COURTROOM COMMUNITIES: CRIMINAL CASE PROCESSING AND SENTENCING REFORM

BY **NANCY MERRITT**

The important and influential role of the courtroom community must be considered when developing and implementing future criminal justice reforms.

Movies and television have long portrayed criminal trials and sentencing as adversarial courtroom battles fought between the prosecution and defense in a drama-fueled quest for justice. In reality, the vast majority of criminal cases involve negotiated pleas with the final sentence determined through compromise rather than battle. These negotiations generally take place outside the courtroom and involve individuals who are skilled at working cooperatively using a combination of written and unwritten rules to move cases quickly and efficiently through the system. Working in tandem with law and formal policy, the unofficial rules are developed collaboratively and evolve over time, changing in response to legal reforms and external influences.

The entity within the court system responsible for implementing formal rules of operation — and developing informal rules — is often referred to as the "courtroom community." Researchers James Eisenstein and Herbert Jacob formally articulated the concept of a courtroom community in their 1977 publication *Felony Justice: An Organizational Analysis of Criminal Courts*.[1] They later expanded the framework through a series of courtroom studies completed in collaboration with Roy Flemming and Peter Nardulli, wherein they developed and articulated a multifaceted theory of courtroom interaction to better understand the realities of felony case processing and differences across jurisdictions.[2]

The courtroom workgroup, which includes all individuals who routinely play a part in the workings of the court and case processing, is the core of the courtroom community.

Based on a theory of organizational dynamics, the courtroom community framework has been used to provide a better understanding of felony court decision-making, processing, and outcomes.[3] In recent years, the concept has been used to analyze the implementation of sentencing guidelines, mandatory minimums, and "get tough" sentencing policies in an effort to better understand how court adaptation affects the final outcome of legal and policy changes in the court system.[4] The framework provides valuable insight into the factors underlying differences in reform implementation and outcomes across jurisdictions subject to the same sentencing policies and laws.

This article explores the courtroom community framework — its members, its goals, and its role in court operations and sentencing outcomes. Drawing from research on courtroom culture, the article highlights the critical need to consider the courtroom community when developing and implementing future criminal justice reforms. (See sidebar, "NIJ-Funded Research on the Courtroom Community.")

The Courtroom Community, Plea Negotiations, and Going Rates

Under the Sixth Amendment to the United States Constitution, individuals facing felony charges are guaranteed the right to representation in court — regardless of their ability to pay. In order to uphold this protection, all states and the federal government offer a system of publicly funded defense, created to serve indigent individuals charged with a crime. However, in a system where the majority of those charged with a crime require this service, jurisdictions may not have the resources necessary to conduct extensive investigations or devote substantial attorney time to trial preparation. As a result, an estimated 90% to 95% of both federal and state court cases are resolved through plea bargaining.[5] Although it has been argued that the reliance on plea negotiations undermines an individual's Sixth Amendment rights,[6] the practice reduces overall court costs and uncertainty, thus fulfilling one of the primary goals of the courtroom community.

The courtroom community has four shared internal goals: reduction of uncertainty with respect to case outcomes, expeditious handling of cases, maintenance of group cohesion, and doing justice.[7] Of these, the most critical goal is the reduction of uncertainty, as this minimizes the expenditure of court resources.[8] This goal is one of the primary reasons that felony case processing in action differs so dramatically from court operation as portrayed in the media. Instead of an adversarial process in which the primary goal is justice, felony sentencing is focused on reducing uncertainty and increasing expediency through the use of negotiated pleas. By offering individuals pre-negotiated sentences in exchange for a guilty plea, uncertainty — in terms of the case outcome and resources expended — is reduced for all parties. This system allows overburdened court systems to process most cases via plea negotiation rather than trial.

Under courtroom community theory, each courtroom establishes what are termed "going rates" for sentencing in routine case types to help streamline the plea process. Going rates are established by informal negotiation and agreement among courtroom actors and are applied differently depending on the strengths and weaknesses of each case. The majority of felony cases naturally fall into one of a number of standard categories in terms of the factors most frequently used to determine sentences: offense type, prior record, aggravating or mitigating circumstances, and strength of evidence. Over time, each court develops an informal sentencing "shorthand" — it assigns like sentences to like cases through the

NIJ-Funded Research on the Courtroom Community

NIJ recognizes the important role the courtroom community plays in criminal justice proceedings. Over the years, NIJ has supported various research to help the field better understand this role and how courtroom culture may affect the implementation of criminal justice reforms. This research includes the following studies:

