adult Court

Attorneys perception of their clients' rationales for accepting their plea bargains highlight the potential influence of developmental factors in the plea bargain process. The majority of attorneys believed their clients chose to accept a plea bargain in order to receive a reduced sentence or disposition. This is in line with what others have

found to be true for juveniles (Malloy, Schulman, & Cauffman, 2014) and is likely the case for adult defendants as well. However, attorneys said juveniles were motivated not by the longer term consequence of a shorter sentence, but by the short term consequence of being able to go home right away. Many of the plea agreements included guaranteed probation so that the child could return home that day rather than risk incarceration. Yet, while the immediate consequence of accepting a probation disposition is the freedom to go home, juveniles struggle to succeed on probation, often accruing technical violations or new charges (e.g., Vidal & Woolard, 2016).

Attorneys reported that juveniles' desire to avoid a trial also motivated decisions to plead guilty. Some defendants were simply interested in avoiding a trial to save a few hours and get the process over with. However, other defendants wanted to avoid the immediate discomfort of listening to witnesses describe their conduct in front of their families and the judge. Both justifications emphasize avoiding negative stressors of time and confrontation inherent in the trial itself rather than the risks of more serious penalties associated with conviction. These motivations would be consistent with research suggesting that youth with a history of conduct problems use more avoidant coping strategies than youth without conduct problems when dealing with stressful situations (Ebata & Moos, 1991). In other words, for adolescents motivated to avoid confrontation, a plea may be a welcome alternative to the stress of a trial.

Findings from this study do bring to light the complexity of juvenile plea bargaining in a jurisdiction where youth may be charged as adults in the criminal court. Certain juvenile defendants are faced with the threat of adult court, and the role that threat plays in the plea bargain process. Some attorneys described a situation where either the prosecutor or the judge offered that the juvenile be processed in juvenile court, rather than adult court, in exchange for a guilty plea. These plea conditions could be akin to "charge bargaining", where prosecutors "stack" multiple charges on one offense, only to be able to bargain a few away (Bibas, 2011). In these situations, the threat of prosecution as adult becomes one bargaining chip in a plea negotiation. Attorneys believed that the offer to remain in juvenile court was the state's way of assuring a conviction; an offer some attorneys believed would be very difficult to refuse.

Attorney Strategies

Research has shown that adolescents are more likely than adults to give in to the recommendations of authority figures (Grisso et al., 2003). Therefore, it is possible that attorney consultation strategies that may not be coercive for adults could result in a situation where a juvenile is more likely to acquiesce. This is especially possible given that research has also shown younger adolescents are less likely to bring up disagreements with their attorneys than older adolescents (Viljoen, Klaver, & Roesch, 2005). Thus, this study examines attorneys' reported consultation practices to determine if attorneys use strategies that facilitate a good decision making process.

Attorneys' strategies for handling disagreements with their clients varied in how forcefully they chose to advise their clients and aligned well with the various expressed interest approaches described by Henning (2005) (i.e., authoritarian, client-centered, and collaborative). The *"Developmentally Informed Structured Reflection"* group of attorneys embodied the closest examples of Henning's (2005) collaborative model and highlighted developmentally appropriate strategies because they (a) address issues of susceptibility to authority figures; (b) attempt to eliminate time pressures; (c) and attempt to increase clients' understanding and awareness of the consequences of their decisions. Attorneys in this group provided additional time for questions and promoted strategies which allowed their clients to think through the consequences of their decision. In their narratives, these attorneys purposely did not tell the clients they disagreed but instead extended their time together, provided additional context, and slowed down the process for them.

