EXAMINING ALFORD PLEAS AND THE PRESUMPTION OF STRONG EVIDENCE

by

Amy Dezember

A Dissertation
Submitted to the
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The Requirements for the Degree
of
Doctor of Philosophy
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by

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DEDICATION

This is dedicated to my husband, Thaddeus, for your constant love and support though this process, and for always making me laugh and smile. I could not have picked a better partner to experience life with. And to our dog, Biscuit, for always reminding me to take a break, go for a walk, and enjoy some puppy cuddles.

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ABSTRACT

EXAMINING ALFORD PLEAS AND THE PRESUMPTION OF STRONG EVIDENCE

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In *North Carolina v. Alford* (1970), the Supreme Court held that defendants who claim innocence but perceive their chances of acquittal at trial to be too risky can still plead guilty so long as there is a sufficient factual basis of guilt against the defendant. However, "sufficient" has never been defined by the courts and thus pleas could be accepted for a variety of reasons with differential standards applied in different cases (Shipley, 1987). Using a mixed method approach, this dissertation adds to the limited research surrounding *Alford* pleas by examining how these pleas compare to traditional guilty pleas in their case processing (i.e., length of case disposal) and sentencing outcomes (i.e., sentence length, sentence reduction, and carceral sentence). Additionally, this dissertation explores the process of negotiating, offering, and accepting *Alford* pleas, to better understand how these unique pleas function in practice.

Analysis of a sample of Virginia court cases indicated that *Alford* plea cases took

longer to dispose of and generally received less favorable sentences than traditional guilty pleas. Specifically, *Alford* pleas received longer sentences, were less likely to receive a full sentence reduction as compared to traditional guilty pleas, and were more likely to receive incarceration as part of their sentence. However, *Alford* pleas were not significantly different from traditional guilty pleas when no sentence reduction was given nor in the size of the sentence reduction (if one was given). Additionally, interviews with court actors (i.e., judges, prosecutors, and defense attorneys) indicated that these pleas are negotiated similarly to traditional guilty pleas, and often only come up near the plea hearing when the defendant is reluctant to plead guilty but also opposed to going to trial. The majority of prosecutors and defense attorneys stated that the strength of evidence is not a driving factor or consideration in the decision to enter an *Alford* plea rather than a traditional guilty plea. Similarly, judges also report no differences in the strength of evidence in *Alford* plea cases and stated that they do not treat their review of evidence any differently in these cases than traditional guilty pleas. Ultimately, Virginia prosecutors and defense attorneys argue that the risk of facing jury sentencing is a much more important factor for reluctant defendants to enter an *Alford* plea.

CHAPTER ONE: INTRODUCTION

The ability for defendants to plead guilty while maintaining their innocence seems like a paradox that should not exist in a system tasked with seeking truth and justice. However, in *North Carolina v. Alford* (1970) the Supreme Court held that defendants who claim innocence but perceive their chances of acquittal at trial to be too risky can still plead guilty so long as there is a sufficient factual basis of guilt against the defendant. Even though *Alford* pleas are constitutional, they garner significant controversy, especially given increased concerns over wrongful convictions (Norris, 2017). For example, one legal scholar stated about *Alford* pleas, "There could hardly be a clearer violation of due process than sending someone to prison who has neither been found guilty nor admitted his guilt" (Alschuler, 2003, p. 1412). Despite the legality of this type of plea for more than 50 years and the controversy surrounding the *Alford* plea, we know very little about how it functions in practice. The vast majority of criminal cases are disposed of though plea bargains, and it is estimated that *Alford* pleas make up between 3-6% of all pleas (including not guilty pleas) at the state and federal level at any given time (Wolf Harlow, 2000). While these percentages may seem low, it is estimated that this percentage represents roughly 76,000 pleas at any given point in time (Redlich & Özdoğru, 2009), which indicates that this is an area of the justice system that warrants further investigation.

Alford pleas have gained additional attention though high-profile cases involving

these pleas, such as the West Memphis Three. The West Memphis Three were three teenagers who were tried and convicted of the murders of three boys in West Memphis, Arkansas (Associated Press, 1994). Despite protesting their innocence, the three were found guilty at trial in 1994. After the trial, Damien Echols was sentenced to death, Jessie Misskelley, Jr. was sentenced to life imprisonment plus two 20-year sentences, and Jason Baldwin was sentenced to life imprisonment (Associated Press, 1994). After an Arkansas Supreme Court ruling upset the convictions because of newly produced DNA evidence and potential juror misconduct, the prosecutor in the case negotiated a plea deal with the West Memphis Three, which allowed them to assert their innocence while acknowledging that prosecutors had enough evidence to convict them (Robertson, 2011). In exchange for entering an *Alford* plea, the court vacated their capital murder convictions and allowed them to plea to lesser charges of first- and second-degree murder and sentenced them to time served, effectively allowing all three men to be released immediately (Robertson, 2011). Numerous documentaries (e.g., *Paradise Lost* documentary series, *West of Memphis*), books (e.g., *Devils Knot, Blood of Innocents*), and other media have investigated this case and the unique plea arrangement that the West Memphis Three entered, often raising questions about the legality of these pleas and concerns about truly innocent defendants entering these pleas. To better understand these pleas, it is important to first start with the case that led the Supreme Court to decide the constitutionality of the *Alford* plea.

Background of *Alford* Pleas

In 1963, Henry C. Alford, an African American man in the south during the

height of the civil rights movement, was accused of first-degree murder in North Carolina, a capital offense that is punishable by the death penalty (*North Carolina v. Alford*, 1970). Alford went to visit a prostitute at a bar and allegedly got into a fight with Nathaniel Young, who was later killed from a shotgun blast. Despite Alford's claims of innocence, there was seemingly strong evidence of his guilt. While there were no eyewitnesses to the crime, there were witnesses who claimed that shortly before the murder, Alford returned home to get his gun, stated he was going to kill the victim, and then upon returning home, stated that he carried out the killing (*North Carolina v. Alford*, 1970). Alford also had a lengthy criminal history, including a prior conviction for murder (*North Carolina v. Alford*, 1970).

Henry Alford was originally charged with first-degree murder, a crime that carried a possible sentence of life imprisonment or the death penalty. Alford agreed to plead guilty in exchange for a second-degree murder conviction. During his hearing, Alford testified that he was innocent and was only pleading guilty to avoid the death penalty. Specifically, Alford stated, "I pleaded guilty on second degree murder because they said there is too much evidence, but I ain't shot no man, but I take the fault for the other man. We never had an argument in our life and I just pleaded guilty because they said if I didn't they would gas me for it, and that is all" (*North Carolina v. Alford*, 1970, p. 28). Despite this statement, the judge accepted his guilty plea, stating that Alford made his decision freely after consulting counsel, and ultimately sentencing him to the maximum 30-year sentence.

Alford repeatedly sought relief, and his conviction was eventually overturned by

the Fourth Circuit Court of Appeals but then re-affirmed in the Supreme Court decision, *North Carolina v. Alford* (*North Carolina v. Alford*, 1970). In this decision, the court recognized that while there are usually two components of pleading guilty—the waiver of the right to a trial and the admission of guilt—the latter is not a constitutional requisite to imposing a criminal sanction. Instead, the U.S. Supreme Court held that defendants may knowingly and voluntarily plead guilty, even while protesting their innocence, if the judge finds "strong evidence" of the defendant's actual guilt. In Alford's case, the Court noted that his plea was similar to a plea of nolo contendere (i.e., no contest) and held that if a defendant can plead nolo contendere while refusing to admit guilt, he should also be able to plead guilty while protesting his innocence. *Alford* pleas have been controversial since the Court's decision as legal scholars argue that they ignore and degrade the core values of our criminal justice system by blurring the lines between guilt and innocence (Alschuler, 2003; Bibas, 2003). In fact, in his dissent, Justice Brennan remarked that Alford was "so gripped by fear of the death penalty that his decision to plead guilty was not voluntary but was the product of duress as much so as choice reflecting physical coercion" (*North Carolina v. Alford*, 1970, p. 40). As a result of this landmark decision, defendants can now enter *Alford* pleas when they claim to be innocent but perceive their chances for acquittal at trial to be too much of a risk. However, it is important to note that even when defendants enter this unique plea, the court accepts it as a guilty plea.

Statement of the Problem

While it is estimated that *Alford* pleas represent roughly 76,000 pleas at any one point in time (Redlich & Özdoğru, 2009), only one empirical study has been published

examining these unique pleas. Since the majority of literature available is in the form of law reviews and theoretical legal articles, this is an area of the justice system that warrants further investigation by empirical researchers. Per the Supreme Court decision, courts are supposed to find a sufficient factual basis of guilty before allowing an *Alford* plea to take place (Bibas, 2003). This requirement is because, unlike in traditional guilty pleas, the defendant does not provide an admission of guilt but rather maintains his or her innocence. Thus, in *Alford* plea cases, the strength of the evidence must be the driving factor in establishing a sufficient factual basis of guilt, both for purposes of the prosecutor offering the plea and in the judge's review of the evidence to establish guilt and to accept the plea. However, "sufficient" has never been defined by the courts and thus pleas could be accepted for a variety of reasons with differential standards applied in different cases (Shipley, 1987). Additionally, research has shown that there are a variety of reasons that defendants, even innocent ones, decide to accept traditional plea deals such as the severity of charges, as a way to be released from jail, and a decrease in punishment at sentencing (Bibas, 2004; Cohen & Reaves, 2006; Kellough & Wortley, 2002).

Thus far, only one empirical study on *Alford* pleas has been published that examined the differences between *Alford* pleas and other types of pleas, including guilty pleas, no contest pleas, and not guilty pleas (Redlich & Özdoğru, 2009). This study compared these pleas on a variety of factors, including defendant's demographic factors (i.e., race, age, gender, education), clinical factors (i.e. mental health diagnoses), and legal factors (e.g., sentence outcomes, days in jail pre-prison, times talked to attorney).

This study found that about 6.5% of all pleas in their sample (or approximately 76,000 individuals) took *Alford* pleas, which provided one of the only national estimates of the frequency of *Alford* pleas (Redlich & Özdoğru, 2009). While this study provides some insight into the frequency of *Alford* pleas and the factors that influence the plea process, it also has its limitations. First, this study does not investigate how the strength of evidence influenced the likelihood of entering *Alford* pleas. The authors did not have access to evidentiary information about the cases in their sample and thus could not address factors related to strength of evidence. Second, this study relied on the Department of Justice's 2004 Survey of Inmates in Correctional Facilities dataset, which limited their sample only to defendants who were given a custodial (i.e., jail or prison) sentence and was limited to just one year in time. To my knowledge, this is the only empirical research looking at the differences between *Alford* pleas and other guilty pleas, indicating that this is an area much in need of additional research.

Dissertation Overview

This dissertation addresses the gap in literature surrounding *Alford* plea cases by comparing case processing and sentencing outcomes by plea type (*Alford* pleas vs. traditional guilty pleas) and examining the assumption that strength of evidence is a driving influence in *Alford* plea cases, both in terms of how prosecutors offer *Alford* pleas and how judges evaluate these pleas according to the standards set by the Supreme Court. This dissertation also addresses the limitations in earlier research by using a dataset that includes cases across multiple years and with defendants who received both custodial and non-custodial (i.e., probation only) sentences, and by conducting interviews with court

actors (i.e., judges, prosecutors, and defense attorneys). This multi-method study addresses four main questions: (1) Does the length of time it takes to dispose of *Alford* plea cases differ from traditional guilty plea cases? (2) Do the sentence outcomes (i.e., length of sentence, reduction in sentence, incarceration) given to *Alford* plea cases differ from those given to traditional guilty plea cases? (3) Does the strength of evidence differ for *Alford* plea cases as compared to traditional guilty plea cases? (4) What is the process for offering, negotiating, and accepting *Alford* pleas and how does the strength of evidence influence the process? Table 1 details the research questions and the methods for addressing these questions.

To address these research questions (RQs), this dissertation used a mixed methods approach to better understand these unique pleas that allow for defendants to plead guilty while maintaining their innocence, and thus adds to the scant literature that currently exists on *Alford* pleas. To address RQ1 and RQ2, administrative records were analyzed to compare *Alford* plea cases to traditional guilty plea cases in the length of time to dispose of the case and the sentence outcomes received, specifically the overall sentence length, the sentence reduction given in exchange for the plea, and whether incarceration was included as part of the sentence. Regression models, including multi-level OLS regression, multi-level logistic regression, and zero inflated beta regression modeling, were used examine the relationship between the type of plea (i.e., *Alford* or traditional guilty plea) and the dependent variables (i.e., length of time to dispose of case, overall sentence length, sentence reduction, incarceration), while appropriately controlling for the jurisdiction-level nature of the data (Raudenbush & Bryk, 2002; Woltman et al.,

2012). Although it was initially proposed to collect court documents to conduct quantitative multi-level modeling analysis to address RQ3, due to the COVID-19 pandemic and court closures, the proposed methods were no longer feasible and instead RQ3 was addressed though qualitative methods (see Appendix B: Detailed Description of Changes to RQ3 Methods). Therefore, to address RQ3 and RQ4, prosecutors, judges, and defense attorneys were interviewed to better understand the process of offering, negotiating, and accepting *Alford* pleas and how the strength of evidence factors into the process.

Table 1. Research Questions and Methods

	Research Question (RQ)	Method	Data Point
1	Does the length of time it takes to dispose of *Alford* plea cases differ from traditional guilty plea cases?	Quantitative	Virginia court data on *Alford* and traditional guilty plea cases
2	Do the outcomes (i.e., length of sentence, reduction in sentence, incarceration) given to *Alford* plea cases differ from those given to traditional guilty plea cases?	Quantitative	Virginia court data on *Alford* and traditional guilty plea cases
3	Does the strength of evidence differ for *Alford* plea cases as compared to traditional guilty plea cases?	Qualitative	Interviews with prosecutors, defense attorneys, and judges
4	What is the process for offering, negotiating, and accepting *Alford* pleas and how does the strength of evidence influence the process?	Qualitative	Interviews with prosecutors, defense attorneys, and judges

This dissertation is organized as follows: Chapter Two provides a review of the relevant literature regarding the theoretical, legal, and empirical scholarship surrounding *Alford* pleas, understanding guilty pleas, strength of evidence in the plea decision-making process, and concerns about false guilty pleas and wrongful convictions. This literature review highlights the gaps that this dissertation aims to fill and introduces the empirical and theoretical foundations used to develop the research questions guiding this dissertation. Chapter Three provides a detailed description of the methodology used to address the research questions, including both quantitative and qualitative methods. Chapter Four provides the results of the quantitative and qualitative analyses. Finally, Chapter Five includes a discussion and significance of these findings, limitations of this research, future research directions to continue developing this body of literature, and conclusions of the dissertation and how it adds to the understanding of how *Alford* pleas operate in practice.

CHAPTER TWO: LITERATURE REVIEW

Guilty pleas are an integral part of our criminal justice system, with 94-97% of state and federal cases resulting in a plea (Cohen & Reaves, 2006; Miller et al., 1978; Zottoli et al., 2016). Defendants typically plead guilty as part of an arrangement with the prosecutor, wherein the state ensures a conviction and the defendant receives some sort of deal or bargain (Bibas, 2004). These deals commonly include the state dropping charges, amending the charges to less severe ones, recommending a discounted sentence, or a combination of all three (Kellough & Wortley, 2002; Redlich et al., 2017). The constitutionality of plea bargaining was affirmed in *Brady v. United States* (1970) when the Court upheld that states can offer benefits to defendants who are willing to admit guilt, so long as the plea is made knowingly, voluntarily, and without coercion. Since this decision, courts have continually relied on plea bargaining as a way to effectively and efficiently dispose of cases. Scholars who support plea bargaining likewise do so because pleas arguably promote procedural values such as speed, cost, efficiency, and free choice (Bibas, 2003). In other words, plea bargaining can give defendants the information and freedom they need to further their own interests and desires. Critics of plea bargaining argue that it undermines structural safeguards and undercuts equal treatment, fairness, and perceptions of fairness by subverting proof beyond a reasonable doubt and other rights (Bibas, 2003).

Despite the criticisms of plea bargaining, it continues to be an integral part of our system, indicating the importance of researching and understanding the various elements

related to the plea process. Most research on plea bargaining has focused on its prevalence, the factors that influence whether the defendant is offered or accepts a plea, and the value of the bargain offered (Spohn, 2018). Very little attention has been paid to *Alford* pleas and the circumstances of the case that might lead to this controversial plea. The overall lack of knowledge and understanding about the *Alford* plea process signals the need to learn more about the legal and extra-legal factors surrounding such a unique and seemingly conflicting legal agreement. Thus, to establish a base for how to study these pleas, it is important to review what we know so far about *Alford* pleas, the theoretical foundations for understanding how guilty pleas operate in practice, the role of the strength of evidence in plea bargaining and legal decision-making, and the concerns of false guilty pleas and wrongful convictions among *Alford* pleas-takers.

What We Know About *Alford* Pleas

As previously mentioned, very little is known about *Alford* pleas and they are typically lumped together with no contest pleas (Redlich & Özdoğru, 2009). However, there are important differences between these two pleas that are necessary to discuss. First, defendants who enter *Alford* pleas assert their innocence whereas defendants who enter no contest pleas simply do not acknowledge guilt. Second, *Alford* pleas require a factual basis, or evidence of actual guilt, on court record for judges to accept them, whereas no contest pleas do not have this requirement. Third, the future legal implications that a defendant experiences as a result of the pleas differ, in that no contest pleas do not count against defendants in future proceedings (e.g. in civil litigations) and *Alford* pleas are considered a strike against the defendant (Shipley, 1987). Finally,

although *Alford* pleas are theoretically permissible in more jurisdictions, no contest pleas appear to be more prevalent. According to Bibas (2003), 47 states and the District of Columbia allow for *Alford* pleas, whereas only 38 states and DC allow for no contest pleas. However, the 1997 Survey of Inmates in State and Federal Correctional Facilities reported that approximately 6% of state defendants entered *Alford* pleas and 11% entered no contest pleas, suggesting that state court judges may be more reticent to accept *Alford* pleas than no contest pleas (Wolf Harlow, 2000). Because of these differences, it is important to look at *Alford* pleas independently from no contest pleas so that we can learn more about what might make *Alford* pleas, and the defendants who take them, unique.

States are not required to allow for *Alford* pleas to be offered in criminal cases. In fact, three states have forbidden *Alford* pleas. For example, the Supreme Court of Indiana has held that judges may not accept guilty pleas accompanied by protestations of innocence (Bibas, 2003; Zottoli et al., 2019). The court suggested that *Alford* pleas risk being unintelligent, involuntary, and inaccurate and that these pleas undercut public respect for the justice system (*Ross v. State of Indiana*, 1983). Michigan and New Jersey courts agreed and also forbid *Alford* pleas, while Arizona permits *Alford* pleas but disfavors them for fear that innocent defendants will plead guilty or that the public will lose confidence in the justice system (Bibas, 2003). Furthermore, individual judges in other states may disfavor *Alford* pleas and for that reason choose not to accept them, even if allowable by state law. Other courts have ruled that it is an abuse of discretion to reject an *Alford* plea simply because defendants refuse to admit their guilty (Shipley, 1987).

While there is little published research on the types of crimes defendants are

charged with, there is an assumption that persons accused of sex offenses are more prevalent among *Alford* plea-takers. It is commonly held that, because sex offenders are among the most reticent to admit their crimes (when guilty), they will take the *Alford* plea option when allowed (Alschuler, 1975; Bibas, 2003; Wexler, 2003). However, one study of inmates convicted of sexual offenses in federal and state prisons found that only 7% were *Alford* plea-takers, 14% were no contest, 51% were traditional guilty, and 28% were not guilty pleaders (Redlich & Özdoğru, 2009). Based on these findings, support for the assumption that sex offenses are more prevalent among *Alford* plea-takers was not found. However, this is one of the only published studies that examined the type of plea and nature of charges, and thus additional research is needed before drawing strong conclusions.

Legal Scholarship on Alford Pleas

Even though the *Alford* case was decided over 50 years ago, the vast majority of literature surrounding these pleas comes in the form of law reviews that debate the merit of these pleas in our criminal justice system (as opposed to empirical research). Legal arguments in favor of allowing and utilizing *Alford* pleas point to several positive effects of such pleas. For example, *Alford* pleas may help achieve several goals of the criminal justice system, including furthering defendants' right to choose courses of action, increasing efficiency through the plea bargaining system, encouraging honesty, and promoting openness in attorney-client relationships (Bibas, 2003; Shipley, 1987). However, critics of these pleas point to the fact that *Alford* pleas raise several concerns about the moral underpinnings of the judicial system, the public image of judicial

integrity, the fear of overuse or collateral attacks, and the potential for inefficiency. It is important to examine the benefits and criticisms that legal scholars raise in order to understand what the intent of these pleas is and how they might operate in practice.

One of the main benefits that legal scholars believe that the *Alford* plea provides the criminal justice system and the plea process is that all defendants should be allowed to make a decision that is in their perceived best interest. Legal scholars argue that defendants claiming to be innocent should be allowed to take advantage of the benefits that come from pleading guilty, just as guilty defendants are (Alschuler, 2003; Bibas, 2003; Shipley, 1987). Legal scholars argue that a variety of factors may influence a defendant's decision to plead guilty beyond actual guilt or innocence, and thus defendants may want to take advantage of attractive plea offers as a way to avoid the risk of trial (Shipley, 1987). A common argument in favor of our criminal justice system effectively operating as a system of pleas is that the practice of plea bargaining presents defendants options to minimize charges or sentences in exchange for pleading guilty. Thus, *Alford* pleas protect the right of defendants to choose courses of action according to their own best interests (Shipley, 1987). Additionally, the plea bargaining system promotes efficiency and without the *Alford* plea option, defendants who otherwise might have pled guilty might choose to go to trial rather than admit their guilt if made to enter a traditional guilty plea (Bibas, 2003; Shipley, 1987). This would result in crowded courtrooms and backed up case logs, thus defeating the efficiency goals of the plea. Essentially, legal scholars argue that these pleas allow defendants, even defendants

claiming to be innocent, to decide their own fates rather than leave it in the hands of a judge or jury and to maintain the efficiency of the plea bargaining process.

Additionally, legal scholars point out that *Alford* pleas can promote openness and honesty between the defendant and his or her attorney. Alschuler (1975) claims that if lawyers and judges insist on admissions of guilt, defendants might lie to their lawyers or defense counsel will pressure clients to confess or lie. Thus, he argues that *Alford* pleas, though distasteful and offensive, are more honest and fair and less hypocritical (Alschuler, 1975). It is argued that without *Alford* pleas, innocent defendants would lie to their lawyers about their guilt in order to reap the benefits of pleading guilty (Bibas, 2003; Shipley, 1987). Instead, allowing *Alford* pleas promotes honesty between an attorney and his client (Conklin, 2020). Thus, if *Alford* pleas are available, clients have little reason to lie to attorneys to get what they want, such as reduced charges or sentences. Alternatively, if courts do not accept *Alford* pleas, innocent defendants are left with two options: (1) go to trial in an attempt to be found not guilty but risk harsher punishment if found guilty or (2) plead guilty simply to benefit from the plea process. It has also been argued that *Alford* pleas save judges from having to regulate the defendant's out-of-court speech and provide an additional way for the defendant to communicate their situation to the court (Conklin, 2020). Legal scholars argue that by not allowing *Alford* pleas, the court actually encourages lying in a way that tarnishes the integrity of the court whenever a defendant selects the latter of the two options (Shipley, 1987). By allowing defendants to take advantage of an *Alford* plea, some legal scholars

argue that the defense attorney is better equipped to evaluate the strength of the case and plan a strategy and the court is better able to ensure the integrity of the plea process.

When legal scholars debate the negative or detrimental effects of *Alford* pleas, one of the first concerns is the potential for actually innocent defendants to feel coerced into pleading guilty because of the threat or risk of conviction at trial. There are many who view plea bargaining as inherently coercive because it offers defendants a "forced choice," such that their choice is between a certain lesser punishment and an unknown risk of a far greater punishment (Kipnis, 1976; Langbein, 1992). The argument is that, as with any other form of plea bargain, an *Alford* plea will include the promise of a lesser sentence (Ward, 2003). Innocent defendants may be faced with the dilemma to either take their chances at trial or lie to their attorneys and to judges by pleading guilty, both of which are conflicted with society's moral vision of its criminal justice system (Shipley, 1987). Additionally, it has been argued that for a defendant who entered an *Alford* plea after being confronted with evidence that the court will likely deem "sufficient," starting over and going to trial is no longer an appealing scenario (Ward, 2003). Therefore, defendants who enter *Alford* pleas may not truly have a choice to begin with and may merely accept the plea over the trial as the lesser of two evils.

From a practical perspective, one legal scholar has raised concerns about the consequences of having a defendant insist on his or her innocence that extend beyond the initial plea and sentencing, such as options for probation or parole. Ward (2003) argues that while defendants might be "sold" on the promise that they will not have to admit any criminal wrongdoing, that may not be true beyond the decision to enter the plea. For

example, when a defendant is placed on probation, they may be required to participate in counseling to address the events that led to the conviction, which often requires the offender to admit responsibility for the underlying offense (Ward, 2003). Additionally, for defendants who are sentenced to jail or prison, *Alford* plea-takers may be denied parole due to their failure to express remorse or possess insight into the offense which led to the incarceration (Ward, 2003). Thus, if defendants are not informed of the possibility that they must later admit their guilt, then concerns of due process and not being properly informed of the direct consequences as required by *Brady v. United States* (1970) may call the validity of the plea into question.

Another concern that legal scholars raise is that these unique pleas may erode the legitimacy of the court and the public's trust in the system. While *Alford* pleas may be constitutional and even efficient, it is also argued that they undermine key values served by admissions of guilt in open court (Bibas, 2003). Accepting pleas without confessions muddy the criminal law's moral message, and thus it is argued that guilty pleas should be reserved for those who confess and to vindicate their victims and the community's moral norms (Bibas, 2003). If the most basic intent of the criminal justice system is punishing blameworthy persons, the conviction of an innocent defendant should be considered intolerable. Thus, legal scholars argue that *Alford* pleas undermine the procedural values of accuracy and public confidence in accuracy and fairness by convicting innocent defendants and creating the perception that innocent defendants are being pressured into pleading guilty (Bibas, 2003; Shipley, 1987). The fear is that the contradiction of the court allowing an innocent person to plead guilty could lead the public to view the

criminal justice system as a corrupt and unfair to process with little emphasis on the ideals of justice.

As mentioned, there is limited research and understanding of the legal decision-making experienced by prosecutors, judges, and defense attorneys in the *Alford* plea process. However, Bibas (2003), a legal scholar, conducted brief, informal interviews with legal actors to better understand the *Alford* plea negotiation process. While limited and informal, Bibas (2003) interviewed defense attorneys and found that many reported that most of their defendants are initially reluctant to admit guilt. The defense counsel stated that they work with defendants, confront them with the evidence, and bring most around to where they will admit guilt, while only a small minority of clients remains unwilling to admit guilt even when it would be in their interests to do so (Bibas, 2003). When Bibas asked defense counsel, prosecutors, and judges why they thought *Alford* defendants would not admit guilt, their answers tended to converge. The most common barrier to a classic guilty plea is the defendant's fear of embarrassment and shame before family and friends. Additionally, while legal scholars have commented on the potential benefits and concerns surrounding the use of *Alford* pleas, it is important to follow up on the issues raised with more rigorous, empirical research to gain a better understanding of how these pleas operate in practice and the consequences of entering these pleas.

Empirical Research on Alford Pleas

As mentioned, to my knowledge, only one empirical study has been published that directly explores these pleas. Redlich and Özdoğru (2009) compared *Alford* plea cases to traditional guilty pleas and no contest pleas, to identify if defendants who

publicly maintained their innocence differed significantly on legal and extra-legal factors, such as demographics, sentence outcomes, and education levels. This study utilized the 2004 Bureau of Justice Statistics Survey of Inmates in State Correctional Facilities, which included 14,449 inmates interviewed between October 2003 and May 2004. The interview lasted approximately one hour and covered a variety of topics, including questions about individual characteristics and demographics, the type of plea entered, criminal history, and the current offenses and sentence (Redlich & Özdoğru, 2009).

Redlich and Özdoğru (2009) also conducted analyses with a limited sample of inmates who were convicted of murder/manslaughter charges, while controlling for potentially confounding variables (e.g., gender, socioeconomic status, offense severity, length of time to be served). Redlich and Özdoğru (2009) also looked specifically at sentence outcomes to test whether or not defendants who take *Alford* pleas are given harsher sentences as compared to other guilty plea types, to see if they are 'punished' for insisting on their innocence. They limited their sample to inmates convicted of murder/manslaughter for two reasons. First, the guilty plea rates for crimes other than murder were so high that it would not allow for comparisons of not guilty plea-takers. Second, in an attempt to address concerns of wrongful convictions as a result of *Alford* pleas, the researchers argued that since murder also carries the longest sentence, the miscarriages of justice that involve murder are among the most egregious. With this information, the researchers provided an examination of the demographic and legal characteristics of individuals who entered *Alford* pleas, as well as to compare them with individuals who entered no contest, traditional guilty, and not guilty pleas on factors such

as age, education levels, prior arrests, and days in jail pre-plea.

Redlich and Özdoğru (2009) generally found few differences between the three guilty plea types. They found that *Alford*, no contest, and traditional guilty plea-takers received very similar sentences, and that all three types were nearly equally likely to receive a sentence that included life in prison or death. In contrast, not guilty plea-takers were almost two times more likely to receive a life sentence. This indicates that *Alford* plea-takers benefit from the deals or bargains that come along with pleading guilty and are not punished for insisting on their innocence. Redlich and Özdoğru (2009) also looked at other legal factors, such as pre-plea/trial release, days spent in jail pre-prison, and number of times spoken to attorney pre-plea. They found that the number of days spent in jail pre-prison significantly discriminated between those pleading not guilty versus traditional guilty, but not for *Alford* plea-takers. Lengthier stays in jail increased the probability of not guilty pleas over traditional guilty pleas, but again, this pattern did not emerge for *Alford* pleas. Additionally, they found an increased likelihood of an *Alford* plea over that of not guilty, guilty, and no contest pleas (though only marginally more for the latter two) for inmates to speak more often with attorneys. A possible explanation for these findings is that *Alford* plea-takers, insisting on their innocence, first rejected traditional guilty plea deals, necessitating numerous plea discussions with their attorneys before all parties agreed on the *Alford* plea, which in turn prolonged their pre-prison jail stays (Redlich & Özdoğru, 2009).

While this study describes *Alford* plea takers in relation to other pleas, it does not provide insight into the decision-making process of defendants who take this unique plea.

Similarly, it has been suggested that judges often rely on a summary of the evidence provided only by the state without a similar summary provided by the defense (Shipley, 1987). However, this merely indicates that the strength of evidence the prosecution presents can define or drive the plea process and that the defense's evidence may not be considered by judges in these pleas, which seems vital in a case where a defendant maintains innocence. Based on the Supreme Court's decision in *Alford*, judges should establish factual guilt in *Alford* plea case, yet this has never been studied, indicating this is an area in much need of research.