- "Craft of Justice: Politics and Work in Criminal Court Communities," award number 79-NI-AX-0062
- "The Contextual Significance of Courtroom Workgroup Racial Diversity to Criminal Case Outcomes," award number 2006-IJ-CX-0009
- "Courtroom Workgroups and Sentencing: The Effects of Similarity, Proximity, and Stability," award number 97-CE-VX-0001
- "Legal Change and Sentencing Norms in Federal Court: An Examination of the Impact of the Booker, Gall, and Kimbrough Decisions," award number 2010-IJ-CX-0010

application of both formal and informal rules, thereby establishing a unique set of informal going rates based on case characteristics and what is deemed acceptable within that particular court system. This mechanism allows the courtroom actors to move the majority of cases through the system expeditiously, reserving limited trial-related resources for those cases that do not fit the norm or that present unusual legal challenges.

By their nature, criminal trial outcomes are uncertain. Although it is true that an individual could avoid all criminal penalty if found not guilty, should they be found guilty, the final penalty is unknown — and would likely exceed the sanction offered in a plea agreement. Similarly, courtroom actors face an uncertain outcome when cases go to trial rather than being determined via negotiation. Thus, there is a clear incentive for individuals charged with a crime to accept a guilty plea — which comes with a predetermined sentence agreed upon by both the prosecution and defense. At the same time, the courtroom actors benefit from the plea process because the prosecution is assured a win, and the defense is spared the risk of an unknown outcome and expenditure of limited resources.

The Courtroom Workgroup

The courtroom workgroup, which includes all individuals who routinely play a part in the workings of the court and case processing, is the core of the courtroom community. However, the courtroom triad — a subset of the workgroup consisting of the judge, prosecutor, and defense — is most instrumental in determining going rates for felony cases.

The actors within the triad have significantly different roles and levels of influence over court proceedings. Although the judge is commonly considered to be the most powerful actor in the court system, the prosecutor wields the greatest power over case outcomes in a system reliant on processing cases via plea agreement. The role of the judge, who is often described as an administrator rather than a decision-maker, is limited to overseeing court activities and ensuring compliance with applicable laws and formal policy.

Importantly, the prosecutor determines the initial type and number of charges for each case. This is true for both trials and plea agreements. In so doing, the prosecutor establishes the upper limits of penalty

possibilities — the starting point of negotiation. To ensure the best possible negotiating position for their office, the prosecutor generally brings the most serious supportable charges against the individual, even when lesser charges are an option. This makes a negotiated plea more attractive to the defense, which knows that the prosecutor can use their discretion to lower the charges and associated penalty if the individual accepts a plea rather than a trial.

Although individuals who are unfamiliar with the system may hesitate to accept a predetermined penalty at the court's going rate, defense attorneys — who regularly interact with the other members of the courtroom workgroup — understand that it is generally in the individual's best interest to do so in order to avoid the "trial penalty" that may be imposed should the plea not be accepted.[9] A trial penalty is essentially the imposition of a harsher sentence at trial than would have been received had the individual accepted a guilty plea. According to the National Association of Criminal Defense Lawyers, on average, an individual charged with a crime who goes to trial receives a sentence that is three times longer than the one they would have received if they had accepted a guilty plea.[10] This increased punishment can be achieved via legal manipulation and tools available to both the prosecutor and the judge. For example, the prosecutor might refuse to stipulate to relevant conduct and offense-specific behavior that may have otherwise reduced punishment, or they might include affiliated charges at trial that would not have been attached under a plea agreement. A judge — depending on the jurisdiction — could consider "obstruction" or deny "acceptance of responsibility" during the sentencing phase, resulting in increased sentence length. This trial penalty, though legal,[11] is an informal and discretionary mechanism — available to both the prosecutor and the presiding judge — that can be used to encourage a guilty plea.

In addition to reducing uncertainty, plea-driven court processes also undermine transparency — an important tenet of criminal trials in the United States. When the determination of guilt or innocence shifts from a public forum to a closed-door negotiation, the process is hidden from public scrutiny and oversight. At the same time, the reliance on pleas arguably reduces the system's responsibility for the punishment, while normalizing the circumvention of the rights of individuals charged with a crime.[12]

Local Legal Culture

Local legal culture refers to the larger environment in which the courtroom workgroup operates. This includes formal laws, policies, and structures; the informal norms and attitudes that govern court operation; and the external agencies and individuals that influence the activities and behaviors of the workgroup. In translating formal policy and law into practice, the courtroom workgroup must be attentive to law enforcement, legislative bodies, appellate courts, prison officials, the media, and political organizations, as well as the voting public. Numerous factors affect the manner and degree to which these external forces influence workgroup operation, including whether judges are elected or appointed, judicial term length, court size, perceived community values, local government structure, and state or federal sentencing statutes and policies.