In contrast, the second group of attorneys ("*Explicit Disagreement and Acceptance of Client's Decision*") clearly expressed their disagreement and actively tried to alter their client's decision. These attorneys' approaches were most similar to Henning's *authoritarian* model because, while they eventually follow the client's expressed interest, they do so only after actively trying to convince their client to make the decision they believe is best. The third group that took an "*Acceptance of Client's Decision*" approach focused on providing factual information and avoiding any direct recommendations or trying to convince their clients to alter their decision. This group best embodies Henning's (2005) *client-centered* approach, assuming that the client knows best given the juvenile's intimate understanding of their own situation. This strategy appears to align with National Juvenile Defender Center's standards for juvenile defense attorneys, "juvenile defense counsel enables the client, with frank information and advice, to direct the course of the proceedings in…whether to accept a plea offer" (NJDC, 2009, p.9). However, these attorneys do not describe taking any precautions to ensure that their client's decision is indeed based on full understanding of the consequences they have explained. Further, as Henning (2005) warns, maintaining a completely neutral position may result in withholding valuable legal insight that could aid defendants in making an informed and intelligent decision.

The *"Developmentally Informed Structured Reflection"* approach may simultaneously be the most developmentally appropriate and difficult strategy to employ

given the time pressures that exist even in juvenile court. This strategy exemplifies the National Juvenile Defender Center's recommendation that juvenile defense counsel should ensure the juvenile client has the "sufficient time to understand and weigh the offer" (p. 22) and aligns with Henning's (2005) description of a developmentally appropriate style to juvenile representation (i.e., the collaborative model). Henning (2005) also explains that the collaborative model would require additional time and resources compared to the other two. Indeed, one attorney described using the *"Developmentally Informed Structured Reflection"* approach if they had enough time, which may partially explain why only a third of attorneys engaged in this type of consultation. Given that attorneys were almost evenly distributed across all three styles of representation, future research is needed into the utility of these strategies on juvenile's understanding, their acquiescence, and their resulting decisions.

Limitations

While this is one of the first studies to gain attorney perspectives on the juvenile plea bargain process, several limitations exist. First, while attorneys gave indications that they were being honest and straightforward about their experiences and practices consulting with juvenile clients it is always possible that study participants were less than honest or unclear in their descriptions. The researcher took measures to ensure clarity, for example, if responses seemed vague or unclear, the researcher attempted to achieve an accurate and straightforward explanation of the attorney's experience through follow-up questions and further conversation. Second, while some interviews lasted over an hour, it is possible that richer data could have been derived from conducting multiple interviews with each participant. The ability to conduct multiple, hour-long interviews was constrained by attorney's schedules. Third, while our goal was to gain an in-depth understanding of the juvenile plea bargain process in a particular office and jurisdiction, it is important to note that each state has its own juvenile justice system. As such, it is possible that plea bargaining may work differently in other areas across the country or even across jurisdictions within the same state. Finally, qualitative methods are employed to gain a deep, micro-level analysis in order to gain knowledge around a particular phenomenon (e.g., in this study, juvenile plea bargains). While this results in small sample sizes by quantitative standards, it is necessary to stress that small sample sizes are not a limitation of qualitative research methodologies in the way they are for quantitative methods. Quantitative methods require large, representative samples to be generalizable. However, qualitative methods are used to reach *transferrable* findings. Transferability is based on the perspective that it is the constructs derived from micro-level analysis that are transferrable to other unique samples. Qualitative methods allow patterns or themes to be transferrable to various groups while the specific content found within those themes can vary. In other words, while the findings from this study should be transferrable to other examinations of juvenile plea bargains, the specific experiences of juvenile defenders in urban and rural districts (for example) will likely vary. According to Morse (1999) with qualitative research what is generalized is the knowledge gained, which is not limited to demographic variables.