In considering the plea decision-making process, there are two characteristics that are unique to *Alford* pleas, as compared to traditional guilty pleas, that might make their decision-making process different than other defendants. First, in theory, judges need to find a sufficient factual basis of guilt before accepting the plea. The admission of guilt typically serves as the factual basis for traditional pleas, but since the defendant insists on innocence in an *Alford* plea case, the judge must instead determine that there is sufficient evidence of guilt in order to allow the plea. In the original case, the evidence against Henry Alford was described as "overwhelming" (*North Carolina v. Alford*, 1970). Second, defendants who take *Alford* pleas are in essence acknowledging that the state's evidence is sufficiently strong for conviction at trial, which is a risk they do not want to take on. This, again, was true for the original case, in which Alford stated that he was pleading guilty because he knew there was too much evidence against him and he wanted to avoid the death penalty (*North Carolina v. Alford*, 1970). Since these pleas are quite controversial it is important to understand how they are used, especially the role that

evidence plays in the plea offer and acceptance as well as the decision-making process for the different people involved in the agreement.

Understanding Guilty Pleas

With the vast majority of criminal convictions in the United States resulting from a guilty plea, scholars continue to debate the merits of plea bargaining, the incentives behind guilty pleas, and the influences on the outcomes of guilty pleas (Alschuler, 1981; Johnson et al., 2016; Wright & Miller, 2002). Defendants typically plead guilty as part of an arrangement with the district attorney, wherein the state ensures a conviction and the defendant receives some sort of deal or bargain (Bibas, 2004). These deals commonly include charge and/or sentence discounts (Redlich et al., 2017) and, depending upon the severity of the crime, can allow for immediate release from jail, which can be a strong incentive to accept the plea offer (Kellough & Wortley, 2002). The courts have relied on plea bargaining as a way to effectively and efficiently dispose of cases (Fisher, 2000), and thus it is important to understand the factors that influence the plea decision making process.

When considering why plea bargains are offered and accepted, some research has focused on the institutional or organizational influences on pleas, such as the role of judges, prosecutors, and defense attorneys working together towards the shared goal of disposing cases efficiently and minimizing uncertainty (Eisenstein & Jacob, 1977). Legal scholars and criminologists have examined how the various legal actors involved in the plea process make plea decisions "in the shadow of trial" (Bibas, 2004; Bushway et al., 2014; Dezember & Redlich, 2019). The "shadow of the trial" model argues that decisions

to offer, accept, or reject pleas derive from the perceived probable outcome of a trial and that a rational, risk-neutral defendant would only accept a plea deal that is less than the expected value of the trial outcome (Bushway & Redlich, 2012). However, critics of the shadow model have raised questions about the face validity of this model (Bibas, 2004). Both the organizational and shadow of the trial theoretical frameworks provide a foundation for better understanding the plea bargaining process.

Organizational Approaches to Plea Bargaining

Research on plea bargaining has frequently focused on organizational influences of the courtroom workgroup on plea bargaining, such as the norms and "going rates" for defendants who are willing to plead guilty (Einstein & Jacobs, 1977). In other words, prosecutors, defense attorneys, and judges collaborate to efficiently dispose of cases and minimize uncertainty. Many studies looking at the effect of courtroom workgroups on plea discounts suggest that the size of any plea–trial sentencing differences varies by jurisdiction (Brereton & Casper, 1981; King et al., 2005). One commonly used approach in plea research is the focal concerns perspective, which builds on the framework of courtroom work groups and institutional factors that impact pleas. This perspective was originally developed in criminology to explain the sentencing decisions of judges (Steffensmeier et al., 1998) but has since been adapted to explain plea bargaining outcomes (Johnson et al., 2016; Shermer & Johnson, 2010). While focal perspective originally focused on the judges' assessment of offender blameworthiness, when applied to plea bargaining, the theory accentuates the unique concerns that prosecutors face during plea negotiations, such as doing justice, trial-worthiness, convict-ability of cases,

and even the prosecutors' own long-term career goals (Johnson et al., 2016). Thus, plea bargaining plays a central role in pursuing these goals through high conviction rates and increased efficiency of the process.

Within this perspective, prosecutors and other decision-makers in the criminal justice system are guided by three focal concerns in reaching sentencing decisions: defendants' blameworthiness, community protection, and practical constraints (Steffensmeier, 1980; Steffensmeier et al., 1998). Blameworthiness considers both the defendant's culpability and the severity of the offense or extent of the harm it has caused. Community protection emphasizes the goals of incapacitation and general deterrence, and assessments about offenders' future dangerousness and likelihood of recidivism. Practical constraints involve both organizational and individual concerns and include, among others, concerns for financial (e.g., the expenditure associated with criminal case processing) and social (e.g., the disruption of family ties) costs of sentencing.

While the focal concerns perspective is most often focused on the inequality and disadvantage in charging and plea outcomes, it is also concerned with evidentiary strength of the case as another key influence in plea bargaining. A consistent finding from early research on guilty pleas is that the quality of evidence against the defendant is an important predictor of plea outcomes (Albonetti, 1986). The majority of focal concerns research regarding evidence has looked at how evidence has impacted various decision-making points during the criminal justice process. For example, research has shown that evidence plays an important role in the prosecutors' initial screening and case acceptance decision (Frederick & Stemen, 2012; Spohn et al., 2001; Spohn & Holleran,

2000). Additionally, Kutateladze and colleagues (2015) found that prosecutors offer more punitive charge bargains when certain types of evidence, such as audio/video recordings, eyewitness identification, or recovered currency, are present. They also found that evidence influences charge offers more so than it influences sentence offers, suggesting that evidence may be more important at initial case acceptance than during plea bargaining. Prior research also indicates that evidence plays a role in prosecutors' decisions to reduce charges (Albonetti, 1991; Shermer & Johnson, 2010) and dismiss cases (Albonetti, 1986). Together, these studies indicate that evidence consistently plays a role in a variety of decision points throughout the adjudication process.

The focal concerns framework provides insight into the decision-making process for the various actors in the courtroom workgroup. A strength of this perspective is its ability to be adapted to different court actors involved in the plea bargaining process and its utility for shaping expectations about various factors that affect plea outcomes (Johnson et al., 2016). For example, prosecutors may weigh a number of practical concerns when deciding how to proceed when offering a plea, including their assessments of the likelihood of conviction if the case went to trial and the need to dispose of cases efficiently. Similarly, the likelihood of conviction, seriousness of the offense, and defendant's prior arrest and conviction history have been found to influence the likelihood and severity of plea offers (Kutateladze et al., 2014; Ulmer & Bradley, 2006). Additionally, focal concerns perspective argues that sentencing decisions reflect the judge's assessment of the offender's blameworthiness or culpability, the judge's desire to protect the community through incapacitation of dangerous offenders, and the

judge's concerns about the social costs of a sentencing decision (Hartley et al., 2007). These elements of the focal concerns perspective provide a foundation for the organizational factors that influence court actors' decisions and that may explain some of the variation and uncertainty in case outcomes.

The focal concerns perspective stresses the importance of practical considerations, including the necessity of making decisions in the face of both limited time and limited information (Kutateladze et al., 2015). Institutional factors like caseload size vary by jurisdiction and can affect the probability of conviction, and thus the plea discount will also vary systematically across courts (Ulmer et al., 2010). In other words, jurisdictions with higher caseloads or fewer trials are more likely to have lower probabilities of conviction and therefore offer plea discounts that are larger to encourage pleas. The time and information constraints inherent in criminal case process often results in reliance on decision-making shortcuts that may open the door to extralegal influences (Albonetti, 1991). Because criminal justice decision makers operate in a system in which information is limited, other factors, such as race, gender, age or prior record, have all been found to influence the plea bargaining process (Kurlychek & Johnson, 2004; Steffensmeier et al., 1995). For example, defendants who are young, black, and male are likely to receive less favorable outcomes, such as being detained prior to their plea and receiving sentences that include incarceration (Albonetti, 1990; Kellough & Wortley, 2002; Kutateladze, Andiloro, Johnson, & Spohn, 2014). This highlights the complexity of plea bargaining due to the various factors that affect pleas at different stages in the process involving multiple decision-makers.

The Shadow of the Trial Model

While criminologists have historically tended to use institutional perspectives such as focal concerns theory to explain variation in plea discounts, legal scholars have focused more on the "bargaining in the shadow of the trial" model to explain such variation (Bibas, 2004; Landes, 1971; Mnookin & Kornhauser, 1979). This model was first developed by economist William Landes (1971), who argued that both the prosecutor and defendant seek to maximize their own utility, which includes their consideration of the probability of conviction, the severity of the crime, the availability of resources, and attitudes toward risk. The shadow model was originally applied by economists to civil and divorce cases, where it was assumed that actors involved in disputes would act rationally, forecast the expected trial outcome, and strike bargains that leave both sides better off by splitting the saved costs of trial (Bibas, 2004). Theorists have argued that the various legal actors involved in the plea process make such plea decisions "in the shadow of trial," thus the name of the model (Nagel & Neef, 1979).

In the recent past, social scientists have worked to empirically test this theory as a way to better understand variations in the size of plea discounts. The shadow model predicts that plea decision-making is premised on the perceived probable outcome of a trial (Bibas, 2004; Landes, 1971; Mnookin & Kornhauser, 1979). According to the model, a rational, risk-neutral defendant would only accept a plea deal that is less than or equal to the discounted value of the trial outcome (Bushway & Redlich, 2012; Dezember & Redlich, 2019). For example, if the expected sentence for a conviction at trial is 20 years and the defendant believes they have an 80% probability of conviction at trial, then

a plea to a sentence of no more than 16 years (i.e., 80% of 20) represents a rational choice for a risk-neutral defendant (Bushway et al., 2014). While the shadow model starts from the perspective of the defendant, it ultimately can be extended to predict the behaviors of all court actors who interact with the defendant (Bushway et al., 2014). For example, a prosecutor would not offer a defendant a plea deal that was less than or equal to the discounted trial sentence, since, in theory, the defendant would not accept that offer.

The shadow theory also argues that prosecutors, defense attorneys, and defendants base their plea decisions on the strength of the evidence they anticipate being presented at trial, suggesting that evidence plays a key role in the plea decision process (Bushway et al., 2014). For example, the theory posits that the plea discount will be large when the probability of conviction is low, and small when the probability of conviction is high. There is some evidence to support this: prosecutors have been found to offer substantial plea bargains to defendants when they do not have adequate evidence to convict at trial (Alschuler, 1968; Kramer & Ulmer, 2002).

Despite its prevalence in legal literature, the shadow model was only recently put to the empirical test. One of the inherent challenges to testing the shadow model is that we simply do not know the counterfactual of what would have happened if the defendant had made a different decision (i.e., gone to trial). Researchers have overcome this problem by using statistical models to create predicted counterfactuals for those who pled guilty based on the remaining few who actually went to trial. Bushway and Redlich (2012) attempted to create the counterfactual by calculating the probability of conviction at trial. The expected value of the plea deal is often represented as $X \leq P(Y)$, with the

expected value of the plea deal (represented as X) being less than or equal to the probability of conviction at trial (P) multiplied by the sentence at trial (Y). In other words, as mentioned, the value of the plea should be less than or equal to the discounted value of the trial outcome (Bushway & Redlich, 2012). After creating this estimate, the researchers examined the distribution of this estimate in the data and compared it to the distribution observed for those who actually go to trial (Bushway & Redlich, 2012). If the shadow of the trial model is correct, they expected to see roughly equivalent coefficients of evidence for those who went to trial, and those who pled guilty.

Additionally, they compared their ability to predict conviction at trial with the strength of evidence for those who went to trial with their ability to predict the conviction at trial/plea discount with strength of evidence for those who pled guilty. They found that the estimates of the probability of conviction at trial were true in the aggregate, but found little support for the claim that strength of evidence predicts the plea discount for those who plead guilty (Bushway & Redlich, 2012). At the aggregate level, the results of the first-known empirical test provided support for the shadow model and demonstrated that the average plea sentence for the sample was equivalent to the average sentence at trial discounted by the probability of conviction for the sample (Bushway & Redlich, 2012). More specifically, they found that on average, those who pled guilty received a sentence that was 77% of the trial sentence, or alternatively, that the sentence at trial was 29.6% higher than the plea sentence (Bushway & Redlich, 2012). In other words, the plea discount appeared to be explainable, on average, by the shadow of the trial model.

However, when they examined the process at the individual defendant level,

Bushway and Redlich (2012) did not find support for the shadow model; they were not able to explain variation in the estimated probability of conviction for defendants who pled guilty compared to those who went to trial. Moreover, the evidence did not explain variation in estimates of probability of conviction for those who pled guilty. For example, a case with a confession led to a nearly 12 percentage point reduction in the probability of conviction at trial for those who pled guilty, which was in opposition to the predicted effect. In many cases, the defendant's actual plea value was not at all similar to the estimate of the discounted probability of a sentence at trial (Bushway & Redlich, 2012). This indicates that the individual estimates were either uncorrelated with key pieces of evidence known to increase the probability of conviction, such as confessions, or correlated in the opposite direction than predicted by the shadow theory. This leaves open the possibility that plea negotiations are at least partially based on factors that have little to do with evidence, as suggested by Bibas (2004). Such factors include caseload, financial considerations, courtroom culture, and individual differences in risk aversion. Additionally, it is important to note that Bushway and Redlich (2012) used a dataset from 1978, which may not reflect our current plea bargaining system and negotiation practices used by prosecutors and defense attorneys. This dissertation addressed this limitation by using a dataset that is more current (i.e., from 2000 to 2017) in the hopes of getting a more accurate view of plea bargaining in today's system.

As a next step in testing the shadow model, Bushway, Redlich, and Norris (2014) conducted an experimental survey of defense attorneys, prosecuting attorneys, and judges. In this survey, which was a partial replication of work done 40 years earlier

(Miller et al., 1978), Bushway et al. (2014) presented respondents with a hypothetical vignette and a set of 31 fact files associated with the crime, each containing a different piece of information pertaining to the hypothetical armed robbery case (e.g., the defendant's race and alibi). They then randomized the presence and absence of three specific types of evidence (eyewitness identification, confession, and DNA match) and the length of the defendant's criminal history (short or long). Respondents were asked to assess the probability of conviction, to estimate the average sentence for a trial conviction, to indicate the least severe sentence that would be acceptable for a plea deal, and to describe what their likely course of action would be in the case. The goal was to assess whether the variation in the plea sentence, probability of conviction, and the expected trial outcome induced in the experiment conformed to the shadow model. Overall, they found that prosecutors and defense attorneys behaved in a manner consistent with the basic shadow model (Bushway et al., 2014). However, this was not true for the judges in the sample, who appeared to make decisions based on fixed discounts. This study provided a formal mathematical explanation for plea decision-making within the shadow model, but also called for additional testing of the shadow model to further specify and improve this theory.

While the shadow of the trial model is attractive for its simplicity, a main criticism of the shadow model is that the paradigm is too simplistic (Bibas, 2004; Johnson et al., 2016; Redlich & Edkins, 2019). Specifically, scholars have argued that structural (e.g., poor lawyering, agency costs) and psychological considerations (e.g., use of heuristics, differences in risk aversion) in plea decisions have sizeable influences, and

thus also need to be considered in the plea decision-making process (Bibas, 2004; Stuntz, 2004). Research also indicates that extralegal factors, such as race and gender, influence the offering and acceptance of pleas (Albonetti, 1990; Kellough & Wortley, 2002; Kutateladze et al., 2014). Specifically, black defendants, especially black male defendants, have a significantly lower probability of a charge reduction when they plead guilty, which means they are also expected to receive a lower value for their plea (Metcalfe & Chiricos, 2018). Similarly, prior criminal history is typically not allowed during the trial phase; thus, it is considered an extralegal factor that juries, with some exceptions, do not hear (*People v. Falsetta*, 1999). However, criminal history is one of the two main factors used for sentencing guidelines and an important factor in determining sentencing outcomes, which implies that criminal history is likely to impact trial outcomes and pleas differently (Spohn, 2000; Tonry, 1987).

Another critique of the shadow theory is that it is based on the key assumption that criminal justice actors act rationally. However, many studies have shown that defendants and criminal justice professionals do not act in strictly rational ways (Guthrie et al., 2001; Plous, 1993; Tversky & Kahneman, 1974). For example, Bjerk (2005) argued that the structure of plea bargaining and the use of harsh penalties will "force" rational people to plead guilty even in cases where they are innocent. Additionally, one study using data from Cook County found that, on average, the plea sentences were actually higher than the expected sentence at trial, suggesting that defendants are acting irrationally more often than not (Abrams, 2011). Finally, there are many structural factors that influence the plea bargaining process, such as the skills of the individual attorneys

involved, sentencing laws, and a lack of understanding on the part of the defendants (Bibas, 2004). Thus, there are many other factors coming into play that are not considered in the current, simplistic version of the shadow model.

While both institutional approaches and the shadow of the trial model provide insight into how the various actors make decisions while plea bargaining and the role that evidence might play in the process, the shadow model clearly outlines the role that evidence *should* have in the bargaining process, providing a foundation for testing this theory with regard to *Alford* plea-takers. As previously mentioned, the shadow model predicts that plea decision-making is premised on the perceived probable outcome of a trial, which in turn is driven by the strength of the evidence (Bushway & Redlich, 2012; Dezember & Redlich, 2019). Since courts are supposed to identify a sufficient level of guilt in *Alford* plea cases, the shadow model would predict that the strength of the evidence is factored into the decision to take the plea, though this has not yet been empirically examined. Since there is an overall lack of empirical research on *Alford* pleas, using the shadow of the trial theory can help provide a foundation for how the strength of evidence influences the plea decision-making process.

Strength of Evidence in Legal Decision-Making

While courts are supposed to find a sufficient factual basis of guilt before allowing *Alford* pleas, judges have wide discretion whether or not to accept these pleas (Redlich et al., 2017; Shipley, 1987). Although *Alford* pleas are considered guilty pleas, these pleas do not include an admission of guilt that occurs when a defendant enters a traditional guilty plea. With *Alford* pleas, since the defendant maintains his or her

innocence, the judge must determine that there is sufficient evidence of guilt in order to allow the plea. In the original case, as noted, the Supreme Court stated that the evidence against Henry Alford was "strong" and "overwhelming" and that it met the criterion for sufficient factual basis of guilt (*North Carolina v. Alford*, 1970). However, "sufficient" has never been defined by the courts and thus pleas could be accepted (or not accepted) for a variety of reasons with differential standards applied in different cases (Shipley, 1987). It has been argued that prosecutors offer deals in weaker cases because the state knows or suspects that they cannot prove their case beyond a reasonable doubt at trial (Bibas, 2004; Gazal-Ayal, 2005). Due to the limited research on *Alford* pleas, it is entirely unknown whether judges who accept *Alford* pleas actively gauge the strength of the evidence against these defendants, or, if they do, what threshold of strength is sufficient. While there was seemingly strong evidence of Henry Alford's guilt (i.e. the witnesses' testimony), this may or may not have been the case for the hundreds of thousands of defendants who have entered *Alford* pleas since.

As previously discussed, theoretical models of plea bargaining indicate that evidence and strength of evidence are important elements of the process in that evidence strength should drive plea decisions insofar as strong evidentiary cases lead to trial convictions (Bushway et al., 2014). For example, prosecutors assess the likelihood of conviction if the case went to trial, indicating that the presence of evidence presumably plays a role in prosecutorial decision making (Spohn et al., 2001). Since courts are supposed to identify a sufficient level of guilt in *Alford* plea cases, the shadow model would predict that the strength of the evidence should factor into the defendant's decision

to take the plea, and in turn, the defendant should receive the benefit of the sentence discounts offered as part of the plea deal. However, the strength of evidence in *Alford* plea cases has not yet been examined, and concerns of false guilty pleas (i.e., wrongful convictions) among *Alford* plea-takers raises questions about the strength of evidence in these cases. Due to these concerns and the lack of empirical research on *Alford* pleas, it is important to examine the role of evidence in plea bargaining, and more specifically in *Alford* plea cases.

Evidence appears to have a particularly strong impact at the initial case screening and in the prosecutor's decision to bring charges against a defendant (Albonetti, 1997). This makes sense since the early stages of a case require prosecutors to evaluate their case based on their perceptions of achieving a conviction, meaning they need to examine the evidence against the defendant and how likely they are to get a conviction based on the evidence that exists. This also indicates that prosecutors will consider the evidence during the plea-bargaining process, and that the plea offers they extend will be based on their assessment of the likelihood of conviction at trial (Kutateladze et al., 2015). Furthermore, defense counsel work with defendants and to the extent possible, confront them with the evidence that the state has against them in order to make a decision about whether to go to trial or enter a guilty plea (Bibas, 2003). Thus, prosecutors and defense attorneys likely both consider the evidence, and possibly even discuss it together, when going through the process of negotiating pleas, either in terms of what offer to extend to the defendant or how to advise their client on whether to accept a plea deal. Although it is presumed that evidence plays a key role in decision-making during the plea process,

studying the role of evidence strength in plea bargaining is notoriously difficult because access to the plea negotiation process is very limited since negotiations are handled outside the courtroom and are not typically formally recorded into court records (Frederick & Stemen, 2012). Thus, it is important to take a closer look at how this concept has been examined and used in research.

The Role of Evidence in Legal Decision-Making

While much of the research surrounding strength of evidence focuses on how evidence influences jury decision-making, researchers have also looked at how strength of evidence factors into the plea bargaining process and the decision making of legal actors. Some scholars argue that the strength of evidence is one of the most critical elements to consider when deciding how to settle a case, often considered as heavily as the defendant's prior record and the seriousness of a crime (Emmelman, 1998). Furthermore, research has shown that as the probability of conviction increases, prosecutors become less willing to plea bargain and defense attorneys become more willing (McAllister & Bregman, 1986). One study found that prosecutors and defense attorneys considered evidentiary factors to the same degree but the evidence influenced plea decisions among legal actors differently, with defense attorneys being significantly less likely to choose to the guilty plea option than prosecutors (Redlich et al., 2016). While this provides support for the notion that the strength of evidence influences the plea decision-making process, it also highlights the potential that court actors are considering the evidence in different ways.

Research looking at prosecutors and defense attorneys often compares how they

each weigh the strength of evidence in the plea negotiation process. Studies have found that prosecuting and defense attorneys claim that evidence strength moderates their decisions to offer and accept plea deals (Emmelman, 1998; Horney, 1980). For prosecutors, evidence appears to have a particularly strong impact at the initial case screening and the decision to bring charges against a defendant (Albonetti, 1997; Spohn et al., 2001). In fact, one prosecutor included in a focus group stated that "a case will not be accepted for prosecution unless it has strong evidence" (Frederick & Stemen, 2012, p. 60). Additionally, research has found that prosecutors also consider the evidence during the plea-bargaining process, and that the plea offers they extend will be based on their assessment of the likelihood of conviction at trial (Kutateladze et al., 2015). For defense attorneys, Edkins (2011) found the "likelihood of conviction based on evidence" to be the most important factor in their decisions to recommend plea bargains. Similarly, another study of defense attorneys showed that "strong evidence" was an important factor in recommending that the defendant take a plea and that the strongest recommendations for clients to take a plea occurred when the evidence was strong and the sentence was lengthy (Kramer et al., 2007). Based on these findings from a variety of studies, it is highly probable that evidence plays a key role at various points throughout the plea decision-making process, including the *Alford* plea decision.

While research clearly indicates that the strength of evidence matters in terms of legal decision making, it is less clear how it might impact each actor differently at different stages of the process. For example, while research that has been previously discussed has shown that the presence of strong evidence increased both prosecutors' and

defense attorneys' willingness to plea, there are additional studies that have found that defense attorneys and prosecutors consider the evidence differently, suggesting that there may be a need to understand these actors separately. For example, studies have found that defense attorneys are more likely to advise a plea when cases were stronger and prosecutors are less willing to plea bargain when cases were strong (Kramer et al., 2007; McAllister & Bregman, 1986). Additionally, while evidence plays an important role in prosecutorial decision making (Albonetti, 1986; Spohn & Holleran, 2000), there are still discrepancies about the role that evidence plays at various stages of the plea bargaining process. While prosecutors have indicated that a case will not be accepted for prosecution unless it has strong evidence (Albonetti, 1997; Frederick & Stemen, 2012), there is some evidence to support the notion that prosecutors have been found to offer substantial plea bargains to defendants when they do not have adequate evidence to convict at trial (Alschuler, 1968; Kramer & Ulmer, 2002). Thus, based on these findings, there are likely cases in which a defendant's case lacks a strong foundation of guilt but yet they still choose to plead guilty. This dissertation aimed to better understand these differences by interviewing both prosecutors and defense attorneys to gain a better insight into how the strength of evidence influences the decision-making practices, including the decision to negotiate an *Alford* plea.

Since not all evidence is the same in quality and what constitutes strong evidence may vary by case, it is also important to make distinctions by the type and reliability of evidence in order to understand how specific types of evidence influence legal-decision making (Frederick & Stemen, 2012; Heller, 2006; Kassin & Neumann, 1997). There are

indications that the type of evidence may matter more than the amount of evidence when it comes to legal decision-making, with certain types of evidence known to increase the probability of conviction (Bushway et al., 2014; O'Neill, 2007). Evidence can be divided into two different types: direct and circumstantial evidence. Direct evidence, such as confessions and eyewitness identification, is evidence that "proves a fact without an inference or presumption and which in itself, if true, establishes that fact" (Heller, 2006, p. 248). By contrast, circumstantial evidence is evidence "from which the fact - finder can infer whether the facts in dispute existed or did not exist" and includes all forensic evidence, such as DNA (Heller, 2006, p. 250). Research comparing direct and circumstantial evidence has found that despite the fact that circumstantial is the more reliable type of evidence, individuals tend to put more value and weight on direct evidence (Heller, 2006; Kassin et al., 2010; Kassin & Neumann, 1997). Because of this discrepancy, it is important to examine the ways in which prosecutors and defense attorneys evaluate and weigh evidence in the cases they handle, including those that result it guilty and *Alford* pleas.

Direct evidence has been considered by many to be the most valuable form of evidence, both in terms of the decision to prosecute a case and when attempting to gain a conviction, either through a guilty verdict or though the decision to plead guilty. Early research suggested that the prosecutor's decision to accept a case is more likely when eyewitness identification or a defendant admission are present (Clarke & Kurtz, 1983). When looking at what types of evidence improve the ability to gain a conviction, confessions appear to be the most heavily considered and valued form of direct evidence,

with numerous studies showing that jurors and mock jurors weigh confessions more heavily than eyewitness testimony (Kassin et al., 2012; Kassin & Neumann, 1997). In fact, some scholars have even argued that once a confession is introduced into a case, the other types of evidence become superfluous (Kassin et al., 2010; McCormick, 1983). There is also some evidence from real cases that confession evidence is valued higher than DNA evidence, despite the fact that DNA testing is considered one of the most reliable of the forensic sciences (Kassin, 2012). However, eyewitness evidence has also been found to be highly valued, especially when contrasted with circumstantial evidence (e.g., DNA evidence). Experimental studies of mock juries have found that the presence of eyewitness testimony substantially increases the rate of conviction (Devine et al., 2001; Greene, 1988). Additionally, a national survey of judges, prosecutors, and defense attorneys found that the existence of a positive eyewitness identification in a hypothetical case increased the probability of conviction by 38% (Bushway et al., 2014). Research has found that, although direct evidence can be unreliable, jurors and judges consistently overvalue direct evidence (Heller, 2006; Kassin et al., 2010; Kassin & Neumann, 1997). Despite research indicating that direct evidence is more problematic than circumstantial evidence, it is important to understand that this type of evidence can carry more weight in the minds of individuals, including attorneys and judges, when considering the strength of the case and the perceived outcome at trial, which could potentially influence the decision to offer and accept a plea bargain.

Despite research indicating that direct evidence is more highly valued, circumstantial evidence is considered to be more reliable, with DNA evidence often

being considered the "gold standard" of evidence. That is, within the science and research communities, DNA evidence is often touted as the standard against which other techniques are compared due to its reliability (National Academy of Sciences, 2009). Additionally, DNA evidence has been instrumental in exonerating hundreds of wrongfully accused and convicted individuals (Innocence Project Report, 2007; Thomspon, 2006), which has brought even more attention to the value of this type of evidence and the impact it can have on a case. However, studies examining the weight given to different types of circumstantial evidence consistently indicate that mock jurors undervalue DNA evidence and do not understand the science presented as part of DNA testing (Heller, 2006; Koehler, 2001; Lieberman et al., 2008; Schklar & Diamond, 1999). Judges, prosecutors, and defense attorney may also undervalue DNA evidence, with the presence of this type of evidence in a hypothetical case only increasing the probability of conviction by 24%, which was lower than both eyewitness identification and confession evidence (Bushway et al., 2014). Thus, even though circumstantial evidence is considered to be more reliable, there are still discrepancies in how these types of evidence are weighed and considered during the plea bargaining process. Therefore, it is important to continue studying the differential impact that these types of evidence can have on the decision-making process for various court actors and thus on the outcomes of cases, including guilty pleas.

Challenges with Measuring the Impact of Evidence

Testing the role of evidence in the plea decision can be challenging and plagued with measurement issues. Previous attempts to measure strength of evidence have often

been overly simplistic and subjective, with most research focusing on legal actors self-reporting how evidence factors into convictions. While this type of information can be valuable in understanding how legal actors consider the evidence, it is also susceptible to discretion or bias (Bushway & Redlich, 2012). For example, one study found that prosecutors and defense attorneys claimed that "evidence strength" moderated their decision to offer or to accept plea deals (Emmelman, 1998). However, these studies did not address how particular types of evidence may have been more or less important in the actors' judgments of evidence strength nor was a rationale for their ratings or responses provided. Additionally, while research relying on self-reports often shows that prosecutors and defense attorneys state that the strength of evidence is one of the most important factors in a case, other research has shown that the defendant's criminal history and the seriousness of the charges to be stronger determinants influencing plea offers (Kutateladze et al., 2014; Ulmer & Bradley, 2006). This could indicate a disconnect between what attorneys think should be the most important factor versus what actually drives plea negotiations, further showing the potential susceptibility to bias in this type of research. Another challenge in understanding how researchers measure strength of evidence is the fact that the term "strength of evidence" has been used interchangeably with "probability of conviction" (Kramer et al., 2007; McAllister & Bregman, 1986), which can lead to even more ambiguity in what is meant by these terms and how they are conceptualized. These criticisms highlight the importance of developing strong definitions for the term "strength of evidence," devising accurate ways to measure it, and using multiple methods to better understand how evidence influences plea outcomes.

