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CRIMINOLOGY

CHARGING AND PLEA BARGAINING PRACTICES UNDER DETERMINATE SENTENCING: AN INVESTIGATION OF THE HYDRAULIC DISPLACEMENT OF DISCRETION

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I. OVERVIEW OF HYDRAULIC DISCRETION AND DETERMINATE SENTENCING

Numerous reform activities have been undertaken to minimize discretion within the criminal justice system. Yet, the success of these programs has been questioned on the grounds that discretion will simply resurface at stages of processing not covered by the reform effort.¹ In fact, this "hydraulic" or "zero-sum" effect is so firmly entrenched as a criticism of current reform efforts that most researchers begin with the assumption that the displacement of dis-

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¹ See Alschuler, *Sentencing Reform and Prosecutorial Power: A Critique of Recent Proposals for "Fixed" and "Presumptive" Sentencing*, 126 U. PA. L. REV. 550 (1978); Casper & Brereton, *Evaluating Criminal Justice Reforms*, 18 LAW & SOC'Y REV. 121 (1984); Coffee & Tonry, *Hard Choices: Critical Trade-offs in the Implementation of Sentencing Reform Through Guidelines*, in REFORM AND PUNISHMENT: ESSAYS IN CRIMINAL SENTENCING 155 (M. Tonry & F. Zimring eds. 1983); Church, *Plea-Bargains, Concessions and the Courts: Analysis of a Quasi-Experiment*, 10 LAW & SOC'Y REV. 377 (1976); Heumann & Loftin, *Mandatory Sentencing and the Abolition of Plea-Bargaining: The Michigan Felony Firearm Statute*, 13 LAW & SOC'Y REV. 393 (1979).

cretion exists and then proceed to describe the various adaptive responses to such structural changes.²

Although applied to all reforms directed at a particular component of the criminal justice system (e.g., bail reform, bans on plea bargaining, mandatory sentencing), the national movement toward determinate sentencing is considered the primary example of a reform effort that will have its intended goals circumvented by the hydraulic displacement of discretion. While reflecting various interests and concerns,³ determinate sentencing is designed to achieve uniform sanctions and minimize socio-economic disparities which may result from a system of unbridled judicial discretion. Yet, most extant and proposed determinate sentencing systems have ignored prosecutorial discretion in charging and plea bargaining practices.⁴ If, however, this "hydraulic effect" characterizes determinate sentencing, gains in sentencing neutrality and uniformity would be eroded by greater disparities in the use of prosecutorial discretion in charging and plea bargaining practices. Under such conditions, the ability of determinate sentencing to achieve its intended goals and to implement meaningful reform would be severely challenged.

Considering its common reference as a criticism of determinate sentencing,⁵ it is surprising that little empirical research has examined whether this presumed hydraulic effect occurs and, if so, whether it has altered the nature and determinants of prosecutorial charging and plea bargaining practices. In fact, most researchers have assumed either that *any* increase in the use of plea bargaining in post-guideline periods is attributable to displacement effects or that a backward transference of discretion to prosecutors and other officials is simply an inevitable consequence of determinate sentenc-

² See Clear, Hewitt & Regoli, *Discretion and the Determinate Sentence: Its Distribution, Control, and Effect on Time Served*, 29 CRIME & DELINQ. 428 (1978); Heumann & Loftin, *supra* note 1; McCoy, *Determinate Sentencing, Plea Bargaining Bans, and Hydraulic Discretion in California*, 9 THE JUST. SYS. J. 256 (1984); S. Verdun-Jones & D. Cousineau, *The Impact of Plea-Bargaining Upon the Implementation of Sentencing Reform* (November 13-16, 1985)(unpublished manuscript).

³ See A. BLUMSTEIN, J. COHEN, S. MARTIN & M. TONRY, RESEARCH ON SENTENCING: THE SEARCH FOR REFORM (1983); Miethe & Moore, *Socioeconomic Disparities Under Determinate Sentencing Systems: A Comparison of Preguideline and Postguideline Practices in Minnesota*, 23 CRIMINOLOGY 337 (1985); Von Hirsch & Hanrahan, *Determinate Penalty Systems in America: An Overview*, 27 CRIME & DELINQ. 289 (1981).

⁴ See A. BLUMSTEIN, J. COHEN, S. MARTIN & M. TONRY, *supra* note 3; Alschuler, *supra* note 1; McCoy, *supra* note 2; S. Verdun-Jones & D. Cousineau, *supra* note 2.

⁵ See Coffee & Tonry, *supra* note 1; F. ZIMRING, MAKING THE PUNISHMENT FIT THE CRIME (1977); Alschuler, *supra* note 1; Clear, Hewitt & Regoli, *supra* note 2; McCoy, *supra* note 2; S. Verdun-Jones & D. Cousineau, *supra* note 2.

ing.⁶ Contrary to this conventional wisdom, however, several factors may actually limit the displacement of discretion and socio-economic biases even when sentencing guidelines do not explicitly regulate prosecutorial practices.

While prosecutors may acquire greater discretionary power under determinate sentencing, their use of discretion is initially constrained by rules of law (e.g., evidentiary requirements) and working relationships with other members of the criminal justice community. For example, participation and membership in a "courthouse subculture"⁷ serves as a structural constraint on unbridled prosecutorial discretion in initial charging and plea bargaining practices. In fact, daily working relationships with judges and public defenders exert some control over prosecutorial practices even in the absence of legal compulsion. On the other hand, prosecutors may believe that regulating judicial discretion is an initial step in revamping the entire criminal justice system. Perceptions of subsequent control over their own discretionary power, as well as public tolerance for various actions, may further limit the greater use of prosecutorial discretion after the passage of sentencing guidelines.

