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For Discussion

1. How might plea bargaining interfere with the due process rights of defendants?
2. Sudnow's research contributed to what criminal justice "themes"?
3. Why did certain types of defendants receive more lenient plea agreements compared to others charged with the same crimes?
4. How might the research methods used by Sudnow have contributed to his findings that were opposite to the more popular view that defendants of lower SES are treated more harshly by the courts?

Key Methodological Terms

Complete Observer
Ethnographic Research
Exploratory Research
Interviewer
Qualitative Study
Quantitative Study

THE DEFENSE ATTORNEY'S ROLE IN PLEA BARGAINING: ARE DEFENDANTS PRESSURED BY THEIR OWN ATTORNEYS TO PLEAD GUILTY?

Alschuler, A. (1975). "The Defense Attorney's Role in Plea Bargaining." *Yale Law Journal* 84:1179–314.

Background

As mentioned previously, guilty pleas account for the vast majority of felony convictions. We take this for granted today, but there was once much controversy over the ethics of attorneys

encouraging their clients to forego their constitutional right to trial. This concern generated some of the most interesting *ethnographies* in court research to date. These studies were invaluable, not so much for the ethical discussions of plea bargaining per se, but for the more realistic descriptions of criminal courts, court politics, and court participants. These were the studies that changed our images of courts from being fair and impartial arbiters of justice to fallible organizations controlled by individuals who sometimes do not have the best interests of their clients in mind. The seemingly heavy focus of these studies on plea bargaining, written primarily between the mid-1960s and late 1970s, reflected academics' questions about the wisdom of the American Bar Association and the President's Commission on Law Enforcement and Administration of Justice in their official approval of plea bargaining in 1967. (The Supreme Court also weighed in on the issue, declaring its constitutionality in 1971.) Scholars were critical of the fact that guilty pleas were the dominant mode of case disposition, which also contrasted with the public's conception of due process. Law schools do not even educate students about the underlying politics of the guilty plea process.

Plea bargaining occurs when a defendant submits a plea of "guilty" in exchange for reduced charges and/or a reduced sentence from the court. (Sentences are "reduced" relative to what the law recommends and what is likely to be handed out at trial.) Legal scholars' primary concerns with plea bargaining lie in the questionable ethics surrounding how guilty pleas are solicited from defendants. A defendant who pleads guilty implicitly agrees to forego their constitutional right to trial and, unlike a trial conviction, cannot appeal the verdict. There are other potential limitations as well, as articulated by Jonathan Casper (1972). First, plea bargaining contributes to different sentences for similarly situated offenders charged with the same crimes. Second, there is a risk under such a system that innocent persons will admit guilt out of fear of facing harsher sentences if convicted at trial. Third, sentences are not based on meaningful goals such as rehabilitation or even retribution. Fourth, the process might convey a sense of corruption to the defendant. Finally, there is very little formal control over the process.

On the other hand, several justifications for plea bargaining have also been put forth. First, there are not enough available resources to take all cases to trial in a timely fashion. Second, plea bargaining helps to avoid mandatory sentences that may be overly severe in particular cases due to unique circumstances of the cases. Third, the process allows trial resources to be reserved for cases where a suspect's guilt is truly in question. Fourth, defendants who acknowledge their guilt might be experiencing a first step toward their rehabilitation and should be "rewarded" with a reduced sentence. Finally, the defendant actively participates in the plea bargaining process and shapes the punishment to some extent, possibly reducing his cynicism toward legal authority.

Albert Alschuler wrote a series of three articles focusing on the roles of prosecutors, defense attorneys, and judges in plea bargaining. Taken together, these articles constitute a scathing critique of the guilty plea process. The article described here has been cited in every subsequent publication on the topic, and it also offers unique insight into defense attorneys that cannot be gleaned from the other studies discussed in this book. Perhaps this is due to the scope of Alschuler's study, which included interviews with court actors across ten major US cities. His observations now represent common knowledge among court scholars, and no related study has encompassed the scope of Alschuler's larger project.

The Study

Alschuler (1975) began his article with the acknowledgment that guilty pleas were far and away the most common means to convictions in the criminal courts, accounting for roughly 90 percent

of all *felony* convictions in the courts he studied during the late 1960s. Although safeguards were in place to ensure that defendants who pled guilty understood the ramifications of their actions, Alschuler set out to interview court participants in ten major cities in order to explore the utility of defense attorneys for protecting the accused in the plea bargaining process. These interviews were unstructured and, therefore, did not constitute "scientific" data.

Interviews were conducted between 1967 and 1968 in Boston, Chicago, Cleveland, Houston, Los Angeles, Manhattan, Oakland, Philadelphia, Pittsburgh, and San Francisco. Alschuler's companion piece, "The Prosecutor's Role in Plea Bargaining," was published in 1968 and was based on the same project.

Findings

Alschuler made the observation that the only way a defense attorney could be financially successful, aside from being an excellent trial attorney, was to handle large numbers of clients. This meant that trials could not be the norm for such attorneys since they required too much time, and so they spent the majority of their time pleading cases. Alschuler went on to describe examples of attorneys with very lucrative careers who had not tried a case in years (he referred to these attorneys as "pleaders"). Only a small minority of these attorneys were truly dishonest, however, even though pleaders in general never intended to go to trial (but *would* go if pressed to do so). The primary problem with pleaders was that, due to their impatience and desire to move cases, they often settled for less attractive plea agreements relative to those secured by other attorneys who more actively argued and negotiated with prosecutors.