Another challenge to previous attempts to measure the strength of evidence is that studies often aggregate evidence without knowing anything about each individual piece of evidence. For example, some studies total the number of pieces of evidence present in a case to create a strength of evidence measure, including the presence of physical evidence, confession, positive eyewitness identification, weapon, number of indictment charges, degree of injury to victim, and the number of witnesses (Devine et al., 2009; Taylor & Hosch, 2004). Since these types of evidence can vary widely in their quality and value, using a summed or aggregate measure limits our understanding of the actual strength of evidence. Additionally, because these pieces of evidence were not examined separately, it was not possible to determine whether any one factor was sufficient to predict convictions. Further, the quality of evidence can vary widely and thus it is important to look at individual pieces or types of evidence as well as the overall amount. For example, Bushway and colleagues (2014) found that different types of evidence (i.e., eyewitness identification, confession, and DNA evidence) impacted the probability of conviction differently among surveyed judges, prosecutors, and defense attorneys. Thus, there is a need for additional research into how different types of evidence may influence the decision-making process, as well as how evidence might impact the type of plea entered.

Finally, it is also important to note that cases of identified wrongful conviction also had the presence of seemingly strong evidence of guilt. In their report of the first 200 exonerees, the Innocence Project (2007) revealed that 77% of these cases with factually innocent defendants had eyewitness evidence against the defendants, 65% had forensic

evidence, 25% had (false) confession evidence, and 15% had informant/snitch evidence. While almost all of the exonerees included in this report went to trial and had the opportunity to contest the evidence against them with the built-in safeguards inherent to the trial process, they were still convicted. It is reasonable to presume that if a judge had considered a guilty plea, including an *Alford* plea, in any of these cases, the level of sufficient evidence of guilt would likely have been met and a conviction still would have occurred. This raises an additional concern about how to properly evaluate and weigh evidence against a defendant, especially in cases where an *Alford* plea was taken and there is already an increased concern of a wrongful conviction. While establishing actual innocence among guilty plea takers (including *Alford* pleas) may not be feasible in most research designs, it is important for researchers to continue to investigate how evidence is evaluated and considered in a case, and how that in turn may influences plea decisions.

Concerns of False Guilty Pleas and Wrongful Convictions

A commonly held belief is that defendants allowed to take *Alford* pleas are indeed guilty, despite their protestations of innocence (Bibas, 2003). This argument is often bolstered by the notion that the judge must review the evidence and find a sufficient foundation of guilt when accepting the *Alford* plea (*North Carolina v. Alford*, 1970). Since *Alford* pleas are the functional equivalent of guilty pleas, supporters of these pleas stress their efficiency and the desirability of letting defendants choose to protect their privacy and provide an honest way to avoid hypocrisy instead of tempting innocent defendants to confess falsely (Alschuler, 1975; Bibas, 2003). However, the justice system should consider not only what the parties want, but also public perceptions of accuracy

and fairness (Bibas, 2003). Thus, the main argument against plea bargaining is that it is a coercive choice and circumvents the safeguards built into the trial process. Since the early days of the plea bargaining process, the possibility of innocent people pleading guilty has been recognized (*State v. Kaufman*, 1879). Those who criticize these pleas generally emphasize the danger that innocent defendants may falsely plead guilty (Bibas, 2003). Some argue that *Alford* pleas undercut proof beyond a reasonable doubt and allow innocent defendants to plead guilty and that *Alford* pleas risk being involuntary because coercive pressures are likely to convince reluctant defendants to plead (Bibas, 2003). Understanding false guilty pleas are important to our understanding of *Alford* pleas considering that *Alford* pleas have been likened to coerced or false confessions in that they force innocent defendants to accept guilty plea deals (Alschuler, 2003).

Frequency of False Guilty Pleas

While it may seems unfathomable that an innocent person would plead guilty to a crime that they did not commit, false guilty pleas are not uncommon (Redlich, 2010). The increased understanding of wrongful arrests and convictions calls into question whether one person's review of the strength of evidence can be considered sufficient for establishing guilt. According to the National Registry of Exonerations, 555 of the 2,725 cases (20.4%) in their database involved a guilty plea (as of February 2021). Furthermore, 24 of the 555 (4.5%) guilty plea exonerations specifically stated that they involved an *Alford* plea at some point in the process (National Registry of Exonerations, as of February 2021). Other studies have looked at the rate of false guilty pleas among exonerees and report rates between 5% and 11%, though these are likely an

underestimation of the extent of the problem (Drizin & Leo, 2003; Gross et al., 2004; Redlich, 2010). While it is important to remember that the *Alford* plea is a guilty plea that allows defendants who have met a threshold for sufficient evidence of guilt to state that they are innocent (rather than actually be innocent), both innocent and guilty parties likely utilize the plea and without a litmus test it nearly impossible to distinguish between them (Redlich & Özdoğru, 2009). Additionally, there are numerous reasons why scholars assume that the rate of false guilty pleas is higher than reported, including the fact that guilty pleas are difficult to withdraw and appeal, and thus wrongful convictions may be especially difficult to recognize and correct (Redlich, 2010). Estimating rates of false guilty pleas using only samples of officially exonerated individuals can be misleading due to the challenges and difficulties experienced when attempting to appeal a case in which the person pled guilty. Furthermore, if some *Alford* plea-takers are in fact innocent (though this is difficult to know with certainty), the ability to adequately estimate the rate of false guilty pleas may be even further complicated.

Contributing Factors to False Guilty Pleas

The lack of safeguards in the plea process is often pointed to as a contributing factor to false guilty pleas. When a defendant pleads guilty, the institutional safeguards that are given to defendants at trial, such as the burden of proof falling on the prosecutor and the ability to cross examine accusers, are absent during pleas. It is notoriously difficult to detect and correct a false guilty plea (Norris et al., 2010; Redlich, 2010). Additionally, since discovery policies vary by jurisdiction and it is not always clear what evidence the prosecution is required to provide the defense during plea negotiations,

innocent defendants may be especially disadvantaged in not knowing the evidence that exists against them (Bibas, 2004; Luna & Redlich, 2020). Some argue that without knowing all of the evidence against them, defendants and their attorneys cannot have an accurate view of the case, which is needed to negotiate a plea deal with the prosecution (Alkon, 2014). In other words, defendants who are guilty of a crime may be aware of some of the evidence present (i.e., an eyewitness or codefendant willing to testify) regardless of the information the prosecutor turns over and thus use this knowledge when negotiating a plea. However, an innocent defendant may not have any information about the crime and may plead guilty simply due to the fear of losing the case at trial and risking harsher punishment (Bibas, 2004). While it may still be difficult for the general public to understand, research has supported the notion that innocent defendants can be induced to falsely confess and even to plead guilty to crimes they did not commit (Acker & Redlich, 2011; Norris & Redlich, 2014). Furthermore, Redlich (2010, p. 56) points out that "in wrongful convictions cases that culminated in a plea bargain, the causal factors never had the opportunity to undergo scrutiny or challenge. As such, the factors identified as contributing to wrongful convictions by trial are likely to be even more prevalent in wrongful convictions by guilty plea."

Another often cited cause or consequence of the efficiency of the plea bargaining process is the strain experienced by overburdened defense attorneys. It has been argued that the plea bargaining system promotes inadequate representation and bad lawyering (Alschuler, 1981; Bibas, 2004). The legal system has streamlined the guilty-plea process in order to maximize the processing of guilty pleas while minimizing the amount of time

and resources used, which in turn has likely minimized the importance of innocence and fairness (Bibas, 2003). Legal scholars argue that defense attorneys, when overburdened, are subject to many temptations to seek quick solutions and reduce the likelihood of acting in their client's best interests. The process of negotiating pleas is informal, highly discretionary, and mostly invisible, which is subject to abuse by both prosecutors and defense attorneys and leads to situations where ineffective assistance of counsel is virtually undetectable in the plea process (Redlich, 2010; Spohn, 2018). Despite federal recommendations that the plea agreements be entered into the court record when the defendant enters a guilty plea, in many jurisdictions today, plea negotiations still take place behind closed doors with no written records that document the concessions that were offered or the promises that were made (Spohn, 2018; U.S. President's Commission on Law Enforcement and Administration of Justice, 1967). Thus, while trials create a record and basis to appeal on, guilty pleas are done in secret and often limit or completely prevent defendants from being able to appeal their conviction.

Finally, arguably one of the most powerful inducements to plead guilty, regardless of guilt or innocence, is the effect of pretrial detention or the desire to avoid further incarceration. For the most part, plea arrangements reduce the number of charges the defendant is facing, the time incarcerated or other punitive consequences that the defendant potentially has to face, or both (Bibas, 2004; Redlich et al., 2017). Research has shown that defendants plead guilty as a way to get out of jail and receive a reduced sentence or probation only (Gross et al., 2004; Kellough & Wortley, 2002; Lowenkamp et al., 2013; Ulmer & Bradley, 2006). Scholars have argued that the choice defendants are

faced with between remaining in jail while awaiting trial and having a reduced sentence or probation if they plead guilty is considered coercive (Kipnis, 1976; Langbein, 1992; McCoy, 2005). For defendants who are innocent, the choice to plead guilty is arguably even more coercive (Redlich, 2010). In fact, one study found that perceptions of the trial penalty (or plea discount) differ between innocent and guilty participants, indicating that the threat of a trial penalties (or benefit of a plea discount) could have a profound impact on the innocent (Wilford et al., 2020). While there is a lack of research comparing guilty and innocent defendants, there have been experimental lab studies conducted to explore coercion and plea decision-making. For example, one experimental study that manipulated the guilt or innocence of the participant found that, while both guilty and innocent participants were more likely to plead guilty rather than go to trial, innocent participants accepted pleas significantly less often than the guilty participants (Gregory et al., 1978). A follow-up, experimental study conducted by Bordens (1984) had similar findings, though he also found that, when manipulating the probability of conviction, innocent subjects were significantly more likely than guilty subjects to accept a plea when the probability of conviction was high, indicating that innocent subjects may be more influenced to accept a plea when there is a high risk of conviction at trial. While it is important to extend studies to actual plea-takers, there is strong evidence that the threat or possibility of severe sanctions is a major factor in accepting guilty pleas, potentially for both innocent and guilty defendants.

Given that the identification of wrongfully convicted persons is only going to increase, further research on *Alford* pleas is important. While the majority of exonerees in

identified wrongful conviction cases pleaded not guilty, it is widely believed that innocent defendants who pleaded guilty would be more difficult to identify but more prevalent given the sheer number of cases resolved via guilty pleas (Gross et al., 2004; Redlich, 2010; Wilford & Khairalla, 2019). Every year, more wrongful convictions are identified and false guilty pleas play a role in a number of these miscarriages of justice. Studying *Alford* plea defendants is one clear area to further explore the possibility of false guilty pleas and the possibility of these pleas leading to wrongful convictions. *Alford* plea cases are unique in that defendants unambiguously claim to be innocent but yet these cases require that sufficient evidence of guilt be established. While this dissertation is not able to address actual innocence, interviewing prosecutors and defense attorneys regarding their plea bargaining practices, including discussing the strength of evidence in *Alford* plea cases, will help illuminate how the sufficiency of evidence is established, if at all, in these cases.

Current Study

This dissertation aimed to explore how *Alford* pleas are used in practice and examine the role of evidence as the driving factor in establishing a sufficient factual basis of guilt in *Alford* plea cases. More specifically, this dissertation compares *Alford* pleas and traditional guilty pleas in their case processing and sentence outcomes and explores how different court actors consider *Alford* pleas when offering, negotiating, and accepting these pleas, including their evaluation of the strength of evidence in *Alford* plea cases and how it compares to traditional guilty plea cases. This study uses the framework of the shadow of the trial model, which argues that the decision to offer, accept, or reject

pleas derives from the perceived probable outcome of a trial. Therefore, the evidence strength should drive plea decisions insofar as strong evidentiary cases lead to trial convictions (Bushway et al., 2014; Dezember & Redlich, 2019). Additionally, some legal scholars argue that prosecutors offer more substantial deals in weaker cases because the state knows or suspects that they cannot prove their case beyond a reasonable doubt at trial (Bibas, 2003; Gazal-Ayal, 2005), which could indicate that there is a relationship between the strength of the evidence and sentence outcomes.

As mentioned, this study is guided by four main research questions: (1) Does the length of time it takes to dispose of *Alford* plea cases differ from traditional guilty plea cases? (2) Do the outcomes (i.e., length of sentence, reduction in sentence, incarceration) given to *Alford* plea cases differ from those given in traditional guilty plea cases? (3) Does the strength of evidence differ for *Alford* plea cases as compared to traditional guilty plea cases? and (4) What is the process for offering, negotiating, and accepting *Alford* pleas? The first two research question are addressed using quantitative analysis of Virginia court data. Table 2 outlines the hypotheses for research question (RQ) 1 and RQ2, based on the above reviewed literature. RQ3 and RQ4 are addressed using qualitative analysis of interviews with court actors and are more exploratory in nature; thus, these questions are not constrained by a priori hypotheses.

Table 2. Hypotheses for RQ1 and RQ2

	Research Question	Hypothesis
RQ1	Does the length of time it takes to dispose of *Alford* plea cases differ from traditional guilty plea cases?	*Alford* plea cases will take longer to dispose of than traditional guilty plea cases.
RQ2	Do the sentence outcomes given to *Alford* plea cases differ from the sentence outcomes given to traditional guilty plea cases?	*Alford* plea cases will receive more beneficial sentence outcomes (e.g., shorter sentences, larger sentences reductions, less likely to receive incarceration), on average, than traditional guilty plea cases

First, in addressing whether *Alford* plea cases take longer than traditional guilty plea cases to dispose of, again, the one previous study on these pleas showed that *Alford* plea defendants talk to their lawyers more often than defendants who enter other types of pleas, indicating that these pleas take longer for attorneys to negotiate and/or for defendants to accept (Redlich & Özdoğru, 2009). In terms of the sentence outcomes that *Alford* plea defendants should receive, the shadow of the trial model theorizes that defendants would not accept a plea deal that is less than or equal to the discounted value of the trial outcome (Bushway & Redlich, 2012). However, since *Alford* plea cases are different from other guilty pleas in that defendants maintain their innocence throughout the plea bargaining process, it is possible that prosecutors ultimately offer better plea deals to *Alford* plea defendants in order to ensure a conviction. Based on the previous research literature and the shadow of the trial model, I hypothesize that *Alford* plea cases will take longer to dispose of and will receive shorter and more beneficial sentence

outcomes (e.g., shorter sentences, larger sentences reductions, less likely to receive incarceration), on average, than traditional guilty plea cases.

CHAPTER THREE: METHODOLOGY

To address these research questions, this dissertation used a mixed methods approach that included conducting quantitative analysis of a large administrative court dataset and qualitative interview with court actors (i.e., judges, prosecutors, and defense attorneys). The research design and analytic strategies are described in this chapter.

Quantitative Methods: RQ1 and RQ2

In order to address Research Question (RQ) 1 and RQ2, I used administrative court data from the state of Virginia.[1] This dataset contains approximately 1.4 million criminal charges that were filed in Virginia between 2000 and 2017 and includes both *Alford* pleas and traditional guilty pleas. While the state maintains an online system, the data are segmented by jurisdiction and accessing one dataset for the entire state for research purposes is more challenging. However, VirginiaCourtData.org, an independent entity that regularly collects the information from Virginia's circuit courts across all jurisdictions, provides access to these records and makes them available for research purposes. Upon request, researchers are given full access to these data, including the personal identifiable information (i.e., names, but not full dates of birth). While this dataset has its challenges, it provides one of the most expansive collection of state-wide court data available. One of the main challenges to this dataset is that individual court hearings are the case-level of this dataset. In other words, it includes information for

[1] The dataset does not include Fairfax and Alexandria circuit courts because those two court systems are not required to use the statewide data reporting system.

multiple hearings throughout the same charge number (e.g., arraignment hearing, bond hearing, and plea hearing may all appear for a single criminal charge). Thus, this dataset required extensive cleaning prior to being able to use it (a more detailed description of the cleaning process is in the next section). George Mason University IRB reviewed the project materials and determined that this portion of the study did not meet the definition of human subjects research and thus is considered exempt (see Appendix A: IRB Exempt Letter for RQ1 & RQ2).

Sample

To answer the first two research questions, a sample was drawn from the statewide dataset consisting of 1.4 million charges in Virginia. This dataset contains demographic information (i.e., defendant's name, sex, race; though not age), as well as information about the charge (e.g., charge number, crime code, charge description, etc.) and sentence outcomes (i.e., sentence length, suspended sentence, probation). As mentioned, this dataset required initial cleaning, which resulted in the dataset being pared down to a smaller size. First, only charges that resulted in a guilty plea are of interest to the dissertation. Out of the approximately 1.4 million charges in the dataset, 825,218 (59%) of the sample concluded by a guilty plea. The remaining charges resulted in a variety of outcomes – charges that went to trial, charges that were nolle prossed, charges that were dismissed, and charges where such information is missing – and thus were removed from the sample. The next step was to only keep the information associated with the plea hearing from the remaining 825,218 charges. In other words, any charge that had a hearing type other than "Plea" or "Plea and Sentencing" was removed. Examples of

other types of hearing include (but are not limited to) arraignment hearings, discovery hearings, motion hearings, and hearings to appoint counsel. After keeping only plea hearings, 317,516 (38.5%) charges remained in the sample.

The vast majority of these 317,516 charges were felony charges (84.3%), and a small percentage were misdemeanors (15.0%) or other minor charges (0.7%; e.g., driving infractions). Since felonies and misdemeanors are different and thus handled differently (Dezember et al., 2021), only the 267,769 felony charges were included, which also represents the majority of the charges (i.e., 84.3%). Next, since this dissertation is focused on comparing *Alford* pleas and traditional guilty pleas, charges resolved by a nolo contendere (n = 12,733; 4.8%) plea were removed. Finally, since the data are structured at the charge level and defendants can face multiple charges, only the most serious charge was selected for each individual. This involved selecting a "primary" charge for each unique individual, which brought the final sample size down to 130,650 charges – including 2,075 *Alford* pleas (1.6%) and 128,575 traditional guilty pleas (98.4%). This final sample (n = 130,650) was used to answer RQ1 and RQ2, comparing the overall length of time it takes to dispose of the charge and the sentence outcomes received by plea type.

Key Variables

The key variables for the quantitative analyses are outlined in Table 3. Four different dependent variables were used. *Case disposal length*, the dependent variable for RQ1, was calculated based on the number of days between when the criminal charges

were filed and the plea date. Three different variables were used to quantify the sentence outcomes to answer RQ2: *overall sentence length*, *sentence reduction*, and *incarceration*.

Table 3. Key Variables for RQ1 and RQ2

Dependent Variables		
Case Disposal Length	Continuous	Length of time between Charge File Date and Disposition (Plea) Date, in days
Sentence Length	Continuous	Full length of the jail/prison sentence given by the judge, in days
Sentence Reduction	Continuous	Proportion of actual sentence received from maximum sentence allowed for the pled-to charge, in months (0 = no reduction, 1 = 100% reduction)
Incarceration	Dichotomous	No incarceration = 0 Any amount of incarceration time = 1
Level-1 Independent / Control Variables		
Type of Plea	Dichotomous	Traditional Guilty Plea = 0 *Alford* = 1
Defendant Sex	Dichotomous	Female = 0 Male = 1
Defendant Race	Dichotomous	Non-White = 0 White = 1
Charge Severity	Ordinal	10-Point Charge Severity Scale (1 = minor crimes, 10 = murder/manslaughter)
Level-2 / Cluster Variable		
Jurisdiction	Categorical	Virginia Jurisdiction Identifier (87 unique values)

The *sentence length* variable was conceptualized as the full length of the jail/prison sentence given by the judge as a result of the guilty plea, measured in days, prior to suspending any of the sentence. For example, if the judge sentenced a defendant with 365 days with 65 days suspended, the sentence length would be 365 days. The variable is conceptualized in this way because, in this example, the defendant could still face the full 365-day sentence if they violated any of the other conditions of their plea (e.g., probation violation, failed drug test, etc.). The goal of this outcome measure is to examine the full sentence that a defendant could face as a result of the guilty plea.

In terms of the *sentence reduction*, three conceptualizations were initially examined: (1) the reduction from the maximum allowed for the indicted charge down to the actual sentence received; (2) the reduction from the maximum allowed for the indicted charge down to the maximum allowed for the pled-to charge; and (3) the reduction from the maximum allowed for the pled-to charge down to the actual sentence received. Since it was hypothesized that *Alford* pleas cases would be treated differently by being offered more substantial plea deals (i.e., potentially bigger sentence reductions) in exchange for pleading guilty to a certain charge, it was most important to examine the potential sentence reduction they received in response to the charges they pled guilty to. Thus, the third conceptualization was identified as the most appropriate for answering this research question. Therefore, *sentence reduction* was computed by subtracting the actual sentence from the pled-to charge maximum and dividing that by the pled-to charge

maximum.[2] For example, if a defendant faced a maximum sentence of 1200 months and received an actual sentence of 24 months, their sentence reduction would be calculated as follows: (1200 – 24) / 1200 = .98, or a 98% reduction. For this measure, there were a small minority of instances where the reduction was a negative number (*n* = 1,731, 1.4%). However, since these negative values were outliers in the data, they were recoded as 0 to indicate no sentence reduction received, a decision made in consultation with Dr. Wilson.

Finally, the *incarceration* variable is a dichotomous variable indicating whether the sentence included any active incarceration time versus no incarceration required.[3] For example, if a defendant is sentenced to 120 days with all 120 days suspended, their outcome would be coded as (0) "no incarceration." Alternatively, if a defendant was sentenced to 120 days with only 20 days suspended, their outcome would be coded as (1) for "incarceration." The conceptualization of this variable aimed to get at the immediate incarceration consequences as a result of the guilty plea.

Each of the regression models include four independent or control variables, including the *type of plea* as the main independent variable and defendant sex, defendant race, and the charge severity as control variables. Unfortunately, due to the limited

[2] Virginia's felony crime code is organized into six classifications that each have a different penalty structure. The most serious classification allows for a maximum of 40 years before increasing to life or death punishments. For the purposes of this dissertation, life was quantified as 50 years and death was quantified as 60 years, which is similar to have previous sentencing research has quantified these types of sentences (Doerner & Demuth, 2010, 2012; Wang et al., 2013).

[3] One limitation of the dataset is that there is not a reliable way to identify if a defendant was given "time served" as a sentence. Therefore, the *incarceration* variable only accounts for if the defendant was given any incarceration as part of their sentence, regardless of if the period of incarceration was completed prior to the plea.

information available in the administrative dataset, these are the only control variable available for inclusion in analysis. As such, all findings should be interpreted with some caution, considering many factors known to influence the plea and sentencing process (e.g., pretrial detention status, criminal history) are not accounted for in analyses.

Table 3 shows how each of these variables were coded. Race was originally a six category variable but was recoded due to small sample sizes across some of the race categories. While there was a large percentage of defendant's coded as White (52.40%, *n* = 68,440) and Black (45.39%, *n* = 59,280), the other minority groups had very few defendants in the sample, and in some cases, no representation in the *Alford* plea sub-sample. For example, defendants coded as Hispanic, which was the next largest minority group, only made up 0.88% (*n* = 1,149) of the sample, and only 0.67% (*n* = 14) of the *Alford* pleas. Therefore, the race variable was recoded into a dichotomous variable that was used for analysis (i.e., White, non-White). In terms of the types of charges to which these defendants pled guilty, all crimes were coded into a 10-point crime severity scale (Redlich et al., 2010), ranging from minor crimes (least serious) to murder/manslaughter (most serious). Additionally, interactions were examined between the independent and control variables. Finally, the jurisdiction identification number is included in the models as a Level-2 variable.

Analytic Strategy

In testing the hypotheses, multiple regression analyses were conducted. Multiple regression analyses allow for the addition of several independent variables in order to consider the effect of each independent variable, while holding all the other variables

constant (Weisburd et al., 2021). Additionally, given the nested nature of the data, analytic methods that account for these clusters were chosen. In other words, criminal cases within a jurisdiction likely share variance due to common characteristics, such as the prosecutors, judges, and defense attorneys working together within a jurisdiction. Before developing the regression models, the nature and distribution of the dependent variables was examined in order to select the most appropriate regression technique. Table 4 shows the descriptive statistics for each raw dependent variable, as well the descriptive statistics if the variable was transformed.

Table 4. Descriptive Statistics for the Dependent Variables

Variable	Raw				Log Transformed			
	Min	*Max*	*Mean (SD)*	*Median*	*Min*	*Max*	*Mean (SD)*	*Median*
Case Disposal Length (days)	0	7,457	125.22 (182.10)	84	0	8.92	4.35 (1.05)	4.44
Sentence Length (days)	0	35,530	1,731.24 (2,018.13)	1,095	0	10.51	7.04 (0.97)	7.00
Sentence Reduction	0	1	0.56 (0.33)	0.70				
Incarceration	0	1	0.52 (0.50)					

For RQ1, which focuses on examining differences in the case disposal length between *Alford* pleas and traditional guilty pleas, there was a range in disposal length for the entire sample from 0 days (minimum) to 7,457 days (maximum). In years, this range

was from 0 to 20.43 years. It took an average of 125.22 days (SD = 182.10) and a median of 84 days to dispose of a case in the sample. Since this variable was not normally distributed, case disposal length was log transformed (natural log) prior to including it in the models, which results in a more normal distribution (Weisburd et al., 2021). After logging, case disposal length ranged from 0 to 8.92 logged days, with an average of 4.35 logged days (SD = 1.05) and median of 4.44 logged days. Figure 1 shows the distribution of the log transformed case disposal length. With the log transformed case disposal variable providing a more normal distribution, this dependent variable was tested using a multi-level OLS regression model. Additionally, logging the variable is advantageous because it is a more realistic way of modeling the mechanism of growth for this variable, which is likely multiplicative rather than additive (Weisburd et al., 2021).

Additionally, multi-level modeling was employed in order to account for the shared variance in nested data and can investigate the relationships within and between levels of grouped data, therefore making it more efficient at accounting for variance among variables at different levels (Woltman et al., 2012). In other words, Multi-level modeling allows for the examination of the type of plea and the dependent variables (i.e., case disposal length), while appropriately controlling for the jurisdiction level nature of the data (Raudenbush & Bryk, 2002; Woltman et al., 2012).

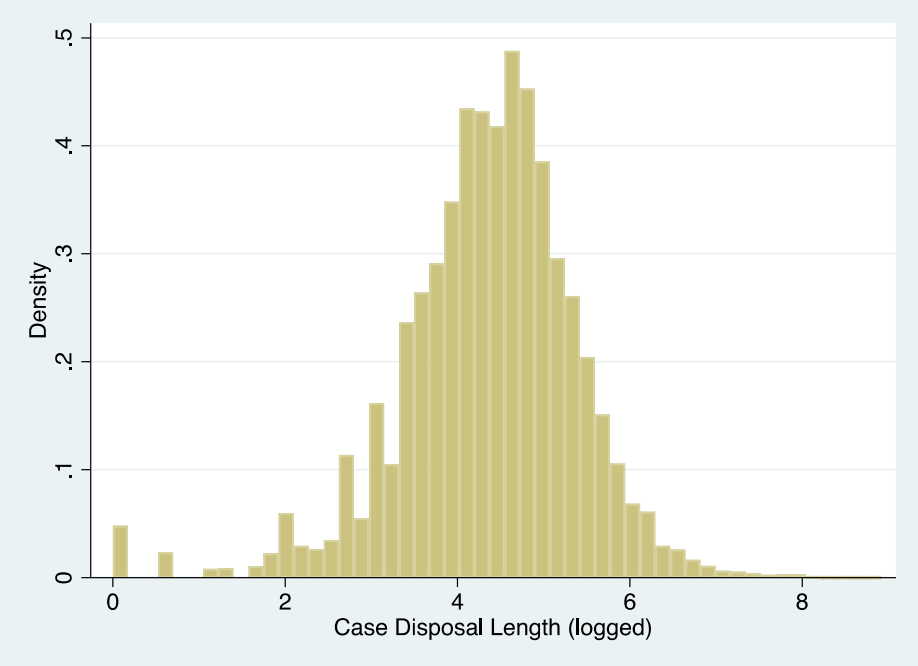

Figure 1. Distribution of Case Disposal Length (logged)

As previously mentioned, three measures were used to address RQ2 and examine the differences in sentencing between *Alford* and traditional guilty plea cases, including the overall sentence length, a sentence reduction measure, and the dichotomous incarceration measure. First, the overall sentence length ranged from 0 days (minimum) to 36,530 days (maximum), or 0 to 101.47 years, for the entire sample. The average sentence length was 1,731.24 days (SD = 2,018.13), or approximately 4.80 years, and a median of 1,095 days (3 years). Similar to case disposal length, the sentence length variable was not normally distributed and thus was log transformed (natural log). Once it was logged, the sentence length ranged from 0 to 10.51 logged days, with an average of 7.04 logged days (SD = 0.97) and a median of 7.00 logged days. Figure 2 shows the distribution of the log transformed sentence length variable. Again, since the transformed

sentence length variable provides a more normal distribution, a multi-level OLS regression model was used to test this dependent variable.

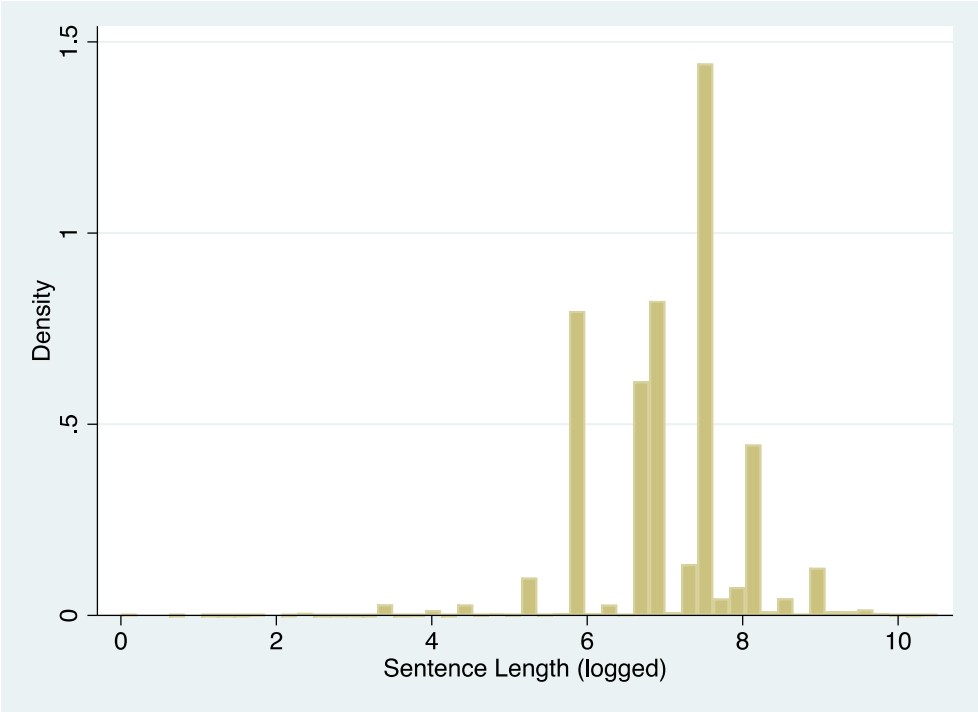

Figure 2. Distribution of Sentence Length (logged)

Next, the sentence reduction variable ranged from 0 (minimum) to 1 (maximum) and had an average reduction of 0.56 (SD = 0.33), or a 56% reduction in the sentence, and a median reduction of 0.70 (70%). Since this variable is a probability distribution, a beta regression is most appropriate for these data (Liu & Kong, 2015). Additionally, this variable is not normally distributed and has excessive zeros due to a large portion of the sample not receiving a sentence reduction (see Figure 3). This could indicate that there are two different decision points impacting the sentence reduction: first is whether to give

a reduction of the sentence at all, and second is the size of the reduction if one is given. Therefore, the most appropriate model to test this variable is a zero-one inflated beta regression. A zero-one inflated beta regression accounts for continuous proportions specifically when the data contain excessive zeros and/or ones (Liu & Kong, 2015; Ospina & Ferrari, 2012). This is a hybrid model that consists of three parts: 1. a logistic regression model for whether or not the proportion equals zero, 2. a logistic regression model for whether or not the proportion equals one, and 3. a beta regression model for the proportions between 0 and 1. In other words, this model tested whether the decisions to give no sentence reduction (i.e., 0) or a full sentence reduction (i.e., 1) are governed by a different process than the other proportions (Buis, 2010).