The hydraulic effect also may not characterize post-guideline practices because of the modicum of control over judicial discretion exercised under most determinate sentencing systems. For instance, most determinate sentencing systems have followed a voluntary and descriptive approach to constructing and implementing guidelines.⁸ Because there is no legal mandate to ensure compliance with voluntary guidelines and because descriptive guidelines are typically based on average sentences in the past, one would expect few changes over previous practices⁹ and little impetus for the

⁶ See Alschuler, *supra* note 1; Clear, Hewitt & Regoli, *supra* note 2; McCoy, *supra* note 2. Aside from enhancing prosecutors' discretion, the hydraulic analogy suggests that other officials (such as the police) may also receive greater discretionary power. Because our interest is in pretrial decisions for felony cases before and after determinate sentencing is imposed, we characterized this "zero-sum" tradeoff in terms of reducing judicial discretion and enhancing prosecutorial discretion. A "trickle down" displacement of discretion to police seems more applicable to misdemeanor cases, but it is unlikely in felony cases. While this study examines prosecutorial discretion in charging and plea bargaining decisions, the structural and informal controls on unbridled use of discretion discussed later are also relevant to reform efforts directed at other types of discretion and other stages of criminal processing.

⁷ A. ROSETT & D. CRESSEY, *JUSTICE BY CONSENT: PLEA BARGAINS IN THE AMERICAN COURTHOUSE* 91 (1976).

⁸ See Miethe & Moore, *supra* note 3; Von Hirsch & Hanrahan, *supra* note 3.

⁹ In fact, the inability of determinate sentencing systems to achieve their explicit goals has been attributed to the fact that most extant guidelines have followed this voluntary and descriptive approach. See generally A. BLUMSTEIN, J. COHEN, S. MARTIN & M. TONRY, *supra* note 3; Miethe & Moore, *supra* note 3.

deflection of judicial discretion to prosecutors. Furthermore, even under most presumptive guidelines, judges still retain enormous discretion because the range of sentence durations is extremely wide and the decision to stay or execute a prison sentence is usually unregulated. Thus, considering the informal mechanisms of social control and the limited control over judicial discretion, major changes in charging and plea bargaining decisions may not typify post-guideline practices.

The felony sentencing guidelines developed in the State of Minnesota, however, are unique in several respects. First, the Minnesota guidelines have been largely successful in achieving their goals of uniformity, neutrality and proportionality of punishment within the constraints of available correctional resources.¹⁰ Second, in comparison to other systems, the Minnesota guidelines exert far more control over judicial discretion, both by imposing a fairly restrictive range on the presumptive sentence duration and by regulating the "in/out" decision (e.g., whether to stay or execute a prison sentence). Furthermore, the Minnesota guidelines consider only two factors for dispositional and durational decisions: the severity of the convicted offense and the offender's prior criminal record. All other factors are explicitly prohibited as a basis for sentencing decisions governed by the guidelines.¹¹ Due to their rigid control over judicial discretion and the absence of control over prosecutorial discretion,¹² the Minnesota guidelines should exhibit clear signs of circumvention *if* the hydraulic effect characterizes reform policies directed at reducing only one type of discretion.

Previous evaluations of the Minnesota guidelines, however, re-

¹⁰ For review, see MINNESOTA SENTENCING GUIDELINES COMMISSION, *THE IMPACT OF THE MINNESOTA SENTENCING GUIDELINES: THREE YEAR EVALUATION (1984)* [hereinafter MSGC]; Knapp, *What Sentencing Reform in Minnesota Has and Has Not Accomplished*, 68 JUDICATURE 181 (1984); Miethe & Moore, *supra* note 3; Moore & Miethe, *Regulated and Unregulated Sentencing Decisions: An Analysis of First-Year Practices Under Minnesota's Felony Sentencing Guidelines*, 20 LAW & SOC'Y REV. 253 (1986).

¹¹ See MSGC, *supra* note 10; Moore & Miethe, *supra* note 10.

¹² While prosecutorial guidelines on charging and plea bargaining practices have been considered in Minnesota, such guidelines on a state-wide basis have not, as of yet, been implemented. See MSGC, *supra* note 10. Several counties, however, have instituted various types of plea negotiation policies independent of the sentencing guidelines. In fact, a survey of county attorneys (prosecutors) revealed that 62% of the counties in Minnesota had informal and unwritten plea negotiation policies, whereas only 9% have formal policies regarding plea bargaining. The remaining 29% of the counties have no articulated policies on plea negotiations. See MSGC, *supra* note 10, at 86. While these policies are not uniform across the state and vary considerably in terms of degree of self-imposed compliance, written plea negotiation policies are more prevalent in the larger, metropolitan county offices (including Minneapolis and St. Paul) than in the more rural counties of the state. See MSGC, *supra* note 10, at 86.

veal few signs of circumvention through non-regulated prosecutorial practices. For instance, Miethe and Moore¹³ report that overall models of charge bargaining and sentence negotiations differed significantly over time, but socio-economic differentiation in the type of persons receiving plea concessions remained at its pre-guideline level. However, because adaptive responses to structural changes slowly evolve through time,¹⁴ the analysis of only first-year practices in that study may be problematic because the time frame is too close to guideline implementation.¹⁵ On the other hand, the Commission's report¹⁶ reveals that overall rates of sentence bargaining have decreased over post-guideline time periods and charge reductions were more common among cases located near the line demarcating whether the presumptive disposition is a stayed or executed prison sentence. This latter study, however, did not examine whether these changes were more common among particular configurations of felony offenders. Consequently, it cannot address whether social differentiation in plea negotiation practices was enhanced in post-guideline time periods. While previous evaluations indicate some temporal changes in plea bargaining practices, they are limited in their ability to address the extent to which the hydraulic effect has circumvented the intent of the guidelines by increasing socio-economic disparities in charging and plea bargaining practices.

RESEARCH HYPOTHESIS

If the hydraulic effect is a logical consequence of determinate sentencing systems which limit judicial discretion but do not directly regulate prosecutorial discretion, major differences in the nature and determinants of prosecutorial practices should be observed over pre- and post-guideline time periods. First, although insufficient evidence for the claim that displaced discretion has under-

¹³ Miethe & Moore, *supra* note 3, at 355-57.