If pleaders performed poorly, then, why did defendants choose them as their attorneys? First, bail bondsmen often recommended the names of attorneys who provided the bondsmen with a cut of their legal fees (recall the earlier discussion of the bail system examined by Foote 1954). Second, some jail and police personnel made similar recommendations in order to receive kickbacks from these attorneys. Finally, these attorneys occasionally hung out in jails in order to drum up business. How did the attorneys induce their clients to plead guilty? If a client admitted guilt to his attorney, the attorney might later return and claim that the prosecutor had an unbeatable case against him, whether true or not. If the client claimed innocence, the lawyer might have gone to great lengths to get a confession. Another tactic involved attorneys approaching family members who, once convinced that pleading guilty was the "right" thing to do, would persuade the relative to plead guilty. Equally reprehensible, some attorneys would exaggerate to their clients the severity of the sentence if convicted at trial, or claim that the prosecutor's offer for a bargain was exceptionally lenient when in fact it was the going rate. Alschuler noted the absurdity of how, when convicted defendants tried to challenge their guilty pleas due to corrupt defense attorneys, courts refused to treat those pleas as invalid. As a result of a system that permitted lawyers to perform their jobs informally and in private, there were "extraordinary opportunities for dishonest lawyers" (p. 1198) to take advantage of defendants. Alschuler talked at length, for example, of how some attorneys charged lower fees to clients who they felt were likely to plead guilty, thus contributing to a self-fulfilling prophecy where these attorneys worked even harder to secure guilty pleas. Even though defendants could challenge the quality of their representation in the courtroom, the absence of any oversight in the guilty plea process made it virtually impossible for defendants to challenge the circumstances under which pleas were negotiated.

Even the most honest attorneys sometimes preferred plea bargaining over the prospect of going to trial, especially when they questioned their own abilities. Going to trial also meant taking a chance, no matter how good the defense, since jurors and some judges could base

their decisions on extralegal factors. Another situation sometimes faced by private attorneys (not public defenders) involved the same attorney representing two defendants involved in the same case. In such cases, the attorney generally perceived one client as more culpable than the other. This situation led some of these attorneys to bargain with prosecutors over dropping the charges against one defendant in exchange for a guilty plea from the other. This situation is unlikely with public defenders because most trial courts automatically assign different defenders to different defendants involved in the same case in order to avoid the appearance of a conflict of interest.

The observations above were made in relation to private defense attorneys, and Alschuler recognized that the guilty plea process favored the economic interests of those attorneys more than salaried public defendants'. Nonetheless, both groups used guilty pleas to the same degree, which implied a different set of motivations for public defenders. For example, PDs dealt with more socially and economically disadvantaged defendants who often had prior records. In these cases attorneys sometimes pursued plea bargains in order to reduce the odds of more severe sentences at trials resulting from the defendants' criminal histories and/or from potential biases held by some jurors toward poor, minority defendants. Another unique situation faced by PDs was their greater familiarity with prosecutors due to courtroom assignments and having to face the same attorneys day after day. Friendships developed between these attorneys that interfered with their willingness to argue over the facts of a case when settling on a plea bargain.

The relatively heavy caseloads of PDs in the cities examined by Alschuler may have also affected attorneys' interests in bargaining. For every defendant an attorney fought vigorously for, another client's case did not receive the same attention. On the other hand, even defendants who received less attention from their PD may have still fared better in plea bargains relative to the clients of private defense lawyers due to the prosecutor's greater "trust" of public defenders. Prosecutors were also more willing to disclose evidence to PDs relative to private attorneys, although this could work against a defendant if the PD was looking for evidence to convince a defendant to plead guilty. Alschuler speculated that this was why prosecutors were more willing to disclose their evidence to PDs, especially in the strongest cases against defendants.

Eisenstein and Jacob (1977) once observed that, in Chicago, delaying case dispositions led to less appealing bargains offered to defendants. Alschuler observed the opposite, where defense attorneys received *better* offers with the passage of time because witnesses became impatient with so many court appearances, their memories faded, and they sometimes backed out of the process altogether. As the odds of conviction declined, the prosecutor's plea bargains became more attractive. Private lawyers were better able than PDs to take advantage of this, however, because of the greater difficulty PDs had in requesting continuances. PDs assigned to one courtroom for weeks at a time would attract suspicion by the prosecutor and the judge if they developed a pattern of requesting continuances. It was also not in the best interest of many PDs' clients to delay trial since many did not obtain bond and were held in custody during the interim.

Attorneys also anticipated how receptive particular judges would be to specific bargains, and so they sought out the more lenient judges. Due to a selection bias where tougher judges conducted more trials (because they were less likely to approve more lenient plea agreements), private attorneys could shop around for more lenient judges who were sympathetic to particular bargains. This was an advantage for private lawyers only, however, since PDs in most of the cities examined were assigned to courtrooms and could not choose their judge. On the other hand, PDs who were more likely to push for trial faced a different problem where more lenient judges placed pressure on PDs to bargain. Alschuler related many examples of the insulting comments directed at defense attorneys by judges. Judges varied to the extent they favored the guilty plea process,

and those who saw plea bargaining as effective case management were more apt to ridicule attorneys who were resistant to bargaining. Incurring the judge's wrath was not in the best interest of the defense lawyer who had to work with the same judge day after day.

Public defenders were also more likely to maintain antagonistic relationships with their clients relative to private attorneys and their clients, perhaps because indigent defendants did not choose their attorneys. These types of relations between PDs and their clients may have contributed to higher odds of plea bargaining if the defenders were generally less interested in the welfare of their clients.

Although the greater caseload pressures on PDs would sometimes interfere with the best interests of their clients, they sometimes used their caseloads as leverage for more lenient plea agreements. PDs had the ability to slow down case processing by threatening trials for some of their cases. Even when prosecutors were not amenable to such threats, judges sometimes placed pressure on prosecutors to "cooperate" with PDs.