Implications for Policy and Practice

Greater time and resources for attorneys may facilitate a context where adolescents are better able to make plea bargain decisions. Undeniably, structural barriers throughout the court process produce time constraints which hinder the abilities of defense counsel to adequately inform and assess their client's understanding (Fountain & Woolard, 2017). Providing additional time may help attorneys by reducing the amount of cognitive load they experience as a result of juggling investigations, negotiations with the state, and consultations with their client, under significant time pressures (Wilson, 2016). Through these interviews it became clear that attorneys felt "rushed" and often ignored or delayed important discussions of the long-term or collateral consequences as well as what rights were being waived. Perhaps with increased time attorneys may feel more comfortable having thorough discussions of complex issues such as collateral consequences with their young clients. However, while additional time may be helpful to attorneys, and has been shown to be helpful for juveniles (Viljoen, Klaver, & Roesch, 2005), that time may be most effective if paired with developmentally appropriate consultation strategies. Adolescents' different decisional capacities compared to adults leaves them vulnerable to external pressures and to prioritizing the short-term consequences of their decisions. Ensuring adolescent defendants are competent to waive their rights and are able to weigh the short and long-term consequences of that decision requires time and an approach that accounts for these developmental differences. Within this study, attorneys identified three disparate strategies taken with juvenile clients. While some of the attorneys described strategies that attempted to account for adolescents' myopia and susceptibility to authority figures in stressful contexts, most attorneys did not address these factors when describing their consultation strategies. While future research is needed to understand how these strategies impact adolescents' decision making and to best inform practical implications, it is not unreasonable to assume that not all time is equal, and that benefits of providing additional time will likely increase as

quality also increases. Certainly, juvenile defender organizations such as the National Juvenile Defender Center already provide trainings to increase the use of developmentally appropriate strategies (e.g., NJDC, 2009). Research can further inform these strategies and trainings by examining the effectiveness of the strategies attorneys report using with their clients.

References

American Bar Association (2004). *Standards for criminal justice 3rd edition: Collateral sanctions and discretionary disqualifications on convicted persons.* Washington, D.C.: American Bar Association. Retrieved from: https://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_standards_collateralsanction-withcommentary.authcheckdam.pdf

Albert, D. & Steinberg, L. (2011). Judgment and decision making in adolescence. *Journal of Research on Adolescence*, *21*, 211-224. doi:10.1111/j.1532-7795.2010.00724.x

Bibas, S. (2011). The myth of the fully informed rational actor. *St. Louis University Public Law Review*, *31*, 79-86. Retrieved from: http://scholarship.law.upenn.edu/faculty_scholarship/914

Blakemore, S.J., & Robbins, T.W. (2012). Decision-making in the adolescent brain. *Nature neuroscience*, *15*, 1184-1191. doi:10.1038/nn.3177

Boyatzis, R.E. (1998). *Transforming qualitative information: Thematic analysis and code development.* Thousand Oaks, CA: Sage.

Braun, V. & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, *3*, 77-101. doi:10.1191/1478088706qp063oa

Buss, E. (2000). The role of lawyers in promoting juveniles' competence as defendants. In T. Grisso, & R.G. Schwartz (Eds.), *Youth on trial: A developmental perspective on juvenile justice* (pp. 244-265). Chicago, IL.: University of Chicago Press.

Cauffman, E., Shulman, E.P., Steinberg, L., Claus, E., Banich, M.T., Graham, S., & Woolard, J. (2010). Age differences in affective decision making as indexed by performance on the Iowa gambling task. *Developmental Psychology*, *46*, 193-207. doi: 10.1037/a0016128

Dedoose (Version 7.0.23). [Web application for managing, analyzing, and presenting qualitative and mixed method research data]. Los Angeles, CA: SocioCultural Research Consultants, LLC.

Ebata, A.T. & Moos, R.H. (1991). Coping and adjustment in distressed and healthy adolescents. *Journal of Applied Developmental Psychology*, *12*, 33-54. doi: 10.1016/0193-3973(91)90029-4

Figner, B., Mackinlay, R.J., Wilkening, F., & Weber, E.U. (2009). Affective and deliberate processes in risky choice: Age differences in risk taking in the Columbia card task. *Journal of Experimental Psychology: Learning, Memory, and Cognition, 35*, 709-730. doi: 10.1037/a0014983

Fountain, E. & Woolard, J. (2017). The capacity for effective relationships among attorneys, juvenile clients, and parents. *Ohio State Journal of Criminal Law*, *14*, 493-519.