¹⁴ See generally A. BLUMSTEIN, J. COHEN, S. MARTIN & M. TONRY, *supra* note 3; Casper & Brereton, *supra* note 1; Heumann & Loftin, *supra* note 1.

¹⁵ In addition to being restricted to first-year practices, the previous study of plea bargaining practices under the Minnesota guidelines by Miethe and Moore is also limited because different types of charge bargaining were combined in the same index. Specifically, their measure of charge bargaining included both charge reductions and charge dismissals. If the likelihood of receiving a charge reduction or charge dismissal is determined by different case and offender attributes, however, including both measures of charge bargaining in the same index may suppress the degree of socio-economic differentiation observed in their comparisons of pre- and post-guideline practices. In the present study, each of these types of charge bargaining will be analyzed separately.

¹⁶ See MSGC, *supra* note 10, at 78-79.

mined the guidelines' intent,¹⁷ overall rates of charge bargaining and sentence negotiations¹⁸ should be higher in post-guideline periods if prosecutors are using their greater discretionary power to entice defendants into guilty pleas. Second, if the hydraulic effect undermines the goals of sentencing neutrality and uniformity through greater differentiation in the type of person who receives plea concessions, measures of the felon's social profile (e.g., sex, race, unemployment status, marital status) should more accurately predict charging and plea bargaining practices in post-guideline periods. Thus, the hydraulic theory of discretion would be supported if overall plea bargaining rates increased and offender characteristics were given greater importance in these decisions after implementation of the sentencing guidelines. Finally, if adaptive responses to structural changes evolve through time,¹⁹ differences in the nature and determinants of prosecutorial practices should be more pronounced during the second year than the first year of the Minnesota sentencing guidelines.

¹⁷ An increase in types of plea bargaining in post-guideline time periods is not a sufficient condition for the inference that displaced discretion has undermined the intent of the sentencing guidelines for several reasons. First, increases in overall rates of plea bargaining, rather than being due to displacement per se, may be attributable to a general rise in the crime rate in post-guideline periods which may require greater use of plea-bargaining for relieving case pressure. On the other hand, even if the overall rates of plea bargaining did not increase over post-guideline periods, the "hydraulic effect" may still be operative if prosecutors are more likely to enter plea agreements for some types of crimes, but less likely to enter them for other types of crime. In fact, upon closer examination, whether or not overall changes in rates of plea bargaining have occurred over time is of little relevance to the claim of displaced discretion and its consequences on the ability of sentencing guidelines to achieve their goals. Specifically, to support the claim that hydraulic discretion has circumvented the goals of sentencing neutrality and uniformity, it must be shown that greater socio-economic differentiation has occurred in plea bargaining practices over time. While one might expect overall rates of plea bargaining to increase after the imposition of sentencing guidelines, the critical question examined here is whether prosecutors are using their greater discretionary power in a manner which enhances socio-economic biases in plea bargaining and, in turn, undermines the explicit goals of the sentencing guidelines.

¹⁸ The Minnesota guidelines reduce the likelihood of a sentence concession for those offenders whose presumptive disposition is an executed prison sentence. For these felons (approximately 20% of all convicted felons), there is little to be gained from a sentence concession because the guidelines largely determine the type of sentence and the duration of confinement. See MSGC, *supra* note 10, at 85; Miethé & Moore, *supra* note 3, at 351. There are few restrictions, however, on the type and length of confinement for those felons who receive a "stayed" prison term because sentencing guidelines have not yet been developed for the majority of offenders in Minnesota whose presumptive disposition is a non-prison sentence. Consequently, one would expect a slight decrease in the overall rates of sentence concessions, but an increase in such bargains on the type and length of sentence for those felons who received a stayed prison term.

¹⁹ See, e.g., A. BLUMSTEIN, J. COHEN, S. MARTIN & M. TONRY, *supra* note 3; Casper & Brereton, *supra* note 1.

II. SAMPLE DESCRIPTION

The data for this study was originally collected by the Minnesota Sentencing Guidelines Commission as part of their evaluation of felony sentencing practices.²⁰ Samples of felons convicted in district courts in Minnesota were selected for the fiscal year 1978 (two years before the guidelines), the first eighteen months under the guidelines (May 1, 1980 to October 1, 1981) and for an additional twelve month period (October, 1981 to September, 1982). For purposes of convenience, the labels 1978, 1980 and 1982 are used to refer to the respective samples.

While each sample was stratified by gender, the post-guideline samples were further stratified by race, county and disposition (including all executed prison sentences in the state in 1980 but only executed prison sentences in the eight most populous urban and rural counties in 1982). Random samples of felons who received stayed prison sentences in 1980 and 1982 were drawn only from these eight counties, whereas a state-wide sample was used for cases processed in 1978. To increase the comparability of the samples, only felony cases processed in the eight counties are analyzed in the present study. While limiting generalizations about state-wide practices, over 60% of all felony cases in Minnesota are processed in this eight county region. Because disproportionate stratified sampling was used in each sample, a weighting factor was applied to each stratum so that the samples more accurately represent the respective populations. After applying these weights, a sample readjustment was performed so that the original weighting procedure did not artificially inflate the sample sizes.²¹

The original eight county samples consisted of 1,450, 1,453, and 1,819 felony cases, respectively. The sample sizes were reduced, however, because of the decision to exclude cases that contained missing data on any major variable in this study. Even though this decision resulted in a moderate loss of cases for each year (12%, 6% and 4%, respectively), a comparison of the original and base samples revealed that missing data were excluded without loss of generality. Thus, the analysis presented below is based on 1,273, 1,369, and 1,738 convicted felons who were processed in the eight counties during the respective pre- and post-guideline time periods.

²⁰ For a more complete description of the data, see MSGC, *supra* note 10, at 19-20.

²¹ For a more complete discussion of this weighting procedure and the limitations of the samples, see Miethe & Moore, *supra* note 3, at 346.