Alschuler made an important distinction between PDs and other "appointed" attorneys, including attorneys in the community who were ordered by judges to defend indigent defendants as well as those who volunteered to do so. These particular attorneys sometimes did not fit well in a system dependent on guilty pleas. First, such attorneys were often paid hourly and so may have opted for trials in order to increase their earnings. Second, due to their (typical) lack of experience in the criminal courts, they were often not privy to courtroom cultures and the informal norms surrounding plea negotiations.

Alschuler concludes with a discussion of ethical issues related to plea bargaining in practice, the most salient of which involves a system that places pressure on the truly innocent defendant to plead guilty. Most attorneys who believed their clients were innocent did not admit to pressuring them into pleading guilty, although some defense attorneys did so when prosecutors offered very large concessions relative to what the laws dictated in such cases. Alschuler also noted hypocrisy in the observations of defense attorneys, namely that these attorneys did not apply the same rule (of not pressuring "innocent" clients into pleading guilty) when defendants claimed to have acted in self-defense, or when they argued entrapment, or when there was an absence of intent. Of the "innocent" defendants who were *not* pressured to plead guilty, some public defenders may have acted out of self-interest in order to avoid client accusations of ineffective representation.

Limitations

Alschuler's work is a very informative piece on the abuses of plea bargaining even though he admitted that it was not a scientific study. As such, his observations were potentially tainted by *selection bias*. Alschuler was one of the harshest and most outspoken critics of plea bargaining, and this was reflected in the interview excerpts he chose to include in the article. These passages focused overwhelmingly on court participants who were critical of plea bargaining. No direct quotes were offered from the "dishonest" attorneys who he claimed were the strongest advocates of the guilty plea process. The reader is not informed about how many attorneys and judges were interviewed and what proportions of these groups were advocates of the process. This method of argumentation is persuasive but does not meet the standard of scientific rigor. Alschuler might have focused only on instances where defendants received raw deals. For all we know, the vast majority of his subjects might have been advocates of the process and the vast majority of defendants might have benefited from not going to trial. His arguments were built on selected evidence, not unlike the arguments of ex-cons regarding what terrible places prisons

are. The primary drawback to this strategy of argumentation is that it is flawed by nature of not offering a solution. Just as prisoners-turned-academics tend to criticize the use of prisons without offering a solution (short of decarceration), Alschuler's arguments are more difficult to defend without offering a viable alternative to the guilty plea process.

One of the criticisms of plea bargaining noted earlier is the possibility that sentencing disparities might emerge based on the extralegal characteristics of defendants. Speculations such as these can only be evaluated empirically with official data on the sentences of defendants who plead guilty versus those convicted at trial, and such evaluations are quantitative in nature. Eisenstein and Jacob (1977), described in the next section, conducted both qualitative *and* quantitative research on the guilty plea process in three urban trial courts. Alschuler, on the other hand, was limited to evaluating this criticism based only on the observations of somewhat critical attorneys. Despite his approach, however, Alschuler was surprisingly neutral in his assessment of possible biases in plea negotiations based on the economic status of defendants. He commented that, while public defenders had proportionately more indigent clients than private attorneys, both types of attorneys seemed to engage in plea bargaining to the same extent.

Nearly forty years have passed since Alschuler's publications on plea bargaining, yet since that time it appears that most criminal defendants have found plea bargaining no less palatable than going to trial. There are several possible reasons for this, including a Supreme Court ruling *after* Alschuler's work that outlawed judicial participation in plea negotiations. Alschuler's description of how judges placed pressures on attorneys to settle their cases underscored the potential of judges to abuse their power by coercing subordinates into ignoring defendants' legal interests. Without these pressures, defense attorneys are better able to serve the interests of their clients. With the prosecution and the defense as sole arbiters in negotiations, it is more realistic to assume that one party or the other would insist on a trial if a plea agreement did not improve the positions of *both* the defendant and the state.

A second possible reason why plea bargaining was not subsequently challenged is because such negotiations permit compromises on both sides of the case. The defense is better able to avoid the maximum punishment, thus permitting sentences that are more apt to "fit" with the unique circumstances of cases. Prosecutors, in turn, can secure convictions without having to spend the resources necessary to create stronger cases for trial. This last observation reflects the economic advantage of guilty pleas, where failure to offer such "rewards" could lead a majority of defendants to opt for trial which, in turn, might slow case processing.

No less important is the potential benefit of plea bargaining to a defendant who wishes to avoid the stigmatization and degradation of a trial. Labeling theorists argue that the criminal trial is nothing more than a ritual for publicly redefining a defendant's life as deviant. The trial process generates greater cynicism on the part of defendants toward legal authority because they are constantly defending themselves while under attack, sometimes for months at a time. Plea bargaining, by contrast, allows the defendant to actively participate in this redefinition which is not under public view and (usually) results in a less negative stigma.

Significance and Subsequent Research

Court scholars who took a decidedly negative view of plea bargaining, such as Alschuler, ultimately had a significant impact on Alaska's ban on plea bargaining in 1975. The ban prohibited negotiations of charge or sentence reductions for all offenses. Interestingly, this resulted in only a 30 percent increase in the number of trials (Rubinstein and White 1979), implying that most defendants continued to plead guilty. (A 30 percent increase in trial rates translated into

a relatively small number of trials in Alaskan courts.) A few years later, however, Lynn Mather (1979) described how many of the bench trials in Alaska had become forums for plea bargaining, or "slow pleas of guilty," where judges basically encouraged defendants to plead out. Alaska's ban continued until 1993 even though the practice of charge bargaining reemerged before then and became commonplace across the state. Regardless, the official ban did not slow down case processing to an appreciable degree, contrary to what critics expected. The Alaska Judicial Council conducted two evaluations of the reform. The first evaluation was conducted five years after implementation, and the second was conducted 15 years after. Together they revealed that the reform was fairly successful in preventing charge bargaining for about 10 years. Prosecutors also became more effective at screening cases and conducting more thorough investigations, ultimately leading to stronger cases, because they could no longer count on plea bargaining in order to secure convictions in cases with weaker evidence. Court delays were actually reduced rather than lengthened, perhaps because of the elimination of prosecutors' tactics to schedule cases for trial in order to persuade defense attorneys to accept their offers (as described by Alschuler). Finally, the ban did not lead to harsher sentences for most crimes although it did coincide with more severe sentences for a small number of offenses. By the mid-1980s, prosecutors did not maintain the negative attitudes toward bargaining that characterized the 1970s. This change in court culture eventually led to the repeal of the ban in 1993.