Gergen, K.J. (2014). Pursuing excellence in qualitative inquiry. *Qualitative Psychology, 1,* 49-60. doi: 10.1037/qup0000002

Godinez v. Moran, 509 U.S. 389 (1993)

Grisso, T. (1980). Juveniles' capacities to waive Miranda rights: An empirical analysis. *California Law Review*, *68*, 1134-1166.

Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Reppucci, N.D., & Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, *27*, 333-363. doi: 10.1023/A:1024065015717

Henning, K. (2004). Eroding confidentiality in delinquency proceedings: Should schools and public housing authorities be notified. *New York University Law Review*, *79*, 520-611.

Henning, K. (2005). Loyalty, paternalism, and rights: Client counseling theory and the role of child's counsel in delinquency cases. *Notre Dame Law Review*, *81*, 245-324.

In re Gault, 387 US 1 (1967).

Jones, J.B. (2004). *Access to counsel.* Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Retrieved from: https://isc.idaho.gov/juvenile/pdfs/OJJDP_Juvenile_Justice_Bulletin_Access_to_Counsel.pdf

Kaban, B., & Quinlan, J. C. (2004). Rethinking a "knowing, intelligent and voluntary waiver" in Massachusetts' juvenile courts. *Journal of the Center for Families, Children, and the Courts*, *5*, 35–55.

Malloy, L.C., Shulman, E.P., & Cauffman, E. (2014). Interrogations, confessions, and guilty pleas among serious adolescent offenders. *Law and Human Behavior, 38*, 181-193. doi: 10.1037/lhb0000065

Miller, J., & Glassner, B. (2016). The 'inside' and the 'outside': Finding realities in interviews. In D. Silverman (ed.), *Qualitative research (4th ed.)* (p. 51-66). Thousand Oaks, CA: Sage.

Morse, J. M. (1999). Qualitative generalizability. *Qualitative Health Research*, *9*, 5-6.

National Juvenile Defender Center (2009). Toward developmentally appropriate practice: A juvenile court training curriculum. Retrieved from: http://njdc.info/wp-content/uploads/2013/09/MfC_Training_Curriculum_Overview.pdf

National Juvenile Defender Center (2013). National juvenile defender standards. Retrieved from: http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf

National Juvenile Defender Center (2017). Access denied: A national snapshot of states' failure to protect children's right to counsel. Retrieved from: http://njdc.info/wp-content/uploads/2017/05/Snapshot-Final_single-4.pdf

Padilla v. Kentucky, 559 U.S. 356 (2010).

Peterson-Badali, M. & Abramovitch, R. (1993). Grade related changes in young people's reasoning about plea decisions. *Law and Human Behavior*, *17*, 537-552. doi: 10.1007/BF01045072

Pierce, C.S. & Brodsky, S.L. (2002). Trust and understanding in the attorney–juvenile relationship. *Behavioral Sciences and the Law*, *20*, 89-107. doi: 10.1002/bsl.478

Redlich, A.D. (2010). The susceptibility of juveniles to false confessions and false guilty pleas. *Rutgers Law Review*, *62*, 943-957.

Redlich, A.D. (2016). The validity of pleading guilty. In B.H. Bornsteing & M.K. Miller (Eds.), *Advances in Psychology and Law* (pp. 1-26). Springer International Publishing.

Roberts, J. (2009). Ignorance is effectively bliss: Collateral consequences of criminal convictions, silence and misinformation in the guilty plea process. *Iowa Law Review*, *95*, 119-194. Available at SSRN: https://ssrn.com/abstract=1407719

Scott, E.S. & Grisso, T. (2005). Developmental incompetence, due process, and juvenile justice policy. *North Carolina Law Review*, *83*, 793-845. Retrieved from: http://scholarship.law.unc.edu/nclr/vol83/iss4/2

Scott, E. S., Reppucci, N. D., & Woolard, J. L. (1995). Evaluating adolescent decision making in legal contexts. *Law and Human Behavior*, *19*, 221-244. doi: 10.1007/BF01501658

Shepherd, R.E. (2001). Pleading guilty in delinquency cases. *Criminal Justice*, *16*, 46-55.