Due to the evolving nature of sentencing legislation and courtroom policy, the methods by which the courtroom workgroup processes criminal cases are interpretive and dynamic. However, because the courtroom community operates within the larger legal culture, it must also be performative.[13] Not only must the workgroup ensure that cases are managed efficiently and in compliance with governing laws, but its members must also be viewed as responsive to the perceived interests of the community and sponsoring organizations. Prosecutors answer to their electorate and political party — particularly if they aspire to higher office — and judges must be responsive to voters or their appointing bodies.

Local influence over the courtroom workgroup and variation in jurisdictional characteristics mean that there is no single state or federal policy that can prescribe how courts operate. Although much of the courtroom community's activity is closed to the public, the imposition of sentencing reforms — such as

structured sentencing, policy guidelines, or mandatory minimum statutes — and the reforms' ultimate impact, shed light on just how much the courtroom community affects court operations and sentencing outcomes from one jurisdiction to the next.

Sentencing Reform

The U.S. criminal justice system is constantly evolving and subject to ongoing reform efforts. Reform initiatives have varied widely over the last century and include a move away from indeterminate sentencing toward structured sentencing, widespread adoption of get tough era mandatory minimum statutes, and attempts at prosecutorial and plea-bargaining guidelines. Although the majority of these reforms alter sentencing practices and penalties to some degree, the results rarely meet the stated expectations of either the politicians who promoted them or the public at large. It has been argued that what were often described as the "unexpected consequences" of mandatory minimum penalties during the get tough era were, instead, the result of policies and laws that were written and implemented without an understanding or consideration of courtroom community dynamics. Conversely, the reforms could be characterized as very sophisticated mechanisms designed to work with existing courtroom dynamics — but with different end goals than publicly stated. Both prosecutors and legislators have acknowledged that mandatory minimum laws provide prosecutors with an advantage during plea negotiations, with one senator opposing their modification on the grounds that they have achieved their "intended goal" of pressuring individuals charged with a crime to cooperate with law enforcement.[14]

The criminal justice system's ability to adapt to sentencing reforms has been widely reported in the literature.[15] This adaptation usually takes the form of selective enforcement of new laws and policies, meaning that the system actors charged with implementing these reforms use their discretion to determine which of the eligible cases will be subject to the new laws and which will not. This is usually accomplished via prosecutorial charging policies — either formal or informal. Research examining the impact of sentencing reform and modification shows that the courtroom community adapts to mandated changes to reflect existing norms and the local legal culture. This holds true in jurisdictions adopting sentencing guidelines, mandatory minimum penalties, and plea or prosecutorial guidelines.[16]

Although a reform may be imposed at the state or national level, it is always implemented at the local level. Consequently, it is inevitable that reforms will be implemented with variation in sentencing patterns, sanctions, and resource requirements across sites.

Conclusion

The past 50 years of courtroom community and sentencing reform research makes it clear that reform does not occur in a vacuum. Instead, it is an evolving process affected both directly and indirectly by individuals, organizations, and systems operating within the sphere of the local courtroom. These entities — members of the courtroom community — have a vested interest in local court operation and will implement external change in a way that best serves that court. Although it may not be possible, or desirable, to institute reforms that are impervious to local manipulation, the importance and role of the courtroom community must be considered in order to craft effective policies and legislation.

About the Author

Nancy Merritt, Ph.D., is a senior policy advisor in NIJ's Office of Research, Evaluation, and Technology.

Notes

1. James Eisenstein and Herbert Jacob, *Felony Justice: An Organizational Analysis of Criminal Courts* (Boston: Little, Brown and Company, 1977).
2. James Eisenstein, Roy B. Flemming, and Peter F. Nardulli, *The Contours of Justice: Communities and Their Courts* (Lanham, MD: University Press of America, 1988); Peter F. Nardulli, James Eisenstein, and Roy B. Flemming, *The Tenor of Justice: Criminal Courts and the Plea-Bargaining Process*

(Urbana, IL: University of Illinois Press, 1988); and Roy B. Flemming, Peter F. Nardulli, and James Eisenstein, *The Craft of Justice: Politics and Work in Criminal Court Communities* (Philadelphia: University of Pennsylvania Press, 1992).