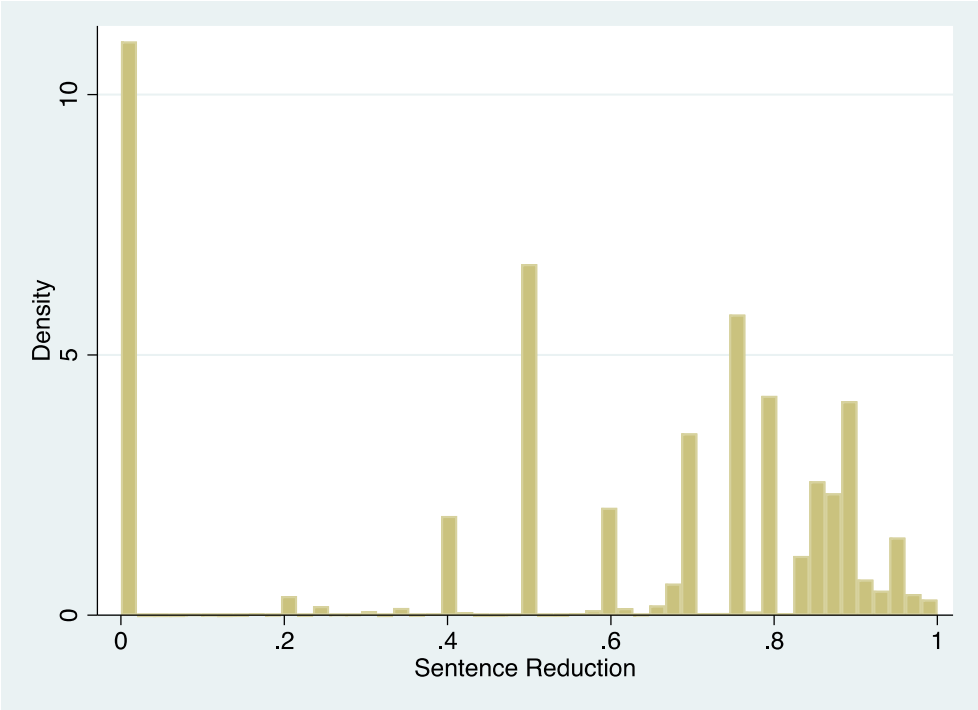

Figure 3. Distribution of Sentence Reduction

Finally, in terms of the incarceration measure, 47.4% of the sample received no incarceration time while 52.6% received some incarceration as part of their sentence. Since this variable is a dichotomous measure (i.e., incarceration versus no incarceration), a multi-level logistic regression was used to test this variable. Logistic regressions are a statistical model that uses a logistic function to model a binary dependent variable, and allows for predictions about dichotomous dependent variables in terms of the log of the odds of Y (Weisburd et al., 2021). In other words, this model will allow for predicting the odds of receiving incarceration as part of the sentence as a result of the independent/ control variables included in the model (i.e., *Alford* plea, gender, race, crime severity).

Changes to the Methods for RQ3

RQ3 specifically deals with comparing the strength of evidence between *Alford* plea cases and traditional guilty plea cases. As presented in my proposal, I had planned to travel to six courthouses in order to collect additional information about the case evidence for a sub-sample (n = 360) of charges in order to conduct quantitative analyses. However, I began working with clerk's offices in two jurisdictions to gain access to the required documents and was interrupted by the COVID-19 pandemic. On March 12, 2020, the governor of Virginia declared a state of emergency in response to the coronavirus pandemic, which halted travel and required teleworking for all state officials, including circuit court employees. For a full description of the steps taken to request these documents prior to the coronavirus pandemic, as well as additional attempts after the state of emergency order was put into place, see Appendix B: Detailed Description of Changes to RQ3 Methods.

After six months of monitoring the courts' operations during the pandemic, I contacted each of the six clerk's offices on September 11, 2020 via phone to inquire about submitting documents requests. At this point, three courts (i.e., Court 2, Court 3, Court 4) were only accepting emergency/urgent document requests. Two courts (i.e., Court 1 and Court 5) indicated that they were accepting "limited" requests from the general public, but warned they were still prioritizing emergency/urgent matters and thus it would likely take a long time to fulfill general requests. One court (i.e., Court 6) did not answer the phone or return my calls but did have an automated message indicating they were prioritizing emergency/urgent matters. On September 16, 2020, I discussed the issue with Dr. Redlich, my dissertation chair, and we both agreed the original data collection plan was no longer feasible given the coronavirus pandemic and court restrictions in place. Since the interviews with court actors included multiple questions about evidence, including how evidence impacts plea bargaining and whether the strength of evidence is different in *Alford* plea cases (see Appendix C: Verbal Consent and Interview Questionnaire), we decided that this research question could still be answered using qualitative data from the interviews. Thus, whereas the question itself has not changed, the methods used to answer the question have. The qualitative methods and analytic strategy for RQ3 (and RQ4) are described below.

Qualitative Methods: RQ3 and RQ4

In order to address RQ3 and RQ4, which are concerned with examining if the strength of evidence is different in *Alford* plea cases and better understanding the process for offering, negotiating, and accepting *Alford* pleas, qualitative interviews with legal

actors were conducted. This involved conducting approximately 30 to 45 minute semi-structured phone interviews with prosecutors, judges, and defense attorneys to determine the process for offering and negotiating *Alford* pleas, including how evidence factors into the decision-making process. The George Mason University IRB reviewed and approved all the interview recruitment materials and procedures for the interviews (for IRB approved materials, see Appendix C: Verbal Consent and Interview Questionnaire and Appendix D: Interview Consent Form).

Samples

To ensure that the interviews were conducted with court actors who have direct experience with *Alford* pleas, I first ran a preliminary investigation of the data to determine the frequency of *Alford* pleas across all of Virginia jurisdictions for the paired down sample (n = 130,650). There were 22 jurisdictions aligned with previous estimates indicating that *Alford* pleas are roughly 1-6% of total pleas (Redlich & Özdoğru, 2009; Wolf Harlow, 2000), while 8 jurisdictions were above that average range (ranging from 7-46% of the total pleas within the jurisdiction), and 57 jurisdictions were below average with less than 1% *Alford* pleas. Table 5 shows the breakdown of how many jurisdictions fall within three groups for the frequency of these pleas: less than 1% *Alford* pleas, 1-6% *Alford* pleas, more than 6% *Alford* pleas.

Table 5. Number of Jurisdictions by *Alford* Plea Frequency

	n	%
Low: Less than 1% *Alford* pleas	57	65.5
Average: 1-6% *Alford* pleas	22	25.3
High: more than 6% *Alford* pleas	8	9.2
Totals	**87**	**100.0**

Since the jurisdictions in the "low" category (n = 57) infrequently or never used the *Alford* plea according to the administrative records, these jurisdictions were not considered for interview recruitment. For the remaining "average" (n = 22) and "high" (n = 8) jurisdictions, I kept jurisdictions that had more than 30 *Alford* plea cases,[4] which left nine "average" jurisdictions and five "high" jurisdictions. Next, I examined frequency distributions for each of these 14 jurisdictions to identify if there were any irregularities or issues and removed two "high" jurisdictions since the vast majority of their *Alford* plea cases occurred in one calendar year, which could be due to a record keeping error or a plea practice unique to that year rather than their regular operations. This left only three remaining eligible "high" jurisdictions, which were geographically spaced out into three regions: Northern, Central, and Southern Virginia. Thus, the three "average" jurisdictions were selected to match these same geographic regions. In the end, six jurisdictions were

[4] I had initially required 30 *Alford* plea cases per jurisdiction to ensure I had enough cases for the original RQ3 design and analysis plan. The six jurisdictions were selected prior to RQ3 redesign in response to the coronavirus pandemic, which is why the 30 *Alford* plea cases requirement remained in place.

selected, one "average" and one "high" jurisdiction within each of the three regions. These six jurisdictions were used for interview recruitment. Table 6 shows the breakdown of the jurisdictions selected for each category.

Table 6. Selected Jurisdictions for RQ3 and RQ4

Region	"Average"		"High"	
	Jurisdiction	***Alford* %**	**Jurisdiction**	***Alford* %**
Northern Virginia	Court 1	1.2%	Court 2	7.2%
Central Virginia	Court 3	1.2%	Court 4	8.0%
Southern Virginia	Court 5	4.6%	Court 6	18.1%

Within these jurisdictions, there were varying numbers of court actors eligible for recruitment. For eligible prosecutors, I initially examined the Commonwealth's Attorney's website for a list of active prosecutors. If the list was not available online, then I contacted their office and requested names of all active prosecutors. For defense attorneys, I again started with the public defender's office's website to collect the names of active public defenders. However, since some jurisdictions do not have a public defender's office (i.e., Court 1[5], Court 4, Court 5, Court 6), the Virginia Indigent Defense Counsel maintains a list of eligible and qualified attorneys who are appointed to indigent clients for each jurisdiction. For jurisdictions with a public defender's office (i.e., Court

[5] Court 1 received state approval and funding to open a public defender's office in the July 2020. However, when interview recruitment and data collection occurred, the office was not open nor handling cases. Thus, the Virginia Indigent Defense Counsel qualified attorney list was used for this jurisdiction.

2, Court 3), both the public defender's office list and the Virginia Indigent Defense Counsel list were used for recruitment. Important to note, since Court 5 and Court 6 are in small, rural jurisdictions that border each other, the Virginia Indigent Defense Counsel maintains only one list of qualified defense attorneys for both of these jurisdictions, and thus the same list was used for recruitment in both jurisdictions. When a defense attorney from Court 5 and Court 6 was interviewed, they were asked to answer the questions based on their experiences in only one of the jurisdictions (rather than both) so that comparisons across jurisdictions could still be made.

Finally, judges' names were gathered from the jurisdiction's circuit court website. Again, since Court 5 and Court 6 jurisdictions are much less populated, the same four judges serve in both circuit courts and have scheduled days in each location. For example, a judge might spend Mondays, Wednesdays, and Fridays in Court 5 and Tuesdays and Thursdays in Court 6. This made the eligible pool of judges for these jurisdictions much smaller, and thus judges interviewed in these jurisdictions were asked about their experiences in both jurisdictions, though asked to talk about each separately. Table 7 shows the eligible number of court actors in each category for each jurisdiction.

Table 7. Court Actors Eligible for Interview Recruitment

	Region	*Alford* Rate	Prosecutors	Defense Attorneys	Judges
Court 1	North	Average	28	149	6
Court 2	North	High	18	138	4
Court 3	Central	Average	34	123	7
Court 4	Central	High	34	222	5
Court 5 & 6*	Southern	Average High	3 (Court 5) 7 (Court 6)	113	4

*Since the Southern jurisdictions are much less populated, the VA Indigent Defense Counsel only maintains one list for both jurisdictions. Additionally, the same four judges serve in both courts.

Procedures

The same procedures were used for prosecutors, judges, and defense attorneys. Eligible individuals were recruited via email to participate in an interview. If follow up was needed, individuals were either emailed again, called, or both. For prosecutors and defense attorneys, a random sample of 20 individuals were emailed during the first round of recruitment. If an individual actively refused to participate or did not respond to emails or calls, his or her name was replaced with another name in order to maintain the sample size. Since there were a limited number of judges in each jurisdiction, all judges were included in the initial recruitment. If a judge actively refused to participate, that judge was removed from follow up communications. Table 8 indicates the proposed number of interviews and completed interviewed in each group, broken down by jurisdiction and in total.

Table 8. Number of Proposed and Completed Interviews, by Court Actor

	"Average"		"High"		Total	
	Proposed	Completed	Proposed	Completed	Proposed	Completed
Prosecutors	10	10	10	11	20	21
Defense Attorneys	10	12	10	11	20	23
Judges*	10	5	10	3	20	8
Grand Total	**30**	**25**	**30**	**24**	**60**	**49**

*Three judges interviewed from Court 5 ("average") and Court 6 ("high") were asked about their experiences in both jurisdictions, and thus are counted as completed interviews for both the average and high jurisdictions.

For prosecutors and defense attorneys, the minimum number of interview respondents was reached for both average and high jurisdictions. However, recruiting judges was much more challenging. As mentioned, all 26 eligible judges were recruited to participate and were sent up to four recruitment emails and called twice if non-responsive. Two judges explicitly refused to participate. Of the 24 judges who did not refuse to participate, only six judges responded to requests and only five actually completed the interview. Three of the judges interviewed were from Court 5 and Court 6 and therefore were interviewed about both jurisdictions. Since these judges were able to provide insight into the practices of both "average" and "high" jurisdictions, they are considered completed interviews for both groups. The remaining two judges were both from the average jurisdiction in the northern region. In the end, while there were five judges interviewed, three completed interviews for two jurisdiction. Therefore, there were eight completed interviews with judges – five from "average" jurisdictions and

three from “high” jurisdictions. In total, the judges’ interviews represent three of the six jurisdictions in the sample, which span both “average” and “high” rates of *Alford* pleas.

For individuals who responded to the interview request, the call was scheduled at time that was most convenient to the respondent. Once the interview was scheduled, I sent a confirmation email, which included the consent form for the respondent to review prior to the call (see Appendix D: Interview Consent Form). At the start of the interview, I verbally reviewed the consent form, reiterated the purpose of the study, reviewed the risks and benefits of participating, and explained the terms of confidentiality with the participant. Additionally, the consent form and verbal consent process included asking participants if they consented to being audio recorded to aid in documenting the interview responses. While some respondents asked additional questions about the recording (e.g., how long the recording will be kept, how it will be used, etc.), all respondents agreed to be recorded. After discussing the audio recording, I provided time for the participant to ask any clarifying questions about the study prior to beginning the interview.

Once I received verbal consent and addressed any questions from the respondent, I proceeded with the prepared semi-structured interview that included questions about their background and career experience, their role and process for negotiating pleas, questions specifically about the strength of evidence in plea bargaining, and questions specifically related to the process of offering and negotiating *Alford* pleas (see Appendix C: Verbal Consent and Interview Questionnaire). The interview protocols were slightly altered for each court actor sample so that the questions were appropriate for that particular group but remained similar so that comparisons of the responses across the

three groups could be made. At the end of the interview, all participants were offered a $50 Amazon e-gift card as compensation for their participation. Eight individuals – two judges and six prosecutors – indicated that they could not accept the gift card compensation, and therefore no e-gift card was sent. The remaining three judges, 15 prosecutors, and all 23 defense attorneys accepted the e-gift card compensation. The interviews were then transcribed, typically within one week of the interview, into a typed and de-identified document.

Analytic Strategy

After completing the transcription process, I imported the typed interviews into a qualitative data management software program (i.e., Atlas.ti 8). I took a semi-grounded approach to data analysis, meaning I used an iterative coding approach that relied on both inductive and deductive analysis. Specifically, I first used an open-coding strategy that involved a line-by-line technique to produce a broad set of themes and details about the plea process as they emerge organically (Glaser & Strauss, 1967). Next, I followed an iterative coding process, whereby the data were visited and revisited, ultimately leading to emerging insights, themes, concepts, and understandings (Srivastava & Hopwood, 2009). Deductive analysis included categories, codes, or themes that are established prior to data analysis, specifically based on the questions used in the interview process. With inductive analysis, on the other hand, patterns, themes and categories emerge from the data after analysis occurs, as opposed to prior to data collection and analysis (Patton, 1990). Generally, these patterns emerged through the descriptions or words articulated by the interview respondents themselves or as categories or patterns that were identified

during the interview or coding process (Patton, 1990). Using both approaches provided for a comprehensive evaluation of the interview data and was especially useful in refining the focus and understanding regarding key concepts within my data set (Srivastava & Hopwood, 2009).

As mentioned, a list of deductive codes was first created based on the interview protocol, as well as anticipated themes and responses following the interviews. Examples of deductive codes include descriptions of the overall plea bargaining process, the role of evidence in the plea process, and specific practices related to *Alford* plea. Using these codes, a first round of coding was conducted. During this process, inductive codes that emerged were added to the previously established list of codes and coding proceeded. Examples of inductive codes that emerged during the coding process included the consideration of victims in the *Alford* plea negotiations, types of cases in which an *Alford* plea would not be allowed or accepted, and the role of jury sentencing as a motive for entering *Alford* pleas. A second round of coding all interviews was then conducted so that any newly developed codes could be applied. This process ultimately led to the development of categories and themes presented in the following chapter.

Finally, when appropriate, the analytic approach included qualitative data display (i.e., quotes, figures, charts) in order to present information in a way that more easily depicts the findings (Miles & Huberman, 1984). Narratives and quotes that highlight themes and patterns were assembled to help with this stage of data analysis and conclusion drawing, specifically through quantifying the frequency of particular themes and by providing context through specific quotes. In Atlas.ti, quotes that were highlighted

from the text can be viewed within the theme of interest. For example, within the category of evidence in *Alford* pleas, 25 quotes were highlighted that discussed the strength of evidence not being a factor or consideration when deciding to take these pleas. Quotes and other visual aids were used during the analysis process and are presented in the following chapter.

CHAPTER FOUR: RESULTS

Quantitative Analysis: Results for RQ1 and RQ2

Since the first two research questions use the same state-wide sample and quantitative methods, the results are presented together. The purpose of analyzing the state-wide administrative data was to better understand the case processing and sentencing outcomes that *Alford* plea cases receive and how those variables compare to traditional guilty plea cases.

Preliminary Analysis

A total of 130,650 cases were included in the final sample used for analysis. An overview of case demographics can be found in Table 9. Of the cases included in the final sample, 1.6% were *Alford* pleas and 98.4% were traditional guilty pleas. These cases were predominately White (52.4%) men (76.3%). The most common charges in the sample were property crimes (45.1%) and drug crime (24.8%). Minor crimes (7.7%), 'other' crimes against persons (7.0%; excluding sex crimes, assault, robbery, kidnapping, or murder), sex crimes (5.0%), assault (4.3%), and robbery (3.4%) were less frequent. The most serious violent crimes, specifically kidnapping/arson (1.0%), rape/sodomy (1.0%), and murder/manslaughter (0.7%), were infrequent in the sample. Missing data was not an issue with this dataset, as gender and pled-to charge did not have any missing cases and race was only missing for 39 (0.029%) cases.

Table 9. Demographics of Sample Cases

Variable	Total (*n* = 130,650)		Guilty Plea (*n* = 128,575)		*Alford* Plea (*n* = 2,075)	
	n	**%**	***n***	**%**	***n***	**%**
Gender[a]						
Male	99,634	76.26	97,955	76.19	1,679	80.92
Female	31,016	23.74	30,620	23.81	396	19.08
Race[b]						
White	68,440	52.40	67,191	52.27	1,249	60.19
Non-White	62,171	47.60	61,345	47.73	826	39.81
Pled-to Charge[c]						
Property Crime	58,871	45.06	58,152	45.23	719	34.65
Drug Crime	32,436	24.83	32,126	24.99	310	14.94
Other Minor Crimes	10,086	7.72	10,006	7.78	80	3.86
Other Person Crimes	9,094	6.96	8,897	6.92	197	9.49
Other Sex Crimes	6,578	5.03	6,217	4.84	361	17.40
Assault	5,633	4.31	5,453	4.24	180	8.67
Robbery	4,438	3.40	4,339	3.37	99	4.77
Kidnapping/Arson	1,310	1.00	1,270	0.99	40	1.93
Rape/Sodomy	1,307	1.00	1,250	0.97	57	2.75
Murder	897	0.69	865	0.67	32	1.54

Notes: *Race* has 39 (0.029%) missing cases. *Gender* and *Pled-to Charge* do not have any missing cases.
[a] $\chi^2(1, 130{,}650) = 25.24$, $p \leq .000$, $\varphi = .014$
[b] $\chi^2(1, 130{,}611) = 51.34$, $p \leq .000$, $\varphi = -.020$
[c] $\chi^2(9, 130{,}650) = 1{,}000$, $p \leq .000$, $\varphi = .089$

The case demographics were examined by plea type to identify significant differences between the groups. The *Alford* plea and traditional guilty plea groups differed on all of the case characteristics (i.e., gender, race, pled-to charge severity),

although the effect sizes were quite small (see Table 9). Of note, 17.4% of *Alford* pleas were in sex crimes cases (other than rape/sodomy), while only 4.8% of these types of charges were entered in a traditional guilty. Similarly, 2.8% of *Alford* pleas were in rape/sodomy cases, while less than 1% of traditional guilty pleas were in cases of rape/sodomy. However, within sex crimes, *Alford* pleas still make up a minority of pleas, with only 4.4% of rape/sodomy cases and 5.5% of other sex crimes, while the vast majority of rape/sodomy cases (95.6%) and other sex crimes (94.5%) resulted in a traditional guilty plea.

Prior to conducting multiple regression analyses, a series of diagnostics were conducted to evaluate the model assumptions and examine the validity of the models. First, while there were not many variables available in this dataset and those that were available are distinct, out of an abundance of caution, bivariate comparisons were conducted between the independent variables to assess for potential multicollinearity. The correlation matrix and variance inflation factor (VIF) statistics were examined for all the independent variables. While there were significant correlations between the independent variables, all were of a small magnitude; that is, less than 0.1 (Weisburd et al., 2021). Additionally, VIF statistics ranged from 1.01 to 1.24, which are all well below the value (i.e., 10) that may warrant further examination or concern (Weisburd et al., 2021). Overall, these findings provided little evidence of the potential for multicollinearity in the regression models. As such, all predictors were included in subsequent models.

Finally, since there were significant differences between *Alford* and traditional plea groups on gender, race, and crime severity, interaction terms were examined in each of the models. Specifically, interactions for non-White males, non-White and crime severity, and male and crime severity were included in each model. A three-way interaction for non-White, male, and crime severity was also examined but not shown in the results presented here as it was not significant in any model. Additionally, since much of the legal literature suggests that *Alford* pleas are most commonly taken in specific types of crimes in which the defendant is more reluctant to admit guilt (e.g., sexual crimes), all models were also run with a plea type-crime severity interaction effect. However, this interaction was not significant in any of the models, and thus was not included in the final regression models reported here.

Regression Analysis

As noted in the methods chapter, regression models were developed to test the different outcome measures. Since these data were nested in nature (i.e., cases within jurisdictions), multi-level modeling or clustering was employed. Separate regression models were developed to examine factors that influence each of the dependent variables. Although the purpose of this analysis was to explain between case (i.e., Level 1) variability in disposal length and incarceration length, controlling for variability between jurisdictions (i.e., Level 2) increases the validity of Level 1 results. Thus, in all models, the jurisdiction served as Level 2 or cluster variable, while the case specific variables (i.e., plea type, defendant characteristics, crime severity) served as independent or Level 1 variables. These models included the main independent variable of type of plea (*Alford*

plea = 1, traditional guilty plea = 0) and four control variables (i.e., defendant gender, race, and the severity of the pled-to charge). Within the defendant characteristics, men were compared to women and non-White racial/ethnic groups were compared to White. Additionally, crime severity was coded on an ordinal 10-point scale (i.e., 1 = minor crimes, 10 = murder).

Next, it is important to examine whether using multi-level or clustering is appropriate at all (Snijders & Berkhof, 2017). Therefore, unconditional (i.e., null) models were examined to establish significant variability at each level of analysis to justify the overall modeling approach and inclusion of predictors (Raudenbush & Bryk, 2002). Table 10 presents the Intraclass Correlation Coefficient (ICC) for each of the unconditional models. The ICC quantifies the degree of homogeneity of the outcome within clusters, specifically the between-level variance relative to within-level variance. The ICC may range from 0 to 1, with an ICC equal to 0 indicates perfect independence of residuals (i.e., observations do not depend on cluster membership) and an ICC equal to 1 indicates perfect interdependence of residuals (i.e., observations only vary between clusters) (Snijders & Berkhof, 2017). For the case disposal length, the unconditional model showed significant variability in the disposal length across jurisdictions. As indicated by the ICC, 17.1% of variability is due to jurisdictional-level factors (i.e., Level 2) and 82.9% of the variability is due to individual case-level factors (i.e., Level 1). Similarly, all of the unconditional models examining sentencing outcomes also showed significant variability at both the jurisdiction level and the case level. Across all of the sentence outcome measures, jurisdiction accounted for a range of 7.7% to 12.5% of the

variability while case-level factors accounted for the majority of the variability across all models (range 87.5% to 92.3%).

Table 10. Unconditional Model Results

	Between-Jurisdiction Variance		ICC
	Estimate	**SE**	
Case Disposal Length	.984***	.002	0.172
Overall Sentence Length	.935***	.002	0.125
Sentence Reduction	.322***	.001	0.119
Incarceration Sentence	.523***	.047	0.077

*** $p \leq 0.001$

Given the results of the unconditional models and the significant variability at both levels, all regression models include either a multi-level or clustering approach to examine the impact of the plea type and other control variables (i.e., gender, race, crime severity, and interactions) on the given outcome measures (i.e., case disposal length and sentence outcomes). In these models, jurisdiction serves as a random intercept in order to account for potential differences between the jurisdictions. While the random intercept is included in each model, the ultimate goal of these analyses is to evaluate whether *Alford* pleas impact the length of time it takes to dispose of the case and the sentence outcomes resulting from the plea.

To examine the effect of an *Alford* plea and control variables (i.e., gender, race, crime severity, interactions) on case disposal length, a multi-level regression model was

developed (see Table 11). As previously mentioned, case disposal length was log transformed. To easily interpret the results of the regression, the coefficient can be exponentiated (i.e., $(e^B - 1) * 100$) to indicate a percent change in the case disposal length based on a 1-unit change for each of the independent variables in the model. Overall, the model was statistically significant (χ^2 (7, 130,608) = 2,084.55, $p \leq 0.001$).

Table 11. Multi-level Regression for Case Disposal Length (logged) (*n* = 130,608)

	B	**SE**	**1 - e^B**	**% Change**	**95% CI**	
					Lower	**Upper**
Fixed Effects						
Alford Plea	0.34***	0.023	0.40	40%	0.29	0.38
Male	0.01	0.016	0.01	1%	-0.02	0.04
Non-White	-0.06***	0.015	0.06	6%	-0.09	-0.03
Crime Severity	0.03***	0.005	0.03	3%	0.03	0.04
Non-White Male	0.09***	0.013	0.09	9%	0.06	0.11
Non-White Crime Severity	0.03***	0.003	0.03	3%	0.03	0.04
Male Crime Severity	0.01	0.005	0.00	0%	-0.01	0.01
Random Effects						
Between-Jurisdiction Variance	0.44	0.038			0.37	0.52

χ^2 (7, 130,608) = 2,084.55, $p \leq 0.001$; *** $p \leq 0.001$

Additionally, the main independent variable of plea type was significant (B = 0.34, SE = 0.023, $p \leq 0.001$) and indicated that, on average, *Alford* plea cases took 40% longer to dispose of than traditional plea cases, providing support for my hypothesis. In addition to the type of plea having a significant effect on the length of case disposal, the

control variables in the model also significantly influenced case disposal length. Specifically, cases with non-White defendants took 6% longer to dispose of than cases with White defendants and 3% longer for each step up in crime severity. Finally, there were significant interactions between race and gender and between race and crime severity, such that case disposal length increased at a higher rate in cases with non-White males and with non-White defendants as the severity of the crime increased. However, it is important to note that, due to the limited case information included in this dataset, factors that impact case disposal length, such as pretrial detention status, are not accounted for in this model.

In terms of the sentence outcomes, the first regression model examined the differences in the overall sentence lengths received by defendants in *Alford* and traditional guilty plea cases using a multi-level model (see Table 12). Again, the sentence length variable was log transformed, thus the results can be interpreted as a percent change by exponentiating the coefficients (i.e., $(e^{B} - 1) * 100$). Overall, the model was statistically significant (χ^2 (7, 127,237) = 5,607.05, $p \leq 0.001$). Further, the main independent variable of plea type was significant ($B = 0.11$, $SE = 0.021$, $p \leq 0.001$) such that *Alford* plea cases received a sentence length that was 16% longer on average than traditional guilty plea cases. This finding is contrary to what was hypothesized, which will be discussed in more detail in the next chapter. Additionally, the interactions were also significant, indicating that, on average, non-White men received a sentence length that was 11% longer than White men, that sentence length increased by 2% for non-White defendants as the crime severity increased, and that sentence length increased by

7% for each step up in crime severity for men. While these findings provide insight, it is also important to acknowledge that other factors that impact sentence length, such as criminal history, are not accounted for in this model and thus the findings should be interpreted with caution.

Table 12. Multi-level Regression for Sentence Length (logged) (*n* = 127,237)

	B	**SE**	**1 - e^{B}**	**% Change**	**95% CI**	
					Lower	**Upper**
Fixed Effects						
Alford Plea	0.11***	0.021	0.16	16%	0.07	0.15
Male	0.04*	0.015	0.04	4%	0.01	0.07
Non-White	-0.03*	0.015	0.03	3%	-0.06	-0.01
Crime Severity	-0.01	0.004	0.00	0%	-0.01	0.01
Non-White Male	0.10***	0.013	0.11	11%	0.08	0.12
Non-White Crime Severity	0.02***	0.003	0.02	2%	0.01	0.02
Male Crime Severity	0.07***	0.004	0.07	7%	0.06	0.08
Random Effects						
Between-Jurisdiction Variance	0.34	0.030			0.29	0.40

χ^2 (7, 127,237) = 5,607.05, $p \leq 0.001$; *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$

To test the effect of the independent variables on sentence reduction, a zero-one inflated beta regression model was developed (see Table 13). As a reminder, this is a hybrid model that consists of three parts: 1. a logistic regression model for whether or not the proportion equals zero, 2. a logistic regression model for whether or not the proportion equals one, and 3. a beta regression model for the proportions between 0 and

1. Overall, this model was statistically significant (χ^2 (7, 126,987) = 393.36, $p \leq 0.001$). However, *Alford* plea is not statistically significant in either the zero-inflated model or the beta regression model, indicating that there is not a significant relationship between *Alford* pleas and not receiving a sentence reduction nor the size of the reduction received.