III. COMPARISON OF VARIABLES OVER TIME PERIODS

A summary of the variables included in this study, the coding of the variables, and the descriptive statistics for each time period is provided in Table 1. The variables are grouped into two general categories: endogenous (dependent) variables and exogenous (independent) variables.

The endogenous variables refer to charging and plea bargaining practices that are of ultimate interest in this study. The major charging variable examined here is the severity of the most serious alleged charge initially filed by the prosecutor (ALEGSEV). This variable was measured on a 10-point scale ranging from 1 (e.g., possession of marijuana) to 10 (2nd degree murder). The ranking of crimes on this scale is identical to the index developed by the Minnesota Sentencing Guidelines Commission to measure the severity of the *convicted* offense.²²

The endogenous variables also include measures of the two most common types of plea bargaining: charge bargaining and sentence bargaining. Charge bargaining was operationalized in terms of whether any of the three most serious charges were either dismissed (CHARDISM) or reduced (CHREDUCE) as part of the plea agreement. While sometimes collapsed into a single measure of charge bargaining,²³ charge dismissals yield greater concessions than charge reductions because consecutive sentencing may be inapplicable in the former case, but may still be possible in the latter.²⁴

Sentence bargaining was measured in terms of whether there was a plea agreement on either the type of sentence or the length of confinement to be served. A sentence concession (PBSSENT) was noted if any of the three most serious charges involved one of the following types of plea agreements: limited or no initial jail time for those receiving a stayed prison term, a stay of imposition rather than a stay of execution of the sentence, "standing silent" as to the type

²² For a complete list of offenses included in each category, see MSGC, *supra* note 10, at 157-59.

²³ See, e.g., Miethe & Moore, *supra* note 3, at 347.

²⁴ It is also true that when a charge reduction is granted as part of a plea agreement the felon may be convicted for separate "behavioral incidents" since the charges are still retained. When separate behavioral incidents are charged, judges can sentence the defendant separately for each incident and, thus, consecutively increase the felon's criminal history score. For a discussion, see MSGC, *supra* note 10, at 71. Because charge reductions may still result in consecutive sentences and an increase in the felon's criminal history score for separate behavioral incidents, a charge reduction is not only a less important concession than a charge dismissal, but these two types of charge bargaining may also be explained by different case and offender attributes.

TABLE 1
VARIABLES, CODING AND SUMMARY MEASURES BY YEAR

VARIABLE (Names)	CODES	N=	MEAN OR PERCENT (STANDARD DEVIATIONS)		
			1978 (1273)	1980 (1369)	1982 (1738)
ENDOGENOUS VARIABLES					
Severity Initial Charge (ALEGSEV)	10-pt scale (1-10)		$\bar{x}=3.84$ (2.06)	4.05 (2.05)	3.97 (2.04)
Charge Dismissal (CHARDISM)	0 No 1 Yes		.67 .33	.68 .32	.61 .39
Charge Reduction (CHREDUCE)	0 No 1 Yes		.87 .13	.91 .09	.92 .08
Sentence Negotiation (PSENT)	0 No 1 Yes		.44 .56	.59 .41	.53 .47
Overall Plea Bargain (PLEABARG)	0 No 1 Yes		.24 .76	.35 .65	.25 .75
EXOGENOUS VARIABLES					
Used Dangerous Weapon? (DANGWEAP)	0 No 1 Yes		.86 .14	.86 .14	.89 .11
Multiple Offenders? (MULTOFFS)	0 No 1 Yes		.59 .41	.67 .33	.69 .31
N of Alleged Offenses (NOFFENSE)	Interval (1-5+)		$\bar{x}=1.63$ (1.05)	1.70 (1.21)	1.91 (1.40)
Below Disposition Line (BELOW1)	0 No 1 1-unit below line		.90 .10	.88 .12	.88 .12
County of Prosecution 1 (HENNCO)	0 Other 1 Hennepin		.56 .44	.61 .39	.65 .35
County of Prosecution 2 (RAMCO)	0 Other 1 Ramsey		.73 .27	.76 .24	.72 .28
Criminal History Score (HISTORY)	Interval (0-6+)		$\bar{x}=.96$ (1.41)	1.00 (1.55)	1.18 (1.71)
Race of Offender (BLACK)	0 Other/white 1 Black		.86 .14	.83 .17	.80 .20
Race of Offender (OTHER)	0 Black/white 1 Other		.94 .06	.92 .08	.93 .07
Sex of Offender (MALE)	0 Female 1 Male		.14 .86	.12 .88	.15 .85
Marital Status (SINGLE)	0 Married 1 Single		.18 .82	.15 .85	.17 .83
Employment Status (UNEMPLOY)	0 Employed 1 Unemployed		.52 .48	.40 .60	.47 .53
Offender's Demo Profile (SOCDANG)	0 Other 1 "Dangerous"		.91 .09	.85 .15	.87 .13

or length of sentence, concurrent rather than consecutive sentences for multiple charges, and/or a reduction of a felony sentence to gross misdemeanor sentence. While measures of charge bargaining and sentence negotiations are interrelated, they are treated here as separate measures so that the analysis is sensitive to specific changes in the nature and types of plea negotiations. However, an overall measure of plea bargaining composed of both charge bargaining

and sentence negotiations (PLEABARG) is also included as an endogenous variable to detect changes in the extent and determinants of *plea bargaining* over time periods.²⁵

The exogenous variables refer to sets of offense, case processing and offender attributes that are expected to influence whether a felon receives a particular type of plea bargaining concession. In addition to the severity of the most serious alleged offense, offense characteristics include whether a dangerous weapon was used in the crime (DANGWEAP), whether the crime involved multiple offenders (MULTOFFS), the total number of separate behavioral incidents noted in the initial charges (NOFFENSE)²⁶ and whether the case bordered the dispositional line such that a one-point reduction in either the severity of the alleged offense or the offender's criminal history would result in a presumptive "stayed" disposition (BELOW1). This latter variable was included to determine if post-guideline plea bargaining practices were more common among cases that straddled the "in/out" dispositional line.²⁷