The Alaska "experiment" served to vindicate critics of plea bargaining, including Alschuler, because the strongest argument favoring the preservation of plea bargaining was the speculation that courts would slow down and bottleneck if negotiations were abolished. Alaska courts do not deal with the caseload volume of the cities included in Alschuler's study, but the fact that trials increased by only 30 percent instead of 100 percent was very revealing about the impact a ban on plea bargaining might have in other states. The return to bargaining in Alaska did not reflect a need to address any problems that emerged as a result of the ban, but instead reflected the interests of prosecutors to avert trials whenever possible in order to increase their chances of obtaining convictions.

Alschuler was also one of the first scholars to provide insight into the realities of Herbert Packer's (1967) theory on *assembly-line justice*. Packer observed that the criminal court system in the United States represents a compromise between due process and crime control. The due process model emphasizes the legal protections offered to criminal suspects so as not to wrongly convict individuals (e.g., right to counsel, right to trial, right to appeal, etc.). It is grounded in the presumption of innocence and in protecting the rights of the accused. Advocates of the crime control perspective, by contrast, emphasize the public's protection from crime rather than the protection of suspects. A crime control emphasis has two implications for court proceedings. First, the demand of case processing must meet the supply of cases that flood the courts, so case processing must be swift. Second, the rights of the accused need not be emphasized at the expense of protecting the public since the vast majority of suspects are factually guilty, assuming that police officers perform their jobs adequately. Therefore, a preoccupation with trials and appeals is not necessary because most cases can be handled expediently with plea bargaining. The best way to handle cases is through an "assembly line" process whereby cases are handled efficiently and disposed of quickly. The focal point of the crime control model is plea bargaining whereas the focal point of the due process model is the trial.

Alschuler's in-depth interviews with prosecutors, defense attorneys, and judges (reflecting all three of his publications from the same study) offered a very realistic assessment of Packer's framework. Not only did he capture attorneys' preoccupations with the assembly-line model, he also underscored the ideological conflict between due process and crime control. Regarding the

latter, even most defense attorneys presumed their clients to be guilty. Alschuler also provided an important qualification to Packer's theory although he did not himself make the connection. That is, Packer theorized that prosecutors who followed a crime control strategy would pay more attention to their decisions at intake regarding whether to pursue formal charges against an arrested suspect, and that they would be careful to pursue prosecutions only in cases involving little doubt about the suspects' guilt. Alschuler countered this idea by describing interviews where attorneys either knew their clients were innocent or strongly suspected that they were innocent yet agreed to plea bargain in order to avoid harsher sentences if found guilty at trial. Recent research supports the idea that even self-proclaimed innocent defendants will sometimes plead guilty even though innocents *in general* are less likely than guilty defendants to accept plea bargains (e.g., Tor et al. 2010). Along with scholars such as Jon Casper (1972), James Eisenstein and Herbert Jacob (1977), Milton Heumann (1978), and Lynn Mather (1979), Alschuler's research inspired a movement within political science and legal studies to more carefully assess how the conflict between due process and crime control impacts both criminal defendants and public perceptions of justice.

Alschuler's work also raised questions regarding the impact of plea bargaining on sentencing disparities, or differences in the sentences administered to similarly situated defendants (i.e., those charged with the same offenses under similar case circumstances and with similar criminal histories). Even under more structured sentencing schemes designed to reduce disparate sentencing, such disparities persist in large part due to plea bargaining (e.g., Farrell and Ward 2011, Shermer and Johnson 2010). Sentences derived through negotiations are necessarily void of considerations of punishment philosophies such as retribution or deterrence. The odds of disparate sentences across similar cases are greater without guiding philosophies. The common observation in related studies that sentences are more severe when defendants are convicted by juries as opposed to guilty pleas is the most obvious evidence of sentencing disparity (Tiffany et al. 1975), but even among defendants who plead guilty there is reason to believe that disparities will exist based on Alschuler's observations regarding factors that influence the magnitude of a deal (i.e., the defense attorney's stubbornness to engage in negotiations, amount of time since formal charges were initially filed, and the amount of evidence against a defendant). None of these considerations have anything to do with sentences dictated by legal statutes, yet they are fundamental to determining the sentences of roughly 95 percent of all convicted felons in the United States. Alschuler provided a very cynical view of a process that has become even more prevalent since he wrote. The various perversions of justice he described are important nonetheless and have contributed to a relatively broad literature on legal cynicism, even if policy makers have since ignored his original observations.

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in response to the unique occupational environment in which guards worked. Others believed that the shared values, attitudes, and behaviors of guards reflected characteristics held long before they entered into the profession. The studies presented in this section explored these perspectives and offered valuable insight into our understanding of the intrinsic structural conflict between prison guards and inmates.

THE STANFORD PRISON EXPERIMENT: WHAT EXPLAINS THE COERCIVE BEHAVIOR OF PRISON GUARDS?

Haney, C., C. Banks, and P. Zimbardo (1973). "Interpersonal Dynamics in a Simulated Prison." *International Journal of Criminology and Penology* 1:69–97.