Table 13. Zero-One Inflated Beta Regression for Sentence Reduction (*n* = 126,987)

	B	**Robust SE**	**95% CI**	
			Lower	**Upper**
Proportion (Beta Regression)				
Alford Plea	-0.05	0.106	-0.25	0.16
Male	-0.23***	0.044	-0.31	-0.14
Non-White	0.12	0.095	-0.07	0.31
Crime Severity	-0.12***	0.013	-0.15	-0.10
Non-White Male	0.01	0.058	-0.11	0.12
Non-White Crime Severity	-0.03***	0.009	-0.05	-0.01
Male Crime Severity	0.04***	0.010	0.02	0.06
Zero Inflate (Logit Regression)				
Alford Plea	0.19	0.251	-0.30	0.68
Male	0.84***	0.143	0.56	1.12
Non-White	0.50***	0.119	0.27	0.74
Crime Severity	0.28***	0.017	0.26	0.31
One Inflate (Logit Regression)				
Alford Plea	-14.64***	0.384	-15.39	-13.88
Male	1.03**	0.326	0.39	1.67
Non-White	0.90	0.604	-0.28	2.09
Crime Severity	0.72***	0.066	0.59	0.84

χ^2 (7, 126,987) = 393.36, $p \leq 0.001$; *** $p \leq 0.001$; ** $p \leq 0.01$
Note: SE adjusted for jurisdiction clustering.

However, *Alford* plea is statistically significant in the one-inflated model (#2 above), indicating that the odds of an *Alford* plea receiving a full sentence reduction was 14.64 times lower ($SE = 0.384$, $p \leq 0.001$) than a traditional guilty plea. This is especially interesting given that *Alford* plea type is not significant in the other portions of the model, indicating there may be some support for the idea that the full sentence reduction decision (i.e., reduction = 1) may be governed by a different process than the other sentence reduction proportions. However, these findings should be taken with caution since this model has the same issue of omitted variables mentioned as the previous models and the distribution of this variable does not have excessive ones, meaning the number of cases that received a true 1 is small ($n = 82$).

These results also show that the control variables were significantly related to the sentence reduction received. The interaction terms were only significant in the beta regression; thus, they were left off of the two logit regression models since they did not significantly alter the results. In cases that received sentence reductions (i.e., the proportion beta regression), the significant interaction terms indicate that as crime severity increased, non-White defendants received smaller sentence reductions than White defendants and men received larger sentence reductions than women. In cases that did not receive a sentence reduction (i.e., the zero inflate logit model), men were more likely to not receive a sentence reduction than women, and non-White defendants were more likely to not receive a sentence reduction than White defendants. Additionally, men were also more likely to receive a full sentence reduction than women (i.e., the one inflate logit model). While the latter result seems contradictory to the previous gender-

based reduction findings, since the sample size of cases that received a true one in their sentence reduction is small these results should be interpreted with caution. Finally, as expected, the more severe the charge was, the less likely the defendant was to not receive a sentence reduction. However, the one inflate model shows that the more severe the crime was, the more likely it was to receive a full sentence reduction, which should also be interpreted with caution due to the small sample size.

Table 14. Multi-level Logistic Regression of Incarceration Sentence (*n* = 127,237)

	Odds Ratio	SE	95% CI	
			Lower	Upper
Fixed Effects				
Alford Plea	1.36***	0.069	1.23	1.50
Male	1.68***	0.058	1.57	1.80
Non-White	0.97	0.033	0.91	1.04
Crime Severity	1.06***	0.011	1.04	1.10
Non-White Male	1.23***	0.036	1.17	1.31
Non-White Crime Severity	1.04***	0.007	1.02	1.05
Male Crime Severity	1.02	0.010	0.99	1.04
Random Effects				
Between-Jurisdiction Variance	0.52	0.047	0.44	0.62

χ^2 (7, 127,237) = 3,638.42, $p \leq 0.001$; *** $p \leq 0.001$

Last, to test the impact of the type of plea on whether or not the defendant had to serve some amount of time incarcerated as a result of pleading guilty, a multi-level logistic regression was modeled. Table 14 shows the results of this model, which was overall statistically significant (χ^2 (7, 127,237) = 3,638.42, $p \leq 0.001$). In this model, the

type of plea was statistically significant, such that the odds of *Alford* plea defendants receiving an incarceration sentence were 1.36 times higher ($SE = 0.069$, $p \leq 0.001$) than that of traditional guilty plea defendants. The interactions between the control variables were also significant in this model. The odds of non-White men receiving incarceration as part of their sentence was 1.23 times higher than White men. Additionally, as the crime severity increased, the odds of non-White defendants receiving incarceration was 1.04 times higher than White defendants. As mentioned with the previous regression models, these findings should be interpreted with caution as variables known to impact incarceration decisions were not available in the dataset and thus missing from the model.

To summarize, in examining the Virginia state-wide court sample, the hypothesized findings received some support. First, as hypothesized, on average, *Alford* plea cases took much longer to resolve than traditional guilty pleas, which aligns with prior literature. Second, in contrast to the hypothesis, *Alford* plea cases received longer sentences, on average, and were more likely to receive incarceration as part of their sentence than traditional guilty plea cases. In terms of the sentence reduction, *Alford* pleas decreased the odds of receiving a full sentence reduction compared to traditional guilty pleas. However, *Alford* pleas were not significantly different from traditional guilty pleas when receiving no sentence reduction nor in the size of the sentence reduction (if one was given). These sentence outcomes are contrary to the hypotheses of this dissertation and provide a new look at the differences in sentence outcomes between these two types of pleas, which will be explored in more detail in the next chapter. Additionally, cases involving non-White men took longer to dispose of than cases with

White men. Non-White men also generally received harsher or less favorable sentences, in that they received longer sentences and were more likely to receive a carceral sentence than White men. Also, as expected, as the pled-to charges became more serious, they also took longer to dispose of and these defendants received harsher, less favorable sentence outcomes (i.e., longer sentence, smaller sentence reductions, and more likely to receive incarceration). While these models were not able to include various factors known to influence case disposal and sentencing (e.g., pretrial detention status, criminal history), the findings provide important insight into the differences between *Alford* pleas and traditional guilty pleas.

Qualitative Analysis: Results for RQ3 and RQ4

Since research questions 3 and 4 were both addressed using the qualitative interviews with court actors, the results are presented together. First, descriptive statistics for the entire interview sample are presented. Next, the differences between "average" and "high" jurisdictions are discussed. The remaining sections present the process of offering, negotiating, and accepting *Alford* pleas, the role of evidence in the plea bargaining process, and whether strength of evidence in *Alford* plea cases differs in traditional guilty plea cases. Responses from defense attorneys and prosecutors are directly compared and discussed together, as they are on opposing sides of the adversarial system. However, since judges play a very different role in the plea process, their responses, for the most part, are discussed separately.

Descriptive Statistics

As previously noted, interviews were conducted with 49 court actors, including five judges, 21 prosecutors, and 23 defense attorneys, which represent three "average" and three "high" *Alford* plea jurisdictions across the state of Virginia (see Table 8 for the number of completed interviews by court actor and jurisdiction). While interview respondents were not directly asked for demographic information (i.e., race, age), the respondents were relatively split by gender, with 24 (49.0%) males and 25 (51.0%) females. This proportion held true for prosecutors and defense attorneys; however, the judges interviewed were predominately male (see Table 15). Interviews with all the court actors lasted a total of 36 hours, 9 minutes, with an average interview length of 44 minutes, 17 seconds. Interviews varied in length, with the shortest interview lasting 26 minutes, 46 seconds and the longest interview lasting 1 hour, 31 minutes, 28 seconds. Table 16 shows the breakdown of interview time by court actor.

Table 15. Gender of Interview Respondents by Court Actor

	Male		**Female**		**Total**	
	n	**%**	***n***	**%**	***n***	**%**
Judges	4	80.0	1	20.0	5	100.0
Prosecutors	10	47.6	11	52.4	21	100.0
Defense Attorneys	10	43.5	13	56.5	23	100.0
Total	**24**	**49.0**	**25**	**51.0**	**49**	**100.0**

Table 16. Aggregated Interview Time by Court Actor

Group	*n*	Interview Time	Percent
Judges	5	3 hours, 36 minutes	10.0
Prosecutors	21	15 hours, 11 minutes	42.0
Defense Attorneys	23	17 hours, 22 minutes	48.0
Total	**49**	**36 hours, 9 minutes**	**100.0**

The interview started by asking the participant background information regarding the individual's experiences, both overall and in their current position (see Table 17). As expected, judges reported having the most experience, with an average of 29.4 years of experience practicing criminal law, but also report the shortest tenure in their current position, with an average of only 6.0 years on the bench. The range of overall experience also shows judges to be much further along in their careers, with a minimum of 20 years of legal experience, though some judges interviewed had only been on the bench for one year. Prosecutors and defense attorneys report similar amounts of experience to one another. Prosecutors reported an average 15.3 years of practicing criminal law, with an average 11.3 years as a prosecutor. Defense attorneys also reported an average of 15.3 years of experience practicing criminal law, with 14.0 years as a defense attorney. However, the range for prosecutors and defense attorneys show that interview respondents ranged from very early in their careers (i.e., only 1-2 years of experience) to respondents who had been practicing for decades.

Table 17. Overall and Current Experience by Court Actor (in years)

	Overall Experience			Current Experience		
	Average	**Min**	**Max**	**Average**	**Min**	**Max**
Judge	29.4	20	40	6.0	1	17
Prosecutor	15.3	7	35	11.3	1	24
Defense Attorney	15.3	2	46	14.0	2	46
Total	16.8	2	46	12.0	1	46

Finally, respondents were asked to estimate how many felony cases they handle in an average year, and what percentage of their cases result in a guilty plea. Many respondents found it challenging to estimate the number of felony cases they handle annually and provided a wide range of guesses, from as low as 50 per year to as high as "thousands." However, respondents were fairly consistent in their estimate of the number of cases that result in a guilty plea, typically providing a number between 90 and 99%. There was only one respondent who provided a number outside of this range – a prosecutor who specifically handled domestic violence and sex crimes. She stated that her caseload only sees about 50% of cases ending in a plea, due to the fact that she has a higher-than-typical trial rate. The remainder of results will be presented based on the objectives of this study, including discussing legal actors' overall plea process, their process for *Alford* pleas specifically, and the role of evidence in the plea process (both for traditional guilty pleas and *Alford* pleas).

Comparison Between Average and High Jurisdictions

While the administrative data showed clear differences in the rate of *Alford* plea use across jurisdictions, the interviews did not highlight these differences as clearly.

Many of the responses from prosecutors and defense attorneys demonstrated high rates of consensus, regardless of whether they were in high or average *Alford* plea jurisdictions. However, the one notable difference between average and high jurisdictions reported during the interviews was role of individual court actors and their feelings or reactions to *Alford* pleas. For example, prosecutors and defense attorneys who practice in Court 6, the "high" southern jurisdiction, specifically mentioned one judge who runs very long plea hearings and asks the defendant numerous questions about their guilt and involvement in the criminal act. However, in *Alford* plea hearings, this judge does not ask as many questions since the defendant is asserting their innocence. For this reason, many prosecutors and defense attorneys stated that defendants enter *Alford* pleas simply as a way to achieve a shorter plea hearing. These quotes highlight this issue:

> "Each judge runs the plea hearing a little differently. I have one judge who goes through the whole colloquy in less than 2 minutes. But [a different] judge, he will take an hour to go through what the first judge does in 2 minutes. He will ask the defendant questions. He will ask all sorts of things of the case. He basically puts them on trial before he accepts the plea. So even when I was a defense attorney, I've had defendants who just don't want to plead guilty and admit to it. So you might want to get the plea and be able to go through the plea hearing quickly so as to not answer to the facts. The judge won't ask as many questions in *Alford* plea hearings. [That] judge does a lot of *Alford* pleas. A lot of defense attorneys and prosecutors know that the plea hearing will be 30 minutes shorter if it's an *Alford* plea than a regular plea because he's not going to ask a million questions of the case." – *Prosecutor, Court 6, southern jurisdiction*

> "It is common where I practice. It is very specific to our area. We have a judge who routinely asks your client to say what they did wrong. And I have a lot of clients that teeter on the edge and don't want to say I'm guilty, because they don't in fact feel like they're guilty. They might know it looks bad, but because this one particular judge is very lengthy in their sentencing, if your client does an *Alford* plea in front of them, then he doesn't ask you that question. So it is common that

> clients who are going to go in front of that judge might take an *Alford* to avoid being asked that question. Or if I have a client who is not eloquent or if they put their foot in their mouth, I might encourage my client to take an *Alford* plea to avoid talking." – *Defense Attorney, Court 6, southern jurisdiction*

Interestingly, due to the small jurisdictions in the south, this judge serves in both Court 5 and Court 6, yet only the prosecutors and defense attorneys in Court 6 describe this as an issue. In talking with the judge who is known for having long plea hearings (and much shorter *Alford* plea hearings), he indicated that he primarily spends his time in Court 6 and only spends one day a week in Court 5, which could explain why Court 5 was classified as an "average" *Alford* plea jurisdiction. This judge also corroborated what the prosecutor and defense attorneys were saying:

> "The difference for an *Alford* plea is that we don't ask if they're pleading guilty because they are in fact guilty. I tell them 4-5 times that I treat an *Alford* plea the same as a guilty plea. I remind them that we proceed the same as if they were pleading guilty. I want it to be clear that just because they said the *Alford* words instead of the other, they're not going to get a different or lesser sentence. In fact, right toward the end, I will say 'I've already gone over the jury trial with you and how that works. And I've told you that when you enter a plea of – fill in the blank – you waive a jury trial and other rights you waive. And if you enter a plea of *Alford*, I treat that the same as guilty. Now that I've gone over all this with you, is it still your intention to plead Alford to these charges?' If they say yes, then we're pretty much done. If they say no, then we have to backtrack and figure out what is going on. If it's a guilty plea, then I ask the defendant what exactly they did to be guilty. If it's an *Alford* or no contest, I don't ask them that question. And I don't ask them if they are in fact guilty." – *Judge, Court 5 & 6, southern jurisdictions*

Similarly, prosecutors and defense attorneys in other jurisdictions also describe the issue that some judges and head prosecutors do not like *Alford* pleas and thus they do not occur as frequently. For example, one prosecutor who had experience working in

both an "average" and "high" jurisdiction offered the following explanation on the frequency and use of *Alford* pleas:

> "I don't know if that's just a difference between the judges and what they're willing to accept. But I know when I would offer an *Alford* plea in [Court 3 "average" jurisdiction], I was admonished by the judge for doing them. He said there is a DOJ policy against *Alford* pleas and so he didn't want to accept them either. I think the judges in [Court 3 "average" jurisdiction] didn't like them as much and they don't seem to mind them in [Court 4 "high" jurisdiction]. I can see why judges wouldn't like them. From a validity standpoint, they have a defendant saying they did not do it, so they might be concerned about the appellate process. I think historically, we are seeing that there are people who have been wrongfully convicted so it raises concerns." – *Prosecutor, Court 4, central jurisdiction*

Additionally, another prosecutor talked about how office leadership and individual head Commonwealth's Attorneys can also dictate how frequently *Alford* pleas are used:

> "I will say that under the old prosecutors' office, they sort of spiraled out of control, so leadership stopped allowing them. In the past, we could just say "by the way this is going to be an *Alford* plea" and they never cared as long as it was a conviction. But then it changed, and they were very against an *Alford*, and they really wanted the defendant to admit guilt. [Under the new leadership], I don't imagine it would be a problem anymore… I don't think the new prosecutors' office cares as much about the defendant standing up and admitting guilt exactly as its presented." – *Prosecutor, Court 2, northern jurisdiction*

These quotes provide some context and possible explanation for the differences in rates of *Alford* pleas across jurisdictions. Interestingly, these responses also highlight the possibility that individual court actors and people in positions of power (i.e., judges, head prosecutors) may a driving factor in the types of plea entered, rather than the evidence or other case specific factors.

Beyond the theme of individual court actors potentially influencing the different rates of *Alford* pleas across jurisdictions, no other jurisdictional differences emerged from

the interviews. Thus, the remaining sections present the findings as a comparison across court actor groups, collapsed across high and average jurisdictions.

Overall Plea Process

In order to compare the process of negotiating *Alford* pleas, respondents were first asked to discuss their overall plea bargaining process, including what factors they consider most important during the plea bargaining process and their timeline for beginning plea discussions. While many prosecutors and defense attorneys stated that the process may vary by case, there were also many consistent elements that they discussed as part of their overall process. Most specifically, prosecutors described starting with a review of the police filing, talking with stakeholders (e.g., police officers, victims), looking at the defendant's criminal history, and reviewing the sentencing guidelines. Alternatively, defense attorneys described reviewing the discovery, meeting with the client to hear their side of the story, and then meeting with the prosecutor to get a sense of potential case outcomes. Beyond the description of their overall process, the court actors were also asked to describe the most important considerations when plea bargaining and the timeline of the bargaining process.

Main considerations in plea bargaining. In terms of the main factors considered when either putting together a plea offer or considering whether to accept it (regardless of plea type), prosecutors and defense attorneys stated many of the same factors. Figure 4 shows the factors that respondents provided, grouped by whether they were mentioned by both, mostly by prosecutors, or mostly by defense attorneys. This figure highlights that strength of evidence was regularly mentioned as a main consideration by both

prosecutors (*n* = 16, 76.2%) and defense attorneys (*n* = 13, 56.5%). Again, this is listed as a main consideration in their overall plea process, which would include both traditional and *Alford* pleas. Additionally, the nature of the offense, defendant factors (i.e., criminal history, mitigating factors), and the attorneys' own evaluation of the case were other factors that both prosecutors and defense attorneys listed as main factors that they consider. However, there were some factors that were primarily mentioned by prosecutors or primarily by defense attorneys, which often made sense considering their role and responsibility. For example, prosecutors more often stated that they considered victim factors (i.e., injury, restitution needs) and public safety concerns. Alternatively, defense attorneys specifically mentioned the defendant's goals (*n* = 10, 43.5%) and the sentence guidelines (*n* = 10, 43.5%) that the defendant is facing as some of their main consideration when negotiating a plea.

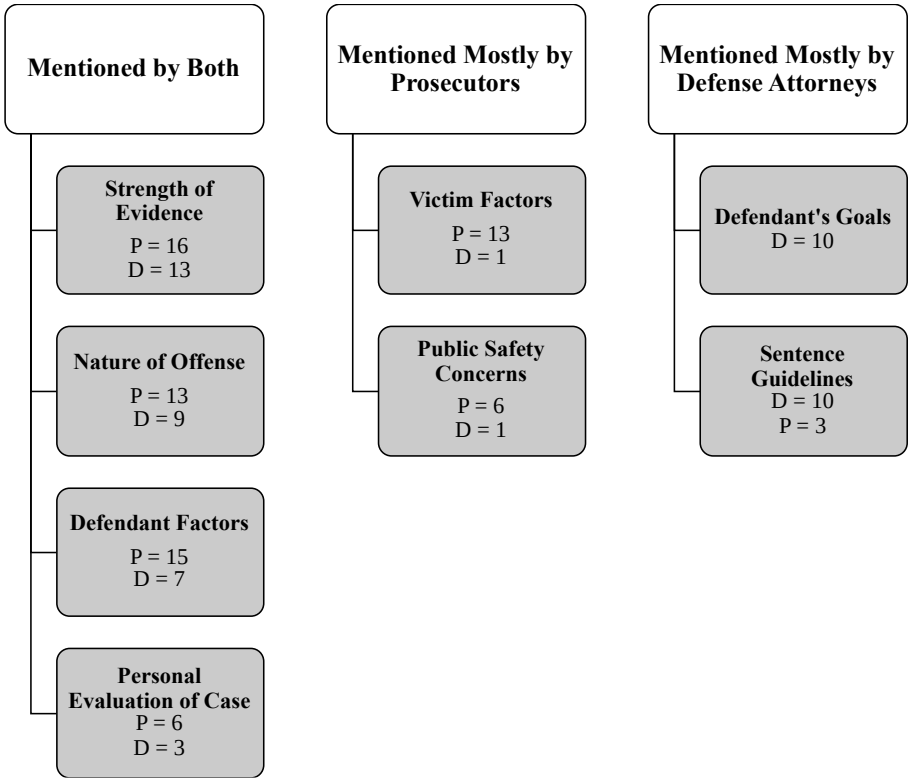

Figure 4. Main Factors Considered in Plea Bargaining Process, Responses from Prosecutors and Defense Attorneys *(P = Prosecutor; D = Defense Attorney)*

Judges, on the other hand, all describe that the two most important factors driving their evaluation of the plea is whether or not the defendant understands what is going on and that the plea is valid (i.e., entered knowingly, intelligently, and with a factual basis of guilt). However, only one judge specifically mentioned the importance of listening to the state's evidence when evaluating the plea. Rather, judges consistently stated that they did not see their role as evaluating the evidence or "accepting" the plea. The following quotes highlight this point:

> "I still want to make sure they asked questions and got answers to their questions, and that they understand the agreement. If they say yes, it is going to be incredibly rare that I don't accept that plea. They've already all agreed to it, so

> there isn't much reason for me to not accept it" – *Judge, Courts 5 & 6, southern jurisdictions*
>
> "I don't know if the judge has the option not to accept it. The defendant has the right to enter the plea and not go to trial. I have to find that it's been made freely and voluntarily, knowingly and intelligently. But beyond that, I cannot refuse the defendant's right to enter the plea." – *Judge, Court 1, northern jurisdiction*

Instead, all five judges consistently stated that the defendant has the right to plead guilty and their role is to simply review the validity of the plea though the use of their oral colloquy and ensure the defendant understands what is happening.

Plea negotiation timeline. In terms of the timeline of plea discussions, prosecutors (n = 12; 57.1%) and defense attorneys (n = 14; 60.9%) consistently stated that the first discussions typically occur around the timing of the preliminary hearing. Both prosecutors and defense attorneys stated that it would be ideal to start discussions sooner, but due to caseloads or needing additional case information, neither party is ready to discuss the option of a plea until the preliminary hearing date. Outside of the preliminary hearing date, prosecutors and defense attorneys also stated that the plea is discussed as soon as possible after defense counsel is assigned (n = 7 [prosecutor = 6, defense = 1]; 15.9%), around the same time as discovery motions (n = 7 [prosecutor = 2, defense = 5], 15.9%), closer to the scheduled trial date when more details of the case are known (n = 4 [prosecutor = 1, defense = 3]; 9.1%), or less frequently, whenever the defense attorney requests a plea offer (n = 2 [prosecutor = 1, defense = 1], 4.5%). While prosecutors said that they do not set an expiration date for their plea offers, prosecutors in both of the

southern jurisdictions stated that their plea offers expire 10 days before the trial date because judges require notification of whether the trial will occur.

Prosecutors initially stated that they provided their best offer up front, and only renegotiate the offer if the defense presents new information (i.e., mitigating factors, new evidence) to the table. Defense attorneys supported this, stating that due to large caseloads, there is often limited time to go back and forth.

> "I try and put the best offer out first. But there are times that we will have to renegotiate the plea, either because the defense brings other information to light or witnesses change their story. I am open to back and forth and hearing a counteroffer, but if you go back and forth too many times then the resolution becomes a product of fatigue." – *Prosecutor, Court 2, northern jurisdiction*

> "There isn't a hard and fast answer – but I think prosecutors and assistant prosecutors have quite a caseload to handle, so I don't think they often take the path of least resistance. If the pros makes an offer, there isn't going to be a whole lot of bickering back and forth." – *Defense Attorney, Court 4, central jurisdiction*

This implies that the offer first provided, typically at the preliminary hearing date, is the one that the defendant must consider if they want to plead guilty. However, as prosecutors and defense attorneys more fully explained their process, they eventually discussed taking part in more traditional negotiations – frequent back and forth, trying to find quick resolutions, and offering better deals if the case gets weaker. The following quotes highlight these dynamics:

> "I have to actually look at the evidence and think about the value of the case before it falls apart. It's less a case of weak evidence and more an issue of we don't have the time or resources to try everything. So we have to pick our battles. So if I say it deserves a year in jail, and the defense says no to that, then I have to

> think about my resources and ask if I'm ok with just 9 months." – *Prosecutor, Court 6, southern jurisdiction*
>
> "There is always back and forth in negotiations, and it's a power thing about who goes first. All of that comes into play. When you do it longer, it becomes more instinctive. Who goes first, usually you want the prosecutor to go first and then you want to get them to go lower? Because they might start lower than where you would have started. So you don't want to show your cards. And you always have to hold your cards close in case you end up going to trial." – *Defense Attorney, Court 3, central jurisdiction*

Both prosecutors and defense attorneys largely describe relying on their own personal experience and evaluation of the case to determine the appropriate "value" of the plea deal. This indicates that, while prosecutors state that they give their best offer first, there is often back and forth that may lead to different types of plea deals, such as *Alford* pleas.

Alford Plea Process

When asked about the process of negotiating *Alford* pleas, nearly all (n = 42; 95.5%) prosecutors and defense attorneys said that the process is exactly the same, except for the decision for the plea to be an *Alford* plea rather than traditional guilty plea.

Prosecutors. All (n = 21) of the prosecutors stated that their process is the same and that the only difference is that the defense attorney asks if it can be an *Alford* plea immediately prior to the plea hearing. In fact, most prosecutors indicated the type of plea that the defendant enters largely does not matter to their process. The following quotes highlight the prosecutors' perspectives:

> "The process is not any different for me. To me an *Alford* plea, as I understand it, it's distinction without a distinction. The defendant is saying there is enough for us to convict him but he doesn't want to say he is guilty. To me, it doesn't make any difference to me. Typically, on our plea forms, there isn't something specific about an *Alford* plea. And then usually that morning of court or the defense

> attorney will call a few days before and asked me if they would take an *Alford* plea instead. And I've never changed the plea form itself. I just add that it's an *Alford* plea." – *Prosecutor, Court 6, southern jurisdiction*
>
> "It's not different from my end. In my personal experience, I don't actually learn until the morning of the plea or even after I've submitted the plea paperwork, and the defense wants to make it an *Alford* plea… I think for the purposes of the plea there is no real distinction between a guilty plea and Alford plea. So on my end, it doesn't make a difference because I wouldn't extend an offer to a defendant who I thought was innocent. I've never refused the opportunity for a defendant to take an *Alford* plea, even though I believe prosecutions can prevent it from happening, but I've never done that." – *Prosecutor, Court 2, northern jurisdiction*
>
> "It's not different for me. In thinking about it, 99% of the time, the question of what the plea will be – *Alford* or guilt – only happens when I'm typing it up. So we've already negotiated all the terms and it's just which type of plea they're going to take. The type of plea entered has little to no, or it just does not factor into my negotiations. 99.9% of the time, it just doesn't matter." – *Prosecutor, Court 3, central jurisdiction*

The only time prosecutors indicated that they might be concerned about an *Alford* plea is in cases with a victim who is strongly opposed to the *Alford* plea or in sex offense cases, which might require the defendant to admit guilt or show remorse in order to participate in treatment or rehabilitation programs:

> "There might be cases where it might be different – if there were serious victim impact issues. You might end up holding the line on something, like a murder or a rape, and you're concerned about appellate issues, or you think the victims need the closure from the guilty plea. But generally, in basic cases, it doesn't make much of a difference." – *Prosecutor, Court 6, southern jurisdiction*
>
> "It can be [different], particularly on sex cases. As part of that person's probation, they have to register as a sex offender and comply with treatment. If that person doesn't admit guilt, the way the evaluations are performed are much different. In those cases, the *Alford* pleas changes the dynamic in terms of what the state does to assess the risk of that person… Otherwise, if I have a case where the victim is

> particularly harmed or aggrieved, it means a lot to that person to say I'm guilty or no contest. So there are some cases where I would consult with the victim on how they feel about *Alford* pleas. If my case is strong, and there is no victim who is particularly harmed, then I don't particularly care." – *Prosecutor, Court 1, northern jurisdiction*

> "There are times we have an agreement, and the defendant is going to plead guilty. Then when we walk into the plea hearing, the defense attorney leans over and says it will be an *Alford* plea. In 90% of the cases, the outcome is the exact same. A guilty plea is a guilty plea. Where it becomes problematic is sexual assault cases. Part of probation supervision is sex offender treatment, in which they have to admit, acknowledge, and be remorseful for the crime. If you plead *Alford*, then it is problematic… If it's not a sex crime case, then my position is that I don't care if it's an *Alford* plea. 9 times out of 10 the court will still find them guilty." – *Prosecutor, Court 1, northern jurisdiction.*

Defense attorneys. Similarly, defense attorneys overwhelmingly (n = 21; 91.3%) stated that their process is largely the same when it ends in an *Alford* plea. Defense attorneys echoed the same sentiments that the prosecutors shared: the type of plea largely does not matter to prosecutors and that the defense attorney brings up the option of an *Alford* plea right before the plea hearing when the terms have already been negotiated. Defense attorneys stated that they often mention to the prosecutor on the morning of the plea hearing that their defendant is going to enter an *Alford* plea rather than formally asking if that would be allowed (see quote above by the prosecutor from Court 1). This finding further drives home the point that the type of plea may not matter to the prosecutor and that the *Alford* plea decision rarely prevents a plea from moving forward. However, two defense attorneys stated that they find the *Alford* plea negotiation process somewhat different than other pleas:

> "About half of the time its different. Many prosecutors view an *Alford* plea as a personal slam in their face, and so they won't agree to it. If the prosecutor is allowing it, its otherwise the process is about the same. It's clear that the judge is going to find them guilty. The prosecutor summarizes the evidence in both cases." – *Defense Attorney, Court 4, central jurisdiction*

> "Only in that the plea negotiations are a lot more in depth. Your client is maintaining they didn't do it, but they probably have some pretty overwhelming evidence that they would likely be convicted at trial. There are also some cases where there might be some holes in the CA's case, but they just don't want to budge or nolle pros anything. Those are the two main situations." – *Defense Attorney, Court 5, southern jurisdiction*

It is important to note that the defense attorney who described prosecutors viewing an *Alford* plea as a "personal slam" is the only individual to describe the potential for an *Alford* plea to create animosity or friction in the plea negotiation process, which could indicate that it this person's experience is an outlier. Finally, most defense attorneys indicated that they have never experienced a prosecutor who would not allow their client to move forward with an *Alford* plea, further indicating that the type of plea may not make any difference in the plea negotiation process.