3. Jo Dixon, "The Organizational Context of Criminal Sentencing," *American Journal of Sociology* 100 no. 5 (1995): 1157-1198, https://www.jstor.org/stable/2782274; Susan U. Philips, *Ideology in the Language of Judges: How Judges Practice Law, Politics, and Courtroom Control* (New York: Oxford University Press, 1998); Darrell Steffensmeier and Stephen Demuth, "Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who Is Punished More Harshly?" *American Sociological Review* 65 no. 5 (2000): 705-729, https://doi.org/10.2307/2657543; Steven E. Barkan, *Criminology: A Social Understanding* (Hoboken, NJ: Prentice Hall, 2001); Chester L. Britt, "Social Context and Racial Disparities in Punishment Decisions," *Justice Quarterly* 17 no. 4 (2000): 707-732, https://doi.org/10.1080/07418820000094731; Stephanos Bibas, "Prosecutorial Regulation Versus Prosecutorial Accountability," *University of Pennsylvania Law Review* 157 no. 4 (2009): 959-1016, https://scholarship.law.upenn.edu/faculty_scholarship/244; Allison D. Redlich, Miko M. Wilford, and Shawn Bushway, "Understanding Guilty Pleas Through the Lens of Social Science," *Psychology, Public Policy, and Law* 23 no. 4 (2017): 458-471, https://doi.org/10.1037/law0000142; Jeffrey T. Ulmer, "Criminal Courts as Inhabited Institutions: Making Sense of Difference and Similarity in Sentencing," *Crime and Justice* 48 (2019): 483-522, https://doi.org/10.1086/701504; Cyrus Tata, *Sentencing: A Social Process: Rethinking Research and Policy* (London: Palgrave Macmillan, 2020); Christi Metcalfe, "Toward a Method for Evaluating Court Actor Influences on Plea Negotiations: A Preliminary Exploration of Public Defenders," *Behavioral Sciences and the Law* 39 no. 3 (2021): 345-357, https://doi.org/10.1002/bsl.2517; and Calvin Morrill and Lauren B. Edelman, "Sociology of Law and New Legal Realism," in *Research Handbook on Modern Legal Realism,* ed. Shauhin Talesh, Elizabeth Mertz, and Heinz Klug (Edward Elgar Publishing, 2021), 413-431, https://doi.org/10.4337/9781788117777.00041.

4. Jeffrey T. Ulmer, *Social Worlds of Sentencing: Court Communities Under Sentencing Guidelines* (Albany, NY: State University of New York Press, 1997); Jeffrey T. Ulmer and John H. Kramer, "The Use and Transformation of Formal Decision-Making Criteria: Sentencing Guidelines, Organizational Contexts, and Case Processing Strategies," *Social Problems* 45 no. 2 (1998): 248-267, https://doi.org/10.2307/3097246; Nancy Merritt, Terry Fain, and Susan Turner, "Oregon's Get Tough Sentencing Reform: A Lesson in Justice System Adaptation," *Criminology and Public Policy* 5 no. 1 (2006): 5-36, https://doi.org/10.1111/j.1745-9133.2006.00110.x; John R. Sutton, "Structural Bias in the Sentencing of Felony Defendants," *Social Science Research* 42 no. 5 (2013): 1207-1221, https://doi.org/10.1016/j.ssresearch.2013.04.003; Mona Lynch and Marisa Omori, "Legal Change and Sentencing Norms in the Wake of *Booker*: The Impact of Time and Place on Drug Trafficking Cases in Federal Court," *Law and Society Review* 48 no. 2 (2014): 411-445, https://www.jstor.org/stable/43670398; Rob Tillyer and Richard Harley, "The Use and Impact of Fast-Track Departures: Exploring Prosecutorial and Judicial Discretion in Federal Immigration Cases," *Crime and Delinquency* 62 no. 12 (2016): 1624-1647, https://doi.org/10.1177%2F0011128713505481; Isaac Unah and Ryan Williams, "What Is So Special About Specialized Courts in the United States?" in *Routledge Handbook of Judicial Behavior,* ed. Robert M. Howard and Kirk A. Randazzo (New York: Routledge, 2017), 280-300; Lauren M. Ouziel, "Democracy, Bureaucracy, and Criminal Justice Reform," *Boston College Law Review* 61 no. 2 (2020): 523-589, https://lira.bc.edu/work/ns/3e99df91-105b-4693-82df-52da1c783b2a; Mona Lynch, Matt Barno, and Marisa Omari, "Prosecutors, Court Communities, and Policy Change: The Impact of Internal DOJ Reforms on Federal Prosecutorial Practices," *Criminology* 59 no. 3 (2021): 480-519, https://doi.org/10.1111/1745-9125.12275; and Rebecca Richardson and Besiki Luka Kutateladze, "Tempering Expectations: A Qualitative Study of Prosecutorial Reform," *Journal of Research in Crime and Delinquency* 58 no. 1 (2021): 41-73, https://doi.org/10.1177%2F0022427820940739.