Background

According to the "dispositional hypothesis," prison environments reflect the characteristics, behaviors, and attitudes of both the inmates and the guards (Haney et al. 1973). Guards lack empathy and are cruel to inmates because of their aggressive nature. Inmates, by virtue of their confinement, are criminals incapable of conforming to the rules and laws of society. Their destructive and reckless tendencies can only be controlled through physical and/or psychological coercion. This perspective is analogous to the importation theory used to explain inmates' attitudes and behaviors as well as the idea that police work attracts certain types of individuals prone to abuse. A team of psychologists from Stanford University led by Philip Zimbardo devised a research experiment to test the dispositional *hypothesis* as an explanation of both guard and inmate behavior. The US Navy and Marine Corps funded the study because they were interested in explaining the conflict between guards and prisoners in their own military prisons. The obvious approach would have been to gain access to a prison and observe the interactions and behaviors of guards and inmates (*ethnographic research*), but the drawback to this approach is that inmates and guards are already part of the prison environment (Haney et al. 1973). It would have been difficult to separate out the effects of individual characteristics (of guards and inmates) from the effects of the prison environment on guards' behaviors toward inmates. Instead, the researchers came up with a clever alternative—construct a "mock" prison whose inhabitants would be selected from the general population. Researchers would *randomly assign* normal functioning adults to play the roles of "prisoners" and "guards," and would then observe the interactions between the two groups. The "prison experiment" became one of the most controversial and criticized studies in the behavioral and social sciences.

The Experiment

In the summer of 1971, Stanford University researchers Craig Haney, Curtis Banks, and Philip Zimbardo (1973) conducted an *experiment* to better understand the conflict between prison guards and inmates.[8] A simulated prison was assembled in a 35-foot section of the basement of the psychology building at Stanford University. The goal was to create a "functional representation" of a prison environment so that researchers could observe the influence of this environment

[8]Additional information on the Stanford Prison Experiment can be obtained from Phillip Zimbardo's website: http://www.prisonexp.org/

on behavior. Ex-prisoners were consulted on the design. Laboratory rooms were turned into six-by-nine foot cells with black steel bars as doors. Each cell contained a cot, mattress, sheet, and pillow. A small room was set aside as the prison yard, and a tiny closet was designated to be the solitary confinement cell (which measured two-by-two-by-seven feet and had no lighting). Guard quarters were constructed in another section of the basement that consisted of a break room, a room for the prison warden and superintendent, and an interviewing area.

The research subjects were recruited from a newspaper advertisement requesting male volunteers for a psychological study of prison life. Seventy-five college students responded. The selection process consisted of questionnaires to assess family upbringing, physical and mental health, and prior involvement in crime. The researchers also interviewed each of the respondents. The 24 subjects selected were deemed to be mature, well-adjusted college students. Subjects were predominately white middle-class students with the exception of one Asian student. Subjects were randomly assigned to play either the role of "prisoner" or "guard" (this was literally done by flipping a coin). Random assignment would allow researchers to determine the influence of the prison environment separate from the characteristics of the individuals playing each role. Efforts were made to ensure that the participants did not know one another and each subject underwent a series of psychological tests prior to the start of the experiment. Four subjects were assigned as alternates, leaving nine guards and nine inmates. Zimbardo himself assumed the role of superintendent and one of his research assistants played the part of the prison warden.

All of the details of the experiment were not disclosed to the subjects. Participants were informed that they would be assigned to play either the role of guard or prisoner for two weeks in exchange for monetary compensation. Each subject signed a contract indicating their consent to participate and their acknowledgement of certain conditions of the experiment. Inmates were told that they would be provided minimal food, clothing, housing, and privacy. They were also informed that they might be subjected to verbal abuse. No other information was provided. Researchers wanted the subjects to enter into the experiment with only their own preconceived ideas about how inmates behaved in prison.

Researchers went so far as to create a realistic prison induction process for the inmates. With assistance from the Palo Alto City Police Department, participants assigned to the prisoner group were all arrested without warning at their place of residence. The public nature of the arrest was meant to humiliate them. Suspects were arrested for either burglary or armed robbery, they were read their Miranda rights, searched, handcuffed, and taken to the police station for booking. At the station, subjects were photographed, fingerprinted, and placed in a detention cell. Next, they were blindfolded and driven to the simulated prison. The prisoners were unaware of the location of the prison so they would think they were being taken to a "real" prison facility. After the inmates arrived, they were stripped of their clothing and sprayed for lice. Each prisoner was issued a uniform that consisted of a simple "smock" with an inmate number on the front. Inmates were not permitted to wear anything under the smock and had to wear stocking caps on their heads (to symbolize having their heads shaved just like actual inmates). The inmates were issued rubber sandals as shoes, and each had to wear a small lock and chain around one ankle. The uniforms were not typical of what real inmates would wear, but the purpose of the uniform was the same: to strip the prisoners of their old identities and remind them of their confined status. All inmates dressed the same in order to solidify their status as "inmates." The entire induction process was designed to degrade and demoralize the inmates. Inmates were referred to only by their inmate numbers rather than by their names. The prisoners were to remain in their cells 24 hours a day for a two-week period.

Subjects designated as prison guards were also issued standard uniforms to help create a common identity among them and to further remind the prisoners of *their* subordinate status.

The guards' uniforms were very similar to what real prison guards might wear at the time of the study. Guards wore khaki shirts, pants, and mirrored sunglasses so that inmates could not make eye contact with them. They were given a whistle and a police nightstick as symbols of authority. The guards were assigned to eight-hour shifts with three guards working per shift. While "off duty," the guards were told to resume all normal activities. Guards attended an orientation meeting prior to the start of the experiment. They were provided with work assignments, prisoner schedules, and procedures for completing reports. Researchers explained that the purpose of the experiment was to create a realistic prison environment. The guards were instructed to "maintain the reasonable degree of order within the prison necessary for its effective functioning" (p. 7). No other instructions were provided. Researchers were purposely vague to make sure the guards brought with them only their own ideas about how to maintain control over a group of subordinates.