Judges. When discussing the plea review process with judges, many judges indicated that their process is different when it is an *Alford* plea. Four of the five judges explicitly stated that they change their plea colloquy when the defendant is entering an *Alford* plea:

> "Well some of the questions are different. I don't ask if they are pleading guilty because they are guilty. I instead ask if they are entering the plea because it's in their best interest. And if they agree that the state has the evidence that would likely find them guilty at trial. But other than those slightly different questions, it's the same." – *Judge, Court 1, northern jurisdiction*

> "I think you need to scrutinize the cases a little more, because the defendant didn't admit to the behavior. If the defendant admits guilty, then that's all well and good. But if they're maintaining innocence and voluntarily accepting the punishment, it's still their decision, but you have to scrutinize it more. There is more of a question if it is knowingly, willfully, and voluntarily. So I ask more questions about the defendants understanding… If the offer works for them, then it's not for me to deny them that. I just need to make sure they have all the information to make a rational decision. It doesn't have to be the best decision, I don't have to agree with the decision, but it has to be their decision to make." – *Judge, Courts 5 & 6, southern jurisdictions*

These judges largely described tweaking the question of "pleading guilty because they are in fact guilty" to be more appropriate for an *Alford* plea, similar to the quote above. Additionally, judges reiterated that they mainly want to make sure that the defendant understands their decision, including what the *Alford* plea means, and that the plea is valid – which is the same as their process in traditional guilty plea cases. However, one judge describes their process as the same, but still pointed out that they want to make sure the defendant understands the *Alford* plea:

> "For me, the process is the same. I have to feel like the person is guilty or that the CA has enough evidence to prove the guilt even if the defendant doesn't want to admit it. The main difference is that I want the defendant to know that the process and consequences are the exact same. I want them to understand that even if they say *Alford* or no contest, I treat it the exact same as a guilty plea." – *Judge, Courts 5 & 6, southern jurisdictions*

Some prosecutors and defense attorneys described their views on whether or not judges treated *Alford* pleas any differently. Almost half (n = 20; 45.5%) of the prosecutors (n = 11; 52.4%) and defense attorneys (n = 9; 39.1%) described judges either openly or subtly expressing their dislike of *Alford* pleas:

> "I don't know if it's a difference between the judges and what they're willing to accept, but I know when I would offer an *Alford* plea in [jurisdiction], I was admonished by the judge for doing them… and so he didn't want to accept them… I can see why judges wouldn't like them. From a validity standpoint, they have a defendant saying they did not do it, so they might be concerned about the appellate process." – *Prosecutor, Court 4, central jurisdiction*

> "I think judges are not a big fan of them, I think the judge will pepper the defendant with questions to make sure the plea should really go forward." – *Prosecutor, Court 2, northern jurisdiction*

> "I think the judges are trying to protect their record and put on as much evidence of guilt as possible. If the client pleads guilty, then the judge just has to agree that they sound guilty. If the judge sees *Alford* or no contest, then I think the judge views themselves as the one actually determining guilt. I think they want to bolster their transcript in case the person comes back." – *Defense Attorney, Court 2, northern jurisdiction*

> "Most judges are going to say that they're not biased against *Alford* defendants. But you can often tell in the court's tone how they feel about it. If the court looks and believes that its overwhelming this person did it and the person is just being stubborn about accepting it. I don't think any court will put it on the record that they're punishing people taking it out on the court. But it's probably only about 10% of *Alford* cases in which the judge is clearly taking it out on the client. But the rest, its usually that the judge is recognizing that there is a recommendation and agreement in place to limit the judge's discretion." – *Defense Attorney, Court 1, northern jurisdiction*

While some prosecutors and defense attorney described this occurring during the plea hearing, most described the judge's harsh treatment coming at the sentencing phase. Specifically, prosecutors described the *Alford* plea as a potential aggravating factor at sentencing, and even stated that they were willing to make that argument in an *Alford* case for a harsher punishment. Alternatively, defense attorneys discussed the challenge of preparing for an *Alford* plea sentencing knowing that the judge expects to see an

acceptance of responsibility. Both prosecutors and defense attorneys agreed that an *Alford* plea defendant's lack of willingness to take responsibility likely translates into the judge sentencing the defendant more harshly:

> "I know there are some judges where the *Alford* plea gets you in more trouble in terms of sentencing. There are some judges that want people to take responsibility for their actions, and that is reflected in the sentence. So there are some judges that I would strongly advise against my client taking an *Alford* plea in front of that judge. The judge would just expect you to go to trial if you think you're innocent." – *Defense Attorney, Court 6, southern jurisdiction*

> "Sometimes I wonder if it looks better for the court. I think judges almost use it again them, especially if the evidence is so strong. Especially in serious cases with a victim, I think the court looks down on the pleas because the defendant isn't taking responsibility. I feel like I've even had to say that the *Alford* plea should be taken into account." – *Prosecutor, Court 2, northern jurisdiction*

> "Another thing to think about is how a judge will view an *Alford* plea. A lot of times they want to see an acceptance of responsibility and an *Alford* plea is clearly not that. So that goes into the calculus of how you are perceived. But it depends on the case. If the victim really wants an apology and guilty plea, then you might not get an *Alford* plea." – *Defense Attorney, Court 1, northern jurisdiction*

These quotes highlight that prosecutors and defense attorneys alike acknowledged that judges want to see a defendant take responsibility for their crime, which is in direct conflict with the *Alford* plea and therefore may lead to harsher punishment in these cases. This may provide some context to the quantitative findings that *Alford* pleas received harsher, less favorable sentencing outcomes, an issue that will be discussed in more detail in the next chapter.

Characteristics of Alford Pleas

In order to better understand what types of cases might result in an *Alford* plea, interview respondents were also asked about any common traits about the cases or defendants who enter these pleas. Finally, they were also asked how often they feel that defendants who enter *Alford* pleas are actually innocent and any unique concerns that might arise in these cases.

Commonalities among Alford plea cases. First, all of the court actors were asked if there were any common traits or characteristics among *Alford* plea cases or defendants. As with other questions, prosecutors and defense attorneys provided many of the same response. Figure 5 shows the different themes that prosecutors and defense attorneys discussed. While there were many different traits mentioned, two of the most common responses from both prosecutors and defense attorneys was that *Alford* pleas occur in cases that are more serious or violent, particularly those with victims, and cases where the defendant is more reluctant to plead. The respondents often discussed these two items together, indicating that the more serious, violent crimes with victims are also the ones in which defendants may be less willing to own up to the crime. Most of the judges (n = 3, 60.0%) also pointed to more serious crimes, violent crimes and crimes with victims as a common trait they also associate with *Alford* pleas. The follow quotes further highlight this issue:

> "I think it happens a lot in serious cases. In Virginia we have juries recommend punishment. So if it's a serious case, and there are difficult facts that they don't want to show a jury, the defendant doesn't want to risk getting buried by jury sentencing. There are also cases where the defendant doesn't want to admit it in

front of family and friends, such as child porn or molestation." – *Judge, Court 1, northern jurisdiction*

"There have been a handful of cases where I'll say, 'I don't care if its guilty, no contest, or *Alford*.' I know that's happened. Generally it's because there is a relationship between the victim and defendant – maybe I want the conviction more than the victim because I know he's dangerous, but his girlfriend loves him too much to testify against him." – *Prosecutor, Court 4, central jurisdiction*

"The *Alford* pleas that I've handled tend to come when the consequences are higher – when it's a more severe punishment that will be imposed… With *Alford* pleas, it seems like it's usually a more violent offense where there is more of a personal element in the crime. So it's not a "victimless" crime, it's not just possessing cocaine… And that I think is a common trait of cases that take an *Alford*. *Alford* pleas seem to happen also when there are two personal narratives, a he-said she-said. So it's a case where the defendant says they didn't do it, but they understand what the other person is going to say" – *Defense Attorney, Court 4, central jurisdiction*

As noted in these quotes, prosecutors also stated that *Alford* pleas occur in more violent or victim-based crimes, which also means that the state benefits from not having to make the victim testify (e.g., unwilling witnesses, young victims, revictimization of trial process). Alternatively, defense attorneys noted that *Alford* pleas occur in more violent or victim-based crime because the evidence in those cases are typically based on the victim's account versus the defendant's account of the events. This indicates that even though the court actors indicate similar traits or characteristics of *Alford* plea cases, they potentially perceived the commonalities to be due to different underlying issues.

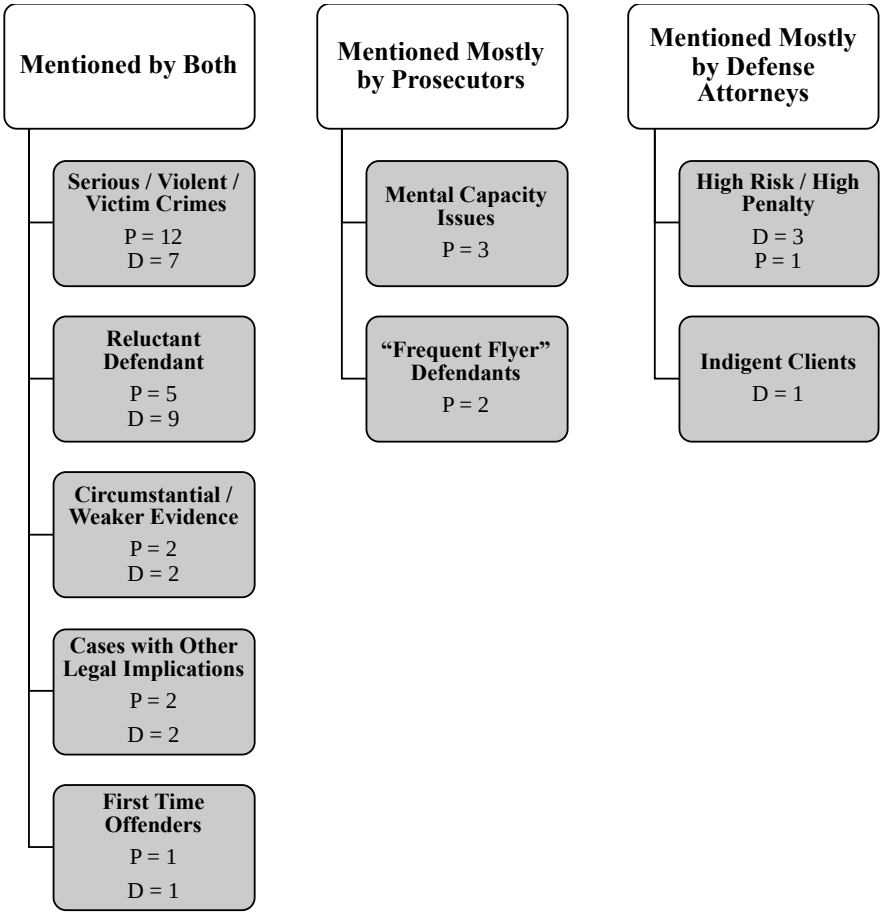

Figure 5. Common Traits of *Alford* Plea Cases, Responses from Prosecutors and Defense Attorneys *(P = Prosecutor; D = Defense Attorney)*

Defendant reasons for entering Alford plea. Next, the court actors were asked what they believed were the defendant's reason for entering an *Alford* plea over a traditional guilty plea (see Figure 6). Most of the responses were similar to their assessment of the common traits of *Alford* plea cases. For example, both prosecutors and defense attorneys frequently stated that they believed defendants entered *Alford* pleas in order to avoid the sigma or shame associated with pleading guilty to certain types of crimes (e.g., sex crimes), as a way to save face with their family and friends, or because

the defendant refuses to admit guilt. While avoiding the stigma or shame and a way to save face are very similar, many of the respondents described these as two distinct situations. Stigma was often described in relation to specific crimes (e.g., sexual assault) that are particularly challenging to admit guilt or that may lead to more detrimental societal labels. Saving face, on the other hand, was described more in terms of the defendant having to deal with people close to them or people they frequently interact with (e.g., family, friends, loved ones) after having admitted guilt to a crime. In other words, stigma was often described more in terms of the societal repercussions of the crime whereas saving face was focused more on having to explain their behaviors or decision to plead guilty to their family and friends. Generally, respondents stated that they felt the *Alford* plea offers defendants a more palatable alternative in these cases.

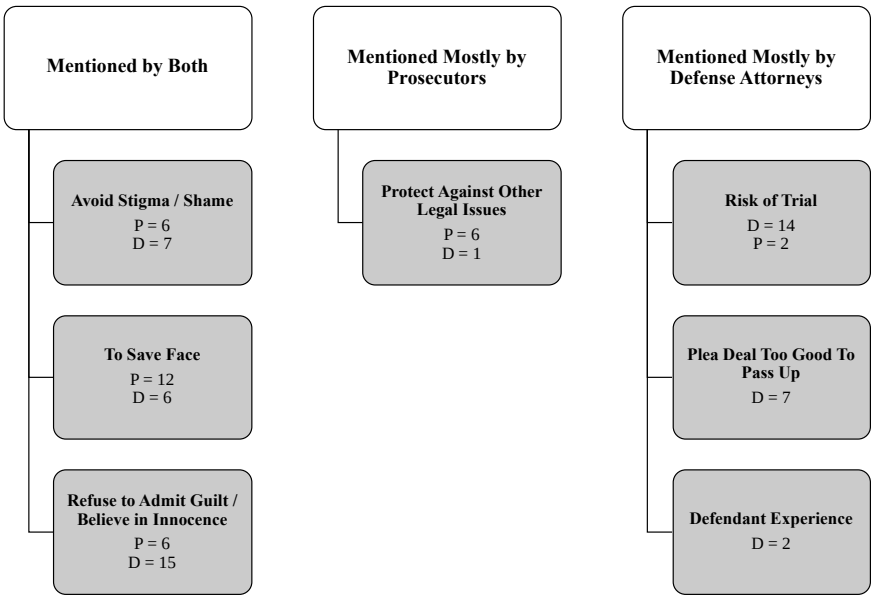

Figure 6. Defendant Reasons to Enter *Alford* Plea, Responses from Prosecutors and Defense Attorneys *(P = Prosecutor; D = Defense Attorney)*

Similarly, some indicated that the defendant truly does not believe that what they did was wrong or that they do not feel responsible for the crime that occurred, even if it is a crime according to Virginia crime statutes. Many defense attorneys (n = 14, 60.9%) indicated that if the risk of trial is high enough, meaning they are facing serious time if convicted at trial, then a reluctant defendant might enter an *Alford* plea. The following quotes highlight this issue:

> "It only really serves clients who do not want to say the words "I'm guilty". It doesn't have a difference from a guilty plea, legally. If it's a good offer, but the client just doesn't want to say that they're guilty, then an *Alford* plea is appropriate." – *Defense Attorney, Court 3, central jurisdiction*

> "*Alford* pleas happen in cases where we're close to going to trial, but it's risky, and the prosecutor offers something that we almost can't resist. But the client is certainly not willing to admit guilt, and we're debating the facts of the case. With experience I learned to recognize the clients where it is going to be a problem to admit guilt, and bring up the *Alford* plea, especially if the prosecutor isn't going to have a problem with it." – *Defense Attorney, Court 1, northern jurisdiction*

> "I'll have this conversation with the client and explain that taking a plea is the best option. We're not going to win at trial without a miracle. But the client will have this deep seated feeling or conviction that they are not in fact guilty. And I've seen it both ways – sometimes it is in fact true, they lacked the criminal intent of what they were accused of. Or, what I think I've run into more, they think they're morally not guilty. There are a set of circumstances that led to this situation. They were targeted by the police, or they're less guilty than other people in the world, maybe they were targeted for race reasons or socioeconomic reasons, or that officer has it out for them. So they may understand that they'll be found guilty at trial, or that they're guilty under the law, but they morally think the system is against them and they didn't do anything wrong. And those are the situations where I explain the third option of an *Alford* plea. A lot of times a client will just be willing to say they're guilty because they want the prosecutors deal, and that happens before an *Alford* plea even comes up. They want to take an *Alford* plea because they're calculating their future life." – *Defense Attorney, Court 1, northern jurisdiction*

Prosecutors were more cautious to speculate on defendant's motives for entering an *Alford* plea since they do not commonly interact directly with defendants. However, many prosecutors felt it was simply to save face and avoid admitting guilt. One additional response prosecutors added was that *Alford* pleas might protect the defendant against other legal issues (e.g., civil suits, immigration consequences, probation violations), though they admitted that they do not know if *Alford* pleas help in those subsequent cases. Similarly, judges were reluctant to speculate, but those that did respond stated that they largely believed it was a way for the defendant to save face with friends and family (n = 3, 60.0%).

Possible innocence among Alford plea-takers. Next, when considering how often defendants who enter *Alford* pleas are in fact innocent, respondents gave a variety of responses. Figure 7 shows all of the responses provided by prosecutors and defense attorneys. Many prosecutors (n = 8, 38.1%) and defense attorneys (n = 9, 39.1%) responded that they believe it is rare that an *Alford* plea defendant is actually innocent. However, many prosecutors (n = 8, 38.1%) and defense attorneys (n = 5, 21.7%) also stated that they have no way of knowing about actual innocence. Beyond that, the vast majority of prosecutors (n = 18, 85.7%) responded that they believed they never had a case where an innocent person entered an *Alford* plea. These prosecutors (n = 18, 85.7%) furthered said that they would never prosecute a case in which they were not 100% sure that the defendant was guilty, and that if there ever was a doubt about the person's guilt, they would simply drop the case.

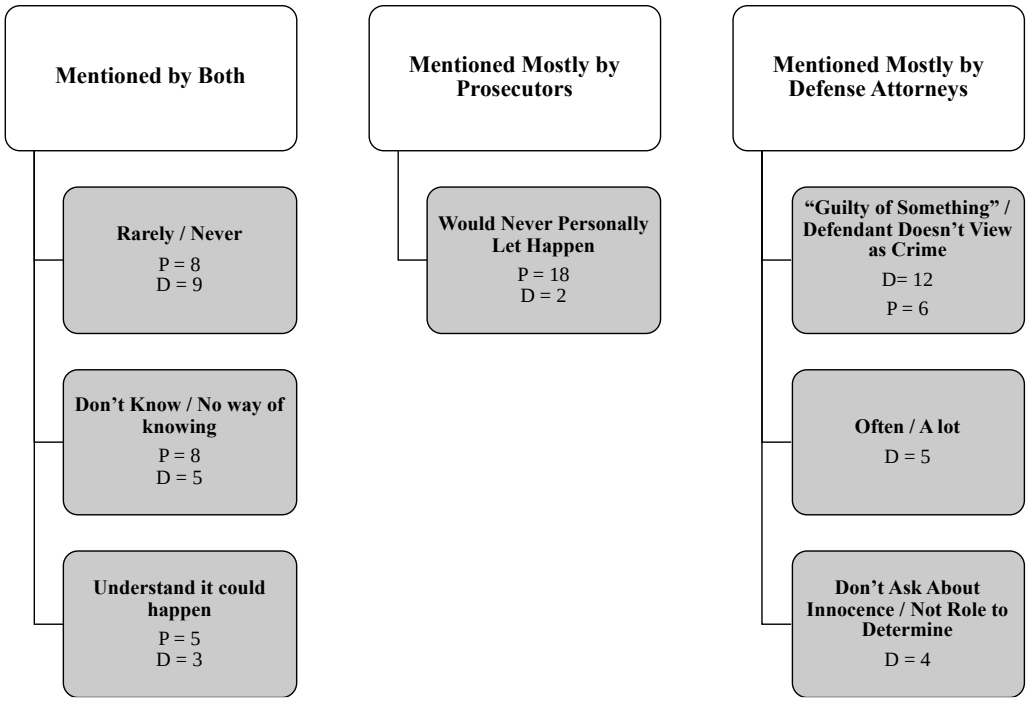

Figure 7. Actual Innocence in *Alford* Pleas, Responses from Prosecutors and Defense Attorneys *(P = Prosecutor; D = Defense Attorney)*

The following quotes highlight this perspective:

> "I think never. But that's coming from what I acknowledge as a biased position. In my estimation, they just don't want to admit that they did it. I think sometimes, and maybe frequently, they are entering *Alford* plea to the plea offer because they might believe themselves to be innocent of the particular crime, even though they did know to do something wrong. I never offer them as a carrot to get the plea. For me, I always come from the perspective that the defendant did it. The defense doesn't always have that luxury. If I don't think they're guilty, then I wouldn't be prosecuting. But if the defendant is just balking at taking plea, then I think I could be a good option to discuss with defense counsel... You should plead guilty if you're guilty. If you're not guilty, we should have a trial and identify whether or not you're guilty." – *Prosecutor, Court 1, northern jurisdiction*

> "I would never personally go forward with a charge if I believed the person were innocent. I think any prosecutor that entertains any doubts about a case and still moves forward, shouldn't be a prosecutor. I know we live in an environment where there are constant allegations of wrongful convictions – and I'm not trying

> to bury my head in the sand – but anytime I got close to a case where I thought the defendant was actually innocent, I dropped the case right away." – *Prosecutor, Court 2, northern jurisdiction*

> "I really wouldn't know the answer to that. From the prosecutor's point of view, I make the plea offer because it's my belief that you're guilty… So if you ask me personally, I would say nobody. Anyone taking the [*Alford*] plea is guilty, they just want to say they're not guilty. If you ask defense attorneys, they may say that their client is innocent and that's why they took the *Alford*. But from my perspective, I only extend offers in cases where I'm confident the defendant is guilty. If someone brings a case and we think we may not have the right person, or I have doubts, or the judge or jury might have doubts, I wouldn't offer an *Alford* plea in those cases. I would either drop it or tell the police to investigate further so that I can be convinced that we have the right person." – *Prosecutor, Court 3, central jurisdiction*

Defense attorneys also echoed a similar sentiment, specifically that defendants who enter *Alford* pleas are either "guilty of something" or that the defendant does not view what happened as a crime (n = 12, 52.2%). One defense attorney stated that many pleas (including *Alford* pleas) are a "legal fiction," which she described as a situation in which the bargaining process might mean that the defendant pleads to a charge that does not perfectly match the facts or evidence of the crime but is a better deal for the defendant overall. Similarly, defense attorneys stated that they often experience clients who, even if they admit to the behavior, simply do not see that behavior as a crime. The following quotes highlight these issues:

> "There is the scenario where the Commonwealth's Attorney will have a bunch of charges, and they'll drop a majority of them in exchange of a plea. And so my client will take the *Alford* to one or two charges. What they plea to may not be exactly what they did, but they probably did something" – *Defense Attorney, Court 5, southern jurisdiction*

> "The way I see it, you are entering an *Alford* plea because in your mind you didn't do it. So I think in their mind, they really think they're innocent. And I think a lot of people are innocent of what they're charged with and some are innocent of everything. So it's complicated... A client who maintains their innocence. I think another one is legal issues. I think attorneys recognize that if you come to a reduced charge and then it's not really what the client did in the first place. I think usually it's the clients who maintain their innocence, or clients that are savvy and skeptical that the system will actually achieve the correct results. They usually are then more likely to realistically assess the benefits of an *Alford* plea." – *Defense Attorney, Court 1, northern jurisdiction*

Finally, judges were also asked this question and largely stated that they have no way of knowing actual innocence (n = 3, 60.0%) and that they would not personally allow an *Alford* plea to go forward if they believed the defendant to be innocent (n = 2, 40.0%).

Usefulness of Alford pleas. Finally, almost all of the court actors agreed that *Alford* pleas can be a useful tool (n = 46, 93.9%), with only three interview respondents outright stating that they do not think believe it is a useful tool in any situation (see Figure 8). All five judges agreed that *Alford* pleas help promote plea bargaining, keep the court functioning, and allow the defendant additional options and control over their outcomes. Prosecutors (n = 16, 76.2%) and defense attorneys (n = 8, 34.8%) also agreed that *Alford* pleas benefit the entire system. However, about half of the prosecutors (n = 10, 47.6%) stated that they do not think is a prosecutorial tool and instead argue it is a better tool for the defense. Most defense attorneys (n = 17, 73.9%) and over a quarter of prosecutors (n = 6, 28.6%) also agreed that *Alford* pleas are beneficial to defendants and provide them more options. Two defense attorneys specifically stated it allows defendants to communicate with the court about what their situations is. However, it is

important to note that some prosecutors (*n* = 5, 23.8%) and defense attorneys (*n* = 6; 26.1%) felt that they are only minimally useful in rare cases.

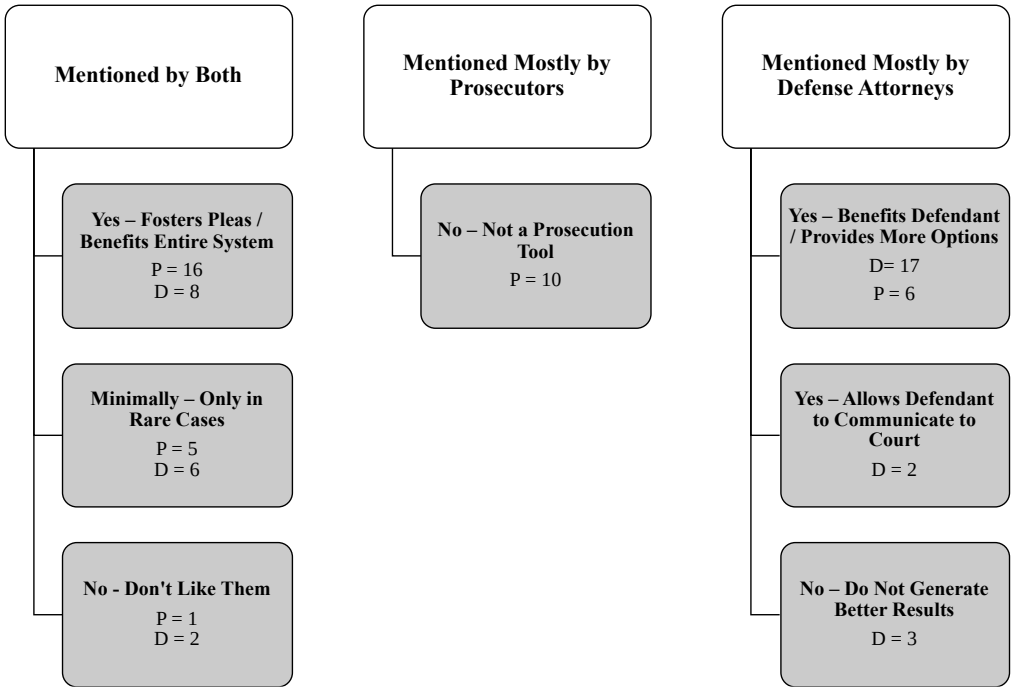

Figure 8. *Alford* Plea as a Useful Tool, Responses from Prosecutors and Defense Attorneys *(P = Prosecutor; D = Defense Attorney)*

Role of Evidence in Alford and Traditional Guilty Pleas

In discussing the role of evidence in plea bargaining, interview respondents were asked to discuss their process of evaluating the evidence in a case, the most important types of evidence to a case, and to compare the evidence in *Alford* and traditional guilty plea cases.

Process of evaluating evidence. In terms of evaluating the evidence in all types of cases (*Alford* and traditional), prosecutors generally stated that they start with the facts of

the case from the police report and the elements needed to prove the charge. Beyond being able to prove the case, prosecutors also talked about considering the individual type of evidence and the potential strengths and weaknesses of that particular evidence type. For example, many prosecutors discussed how challenging witness evidence can be, due to the fact that a witness could either provide very strong or very problematic testimony, depending on how cooperative the individual is. Finally, most prosecutors stated that it is necessary to look at the big picture of the story that the evidence is telling. Ultimately, they stated that it is very case dependent and that it is most important factor is to ensure that the evidence tells a clear, compelling story. The following quotes highlight these factors:

> "I look at the elements of the charge and think about what we have to prove to convict. Then I look at the facts of the case and the evidence that we can introduce. I have to prove each element of the case. If it's a larceny, I have to prove that it was in fact a theft, and then the value of the item stolen… Then I think about whether the element is strong or weak. And then can we prove it with evidence that is admissible in court." – *Prosecutor, Court 5, southern jurisdiction*

> "I consider if there is direct evidence v. circumstantial evidence. If there is direct evidence, how strong is it and how much direct evidence is there. If its circumstantial, then how tight of circumstantial evidence is it. Can you tightly put the story together to make sure there is no other plausible explanation? In both of those cases, we are needing beyond a reasonable doubt when we make our statements to the jury, so is there any other plausible explanation for what happened? If there is, then maybe your case isn't as tight as you think it is." – *Prosecutor, Court 4, central jurisdiction*

> "You have to figure out who your witnesses are and how they might do testifying on court. If you have officers who are reliable and you know they're good on the witness stand and effective communicators, that's something to consider. If it's a third party witness, is it an expert or a doctor, or is it a flaky person who is changing their story a lot. You have to look at who is testifying, and how easy it

> might be to poke holes in the witness. If I have a rock solid case where the defendant has a solid criminal history and this offense just builds on that, then I might not offer much. Or I'll only say that I'll provide a recommendation or a cap. So yeah, it's the facts of the case, how compelling or persuasive the facts are, what the jury might think." – *Prosecutor, Court 1, northern jurisdiction*

On the other hand, defense attorneys describe their starting point as dependent on the amount of discovery they receive. Most defense attorneys stated that they do additional investigation in addition to the discovery in order to fully evaluate the evidence. Similar to prosecutors, they described having to weigh the potential strengths and weaknesses of individual pieces of evidence. As part of their investigation process, they stated that they are frequently looking for ways to suppress evidence, file constitutional challenges, or poke holes in the state's case. Additionally, defense attorneys described it being about more than just the evidence, and that it also needs to be about the way in which the jury will view the case. Finally, defense attorneys also stated that part of their evaluation is identifying what the worst possible outcome could be to inform what type of plea deal they might be able to get. The following quotes highlight these themes:

> "First, how much discovery you received and what is that discovery. If they have witnesses, how strong are the witnesses. Now a days, there is a lot of body cam. We have a lot of drug charges and most are on camera. You want to look at the type of evidence that you're dealing with. The video may convey the story or it may not. You also have to look at the crime and if the evidence fits that crime. You also have to think about how the jury will actually think about the evidence. So you have to think about how they will react. A lot of times, the CA might not have a lot of evidence but if it's a sex crime or a drug crime, the jury might overlook the lack of evidence because they just don't like the crime. And they might decide to hammer them about it instead." – *Defense Attorney, Court 5, southern jurisdiction*

> "A lot of it has to do with the law and jury selection. I look at the discovery, the answers, I look at the emotional factors in my favor and those not in my favor. And I come up with a theme, which is always very simple. In two sentences, what do I want the jury to see at the end of the trial? Based on the strength or weakness, that determines the case. It's not just evidence, there are many emotional issues. Like rape cases, child abuse cases, murder cases, there are strong emotions and you have to find a way to negate the influences." – *Defense Attorney, Court 4, central jurisdiction*

> "You do your best to find everything out. You are also doing your own investigation aside from talking to the prosecutor. You talk to the defendant – at great length and many times -- to learn about their circumstances, their life, and what did or did not happen. You go out and talk to the witnesses and find out all kinds of things the defendant might not even know about that might be helpful or harmful. There might be video tape, there might be eyewitnesses, there might be material on their Facebook page. There are a million ways to find the information and think about how valuable the information is. So you sit down with your client, discuss the information you found, and weighing it with your client. Keeping them aware of what is going and what we're going to do in the case. If we want to go to trial, or what kind of settlement/plea agreement can we hope to make. What is the worst outcome we're willing to accept or should we just go to trial? Sometimes clients just want to go to trial even if they know the chance of winning are overwhelmingly poor." – *Defense Attorney, Court 2, northern jurisdiction*

Finally, judges largely stated that they do not do much of an evaluation of the evidence in plea hearings, based on the assumption that both parties have agreed to the evidence during the process of the plea bargain. For example, one judge specifically stated, "I don't do much of an evaluation of the evidence if the defendant wants to plead guilty and agrees to the CA's evidence" (*Courts 5 & 6, southern jurisdictions*). Further, all the judges stated that the proffer of evidence during the plea hearing is very summary-fashioned and largely only hits on the main points. The judges stated that the prosecution's proffer of evidence during the plea hearing is simply to ensure that the case

facts meets the element of the crime and that the defense agrees to the facts. In fact, one judge specifically said, “I’m not going to start asking more questions. I’m not asking if they got fingerprints or any of that” (*Courts 5 & 6, southern jurisdictions*). Overall, judges indicated that their evaluation of the evidence is largely procedural and is not very involved.