5. Lindsey Devers, "Plea and Charge Bargaining: Research Summary," Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance, https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf.

6. National Association of Criminal Defense Lawyers, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How To Save It,* Washington, DC: National Association of Criminal Defense Lawyers, www.nacdl.org/trialpenaltyreport; and Carissa Byrne Hessick, "The Constitutional Right We Have Bargained Away," *The Atlantic,* December 24, 2021.

7. Eisenstein and Jacob, *Felony Justice.*

8. Celesta A. Albonetti, "Criminality, Prosecutorial Screening, and Uncertainty: Toward a Theory of Discretionary Decision Making in Felony Case Processings," *Criminology* 24 no. 4 (1986): 623-644, https://doi.org/10.1111/j.1745-9125.1986.tb01505.x; and Eisenstein and Jacob, *Felony Justice.*

9. Celesta A. Albonetti, "Sentencing Under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentence Outcomes for Drug Offenses, 1991-1992," *Law and Society Review* 31 no. 4 (1997): 789-822, https://doi.org/10.2307/3053987; Candace McCoy, "Plea Bargaining as Coercion: The Trial Penalty and Plea Bargaining Reform," *Criminal Law Quarterly* 50 no. 2 (2005): 67-107; Andrew Chongseh Kim, "Underestimating the Trial Penalty: An Empirical Analysis of the Federal Trial Penalty and Critique of the Abrams Study," *Mississippi Law Journal* 84 no. 5 (2015): 1195-1255, https://ssrn.com/abstract=2635657; and Miko M. Wilford, Gary L. Wells, and Annabelle Frazier, "Plea-Bargaining Law:

The Impact of Innocence, Trial Penalty, and Conviction Probability on Plea Outcomes," *American Journal of Criminal Justice* 46 (2021): 554-575, https://doi.org/10.1007/s12103-020-09564-y.

10. National Association of Criminal Defense Lawyers, *The Trial Penalty.*

11. *Brady v. United States,* 397 U.S. 742 (1970).

12. Carissa Byrne Hessick, *Punishment Without Trial: Why Plea Bargaining Is a Bad Deal* (New York: Abrams, 2021).

13. Tata, *Sentencing: A Social Process.*

14. Hessick, "The Constitutional Right We Have Bargained Away."

15. Candace McCoy, *Politics and Plea Bargaining: Victims' Rights in California* (Philadelphia: University of Pennsylvania Press, 1993); Jeffrey T. Ulmer, James Eisenstein, and Brian D. Johnson, "Trial Penalties in Federal Sentencing: Extra-Guidelines Factors and District Variation," *Justice Quarterly* 27 no. 4 (2010): 560-592, https://doi.org/10.1080/07418820902998063; and Sonja B. Starr and M. Marit Rehavi, "Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of *Booker*," *Yale Law Journal* 123 no. 1 (2013): 2-80, https://www.yalelawjournal.org/article/mandatory-sentencing-and-racial-disparity-assessing-the-role-of-prosecutors-and-the-effects-of-booker.

16. Merritt, Fain, and Turner, "Oregon's Get Tough Sentencing Reform"; Joshua B. Fischman and Max M. Schanzenbach, "Racial Disparities Under the Federal Sentencing Guidelines: The Role of Judicial Discretion and Mandatory Minimums," *Journal of Empirical Legal Studies* 9 no. 4 (2012): 729-764, https://doi.org/10.1111/j.1740-1461.2012.01266.x; Lynch, Barno, and Omori, "Prosecutors, Court Communities, and Policy Change"; and Richardson and Kutateladze, "Tempering Expectations.".

Image source: Alina555/Shutterstock.com.

NCJ 304622

Cite this article as: Nancy Merritt, "Courtroom Communities: Criminal Case Processing and Sentencing Reform," *NIJ Journal* 284, December 2022, https://nij.ojp.gov/topics/articles/courtroom-communities-criminal-case-processing-and-sentencing-reform.