After the subjects were placed in their "cells," the warden welcomed the inmates and read them the institutional rules that were written by the warden with input from the guards. Inmates had to memorize the rules and recite them back to the guards during the scheduled inmate counts. The daily routine of the inmates consisted of the following:

three meals (consisting of a bland diet)

three toilet visits (all supervised)

two hours of free time (to read or write letters)

work assignments

daily exercise

two visiting periods per week

The routine became the inmate's only indication of time, as there were no clocks or windows in the prison.

Observations

All of the interactions between guards and inmates were continuously observed. Both the warden and superintendent were present at various times to document what took place and all of the events were recorded. Intercoms secretly recorded conversations between the inmates as well as between the guards. During the first day of the experiment, both groups appeared to have had some difficulty with their respective roles. The scheduled counts created an opportunity for the guards to assert their authority, and the inmates complied. When the inmates did not follow the rules, the guards required them to do "pushups" as punishment. Remember, the guards were not given any instructions on *how* to punish and so the pushups were their own idea. Punishments were also administered for disrespecting the guards because the guards felt they were entitled to respect by nature of their position. What happened on the second day completely surprised researchers. The day began with a revolt from the inmates. They removed their caps and inmate numbers and refused to leave their cells. Next, they barricaded their cells with their cots and verbally abused the guards. When the day shift arrived, the day shift guards became angry at the nightshift and blamed them for the rebellion. The guards immediately attributed the inmates' behavior to lenient treatment by the guards during the previous night. Reinforcements were called in (the alternate guards) and the night shift guards stayed on duty to assist in quieting the disturbance. The guards sprayed inmates with a fire extinguisher in order to gain access to their cells. Next, they proceeded to strip the inmates of their smocks and removed their cots.

The alleged "leaders" of the revolt were taken to solitary confinement while the other inmates were subjected to verbal abuse and physical intimidation by the guards. The guards successfully ended the disturbance.

Realizing that all nine guards could not remain on duty during a single shift, one of the guards came up with a plan to use "psychological tactics" to keep the inmates in line. A "privilege" cell was set up for the three inmates believed to be the least responsible for the disturbance. These inmates were given back their clothes and beds, were allowed to wash and brush their teeth, and were given a special meal that was eaten in the presence of the other inmates. The guards were deliberately trying to break the inmates' solidarity. The next day, the "good" inmates were returned to their cells and the "bad" inmates were taken to the privilege cell. This was all done to confuse the inmates and to trick the alleged leaders into thinking that their fellow inmates had turned on them and were now cooperating with the guards. Guards wanted to turn the inmates against each other in order to divert their aggression away from them (a plan that was developed on their own). These actions also appeared to be increasing solidarity among the guards and their roles became more well-defined. The guards started to perceive the inmates as threats and, in response, began to intensify their efforts to control them. Guards no longer followed the daily routine. Bathroom visits became privileges dispensed at the whim of the guards. The guards went so far as to place buckets in the inmates' cells to be used as toilets, and then they refused to empty them. One inmate had his smoking privileges taken away and others were denied access to their mail.

Thirty-six hours into the experiment, one inmate started to exhibit intense emotional symptoms such as uncontrollable crying and bouts of aggression. The researchers believed he was faking so he would be released early. Even some of the researchers assumed the roles of prison administrators by treating the inmate as a "con." The prison consultant was brought in to interview the inmate. He called the inmate "weak" and explained that his treatment was mild compared to what real inmates received. The consultant then bargained with the inmate by telling him that if he continued with the experiment and served as an informant, the guards would leave him alone. He was sent back to his cell and told to think it over. At the next count, the inmate started screaming at the other inmates about how they could not leave or quit the experiment. His erratic behavior intensified and the guards were unable to bring him under control. The prison administrators finally realized his symptoms were real and released him.

Day four was visiting day. The researchers were concerned that family members might find the prison environment alarming and would be shocked at the appearance of the inmates, so they decided to manipulate the situation. The inmates were washed, allowed to shave, and fed a large meal. A nice-looking former Stanford cheerleader was brought in to play the role of greeter, and music was pumped in over the intercom during the visits. Despite the fact that the visitors were made to wait an hour to spend ten minutes with their family members, most cooperated. Some of the parents expressed concerns over the physical appearance of their sons, but the warden and superintendent alleviated their worries. One father was asked if he felt his son could handle the experiment and he indicated that he could. Most of the parents left with the impression that the experiment was all in fun and that their loved ones were well taken care of.

After visiting hours were over, the guards picked up on a rumor that the inmate released from the experiment on the third day was planning on returning to the prison with friends to help the other inmates escape. The guards called a meeting with the warden and superintendent to discuss strategies for preventing the escape. One idea was to bring in an informant to pose as an inmate to try and get information on the plan. The researchers also went so far as to try and have the inmates moved back to the Palo Alto jail, but the sheriff refused because

of liability concerns. The researchers ended up dismantling the jail and moving the inmates to another floor of the building. If anyone from the outside showed up, they would be told the experiment ended and everyone had gone home. The only person who showed up was a colleague of one of the researchers who was curious about the experiment. The escape rumor turned out to be false. The jail was reconstructed and the inmates returned to their cells. The guards became furious after spending so much time dismantling and re-constructing the mock prison. They took out their frustration on the inmates who had made them look foolish. The guards punished the inmates by having them do strenuous exercises and more chores. Each count lasted over an hour and the inmates were subjected to continuous verbal abuse.