The major case processing variable examined here was the county of adjudication. Previous evaluations of the Minnesota guidelines revealed major differences in charging and plea negotiation practices by county.²⁸ As a result, jurisdictional differences were coded in such a way to compare cases processed in Hennepin County (Minneapolis) and Ramsey County (St. Paul) with the other six included counties. Finally, offender attributes included the

²⁵ The overall measure of plea bargaining (PLEABARG) is included primarily for heuristic purposes. As shown later, combining all items into a single scale of "plea bargaining" is misleading because each type of plea bargaining (CHARDISM, CHREDUCE, PSENT) is explained by different offense, case-processing and offender attributes. Also, it is important to note that the percentage of felons who received a plea bargain does not equal the sum of the separate measures of charge dismissal, charge reduction and sentence concessions because some defendants received both charge and sentence bargains. Although not shown in Table 1, the percentage of felons in 1978, 1980 and 1982 who received both charge and sentence bargains were 21.4%, 15.3% and 17.5% respectively.

²⁶ "Separate behavioral incidents" refer to cases in which a series of separate offenses were committed over a particular time period, across different jurisdictions, or involving different victims. See MSGC, *supra* note 10, at 71-79. A series of convictions for separate behavioral incidents could increase the defendant's criminal history score to a level in which the presumptive disposition becomes an executed prison term; thus, the number of alleged behavioral incidents is a crucial consideration, as well as a major enticement, for entering a guilty plea under the Minnesota guidelines. See *supra* note 24 and accompanying text. By exercising their legal authority to retain multiple charges against a defendant, prosecutors can also "target the dispositional line" and determine whether the presumptive sentence is a stayed or executed prison term through the number of separate behavioral incidents carried over to final disposition.

²⁷ See also MSGC, *supra* note 10, at 81-85.

²⁸ See MSGC, *supra* note 10, at 72-86; Miethe & Moore, *supra* note 3.

felon's criminal history score, race, sex, marital status and whether or not the offender was employed at the time of the offense. To assess whether particular configurations of offenders are less likely to be given plea concessions, a composite measure of the offender's demographic profile was also constructed (SOCDANG). This measure compares individuals whose demographic profile fits the stereotypical image of a "high risk" or "dangerous" offender (e.g., male, non-white, single and unemployed) with all other demographic profiles.

A comparison of the summary statistics in Table 1 reveals few overall changes in charging and plea bargaining practices over pre- and post-guideline time periods. For instance, rates of charge reductions decreased slightly over time, whereas charge dismissals were slightly more common in 1982 than during any other time period. Sentence negotiations and overall rates of plea bargaining decreased in post-guideline periods, but these trends were especially apparent in 1980. On the other hand, there was little change over time in the average severity of the initial charge.

A closer examination of the types of cases which received plea agreements also revealed few changes over time. For instance, charge dismissals were far more likely at each time period for felons charged with multiple behavioral incidents than single behavioral incidents. Similarly, regardless of time period, charge reductions were about three times more likely for offenders whose severity/history combination placed them below the dispositional line (e.g., felons whose presumptive disposition on conviction would have been a prison sentence). Sentence concessions, however, were far more likely for offenders above this dispositional line at each time period.²⁹ Thus, contrary to expectations based on the claims of displaced discretion, the overall trends reported here and in Table 1 suggest that prosecutors' charging and plea bargaining practices remained fairly stable across pre- and post-guideline periods.

IV. MODELING CHANGES IN CHARGING AND PLEA BARGAINING PRACTICES

Time-specific models for initial charging practices and each type of plea bargaining were estimated to examine whether the determinants of these dispositional decisions had changed over time. Chow tests for the equality of a set of coefficients were performed to determine if time-specific models exist for each dispositional deci-

²⁹ These analyses are not presented here but are available from the author upon request.

sion. To reduce the likelihood of a type I error, the hypothesis of identical models over time was rejected if the observed probability of obtaining such an outcome was less than .01 ($p < .01$). The specific variables that contributed to the time-specific models were found by re-estimating the models when all two-way interaction between time and the other exogenous variables were included in the equations.³⁰ The time-specific models for initial charging and plea bargaining practices are presented in Tables 2 through 4.

A. MODELS OF INITIAL CHARGING PRACTICES

One of the primary ways in which the Minnesota sentencing guidelines could be circumvented is through greater socio-economic differentiation in initial charges filed by the prosecutor. Specifically, if particular social groups (such as males, blacks, unmarried or unemployed persons) are charged initially with more severe offenses after passage of the guidelines, these changes in initial charging practices would undermine the goals of uniformity and greater socio-economic neutrality in sentencing decisions.³¹ The results of estimating the time-specific models for the severity of the initial charge are provided in Table 2.

While several variables exhibited time-specific effects, the *overall* models of initial charging practices were not significantly different

³⁰ Chow tests are commonly used in the econometric literature to test the equality of a set of coefficients across models. These tests are used here to evaluate the hypothesis that the overall models for initial charging and each type of plea bargaining are identical over pre- and post-guideline periods. A "significant" Chow test implies that the overall models are significantly different at the two time periods. After determining that the overall models are different, regression models with all two-way interactions between time and other attributes are estimated to locate those particular offense, case and offender characteristics that contribute to these time-specific models. For an application of these tests to comparable research questions, see Miethe & Moore, *supra* note 3; Miethe & Moore, *Racial Differences in Criminal Processing: The Consequences of Model Selection on Conclusions About Differential Treatment*, 17 THE SOC. Q. 217 (1986).