Most valuable types of evidence. In terms of the most important or valuable types of evidence, prosecutors and defense attorneys had many similarities in their responses. Figure 9 shows the types of evidence mentioned and frequency that they were mentioned by prosecutors and defense attorneys. By far, video evidence was mentioned the most often, including body-worn cameras and surveillance cameras, with 16 (76.2%) prosecutors and 14 (60.9%) defense attorneys listing it as a valuable type of evidence in a case. Many of the prosecutors and defense attorneys specifically stated that body-worn cameras are becoming more widely used, and thus many (if not all) cases include this type of evidence. Additionally, prosecutors and defense attorneys stated that video evidence is very compelling, to judges and juries, and that it is often very hard to refute. For the same reason, forensic or scientific evidence, as well as DNA evidence, was also commonly mentioned as valuable evidence.

Eyewitnesses, other witnesses, and confessions / defendant statements were also commonly mentioned, though prosecutors and defense attorneys acknowledged the potential problems of these types of evidence. Prosecutors often stated that even though witnesses are how they bring other types of evidence into the record, which make them invaluable, judges and juries also want corroborating evidence in addition to the

witnesses. In contrast, defense attorneys often described witnesses as favorable to their case, since they are often unreliable, unwilling to cooperate with the state, or untrustworthy. Audio recordings and fingerprints were mentioned by a few respondents as well as a handful of other evidence types, including ballistics, documents, and any evidence found directly on the defendant.

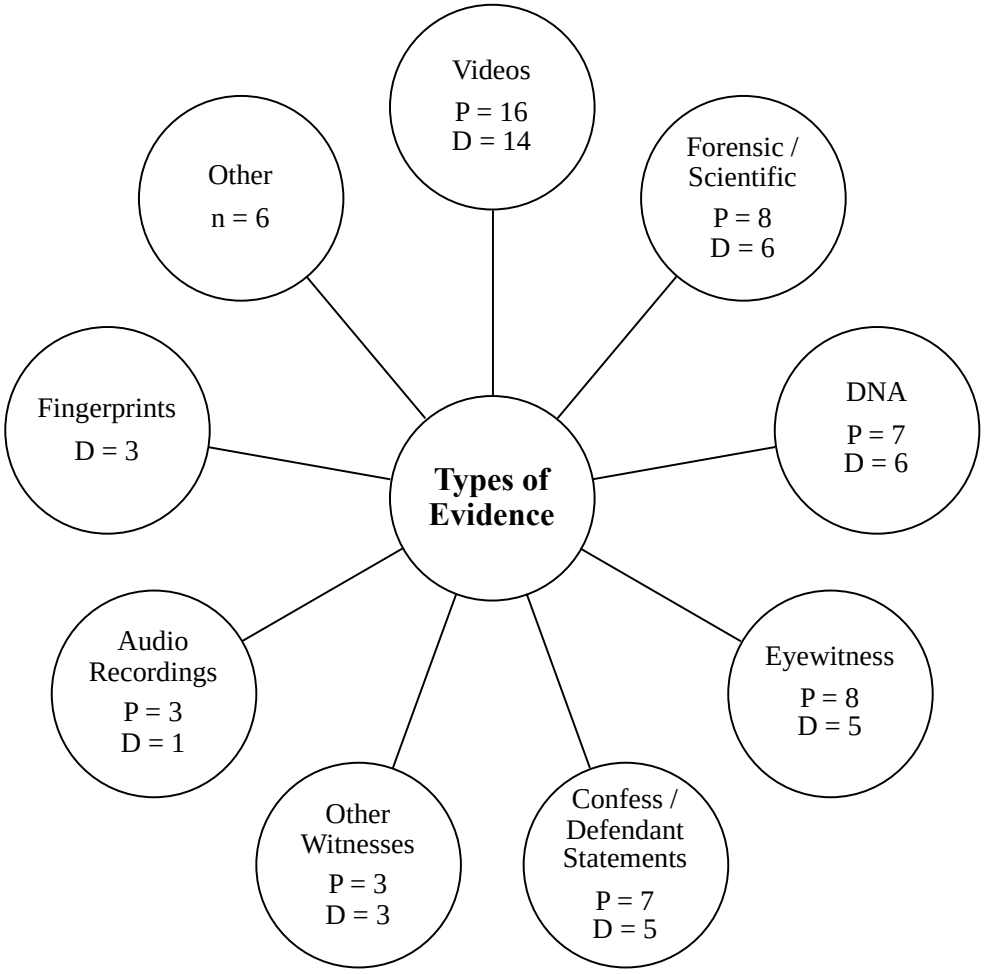

Figure 9. Most Important Types of Evidence, Responses from Prosecutors and Defense Attorneys *(P = Prosecutor; D = Defense Attorney)*

When judges were asked about the most important types of evidence, they generally stated that they are not looking for specific types or values of evidence during the proffer. Judges stated that as long as the proffer tells a story that makes sense and the defense does not argue the facts, then they do not focus on any specific types of evidence. However, one judge said that the most compelling case is when "there is a voluntary confession from the defendant, and the defense doesn't challenge the voluntariness of the confession" (*Courts 5 & 6, southern jurisdictions*). The judges' responses to the most important types of evidence largely echoed their earlier responses that evaluating the evidence is not part of what they do during a plea hearing.

Comparison of evidence in Alford and traditional guilty plea cases. Finally, all court actors were asked whether evidence in *Alford* plea cases differed from traditional guilty plea cases. Table 18 shows the responses by court actor as well as the combined totals. A small minority of prosecutors (n = 2, 9.5%) and defense attorneys (n = 3, 13.0%) stated that they believed the evidence was the same in *Alford* and traditional guilty plea cases. Alternatively, 8 (38.1%) prosecutors and 6 (26.1%) defense attorneys said that they felt *Alford* plea cases occurred in cases where the evidence was likely weaker. For example, here are some quotes from respondents who argued it was possibly weaker:

> "They might occur in cases where my evidence may not be as strong as I would like, or where I am trying to spare a victim from additional trauma that a trial might impose, an *Alford* plea can accomplish obtaining the proper conviction." *– Prosecutor, Court 4, central jurisdiction*

> "I think that in cases where there are *Alford* pleas, chances are there are a higher percentage of cases that are based on weaker evidence, than the percentage of cases that are stronger cases. So the defendant might know that it's their word versus the victim, so they might be more willing to enter and *Alford* plea. They

don't want to admit guilt in a case where they think they could probably win at trial, but they don't want to risk it. Alternatively, if they know I have DNA evidence, video evidence or confessions, things that don't lie, they probably wouldn't want to do an *Alford* plea." – *Prosecutor, Court 3, central jurisdiction*

"I think I could get an Alford plea through if the prosecutors realize that I have an actual argument that I can win. So therefore, they might be more willing to bend the rules to get the conviction." – *Defense Attorney, Court 2, northern jurisdiction*

"In a lot of cases there is a confession to the police, which is a strong piece of evidence. A pretrial confession is often going to take an *Alford* usually off the table. So yeah, the evidence is different. If you're on camera stealing a tv, then you're not going to be able to take an Alford plea, because that will undermine the defense and sentence." – *Defense Attorney, Court 1, northern jurisdiction*

Table 18. Comparison of Evidence in *Alford* and Traditional Guilty Plea Cases, Responses from Prosecutors and Defense Attorneys

	Evidence is the Same	**Weaker in *Alford***	**Not About Evidence**
Prosecutors (*n* = 21)	2 (9.5%)	8 (38.1%)	11 (52.4%)
Defense Attorneys (*n* = 23)	3 (13.0%)	6 (26.1%)	14 (60.9%)
Combined (*n* = 44)	5 (11.4%)	14 (31.8%)	25 (56.8%)

However, most interestingly, none of the prosecutors or defense attorneys stated they felt the evidence is stronger in *Alford* plea cases. This is important considering the Supreme Court decision indicated that there should be a strong evidence of guilt in *Alford* pleas, especially considering the lack of an admission of guilt by the defendant. Instead,

the majority of prosecutors (n = 11, 52.4%) and defense attorneys (n = 14, 60.9%) responded that they do not believe the differences between the two types of pleas had anything to do with the evidence. They largely argued that it was either about individual defendants or the risk of facing jury sentencing if convicted at trial. Prosecutors and defense attorneys often stated that they believed there are some defendants who do not want to admit guilt, and thus will enter an *Alford* plea regardless of the strength of evidence that they are facing. Additionally, prosecutors and defense attorneys stressed that the riskiness of trials was a factor that typically matters more than the evidence. Here are some quotes that highlight this point:

> "What I've found with *Alford* pleas is that the evidence isn't stronger or weaker, it's just that the particular defendant doesn't want to stand up and admit guilt and wants to take the benefit of the plea offer. As far as I can tell, there is no distinction between *Alford* plea cases and regular plea in terms of the evidence." – *Prosecutor, Court 6, southern jurisdiction.*

> "I don't think it's really about the strength of evidence. More, it's about whether there are concerns on the case's suitability for trial. Like, do I want to put a 6 year old on the witness stand and be the primary witness in this case? If I can avoid it I probably would want to." – *Prosecutor, Court 2, northern jurisdiction*

> "It's really if risk of trial or the risk of mandatory minimums is really high and so they'll plead guilty to things even if they didn't do it." – *Defense Attorney, Court 3, central jurisdiction*

> "Whether or not they do an Alford plea has less to do with the evidence and more to do with the individual." – *Defense Attorney, Court 6, southern jurisdiction*

> "That doesn't really factor into much at all. Its more about what the client wants to communicate to the court. Obviously there has to be a sufficiency of the evidence that a jury would find them guilty. But I wouldn't say the strength of case is the determinant of the Alford plea." – *Defense Attorney, Court 5, southern jurisdiction*

In addition to the riskiness of trial, many court actors explained that, in Virginia, the sentence is given out by the juries rather than judges. Further, juries – unlike judges – are not provided with sentencing guidelines, they do not have the power to suspend mandatory minimums, and they do not have the power to go outside of the statutory sentencing range. Therefore, court actors argued that the sentencing at trial is often so much higher than what the plea bargain would entail that it is almost foolish not to take the deal. Defense attorneys even argued that they believe some defendants, especially those in *Alford* pleas, are very risk adverse and do not even consider the evidence they are facing, they simply want to plead guilty to get the case over with and with minimal punishment.

Judges were more split on their comparisons of the evidence in *Alford* and traditional guilty plea cases. Two judges felt that the evidence is the same regardless of the type of plea. One of those judges even stated, "I find that the proffer is the same regardless of the type of plea. But I guess I am relying on the defense attorney too, because if they tell me their client is not guilty I would feel differently. But if that doesn't happen, then I usually understand that the defense agreed to the proffer of evidence and that it's in their clients' best interest to enter the plea" (*Courts 5 & 6, southern jurisdictions*). Alternatively, two judges felt that the evidence tends to be weaker in *Alford* plea cases, with one judge stating, "Its usually circumstantial, there usually isn't a confession. There might be an eyewitness, but there might be some suspect identification" (*Court 1, northern jurisdiction*). Finally, the remaining judge stated that

the *Alford* plea is not necessarily about the evidence and is instead about what the defendant wants to communicate to their family and the court.

Overall, prosecutors and defense attorneys argued that evidence is one of the main factors to consider in the plea bargaining process generally, in order to ensure that the facts of the case meet the elements of the charge. Additionally, prosecutors describe needing to develop a tight, compelling story indicating the defendant's guilt while the defense actively described needing to find ways to poke holes in that story and exclude evidence. Interestingly, judges largely indicated that they did not see it as part of their role to evaluate the evidence during a plea hearing, simply because they assume that both sides have already agreed to the evidence and therefore it does not need any additional scrutiny. While prosecutors and defense attorneys acknowledged that all types of evidence have potential strengths and weaknesses, both groups largely stated that video evidence is the most important in a case as it can be used to clearly implicate the defendant. Finally, when comparing evidence in *Alford* and traditional guilty plea cases, some respondents stated that they do not believe that plea type has anything to do with the evidence, and *Alford* pleas are more about individual defendant goals and decisions.

In sum, these interviews highlighted interesting, new findings about *Alford* pleas. First, with the one exception of role that powerful, influential court actors (i.e., judges, head prosecutors) have in the discretionary use of *Alford* pleas, no other differences emerged between "average" and "high" jurisdictions. Across all jurisdictions, court actors described negotiating *Alford* pleas in the same way as traditional guilty pleas, and only differed in that defense attorneys raised the possibility of the plea being an *Alford*

immediately prior to the plea hearing. Additionally, the court actors indicated that *Alford* pleas seem to largely be used in cases with a reluctant defendant, and that prosecutors generally allow *Alford* pleas when requested by the defense since the outcome is the same (i.e., guilty finding). In fact, over half of prosecutors and defense attorneys indicated that they did not believe the decision to enter an *Alford* plea is about the strength of evidence at all, and that the risk of facing much harsher jury sentencing after a trial is more influential in the defendant's decision. These issues will be discussed in more detail in the next chapter.

CHAPTER FIVE: DISCUSSION AND CONCLUSIONS

The goal of this dissertation was to examine how *Alford* pleas compare to traditional guilty pleas in their case processing and sentencing outcomes and to explore the process of negotiating, offering, and accepting *Alford* pleas, including the role of strength of evidence in the process. This chapter includes a discussion of the findings and study limitations, as well as ideas for future research and the overall conclusions of this dissertation.

Discussion of Findings

Findings from the quantitative analyses (i.e., RQ1 and RQ2) indicate that *Alford* plea cases take longer to process and generally receive harsher, less favorable outcomes compared to traditional guilty pleas. In contrast, the qualitative findings (i.e., RQ3 and RQ4) indicate that court actors largely do not consider *Alford* pleas as any different than traditional guilty pleas. Prosecutors and defense attorneys generally reported using the same plea negotiation process regardless of whether it was an *Alford* or traditional guilty plea. While judges reported treating *Alford* pleas very similarly to traditional guilty pleas, prosecutors and defense attorneys stated that they believe judges look at *Alford* pleas more harshly at sentencing, due to the defendant's lack of responsibility or remorse. In many ways, the qualitative interviews helped to provide context for the quantitative analyses with the court administrative data. In this chapter, these findings will be discussed in further detail, including the how these findings build on prior legal and empirical literature and the potential theoretical and policy implications.

Case Disposal Length

Prior scholarship has posited that *Alford* pleas may take longer to dispose of than traditional guilty pleas, either due to the time it takes to negotiate the unique plea or due to the defendant's reluctance to enter a plea (Bibas, 2003). The current study found that, in general, *Alford* plea cases take longer to dispose of than traditional guilty plea cases in Virginia, which provides support for my hypothesis. Redlich and Özdoğru (2009) found that *Alford* plea inmates spoke with their attorney more often than traditional guilty and no contest plea inmates; thus, one possible explanation for the longer case disposal could be due to the increased number of meetings or conversations between the *Alford* plea-takers and their attorneys as found in the previous study. However, since the current study was not able to account for other factors that may influence case disposal length, such as pretrial detention status, further research is needed to more fully examine the differences in case processing between *Alford* and traditional guilty pleas.

The prior study on *Alford* pleas also theorized that *Alford* plea-takers' insistence on their innocence may lead to numerous plea discussions with their attorneys before all parties agree on the *Alford* pleas (Redlich and Özdoğru, 2009). Many of the defense attorneys interviewed for this study stated that a commonality among *Alford* plea-takers was their reluctance to enter a traditional guilty plea, which could be due to their insistence on innocence. In fact, Virginia defense attorneys in the current sample stated that they would raise the option of an *Alford* plea if a client was reluctant to plead but the defense attorney felt it was too good of a deal to pass up. Thus, based on the interviews with Virginia court actors, the reluctance to plead guilty may be a feasible explanation as

to why *Alford* plea cases may take longer to dispose of than traditional guilty pleas, which provides some support for what prior legal scholarship has theorized about these pleas.

The finding that *Alford* pleas take longer to dispose of than traditional guilty pleas has potential policy implications that should be considered. Most concerning, this finding indicates that *Alford* plea-takers who are detained pre-plea spend more time incarcerated prior to conviction than traditional guilty plea-takers. Arguably, pretrial detention and the desire to avoid further incarceration is arguably one of the most powerful inducements to plead guilty (Gross et al., 2004; Kellough & Wortley, 2002; Lowenkamp et al., 2013; Ulmer & Bradley, 2006). While the quantitative analysis could not account for pretrial detention status, defense attorneys stated that their *Alford* plea clients are reluctant to enter a guilty plea and thus the desire to end their detention could have been a strong incentive to enter an *Alford* plea. Scholars have argued that the choice between remaining in jail while awaiting trial and having a reduced sentence or probation if they plead guilty is coercive (Kipnis, 1976; Langbein, 1992; McCoy, 2005). Further, the option of entering an *Alford* plea may be even more enticing or coercive to a reluctant defendant because they can specifically maintain their innocence while still receiving the benefits of the plea. Unfortunately, this study did not have access to pre-plea detention, and thus it would be very valuable for future research to examine the impact of longer case disposals and pre-plea detention on the decision to enter an *Alford* plea.

Sentence Outcomes

While the shadow of the trial model theorizes that defendants should not accept a plea deal that is less than or equal to the discounted value of the trial outcome (Bushway & Redlich, 2012), *Alford* plea cases are different from other guilty pleas in that defendants maintain their innocence throughout the plea bargaining process. Thus, this study set out to examine whether prosecutors ultimately offer better plea deals to *Alford* plea defendants in order to ensure a conviction. However, in the current sample, *Alford* plea cases generally received harsher, less favorable sentences compared to traditional guilty pleas, which is contrary to the hypothesis and different from prior findings about *Alford* pleas. Redlich and Özdoğru (2009) found that *Alford*, no contest, and traditional guilty plea-takers received very similar sentences, and received the leniency typically associated with pleading guilty; thus, based on their findings, it appeared that *Alford* plea-takers were not punished for insisting on their innocence.

However, in the current sample, the findings were quite different. *Alford* pleas received longer sentences, were more likely to receive incarceration as part of their sentence and were less likely to receive a full sentence reduction as compared to traditional guilty pleas. The only sentence outcomes that *Alford* pleas and traditional guilty pleas did not differ significantly on concerned the size of the sentence reduction (if given) and the likelihood of not receiving a sentence reduction. The findings from the current study indicated that defendants who enter *Alford* pleas are treated differently, possibly even punished, for insisting on their innocence. However, the current analyses were not able to account for other variables known to impact sentence length, such as

criminal history, and thus, as noted, these findings should be interpreted with some caution. For example, *Alford* plea defendants may have lengthier criminal histories than traditional guilty plea defendants and therefore may be more "savvy" about the plea options available to them. If this is the case, it is possible that longer criminal histories account for the sentence differentials rather than the type of plea per se. However, this explanation is inconsistent with the finding that defense attorneys indicated that they are almost always the one who raises the option of an *Alford* plea with their clients. In future research, it will be important to examine criminal history and other potential influences on sentence length to better understand sentencing differences between *Alford* pleas and traditional guilty pleas.

Interviews with the court actors provided further support and context for the finding that *Alford* plea cases are treated more harshly. Despite judges stating they did not treat *Alford* pleas any differently, both prosecutors and defense attorneys stated that they believe taking an *Alford* plea poses a challenge for defendants at sentencing. Prosecutors argued that they can use the *Alford* plea against the defendant in their arguments at sentencing, stating that the defendant will not take responsibility for their actions. While defense attorneys stated that they could try to make an argument that the defendant is less culpable due to the possibility of their innocence, they felt that judges tended to not like this argument and would prefer to see a defendant show remorse. These responses from prosecutors and defense attorneys provide context to understand the quantitative results about harsher punishments being received in *Alford* plea cases.

This set of findings fits within focal concerns theory, which argues that legal decision-makers are guided by focal concerns, including defendants' blameworthiness, when reaching sentencing decisions (Steffensmeier, 1980; Steffensmeier et al., 1998). As previously mentioned, prosecutors stated that they would use the defendant's refusal to admit guilt as part of their argument in favor of a harsher sentence in *Alford* plea cases. Similarly, both prosecutors and defense attorneys stated that they thought judges might sentence more harshly in these cases because judges view the *Alford* plea as the defendant not taking responsibly or showing remorse for their actions. Within focal concerns theory, remorse (or lack thereof) plays a large role in the judge's view of blameworthiness, and thus may factor into the judges sentencing decision-making.

The sentencing findings only partially support the shadow of the trial model. This theory argues that a rational, risk-neutral defendant would only accept a plea deal that is less than or equal to the expected value of the trial outcome, and that defendants actively consider the possibility of conviction at trial when deciding about plea offers (Bushway & Redlich, 2012). If *Alford* pleas operate in practice as the Supreme Court intended, then these defendants would face a strong likelihood of being convicted at trial and thus be willing to accept a deal in the shadow of the trial. Since *Alford* plea defendants in the current study were found to receive longer and harsher sentence outcomes than their traditional guilty plea counterparts, this may indicate that *Alford* plea defendants make decisions based on the acknowledgement of the strength of evidence against them and the expected outcome of trial. However, almost one-third of prosecutors and defense attorneys stated that they believe the evidence in *Alford* plea cases is often weaker than in

traditional guilty plea cases, which casts doubt on the notion that *Alford* pleas are made in the shadow of the trial.

Instead, the findings from this study may lend additional support to criticisms that the shadow model oversimplifies the plea decision process. For example, prior critiques of the model have argued that defendants are often not rational decision makers and can be influenced by a variety of psychological and emotional biases (Bibas, 2004; Redlich et al., 2017; Stuntz, 2004). Prosecutors and defense attorneys in the present study explained that juries are required to sentence within the statutory sentence range, which leads to sentence outcomes that are much harsher than what a judge would sentence (as judges have much wider discretion). Despite this, defense attorneys stated that with reluctant defendants, they often felt they needed to explain why a plea deal was so favorable or even convince their clients to accept the deal, using the *Alford* plea as an option to make accepting the plea more palatable. Bibas (2003) received similar responses through informal interviews with defense attorneys, which may indicate that *Alford* plea defendants do not operate within the strictly rational choice framework of the shadow model. Alternatively, court actors indicated that defendants wanted to enter *Alford* pleas for psychological or emotional reasons, such as saving face with their families and avoiding stigma – reasons that do not pertain to the forecasted probability of conviction at trial. Thus, based on the interviews with court actors, defendant's emotional reasonings may be a stronger indicator in the plea decision, contradicting the core of the shadow model assumption that defendants are rational decision-makers.

In addition to the harsher sentences found in the administrative data, the court actors interviewed also noted that the negative sentence impacts may extend further beyond the initial sentencing, especially in sexual crime cases. Prosecutors and defense attorneys both stated that taking an *Alford* plea and maintaining innocence may work against defendants down the road when in treatment programs or when reviewed for early release. Legal scholars have also stated their concerns around this issue, with one specifically arguing that defendants might be sold on the promise that they will not have to admit any criminal wrongdoing but then be required to admit responsibility as part of counseling or probation reviews (Ward, 2003). Ward (2003) also added that for defendants who are sentenced to jail or prison, *Alford* plea-takers may be denied parole due to their failure to express remorse or possess insight into the offense which led to the incarceration. This lends additional support to focal concerns theory, potentially explaining the longer sentences given in *Alford* plea cases. Based on the interviews with court actors, it appears that *Alford* pleas are in direct contrast with remorse and blameworthiness, one of the major tenants of focal concerns.

In terms of policy implications of these findings, the indication that *Alford* plea cases receive longer sentences raises concerns about the potential of defendants being punished for insisting on their innocence. While many of the judges stated that they do not treat *Alford* plea cases any differently than traditional guilty pleas, the findings from the quantitative analysis potentially indicate otherwise, at least in terms of sentencing. Although more research is needed, it may be beneficial for judges to receive specialized training or instructions on how to handle cases in which the defendant is legally

maintaining innocence so as to not punish a defendant for entering an *Alford* plea. Similarly, considering that these are legal, constitutional pleas, defendants should not be concerned that choosing to enter an *Alford* plea could lead to a harsher punishment simply for entering a particular type of plea. As prior legal scholars have argued, defendants claiming to be innocent should be allowed to take advantage of the benefits that come from pleading guilty without fear of repercussions (Alschuler, 2003; Bibas, 2003; Shipley, 1987). Ideally, specialized policies and practices should be developed to allow defendants to enter *Alford* pleas without having to face repercussions in sentencing and punishment.

Role of Evidence in Alford Pleas

While the *Alford* plea, if used as the Supreme Court intended, should be driven by the strength of evidence against the defendant, this study did not find support for this notion. In fact, none of the prosecutors and defense attorneys interviewed stated that they believe the evidence is stronger in *Alford* plea cases compared to traditional guilty pleas. Instead, over half of prosecutors and defense attorneys interviewed stated that they did not believe the decision to enter an *Alford* plea (rather than a traditional guilty plea) was about the strength of evidence at all. While there have not been any previous empirical studies examining the role of evidence in *Alford* pleas, this finding has both practical and theoretical implications since the strength of evidence is considered to be a driving factor for *Alford* pleas.

As previously described, the shadow of the trial model argues that prosecutors, defense attorneys, and defendants base their plea decisions on the strength of the

evidence they anticipate being presented at trial (Bushway & Redlich, 2012; Dezember & Redlich, 2019). This study found support for the shadow model in that many of the prosecutors and defense attorneys reported the strength of evidence being an important factor in the plea bargaining process when discussing their general plea practices. Prosecutors specifically stated that evidence is the number one factor when considering whether to move forward with a case, which is in line with prior research indicating that the evidence strength moderates prosecutors decisions to prosecute cases and offer plea deals (Albonetti, 1997; Emmelman, 1998; Horney, 1980; Spohn et al., 2001). Similarly, defense attorneys interviewed stated that the strength of the evidence is second only to the defendants' goals, and that they would discuss the strength of evidence with their clients when advising whether to enter a guilty plea or go to trial, which is again in agreement with prior research of defense attorneys (Edkins, 2011; Kramer et al., 2007). Overall, in terms of their general plea negotiation practices, interviews with prosecutors and defense attorneys provides support for the shadow of the trial model and the idea that the strength of evidence is a primary driving factor in the decision to accept a plea.

However, support for the shadow model was not further amplified in terms of the *Alford* plea negotiation process, primarily because prosecutors and defense attorneys stated evidence was generally not a factor in the decision to enter an *Alford* plea rather than a traditional guilty plea. Instead, both prosecutors and defense attorneys pointed to the risk of facing jury sentencing to be a much larger factor driving reluctant defendants to enter an *Alford* plea. Thus, the findings from this study may indicate that, at least for states that practice jury sentencing, the shadow of the trial model does not explain the

decision to enter an *Alford* plea specifically. One of the main criticisms of the shadow model is that the paradigm is too simplistic (Bibas, 2004; Johnson et al., 2016; Redlich & Edkins, 2019), which appears consistent with the findings from this study as well. Prior research has found that in addition to evidentiary factors, non-evidentiary factors (e.g., pretrial release status, victim characteristics) and defendant characteristics (e.g., criminal history, drug use) also influence the plea decision-making of legal actors (Redlich et al., 2016). Thus, continuing to study plea decision-making, especially in *Alford* pleas, and the variety of factors that influence the process, such as jury sentencing for Virginia, will help further specify the shadow model and improve its explanatory abilities.

In addition to the prosecuting and defense attorneys, judges also play a valuable role in evaluating the strength of evidence in *Alford* plea cases, as required by the Supreme Court ruling. The *Alford* (1970) ruling calls for a sufficient factual basis of guilt to be established specifically through the judge's review of the evidence to establish guilt before accepting the plea. As previous scholars have indicated, judges have wide discretion whether or not to accept these pleas and thus they could be accepted (or not accepted) for a variety of reasons with differential standards applied in different cases (Redlich et al., 2017; Shipley, 1987). This also appeared true for the current study. Despite the fact that courts are tasked with identifying a sufficient level of guilt in *Alford* plea cases, many of the judges interviewed indicated that they did not review the evidence in *Alford* plea cases since they believed it to already be agreed upon by the prosecutor and defense, which stands in direct contrast to the vision laid out by the Supreme Court.

Additionally, many of the court actors interviewed stated that *Alford* pleas are largely treated the same as traditional guilty pleas, indicating that they are not given a specialized evidentiary review to ensure a sufficient level of guilt is established. This is especially concerning considering prior research has shown that factual guilt, a required component of plea validity, in traditional guilty plea cases is often de-emphasized and conflated with an individual's willingness to plead guilty (Dezember et al., 2021; Redlich, 2016). Although *Alford* pleas are considered guilty pleas, these pleas do not include an admission of guilt that occurs when a defendant enters a traditional guilty plea; thus the judge must determine that there is sufficient evidence of guilt in order to determine that the plea is valid and allow the plea to go forward. However, in Virginian *Alford* plea cases, it appears that judges may still conflate the defendant's willingness to enter a plea with factual guilt, despite the fact that the defendant's plea specifically does not include an admission of guilt, but rather a claim of innocence.

In terms of specific types of evidence, the interview findings were consistent with prior research on the reliability of various types of evidence. For example, video evidence, which is a type of direct evidence, was most frequently mentioned as a valuable type of evidence to have in a case. This provides support for earlier research that has shown that, despite the fact that circumstantial evidence is often more reliable, individuals tend to put more value and weight on direct evidence (Heller, 2006; Kassin et al., 2010; Kassin & Neumann, 1997). This was true for the study sample as well, as many of the prosecutors and defense attorneys stated that judges and juries value seeing video evidence, and thus they rely upon it when building a case. Additionally, court actors

mentioned that confessions and eyewitnesses, also forms of direct evidence, are strong evidence in a case, despite the fact that there is ample research indicating the challenges associated with these types of evidence and the likelihood for false confessions and erroneous eyewitness identifications (Kassin, 2012; Kassin et al., 2010; Redlich, 2010).