Researchers decided to bring in a Catholic priest who had served as a prison chaplain in order to provide feedback on the reality of the prison environment. The inmates were allowed to speak with the priest individually. The priest was quite surprised when the inmates introduced themselves by their number and not their actual name. He then proceeded to ask the inmates what they were doing to get out of prison. The inmates appeared confused by the question so the priest told them they needed a lawyer. He even offered to call their parents to tell them to get legal assistance. Some of inmates consented. One particular inmate refused to see the priest. He complained of feeling sick and requested to see a doctor. When he came out of his cell, he started crying uncontrollably. He was taken to a room to rest and was given some food. The guards became angry with this and made the other inmates start chanting that inmate #819 was a "bad inmate" (knowing that inmate #819 could hear this). The inmate became more upset and was asked if he wanted to go home. He responded that he couldn't because the other inmates would think he was bad. He asked to go back to his cell. Zimbardo told the inmate that he was not bad, that this was just an experiment, not a real prison, and the inmate agreed to leave.

The next day researchers decided to schedule a parole hearing. Some of the inmates were brought before a parole board that consisted of college staff and graduate students. The prison consultant was also present. The inmates were asked if they would forfeit their pay in exchange for parole, and most said yes. When they were told to go back to their cells, however, they all complied. The last rebellious act on the part of the inmates occurred right before the experiment ended. The new inmate, brought in as an alternate, went on a hunger strike. The prison experience was different for this inmate. He came in and immediately became immersed into the hostile environment created by the guards. The other inmates experienced a more gradual introduction to the environment. The others also told the new inmate that the prison was real because they were not free to leave. When he refused to eat, the guards placed him in solitary confinement and held him three times longer than the rules allowed. Instead of sympathizing with the inmate, the others labeled him a troublemaker. The guards took advantage of this and gave the other inmates a choice: give up their blankets and the inmate would be released from solitary confinement. The inmates chose to keep their blankets.

On the fifth night, some visiting parents asked Zimbardo to contact a lawyer (just as the priest had suggested) to help get their sons out of prison. An attorney showed up the next day and met with each of the prisoners. It was at this point that Zimbardo and the other researchers decided to end the experiment—less than one week after it began. The researchers felt that the simulated prison environment had become too real for both the guards and the prisoners. The inmates continued to become passive and withdrawn and showed signs of depression. Some of the guards became overzealous in their actions to control the inmates while the other (more humane) guards felt helpless to intervene. One of the interviewers hired to question the guards and inmates expressed strong objections to how the inmates were being treated and was shocked that the experiment had been allowed to continue as long as it did. The prisoners were elated to

be released early but the guards expressed discontent that the study was over. During the entire experiment, no guard ever showed up late for work, called in sick, or requested overtime pay for the extra time on duty. The guards genuinely appeared to like their position of authority over the inmates.

Conclusions

Based on their observations, Zimbardo and his research team argued that they had successfully refuted the dispositional hypothesis. The subjects recruited to play the roles of guards and prisoners were normal, middle-class adults put into an environment where the guards were given almost total authority over the prisoners. With little direction on how to exert and maintain that authority, the guards increasingly demonstrated negative and hostile behaviors. They quickly immersed themselves into their positions and relied on both physical and psychological techniques to control the inmates. Three types of guards were observed. The "tough but fair" guard adhered to the prison rules consistently for all inmates. The "good guys" gave the inmates special privileges and never punished them. A third group of the guards were antagonistic and harsh toward the inmates. Rules were enforced arbitrarily and they seemed to enjoy coming up with new ways to exert power over the inmates. None of the psychological testing or personal interviews provided any insight into why the guards behaved differently.

There were also observed differences in the coping styles of the prisoners. Initially, the inmates all complied with the orders and followed the rules. This quickly changed when several inmates became rebellious and antagonistic toward the guards. The inmates eventually became more passive as the experiment progressed. Four prisoners experienced severe emotional distress, and one even developed a psychosomatic rash. A few inmates actually tried to endure the conditions as best they could by cooperating at all times with the guards. The solidarity between inmates existing at the beginning of the study diminished quickly, as evidenced by their loss of personal identities (recall how each of them introduced themselves to the priest by their inmate number). All of the inmates expressed relief when the experiment was terminated early. The only personality trait uncovered in the psychological testing that appeared to be linked to differences in coping styles was that prisoners who tested high on a measure of authoritarianism seemed to adapt better to the environment.

The researchers believed that their observations of the simulated prison environment offered support for the contention that the prison environment, not the individuals who inhabit it, influences the behaviors of actual inmates and guards. Prisons were designed to be dehumanizing, degrading, and to instill a sense of despair among the inmates being held against their will. Guards were put in a position of having to exercise control and maintain authority over the prisoners under conditions in which they were outnumbered and disrespected by the prisoners. Inmates and guards became immersed in roles that were shaped by their environment. Some inmates adapted by lashing out against the guards through violence and verbal insults while others shut down emotionally and became depressed and submissive. Knowing that it was the responsibility of the guards to maintain control over the inmates, some guards exerted their authority in an aggressive and hostile manner. According to the researchers, this explained the volatile interactions that frequently occurred between guards and inmates in real prisons.

Criticisms

The researchers put forth great effort in creating their simulated prison, but an obvious question raised after the study was published was whether or not the environment was authentic.