Ordinary least squares (OLS) was used to estimate the models of charging and plea bargaining practices at each time period. OLS regression has some well-known problems when the dependent variable is dichotomous. Yet, a sizeable body of research suggests that comparable results between OLS and other estimation techniques (such as Probit and Logit) are observed when the samples are large and the distribution of scores is less extreme than 75% and 25% in the respective categories. See Miethe & Moore, *supra* note 3, at 350. Although not shown here, Probit and Logit models were also estimated for each of the measures of plea bargaining. The results from these analyses were generally quite similar to those reported in the body of the paper. The relative size of the coefficients were similar across these alternative specifications and there was no increase in socio-economic differentiation after passage of the guidelines. Thus, the OLS results are presented here without loss of generality.

³¹ On the other hand, greater social differentiation in the severity of initial charges could also be due to the fact that particular groups of individuals are simply committing more "serious" crimes in post-guideline time periods.

TABLE 2
UNSTANDARDIZED REGRESSION COEFFICIENTS FOR TIME-SPECIFIC
MODELS OF THE SEVERITY OF INITIAL CHARGE

VARIABLE ^a	1978	ALEGSEV 1980	1982
HISTORY	-.024 (.034) ^b	-.046 (.032)	-.032 (.025)
NOFFENSE	.146** (.045)	.131** (.039)	.125** (.029)
MULTOFF	.091 (.096)	.233* (.102)	.088 (.088)
DANGWEAP	3.247** (.139)	2.837**+ (.142)	3.125** (.130)
HENNCO	.302** (.116)	.154 (.115)	.164 (.102)
RAMCO	.091 (.127)	-.406**++ (.126)	-.015 (.106)
MALE	.799** (.142)	.990** (.151)	1.242**# (.119)
SINGLE	-.198 (.124)	-.337* (.137)	-.278* (.108)
UNEMPLOY	.065 (.103)	-.017 (.108)	-.071 (.090)
BLACK	.054 (.168)	.053 (.177)	.287* (.133)
OTHER	.187 (.225)	.214 (.222)	.427* (.186)
SOCDANG	.003 (.230)	.208 (.210)	-.002 (.175)
Constant	2.406** (.205)	2.816** (.208)	2.467** (.165)
N=	1273	1369	1738
R ² =	.343	.283	.330
Chow Tests:			
	1978-80: F=1.985, ns (d.f.=12,2629)		
	1978-82: F=1.704, ns (d.f.=12,2998)		
	1980-82: F=1.206, ns (d.f.=12,3094)		

Notes:

- ^a See the text for a discussion of the variables.
^b The standard errors are in parentheses ().
* Significant coefficient for time-specific model at $p < .05$; ** $p < .01$.
+ Significant interaction between time and attribute for comparisons of 1978 and 1980 models at $p < .05$; ++ $p < .01$.
Significant interaction between time and attribute for comparisons of 1978 and 1982 models at $p < .05$; ## $p < .01$.

over pre- and post-guideline time periods. Regardless of time period, felons who were male, used dangerous weapons and allegedly participated in multiple behavioral incidents (NOFFENSE) were ini-

tially charged with more serious offenses than their counterparts. The use of a dangerous weapon had a less pronounced effect, however, in 1980 than was true in 1978, whereas sex differences in the severity of the initial charge were greater in 1982 than in 1978. Less serious charges were also filed in Ramsey County than the other counties in 1980, but no significant differences between Ramsey and the other counties were observed in 1978 and 1982. Although the time-specific contrasts were not statistically significant, blacks and other racial minorities (in comparison to white felons) were particularly likely to be charged with more serious offenses in 1982. However, the lack of major changes over time in the predictors of the severity of the initial charge is inconsistent with the hypothesis that sentencing guidelines strongly influence the nature and determinants of non-regulated charging practices.

B. MODELS OF PLEA BARGAINING PRACTICES

Major changes in the determinants of charge bargaining and sentence negotiations also would be expected if the hydraulic effect results in discretion being displaced to prosecutors and greater socio-economic disparities in non-regulated decisions. Offender characteristics should also have a stronger impact on plea bargaining decisions in 1982 than in 1980 if adaptive responses to structural change evolve slowly through time. As shown in Tables 3 and 4, however, these predictors were generally not supported. While pre-guideline models of charge dismissals, charge reductions and sentence concessions were significantly different than their post-guideline counterparts, these time-specific models were primarily due to the differential importance given to case processing and offense attributes, rather than offender characteristics. Furthermore, a comparison of the overall models for each type of plea bargaining in 1980 and 1982 revealed few differences across post-guideline periods, suggesting that major adaptive responses to the sentencing guidelines did not evolve through time.³²

As shown in Table 3, charge dismissals were more common

³² Tables 3 and 4 do not identify those time-specific effects which were statistically different between 1980 and 1982. These time-specific effects were excluded because the overall models for most of the measures of charging and plea bargaining practices (except PBSENT and PLEABARG) were found to be not significantly different at each post-guideline time period. Although they were not specifically identified, one can determine those variables which exhibit different effects in 1980 and 1982 by comparing the relative sizes and direction of the unstandardized regression coefficients for the post-guideline models provided in these tables. Aside from being few in number, most of the "significant" differences between 1980 and 1982 practices are due to the differential effects of offense (e.g., weapon use) and case attributes (e.g., county differences). In

each year for offenders who were charged with multiple offenses and processed in Ramsey County. Regardless of time period, measures of the offender's demographic profile had little net impact on this type of plea agreement. The time-specific models of charge dismissals were due to the differential importance placed on offense and case-processing variables at post-guideline time periods. Specifically, the number of alleged offenses became less important in post-guideline practices, whereas county differentiation was greater in both post-guideline periods. Post-guideline felons processed in Ramsey County were far more likely to have charges dismissed, whereas offenders processed in Hennepin County were less likely than their counterparts to receive a charge dismissal in post-guideline periods. Furthermore, pre-guideline felons charged with using a dangerous weapon were more likely to gain a charge dismissal, but in 1982 these felons tended to be *less* likely to gain a charge dismissal than persons who did not use a dangerous weapon.