Finally, it is important to consider the policy implications of these evidentiary findings in *Alford* plea cases. Even with the notion that *Alford* pleas are unique in the fact that they require a sufficient level of evidence to ensure guilt, it has been established that *Alford* and traditional guilty plea defendants have been wrongfully convicted, making up over 20% of the National Registry of Exonerations (as of February 2021). Since this study indicates that *Alford* plea cases in Virginia are not necessarily evaluated to ensure a sufficient level of evidence to establish guilt, it raises concerns that these pleas are not being implemented as intended, which could lead to wrongful convictions. Scholars argue that, due to the fact that guilty pleas are difficult to withdraw and appeal, the rate of false guilty pleas is higher than reported and thus wrongful convictions may be especially difficult to recognize and correct among guilty pleas (Gross et al., 2004; Redlich, 2010; Wilford & Khairalla, 2019).

Furthermore, the prior study on *Alford* pleas argued that since both innocent and guilty parties likely utilize the *Alford* plea, that without a litmus test, it nearly impossible to distinguish between them (Redlich & Özdoğru, 2009). This argument is likely true for the current study as well, considering that many of the court actors stated that they did not believe that *Alford* plea-takers are actually innocent and also that the *Alford* plea is a useful tool for cases with reluctant defendants. While this study did not endeavor to

examine actual innocence in *Alford* plea cases, the lack of standards surrounding establishing a factual basis of guilt is concerning. This is especially concerning given that convictions by guilty plea typically cannot be appealed and factors that contribute to wrongful convictions by trial (e.g., ineffective assistance of counsel) are likely to be even more prevalent in wrongful convictions by guilty plea (Redlich, 2010). Therefore, courts should consider implementing specific standards and practices around ensuring that there is a sufficient level of evidence in *Alford* plea cases to ensure that they are not leading to wrongful convictions.

Offering, Negotiating, and Accepting Alford Pleas

The process of offering, negotiating, and accepting *Alford* pleas was largely exploratory due to limited prior research, and thus findings from the current study are preliminary. First, much of the legal scholarship contends that *Alford* pleas are most common in sex crimes and sexual offenses (Alschuler, 1975; Bibas, 2003; Wexler, 2003). In the current sample, approximately 20% of all *Alford* pleas were sex offenses, while only about 6% of traditional guilty pleas were for sex offenses. However, within sex offenses, *Alford* pleas only made up about 5% of the pleas while traditional guilty pleas accounted for 95% of pleas in sex offenses. This is similar to prior study on *Alford* pleas, which found that about 13% of *Alford* pleas were for sex offenses yet only 7% of all sex offenses were *Alford* pleas (Redlich & Özdoğru, 2009). Additionally, the current study did not find a significant interaction between *Alford* pleas and the type of crime (including sex crimes). Further, while the court actors stated that they felt *Alford* pleas happened in cases where the defendant wanted to avoid the stigma associated with the

crime (e.g., serious, violent crimes), they also indicated that they happen in all types of cases. In fact, the prosecutors and defense attorneys interviewed often stated that common traits of *Alford* plea cases were more about the defendant themselves (e.g., reluctant defendants) than the crime or case characteristics. Thus, further research is needed to examine the relationship between these variables, and how the type of crime might impact the decision to enter an *Alford* plea.

Generally, prosecutors and defense attorneys stated that their process of negotiating *Alford* pleas was the same as with traditional guilty plea cases, the only difference being the defendant's decision for the plea to be an *Alford.* Prosecutors and defense stated that *Alford* pleas are another option of efficiently disposing of cases through plea bargaining and avoiding trial, especially in cases with reluctant defendants. This is consistent with the institutional theories, which stress the importance of practical considerations and efficiently disposing of cases while minimizing uncertainty (Eisennstein & Jacobs, 1977). Additionally, legal scholars and institutional theories argue that the plea bargaining system promotes efficiency and without the *Alford* plea option, defendants who otherwise might have pled guilty choose to go to trial rather than admit their guilt if made to enter a traditional guilty plea (Bibas, 2003; Shipley, 1987). Judges in the current study also reiterated this point, often mentioning the overall benefit and necessity of plea bargaining, including *Alford* pleas, to keep the system functioning since it was not practical for all cases to go to trial.

Additionally, the court actors in this study argued that they believe that the *Alford* plea allows defendants to have another choice when deciding what to do in their case.

Prior legal scholarship has argued that the *Alford* plea provides the defendant, guilty or innocent, with an opportunity to make a choice that is in their perceived best interest and take advantage of the benefits that come from pleading guilty (Alschuler, 2003; Bibas, 2003; Shipley, 1987). Defense attorneys specifically stated that they believed that *Alford* plea-takers often enter the plea because they see the plea deal as too good to pass up. Similarly, judges stated that they felt *Alford* pleas provided the defendant with an additional way to plead guilty but also communicate to the court about their situation. These findings in favor of *Alford* pleas providing additional options to the defendant are consistent with prior legal scholarship, which argued that one of the main benefits of the *Alford* plea is that it protects the right of defendants to choose their course of action according to their own best interests (Shipley, 1987).

Overall, the interviews with the court actors indicated that *Alford* pleas are treated very much the same as traditional guilty pleas when negotiated, offered, and accepted, regardless of region or jurisdiction. Yet, the quantitative findings indicate that they are treated differently, at least in terms of taking longer to dispose of and receiving harsher sentence outcomes. Additionally, the administrative records indicated that jurisdictions use *Alford* pleas at different rates, with many jurisdictions having no *Alford* pleas on record while other jurisdictions had *Alford* pleas making up one-third or more of their total guilty pleas. However, interviews with court actors across jurisdictions with average and high rates of *Alford* pleas showed no differences in the negotiation process of an *Alford* pleas, other than the mention of individual court actors' preferences (i.e., judges and prosecutors) potentially influencing whether or not *Alford* pleas are used.

Furthermore, court actors in different regions of the state (i.e., north, central, and south) and in urban, suburban, and rural portions of the state all reported similar negotiation practices for both *Alford* and traditional guilty pleas, leaving questions as to why the *Alford* plea rates vary so drastically across jurisdictions according to the administrative data. Because of the inconsistency between what the court actors self-report and what the administrative records show, it is clear that *Alford* pleas warrant additional examination to further understand how they are used in practice and the treatment that *Alford* plea cases receive.

Finally, it appears that many of the court actors do not think of the *Alford* plea in the terms that the Supreme Court set out, thus it would benefit the plea bargaining process to set forth standards as to how evidence in *Alford* pleas is evaluated and used for establishing a sufficient level of guilt. By doing this, the court can better ensure that these pleas are not used inappropriately or in a way that would result in wrongful convictions of innocent defendants.

Study Limitations

There are several limitations that warrant discussion. First, the quantitative analyses are limited to individuals who already entered a guilty plea (i.e., *Alford* or traditional), and thus cannot account for defendants who went to trial or the factors that impacted the decision to go to trial. This is an often cited limitation to studying plea bargaining, especially within the shadow of the trial model. Since all of the defendants in the sample entered a guilty plea, these defendants may differ from defendants who were convicted at trial and from defendants who were acquitted. However, acquittal rates are

typically very low since the vast majority of cases are disposed of though guilty pleas (Cohen & Reaves, 2006; Miller et al., 1978). Additionally, this dissertation was primarily interested in identifying differences between *Alford* pleas and traditional guilty pleas to better understand the bargaining process that leads to an *Alford* plea, including whether the strength of evidence is the driving factors as established in the Supreme Court case.

Another limitation was the restricted information that is publicly available in the administrative court data and the potential for omitted variable bias in the current analyses. The administrative data only included basic information about the case, including the defendant's gender and race as well as charge and sentence information. It did not include other important variables, especially those that interview respondents described as factors in the *Alford* plea decision, such as criminal history, victim information, and pre-plea detention. Access to these variables would likely improve the internal validity of the study. Similarly, there were issues of missing data or data entry errors that caused cases to be removed during the cleaning process, which is common with administrative data. However, even after data cleaning, 130,650 cases across multiple years remained in the sample for analysis. Finally, since there is very limited prior research regarding factors that influence *Alford* pleas, the limited variables that were accessible helped provide a broad understanding of the case processing and sentencing outcomes that have not been studied in this way before.

Additionally, although it was previously planned to obtain the proffers of evidence in a subset of case, this was no longer feasible after the coronavirus pandemic limited access to the courts. I planned to collect and code the evidence that was provided

in the proffer that was presented by the prosecutor at the plea hearing for quantitative analysis. However, when these documents were no longer available to be collected, a suitable option was to rely on the interviews to examine the role of evidence in the *Alford* plea negotiation process. While the interviews were informative, they were qualitative in nature and did not allow for quantitative analysis that was initially proposed. The proposed quantitative analysis was intended to provide an empirical evaluation of the evidence and how the type of plea and other control factors (i.e., gender, race, pled-to charge) impact the strength of evidence. Considering the strength of evidence is a core component of the *Alford* plea, further quantifying and comparing the strength of evidence in *Alford* and traditional guilty plea cases should be an aim of future research.

There are also limitations to interviews that should be acknowledged. First, asking court actors about the *Alford* pleas bargaining process and the role that strength of evidence plays in the process largely led court actors to respond based on hypothetical or retrospective situations, which may limit the external validity of the findings. Similarly, by relying on past experiences to guide their responses, the court actors may not remember the nuances of the plea negotiation process, which could have influenced why no differences were found in the negotiation processes between jurisdictions with average and high rates of *Alford* pleas. However, ensuring that participants had ample and specific experience with *Alford* pleas helped alleviate some of these concerns. Finally, the interview selection and eligibility process may have led to some selection bias and social desirability among respondents. Since participation was voluntary, the sheer act of volunteering for the interview may indicate a selection bias among respondents who

wanted to present the plea negotiation process in a particular light. However, the study was designed to interview court actors in three roles (i.e., prosecutors, judges, and defense attorneys) across six different jurisdictions in order to achieve a variety of responses and perspectives of the *Alford* plea bargaining process.

Finally, since this dissertation only used data from one state, findings may only be representative of the Virginia court process and the negotiation procedures of court actors within this state. Randomly selecting the jurisdictions to sample court actors from helped increase the generalizability of the interview findings to the entire state. Additionally, since many of the court actors indicated that jury sentencing is not a common practice (i.e., only practiced in Virginia, Arkansas, Kentucky, Missouri, Oklahoma, and Texas) and suggested that it largely impacts the decision to enter a plea, some of the findings regarding plea bargaining practices and outcomes may not emerge in states that do not practice jury sentencing. However, only one study has been dedicated to examining *Alford* pleas, and thus any additional research is helpful in developing our understanding of these pleas. Despite this limitation, research about the *Alford* plea bargaining process and practices within one state can still provide valuable insight that can be built upon and replicated in other states.

Suggestions for Future Research

In order to continue developing our understanding of *Alford* pleas and the role of evidence in plea bargaining, there are numerous suggestions for future research. First and foremost, interviews with defendants who have chosen to take an *Alford* plea will help illuminate the reasons that this type of plea is chosen over other types of pleas. Since it

was not feasible to interview defendants for the current study, this dissertation and prior legal scholarship relied solely on the perspectives of court actors to indicate the reasons that this type of plea is used. Similarly, the prior empirical study on *Alford* pleas (Redlich & Özdoğru, 2009) relied on survey data and did not have direct access to defendants who entered *Alford* pleas. Therefore, a study focusing on interviewing defendants to learn more about their decision-making process would help to illuminate the various reasons defendants might choose to enter an *Alford* plea over a traditional guilty plea.

Similarly, observing the *Alford* plea process from the beginning of the case through sentencing would also help illuminate extra-legal factors that influence the decision-making process. While this dissertation was able to examine the self-reported negotiation process from the perspective of court actors, it would be valuable to also observe the negotiation process to identify issues that may not have been reported as part of the interview. Similarly, observing the negotiation process could also provide more context as to the defendant's decision-making as they discuss their options with their defense attorney. Additionally, since many prosecutors and defense attorneys indicated that they believe judges look at *Alford* pleas differently than traditional guilty pleas, systematically observing the in-court proceedings related to *Alford* pleas would help identify if there are differences in how the court treats *Alford* pleas. Conducting systematic, empirical observations of *Alford* plea negotiations and court hearings would further our understanding of how these pleas operate in practices and the differences that arise in the process.

Another area for future research is to quantitatively compare the evidence in *Alford* and traditional guilty plea cases, as originally proposed in this study. During the development and piloting of the dissertation research design, the documentation needed to quantify evidence was identified as a feasible data collection for the state of Virginia. Similarly, other states may also require a proffer of evidence or other evidentiary documentation to be entered into court record as part of a plea. Thus, it would be valuable to carry out this type of data collection and analysis to examine how evidence may vary in *Alford* plea cases. While testing the role of evidence in the plea decision can be a challenging endeavor, evidence is often indicated as a primary factor in legal decision-making, further highlighting the importance of researching this area of plea bargaining. Similarly, as criminologists continue to test the shadow of the trial model, it will become even more valuable to develop strong measures and conceptualizations for strength of evidence, which can then be used to determine how strength of evidence varies by plea type. Beyond evidence strength, there is a need for additional research to further specify how different types of evidence influence the plea process, as well as determine what factors can help explain variation in plea decision-making. Therefore, future research should focus on using evidentiary documentation to quantify the impact of evidence types and strength of evidence and how it influences the type of plea entered.

Future research should also focus on examining other factors that may influence the *Alford* plea decision. The dataset used in the current study only provided limited variables (e.g., race, charge) and there are many other factors that may be influencing the type of plea, such as the criminal history, defendant's education, and whether or not the

defendant was detained pre-plea. Both prior literature and findings from the interviews with court actors indicate that there are many legal and extra-legal factors that influence the plea bargaining process (Redlich et al., 2016). Further developing the models used to compare *Alford* and traditional guilty pleas to include additional variables will help better understand the different factors that are influencing the type of plea, as well as the case processing and sentence outcomes.

Since the jury sentencing practices in Virginia frequently came up as a factor influencing *Alford* pleas, it would also be valuable for future research to focus on the influence of jury sentencing as compared to judicial sentencing. Interestingly, the Virginia legislature eliminated jury sentencing and will instead require judges to hand down all sentences, a change that will go into effective in July 2021 (Lavoie, 2020). The implementation of this policy change would allow for a pre-post study design to examine the impact of jury sentencing on plea bargaining practices in Virginia. Additionally, there are five other states – Arkansas, Kentucky, Missouri, Oklahoma, and Texas – that still practice jury sentencing that could be used for cross-state comparative studies. Further examining the impact of jury sentencing on *Alford* pleas could help identify potentially coercive plea bargaining practices and lead to changes in policies.

Finally, this study should be replicated in other states to identify the *Alford* plea bargaining practices in other jurisdictions. The Virginia administrative data and interviews determined many trends and practices that may be unique to these areas, and thus it would be valuable to conduct similar studies in all other states to identify trends and practices that occur in other jurisdictions as well. Additionally, by conducting

systematic, empirical studies across multiple state and jurisdictions, the field could work to develop evidence-based practices around the use of *Alford* pleas in order to ensure that these pleas are being used as intended.

Conclusions

From a scholarly perspective, this dissertation helps address the gap in literature surrounding *Alford* pleas. With only one previous empirical study regarding *Alford* pleas, this dissertation adds to the field by providing more information and understanding about these unique pleas and how the strength of evidence might impact the decisions made by legal actors and defendants. First, this study provides valuable insight into the differential treatment of *Alford* plea cases, specifically in that *Alford* plea cases take longer to dispose of and generally receive less favorable sentence outcomes than traditional guilty plea cases. Additionally, the findings from this study also indicate that court actors do not view *Alford* pleas any differently than traditional guilty pleas, and even stated that the evidence is not an influential factor in that decision. This is an especially important finding considering the Supreme Court's ruling states that the record before the judge must contain strong evidence of actual guilt, which does not appear to be happening in Virginia. Additionally, the findings from this study highlight the complexity of factors that may be at play when a defendant decides to enter an *Alford* plea as well as the various considerations, including the strength of the evidence, that impact legal decision-making in these cases.

From a policy perspective, this dissertation provides further information about *Alford* pleas and the application of the Supreme Court decision in practice. Study findings

indicate that, based on current practices in Virginia, *Alford* pleas are negotiated in very much the same way as traditional guilty pleas and that evidence in *Alford* pleas is not evaluated to ensure a sufficient basis of guilty any differently than other guilty plea cases, despite the standards set forth in the *North Carolina v. Alford* (1970) decision. It is important to ensure that Supreme Court decisions, like the one in *Alford*, result in policy changes that ensure the rulings are carried out as intended. Based on the findings from Virginia, additional policies and practices would be beneficial to ensure that defendants are not punished simply for insisting on their innocence. Additional studies should be conducted around the country to see what processes other states use to ensure that the factual basis of guilt is established in *Alford* plea cases. Replicating this study in other states could lead to the development of evidence-based practices surrounding the role of evidence in plea bargaining and the court's acceptance of guilty pleas.

APPENDIX A: IRB EXEMPT LETTER FOR RQ1 & RQ2

Office of Research Development, Integrity, and Assurance

Research Hall, 4400 University Drive, MS 6D5, Fairfax, Virginia 22030
Phone: 703-993-5445; Fax: 703-993-9590

DATE:	September 26, 2018
TO:	Allison Redlich
FROM:	George Mason University IRB
Project Title:	[1325450-1] Alford Pleas and the Presumption of Strong Evidence
SUBMISSION TYPE:	New Project
ACTION:	DETERMINATION OF NOT HUMAN SUBJECT RESEARCH
DECISION DATE:	September 26, 2018

Thank you for your submission of New Project materials for this project. The Institutional Review Board (IRB) Office has determined this project does not meet the definition of human subject research under the purview of the IRB according to federal regulations.

Please remember that if you modify this project to include human subjects research activities, you are required to submit revisions to the IRB prior to initiation.

If you have any questions, please contact Katie Brooks at (703) 993-4121 or kbrook14@gmu.edu. Please include your project title and reference number in all correspondence with this committee.

Please note that department or other approvals may be required to conduct your research.

GMU IRB Standard Operating Procedures can be found here: http://oria.gmu.edu/1031-2/?_ga=1.12722615.1443740248.1411130601

This letter has been electronically signed in accordance with all applicable regulations, and a copy is retained within George Mason University IRB's records.

APPENDIX B: DETAILED DESCRIPTION OF CHANGES TO RQ3 METHODS

RQ3 specifically deals with comparing the strength of evidence between *Alford* plea cases and traditional guilty plea cases. As presented in my proposal, I had planned to collect additional information the case evidence for a sub-sample (n = 360) of cases to do a more quantitative analysis of this research question, which I had planned to collect from January through June 2020. While Virginia does maintain a statewide electronic case information that is accessible through the internet, this electronic system does not include case filings or motions, such as proffer of evidence documents or discovery documents. As described in my proposal, gaining access to these types of case files involved traveling to numerous circuit courts and requesting these types of files using the public records computers inside the courthouses. After completing much of RQ1 and RQ2 analyses, I began this process in January 2020, starting with the Northern circuit courts. During January and February 2020, I visited both courts numerous times to learn the process of requesting the necessary documents through their clerk's offices. As anticipated, this process required numerous discussions and back and forth with the court to identify the best method of acquiring these documents, speaking extensively with employees of each of these clerk's office (both in person and by phone/email).

Based on in-person and telephone conversations with Court 2's Circuit Court Clerk's office, I received guidance on how to submit the request, including specifically what information to include in the request in order to receive case evidence documentation. They notified me that since it was not a priority request, they could not

give an exact timeline to fulfill the request but estimated that it could be completed within a few months. With this guidance, I submitted a formal document request with Court 2's Circuit Court Clerk on February 20, 2020. The Circuit Court Clerk's office responded to my request on February 25, 2020 indicating that they could not fulfill my request because they do not maintain these types of documents, which was contradictory to the conversation I had previously had with the office. After exchanging emails and phone calls to clarify these issues, I was told that I would need to work with the Commonwealth's Attorney's office for these types of documents. During regular meetings with my chair, Dr. Allison Redlich, I notified her of the progress and challenges I was experiencing with Court 2's Circuit Court Clerk's office.

During this same timeframe, I also visited the other northern circuit court (Court 1) clerk's office multiple times. Initially, I was told it was best for me to access the cases using their public-access computers and print the documents myself, which I could then pick up through the clerk's office and pay for printing costs. After indicating the number of cases in my sample (i.e., 60 cases), they then suggested that I formally submit a documents request that they could fulfill electronically by putting the documents on a CD. With this guidance, I submitted a formal request with the northern circuit court clerk on February 24, 2020. Similar to Court 1, they could not give me an estimate of how long it would take to fulfill the request but provided me with a phone number to contact to get status updates on my request. On March 2, 2020, I received a phone call from the northern circuit court clerk's office indicating that it was too big of a request and it would take them too long to complete. At this point, they again requested that I come into the

court and print the documents myself rather than the request being fulfilled by the Clerk's office. Again, during regular meetings, I updated my chair of on these issues.

By early March 2020, the coronavirus pandemic had dramatically altered the operations of courts across the state of Virginia. On March 12, 2020, the governor of Virginia declared a state of emergency, which halted travel and required teleworking for all state officials. At that point, I contacted all six of the clerk's offices in my sample to gain more information about how their courts were operating under the current pandemic restrictions. All six courts indicated that they were not allowing general public into the courthouse and that only emergency and priority filings and requests were being handled. Over the next six months (i.e., March through September 2020), I periodically checked the court's websites to get updates on their operations to identify if I could move forward with my documents requests. I also regularly met with my chair to update her on the courts' operations and status.

After six months of monitoring the courts operations during the pandemic, I contacted each of the six clerk's offices via phone to inquire about submitting documents requests on September 11, 2020. At this point, three courts (i.e., Court 2, Court 3, Court 4) were still only accepting priority/emergency requests and filings and was not allowing the general public into the courthouse. Two courts (i.e., Court 1 and Court 5) indicated that they were accepting "limited" requests but warned that it would likely take a long time to fulfill general requests since they were still prioritizing emergency/urgent matters. One court (i.e., Court 6) did not answer their phone or return my call but did have an automated message indicated they are prioritizing emergency/urgent matters.

On September 16, 2020, I discussed the issue with my chair and we both agreed that this portion of data collection was no longer feasible given the coronavirus pandemic and court restrictions in place in response to the pandemic. However, since the interview protocol included multiple questions about evidence, including how evidence impacts plea bargaining and whether the strength of evidence is different in *Alford* plea cases (see Appendix C: Verbal Consent and Interview Questionnaire), we decided to move forward with answering this question using qualitative data from the interviews.

APPENDIX C: VERBAL CONSENT AND INTERVIEW QUESTIONNAIRE

Consent Script

Before we begin, I would like to give you a little background information about the study you are being asked to take part in. The current study, funded by the National Science Foundation, is being conducted to learn more about legal professionals' decision-making process during the guilty plea process, including the process of offering, negotiating, and accepting different types of guilty pleas. More specifically, we are interested in learning more about *Alford* pleas, the role of evidence in these pleas, and how they might compare to traditional guilty pleas. Only one previous study has looked at these pleas, so your experiences and insights are very valuable in helping us understand the factors that might lead to a defendant entering this type of plea.

To confirm, have you been a [Judge/Commonwealth's Attorney/Defense Attorney] for at least five years? **[If yes]** Do you handle felony cases? **[If yes]** Have you had experiences handling cases that result in an *Alford* pleas?

> **[If no to any of the eligibility questions]** I'm sorry, but it looks like you are not eligible to participate. Is there anyone else in your office that you think would be willing to speak with me? *[Collect any names/information provided.]* Thank you very much for your time and consideration. ***[Interview would end. No compensation given due to ineligibility.]***

This interview will take approximately 30-45 minutes. I have emailed you a copy of the consent form, but I would like to go through it verbally with you before we start the interview. Your participation is voluntary and you may refuse to answer any question. If you prefer not to answer a question, just say so and we will move on to the next question. You also have the right to stop the interview at any time. As a thank you for participating, I will send you a $50 gift card for completing the interview, if your position allows for such compensation. If you decide to stop the interview prior to answering half of the questions, I will still send you a $25 gift card. Participation poses minimal risks. You may experience some stress or discomfort discussing your feelings about your work, the plea negotiation process, or your overall views of legal proceedings. However, all of the information we collect will be kept confidential, and we will never use your name in our reports. Taking part offers no known benefits, but your answers will help our research and help us better understand the overall plea process and how evidence factors into the process.

I will be taking some notes while we talk. In addition to my notes, with your permission, I would like to audio record our conversation. It will help to have an audio recording when I transcribe this interview to ensure that I accurately capture your responses. Only project staff will have access to the recording and project materials, and those materials

will be stored on a secured computer. The recording will be destroyed after completion of the study.

Before we get started, do you have any questions about the interview? *(record questions verbatim)*

Are you willing to participate in this interview?

_____ Respondent consented to the interview.
[IF YES, CONTINUE WITH AUDIO RECORDING CONSENT.]

_____ Respondent did not consent to the interview.
[IF CONSENT IS DECLINED, THE INTERVIEW WILL END.]

Do you agree to recording this interview?

_____ Respondent consented to audio recording.
[IF CONSENT IS GIVEN TO RECORD, THE RECORDER WILL BE TURNED ON.]

_____ Respondent did not consent to audio recording.
[IF CONSENT TO RECORD IS DECLINED, RECORDER WILL NOT BE TURNED ON. ONLY NOTES WILL BE TAKEN.]

Thank you.

Background Questions

1. How many years have you practiced criminal law?
2. How many years have you served as a [Judge/Commonwealth's Attorney/Defense attorney]?
3. What jurisdiction do you primarily work in?
4. Over the past year, approximately how many felony cases did you handle?
5. Over the past year, approximately what percentage of those cases resulted in a plea deal?

General Plea Process Questions

6. Can you tell me a little bit about how you go about [negotiating/offering/accepting] a plea?
   Probe: Can you tell me a little more about what the process is like in a typical case? What is the process between you and the defense attorney

like in a typical case)

7. On average, when do you most commonly begin to consider offering a plea deal to the defendant?
8. What are some of the main factors you consider when [negotiating/offering/accepting] a guilty plea?

Strength of Evidence Questions

9. How important is the strength of the evidence when [negotiating/offering/accepting] a guilty plea?
10. How do you evaluate the strength of evidence in a case?
    Probe: What types of things factor into your evaluation?
11. What types of evidence do you find the most important?

***Alford* Plea Questions**

12. How many times have you been involved in a case in which the defendant took an *Alford* plea?
    Probe: In your experience, how common is it?
13. How is the plea [negotiation/acceptance] process different in *Alford* plea cases as compared to cases with regular guilty pleas?
    Probe(s): How does the *Alford* plea typically come up? Who typically brings up the option of entering an *Alford* plea?
14. Do you find that the strength of evidence differs between cases that end in an *Alford* plea as compared to those that take a regular guilty plea?
    Probe: If so, how do they differ?
15. In your experience, what are some of the common traits or characteristics of cases or defendants who take *Alford* pleas?
16. In your experience, what are some of the reasons for why defendants want to take an *Alford* plea rather than a regular guilty plea?
17. How do you go about explaining an *Alford* plea to your clients?
18. Do you think *Alford* pleas are a useful tool to you as a [prosecutor/defense attorney/judge]?
    Probe: Why or why not?
19. How often do you think defendants who take *Alford* pleas do so is because they're actually innocent?
20. Do you have any concerns when [offering/accepting] *Alford* pleas as compared to a regular guilty plea?

Wrap Up Questions

21. Is there anything else you would like to share with me about the plea process, how the strength of evidence factors into the process, or your thoughts on *Alford* pleas?

APPENDIX D: INTERVIEW CONSENT FORM

College of Humanities and Social Sciences
Department of Criminology, Law & Society
4400 University Drive 4F4 Fairfax, Virginia 22030
Phone: 703-993-8183 Fax: 703-993-8316

Alford Pleas and the Role of Evidence in the Guilty Plea Process
Informed Consent Form

RESEARCH PROCEDURES
This research, funded by the National Science Foundation, is being conducted to learn more about legal professionals' decision-making process during the guilty plea process, including the process of offering, negotiating, and accepting different types of guilty pleas. More specifically, we are interested in examining how the strength of evidence factors into the plea process and how evidence might influence the type of plea (i.e., traditional guilty plea or *Alford* plea) that is offered and accepted.

If you agree to participate, the phone interview will take approximately 30-45 minutes and you will be asked questions about the overall plea process, how the strength of evidence factors into the plea process, and how the processes might different depending on the type of plea. Approximately 60-70 court personnel are being recruited, including attorneys and judges. To be eligible to be interviewed, legal professionals need to have worked in their current role for at least five years, have experience handling felony cases, and have experience with the plea process and *Alford* pleas.

RISKS
There are no foreseeable risks for participating in this research. However, please feel free to skip any questions you are not comfortable answering.

BENEFITS
There are no benefits to you as a participant other than to further research on the plea process. You will be contributing valuable, much needed information about the plea negotiation process, including the process for offering, negotiating, and accepting different types of guilty pleas.

CONFIDENTIALITY
The data in this study will be confidential. You will be assigned a unique, non-identifiable subject number and all of your responses will only be linked to that number. Your name will not be used in any reports and all of the information we collect will

remain confidential. A master list linking names to unique identification numbers will be maintained by the lead investigator, Dr. Allison Redlich, and the co-investigator, Amy Dezember. They will be the only people with access to the list. The de-identified data could be used for future research without additional consent from participants. The Institutional Review Board (IRB) committee that monitors research on human subjects may inspect study records during internal auditing procedures and are required to keep all information confidential.

PARTICIPATION
Your participation is voluntary, and you may withdraw from the study at any time and for any reason. If you decide not to participate or if you withdraw from the study, there is no penalty or loss of benefits to which you are otherwise entitled. If you decide to participate, you will receive a $50 gift card. If you begin the interview but complete fewer than half of the questions, you will receive a $25 gift card.

AUDIO RECORDING
With your permission, we would like to audio record our conversation. To ensure that we accurately capture your responses, it will help to have an audio recording when writing up a summary of this interview. Only project staff will have access to the recording and the audio files will be stored on a password-protected and secure computer. The recording and all identifying materials will be destroyed after completion of the study.

CONTACT
This research is being conducted by Amy Dezember under the supervision of Dr. Allison Redlich, Department of Criminology, Law, and Society at George Mason University. Dr. Redlich may be reached at 703-993-5835 for questions or to report a research-related problem. You may contact the George Mason University Institutional Review Board (IRB) Office at 703-993-4121 or by email at irb@gmu.edu (reference project #1584991-1) if you have questions or comments regarding your rights as a participant in the research.

This research has been reviewed according to George Mason University procedures governing your participation in this research.

CONSENT
I have read this form, all of my questions have been answered by the research staff, and I agree to participate in this study. *(Please verbally indicate your consent to the interviewer)*

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BIOGRAPHY

Amy Dezember received a Bachelor of Arts in Criminal Justice and a Bachelor of Arts in Sociology from Gonzaga University in 2010. She received her Master of Science in Justice, Law and Society with a focus in Justice and Public Policy from American University in 2012.