Silver, C. & Lewins, A. (2014). Using software in qualitative research: A step-by-step guide. Thousand Oaks, CA: Sage.

Sprott, J.B. & Greene, C. (2010). Trust and confidence in the courts: Does the quality of treatment young offenders receive affect their views of the courts? *Crime & Delinquency, 56*, 269-289. doi: 10.1177/0011128707308176

Steinberg, L. (2009). Adolescent development and juvenile justice. *Annual Review of Clinical Psychology*, *5*, 459-485. doi: 10.1146/annurev.clinpsy.032408.153603

Steinberg, L., Albert, D., Cauffman, E., Banich, M., Graham, S., & Woolard, J. (2008). Age differences in sensation seeking and impulsivity as indexed by behavior and self-report: evidence for a dual systems model. *Developmental Psychology*, *44*, 1764-1778. doi: 10.1037/a0012955

Steinberg, L., Graham, S., O'Brien, L., Woolard, J., Cauffman, E., & Banich, M. (2009). Age differences in future orientation and delay discounting. *Child Development*, *80*, 28-44. doi: 10.1111/j.1467-8624.2008.01244.x

Tobey, A, Grisso, T, & Schwartz, R. (2000) Youths' trial participation as seen by youths and their attorneys: An exploration of competence based issues. In T. Grisso & R.G. Schwartz (Eds.), *Youth on trial: A developmental perspective on juvenile justice* (pp. 225-242). Chicago, IL.: University of Chicago Press.

Tyler, T.R. (2015) Why trust matters with juveniles. *American Journal of Orthopsychiatry*, *85*, S93-S99. doi: 10.1037/ort0000104

Vidal, S. & Woolard, J. (2016). Parents' perceptions of juvenile probation: Relationship and interaction with juvenile probation officers, parent strategies, and youth's compliance on probation. *Children and Youth Services Review*, *66*, 1-8. doi: 10.1016/j.childyouth.2016.04.019

Viljoen, J.L., Klaver, J., & Roesch, R. (2005). Legal decisions of preadolescent and adolescent defendants: Predictors of confessions, pleas, communication with attorneys, and appeals. *Law and Human Behavior*, *29*, 253-277. doi: 10.1007/s10979-005-3613-2

Viljoen, J.L., McLachlan, K., Wingrove, T., & Penner, E. (2010). Defense attorneys' concerns about the competence of adolescent defendants. *Behavioral Sciences and the Law, 28*, 630-646. doi: 10.1002/bsl.954

Viljoen, J.L. & Roesch, R. (2005). Competence to waive interrogation rights and adjudicative competence in adolescent defendants: Cognitive development, attorney contact, and psychological symptoms. *Law and Human Behavior*, *29*, 723-742. doi: 10.1007/s10979-005-7978-y

Viljoen, J.L. & Wingrove, T. (2007). Adjudicative competence in adolescent defendants: Judges' and defense attorneys' views of legal standards for adolescents in juvenile and criminal court. *Psychology, Public Policy, and the Law, 13*, 204-229. doi:10.1037/1076-8971.13.3.204

Willig, C. (2013). *Introducing qualitative research in psychology*. New York, NY: McGraw-Hill Education.

Wilson, M.J.W. (2016). Defense attorney bias and the rush to the plea. *Kansas Law Review*, *65*, 271-325.

Woolard, J. & Scott, E. (2009). The legal regulation of adolescence. In R.M. Lerner & L. Steinberg (Eds.), *Handbook of adolescent psychology* (3rd ed., Vol. 2, pp. 345–371). New York, NY: Wiley. doi.10.1002/9780470479193.adlpsy002011

Zottoli, T.M., Daftary-Kapur, T., Winters, G.M., & Hogan, C. (2016). Plea discounts, time pressures, and false-guilty pleas in youth and adults who pleaded guilty to felonies in New York City. *Psychology, Public Policy, & the Law, 22*, 250-259. doi: 10.1037/law0000095