The time-specific models for charge reductions were also due primarily to the differential importance given to offense and case processing attributes in post-guideline time periods. As shown in Table 3, the impact of the severity of the initial charge, multiple offenders and processing in Ramsey County on the likelihood of charge reductions was less pronounced in both post-guideline periods. Furthermore, pre-guideline differentiation based on weapon use diminished in 1982, whereas the pre-guideline tendency for cases that straddled the dispositional line (BELOW1) to gain charge reductions was eliminated in 1980. Although employment status had no significant effect at any time period, charge reductions were also slightly more common among employed than unemployed felons before passage of the guidelines, but an opposite trend was observed in 1982.

The time-specific models of sentence concessions and overall plea agreements are shown in Table 4. The time-specific models of sentence concessions are largely due to the differential importance given to the county of processing and measures of the offender's demographic profile. Specifically, pre-guideline felons processed in Ramsey County were far more likely to receive a sentence concession than those in other counties, whereas post-guideline felons processed in the urban counties (Hennepin or Ramsey County) were far *less* likely to be given such plea concessions. On the other hand, the felon's employment status had no discernable impact on

contrast to expectations, there were few signs of greater social differentiation in plea bargaining practices in 1982 than in 1980.

TABLE 3
UNSTANDARDIZED REGRESSION COEFFICIENTS FOR TIME-SPECIFIC
MODELS OF CHARGE DISMISSAL AND CHARGE REDUCTION
PRACTICES

VARIABLE ^a	CHARDISM			CHREDUCE		
	1978	1980	1982	1978	1980	1982
ALEGSEV	.012 (.008) ^b	.019** (.007)	.014* (.006)	.042** (.005)	.025**+ (.004)	.027**# (.004)
HISTORY	-.008 (.009)	-.005 (.008)	-.015* (.007)	-.014* (.006)	-.009 (.005)	.000 (.004)
NOFFENSE	.125** (.012)	.077**+++ (.010)	.071**## (.008)	-.027** (.008)	-.013* (.006)	-.020** (.005)
BELOW1	-.018 (.046)	.031 (.039)	.001 (.035)	.082* (.033)	-.001 + (.025)	.024 (.021)
MULTOFF	.063 (.026)	.025 (.026)	.066** (.023)	.031 (.018)	-.001 + (.016)	-.026 ## (.014)
DANGWEAP	.103** (.046)	.057 (.041)	-.054 ## (.040)	.093** (.032)	.066** (.026)	.008 # (.024)
HENNCO	.008 (.031)	-.120**+++ (.029)	-.078**# (.027)	.049* (.022)	.013 (.018)	.036 (.016)
RAMCO	.143** (.034)	.257**+ (.032)	.374**## (.028)	.095** (.024)	-.009 ++ (.020)	-.033* ## (.016)
MALE	.105** (.038)	.010 (.038)	.058 (.032)	.015 (.027)	-.013 (.024)	.017 (.019)
SINGLE	-.029 (.033)	-.023 (.034)	-.007 (.029)	-.018 (.023)	.029 (.022)	-.031 (.017)
UNEMPLOY	-.027 (.027)	.018 (.027)	-.007 (.024)	-.036 (.019)	-.014 (.017)	.012 # (.014)
BLACK	.006 (.044)	-.043 (.044)	.012 (.035)	.024 (.031)	.026 (.028)	-.029 (.021)
OTHER	.032 (.060)	-.045 (.055)	.054 (.049)	.047 (.042)	.002 (.035)	.064* (.029)
SOCDANG	.002 (.061)	.025 (.053)	.006 (.046)	-.040 (.043)	-.028 (.033)	-.023 (.027)
Constant	-.050 (.057)	.092 (.056)	.077 (.046)	-.037 (.041)	.004 (.035)	.020 (.027)
N=	1273	1369	1738	1273	1369	1738
R ² =	.124	.150	.196	.154	.063	.080
Chow Tests:						
1978-80: F=3.112, p<.001 (d.f.=14,2627)				F=4.231, p<.001 (d.f.=14,2627)		
1978-82: F=6.356, p<.001 (d.f.=14,2996)				F=6.615, p<.001 (d.f.=14,2996)		
1980-82: F=1.975, ns (d.f.=14,3096)				F=1.850, ns (d.f.=14,3096)		

Notes:

^a See the text for a discussion of the variables.^b The standard errors are in parentheses ().

* Significant coefficient for time-specific model at p<.05; **p<.01.

+ Significant interaction between time and attribute for comparisons of 1978 and 1980 models at p<.05; ++p<.01.

Significant interaction between time and attribute for comparisons of 1978 and 1982 models at p<.05; ##p<.01.

sentence concessions before the guidelines, but unemployed felons were less likely than their employed counterparts to gain a sentence concession in post-guideline time periods. Furthermore, pre-guideline felons whose social profile fit the stereotypical image of being "dangerous" were far less likely than other offenders to receive a sentence concession, but this variable had no significant impact on post-guideline practices.

Finally, while the explanatory power of the models was minimal at each time period, several common and time-specific effects were observed when models of the likelihood of gaining any type of plea concession were estimated. As shown in Table 4, the overall models of plea bargaining (PLEABARG) were significantly different at each time period. Regardless of time period, however, plea concessions were generally more common, *ceteris paribus*, for offenders who had shorter criminal records and who were charged with multiple offenses. The difference in the pre- and post-guideline models of plea bargaining was primarily due to variation in the importance placed on the county of adjudication. Plea concessions were less likely in the two urban counties than in the other counties after passage of the guidelines, whereas pre-guideline felons processed in Ramsey County were significantly *more* likely to receive some type of plea concession.

V. DISCUSSION AND CONCLUSION

Many commentators have questioned the ability of reform efforts to achieve their intended goals. While attacked on several fronts, a dominant criticism of determinate sentencing is that gains in sentencing neutrality and uniformity are easily offset by the displacement of discretion and greater socio-economic differentiation in non-regulated prosecutorial practices. It was argued here that this presumed "hydraulic effect" should be particularly apparent under Minnesota-like guidelines which exert rather rigid controls over judicial discretion but are silent on the issue of prosecutorial discretion.