The *ecological validity* of Zimbardo's study depended on the extent to which his participants perceived the prison environment to be real. No matter how much Zimbardo and his team tried to simulate an authentic prison environment, the fact remained that the prison was not real. Certain conditions of prison could not be imitated. At no time were the inmates or guards in any physical danger, and the experiment was designed to last only two weeks. It was possible that the prisoners and guards had just put on a good show for the researchers by behaving in stereotypical ways because this was what was expected of them. Both groups knew their behaviors were being recorded. In response to the issue of ecological validity, researchers pointed out that the guards believed the experiment focused solely on the inmates. They did not know their conversations were recorded in the breakroom. Instead of using this time to get to know their fellow employees, most of their conversations focused on work. They spoke about the inmates and discussed prison-related details. Interviews conducted after the experiment ended also revealed that there were interactions between the guards and prisoners that were not observed, such as trips to the bathroom. These unobserved interactions were reportedly more negative than those observed. The harassment continued and was often more intense. Also, the hostility of some of the guards intensified as the experiment progressed, suggesting that these guards might have become consumed in their roles. According to Zimbardo, the guards were not given any specific instructions on how to exert control, yet they relied on physical and psychological coercion. Certain aspects of the prisoners' daily routine such as watching television, reading, and even going to the bathroom became privileges that were granted or denied at the whim of the guards. The guards knew they had authority over the lives of the prisoners and they had no difficulty exhibiting that control. Several guards even reported that they found the control "exhilarating." According to Erich Fromm (1973), however, Zimbardo's experiment failed to adequately distinguish between "behavior" and "character." The guards were assigned a role, and while some behaved negatively toward the prisoners based on their beliefs regarding how guards should act, it was misleading to suggest that the guards *enjoyed* treating the prisoners poorly.

Conversations between prisoners were also recorded without their knowledge. The prisoners spent most of their time talking about their prison experiences. They complained to each other about the food, the guards, and the punishments. This was a group of students who did not know one another outside of the experiment and yet they had very little interest in learning about each other. The inmates introduced themselves by their numbers to the priest, and three inmates were willing to forfeit their pay to go home. The prisoners became passive and emotionally distraught as the experiment progressed. Despite the fact that the prisoners knew their incarceration was not real, researchers believed that the experience affected them. The loss of personal identity in conjunction with the arbitrary control and emasculation appeared to have had an impact on their behaviors. The helpless behaviors exhibited by the prisoners may have been manifestations of the initiation technique used in the study. Subjects were unknowingly arrested by real police officers and taken to a police station for booking. It would have been natural for them to be confused as to whether or not they were free to end the experiment at any time (Fromm 1973). There continues to be doubts as to whether or not the inmates and guards acted on their own accord. Carlo Prescott, the ex-inmate who served as a consultant for the experiment, wrote an article for the *Stanford Daily* in 2005 in which he reported that researchers had prompted some of the participants' actions (http://daily.stanford.edu/article/2005/4/28/ the Lie Of The Stanford Prison Experiment).

Zimbardo's sample of research subjects could also be criticized. His subjects were selected from of group of volunteers who had answered an ad in the newspaper. Each underwent psychological testing and an interview, yet 24 white male college students were selected to participate

in the experiment. Study participants shared very few characteristics with real prison guards and inmates. It is questionable whether the results would have *generalized* to a larger, more diverse population.

Most of the criticisms focused on alleged *ethical violations* in Zimbardo's research. All of the details of the experiment were not disclosed to the participants. The fake arrests that took place at the beginning of the study were a complete surprise. This was intentional because the researchers wanted the prisoners to go through the same type of induction as real criminals. The vagueness of the instructions left the guards under the impression that the researchers were only interested in studying the behaviors of the prisoners, and researchers made no attempt to correct this because they wanted the guards to feel comfortable playing their roles. *Full disclosure* is not always ideal when conducting research but it becomes an important consideration when making sure that subjects willingly provide their *informed consent* to participate. Zimbardo himself admitted he became so caught up in his role of prison superintendent that his objectivity may have been compromised. When confronted with the rumor of the impending prison break, he helped devise a strategy to stop it. Despite the fact that Zimbardo was assigned a role to play in the experiment, as a researcher he should have allowed the guards to come up with their own plan.

The most significant ethical issue surrounding the Stanford Prison experiment was the *harm* inflicted upon the subjects. Researchers wanted to explore the influence of a prison environment on the behaviors of individuals assigned to play the roles of prisoners and guards, but they never anticipated the extent to which both groups would become absorbed in those roles. The prisoners suffered harm and became so emotionally distraught that the experiment had to be terminated after only six days. The guards became immersed in their roles and demonstrated a willingness to use physical and psychological coercion to control the prisoners. Their position of authority carried with it a sense of power that they freely exercised. No one questioned their tactics or intervened to stop the abuse. While the experiment was taking place, over fifty curious individuals visited the prison and observed what was going on. No one voiced any concerns or disapproval until the sixth day when a colleague of Zimbardo showed up and expressed shock and condemnation at what was taking place. Before the subjects left the experiment, everyone participated in discussion sessions to allow the guards and prisoners to openly express their thoughts and feelings. The researchers also participated by questioning the moral and ethical concerns of some of their actions. It is important to point out that the researchers followed all guidelines specified by the Stanford Human Ethics Committee which granted approval of the study. Predicting harm can be difficult, but the experiment should have been terminated once the researchers started to observe the prisoners' distress and the guards' willingness to inflict suffering.

Significance and Subsequent Research

The Stanford Prison experiment became widely cited primarily because of the alleged ethical violations. Numerous social science research texts cite the study as an example of unethical research, and the experiment has never been replicated in the United States for this reason. In 2002, the British Broadcasting Corporation produced a reality television show based on the original prison experiment. Fifteen participants were assigned to play the roles of prisoners and guards in a simulated prison constructed in a television studio. Two psychologists, Alex Haslam and Stephen Reicher, watched over the project, and an independent ethics committee was on hand to supervise as well. In this experiment, the prisoners formed a unified front against the guards. Prisoners mocked and ridiculed the guards and refused to comply with their orders (Reicher and Haslam 2006).