Coupled with previous evaluations of the Minnesota guidelines which report significant advances in sentencing neutrality and uniformity,³³ the results of this study question the assumption that such gains are eroded by greater socio-economic disparities in non-regulated charging and plea bargaining practices. While different plea bargaining models were used across pre- and post-guideline peri-

³³ See, e.g., MSGC, *supra* note 10; Knapp, *supra* note 10; Miethe & Moore, *supra* note 3; Moore & Miethe, *supra* note 10.

TABLE 4
UNSTANDARDIZED REGRESSION COEFFICIENTS FOR TIME-SPECIFIC
MODELS OF SENTENCE NEGOTIATIONS AND OVERALL PLEA
BARGAINING

VARIABLE ^a	PBSENT			PLEABARG		
	1978	1980	1982	1978	1980	1982
ALEGSEV	-.030** (.008) ^b	-.002 + (.008)	-.024** (.006)	.006 (.007)	.012 (.007)	-.001 (.006)
HISTORY	-.012 (.010)	-.012 (.009)	-.008 (.007)	-.019* (.009)	-.014 (.008)	-.023** (.006)
NOFFENSE	-.120 (.013)	.026* + (.010)	.013 # (.008)	.025* (.011)	.047** (.010)	.035** (.007)
BELOW1	-.021 (.050)	.023 (.042)	-.127** (.036)	-.035 (.044)	.046 (.041)	-.040 (.034)
MULTOFF	-.013 (.028)	-.040 (.027)	.013 (.023)	.059* (.024)	-.033 + (.027)	.042* (.022)
DANGWEAP	-.008 (.050)	-.095* (.044)	-.109** (.040)	-.027 (.043)	.047 (.043)	-.142** # (.038)
HENNCO	-.072* (.033)	-.270** ++ (.030)	-.192** ## (.027)	-.004 (.029)	-.247** ++ (.030)	-.117** ## (.026)
RAMCO	.136** (.037)	-.386** ++ (.034)	-.539** ## (.028)	.160** (.032)	-.045 ++ (.033)	-.052 ## (.027)
MALE	.003 (.041)	.042 (.041)	-.004 (.032)	.005 (.036)	.013 (.040)	.049 (.031)
SINGLE	-.023 (.036)	-.026 (.037)	.018 (.028)	-.029 (.031)	-.008 (.036)	-.013 (.027)
UNEMPLOY	.045 (.030)	-.074* ++ (.029)	-.111** ## (.023)	-.009 (.026)	-.071* (.028)	-.072** (.023)
BLACK	.031 (.048)	-.022 (.047)	-.015 (.035)	-.012 (.042)	-.060 (.046)	-.009 (.034)
OTHER	-.030 (.065)	-.058 (.059)	-.022 (.049)	-.030 (.057)	-.080 (.058)	.031 (.047)
SOCDANG	-.175** (.067)	.037 + (.056)	.065 ## (.046)	-.098 (.058)	.061 + (.055)	.047 # (.044)
Constant	.727** (.063)	.640** (.059)	.831** (.046)	.686** (.055)	.688** (.057)	.778** (.044)
N=	1273	1369	1738	1273	1369	1738
R ² =	.067	.133	.236	.050	.094	.058
Chow Tests:						
1978-80: F=13.92, p<.001 (d.f.=14,2627)			F=6.150, p<.001 (d.f.=14,2627)			
1978-82: F=21.65, p<.001 (d.f.=14,2996)			F=3.146, p<.001 (d.f.=14,2996)			
1980-82: F=4.569, p<.001 (d.f.=14,3096)			F=5.529, p<.001 (d.f.=14,3096)			

Notes:

- ^a See the text for a discussion of the variables.
^b The standard errors are in parentheses ().
* Significant coefficient for time-specific model at p<.05; **p<.01.
+ Significant interaction between time and attribute for comparisons of 1978 and 1980 models at p<.05; ++p<.01.
Significant interaction between time and attribute for comparisons of 1978 and 1982 models at p<.05; ##p<.01.

ods, the major contributors to these time-specific models were changes in the direction and relative magnitude of offense and case attributes over time. Contrary to expectations based on the hydraulic effect, social differentiation in the type of persons who receive charge and sentence concessions did not increase appreciably after implementing the guidelines. Furthermore, while several changes occurred over post-guideline periods, the importance of offender characteristics remained relatively stable between 1980 and 1982. This latter finding suggests that if criminal justice officials adapt their practices to external changes, most adjustments were made during the first eighteen months of the guidelines.

Given the extent to which the hydraulic effect has been employed as a criticism of determinate sentencing, several additional analyses were undertaken to investigate whether socio-economic disparities were suppressed in the previous analysis. For instance, since the vast majority of the nonwhite felons came from the large metropolitan counties, some of the variation in plea bargaining practices over time attributed to county differences may actually reflect greater racial disparities.³⁴ To evaluate this possibility, cases processed in Ramsey County and Hennepin County were analyzed separately. These county-specific models were then compared across time periods. The slight social differentiation in charging and plea bargaining practices observed in the aggregate models was quite similar to that found in the county-specific models, suggesting that our analysis did not seriously mask intra-county variation. Similarly, the number of alleged offenses had a major impact on the likelihood of both types of charge bargaining at each time period, but there was no indication that particular social groups were disproportionately charged with multiple behavioral incidents in post-guideline periods. These additional analyses further support our contention that there was little circumvention of the goals of the Minnesota sentencing guidelines through non-regulated prosecutorial practices.

While reform efforts may exhibit some backward transference of discretion, it is not necessarily true that prosecutors will use this greater discretion presumably bestowed by sentencing guidelines. In fact, although often overlooked by critics of reform efforts, several internal and external constraints are imposed on prosecutors and other criminal justice officials that restrict the use and abuse of their greater discretionary powers even when sentencing guidelines do not explicitly regulate presentence decisions. These social con-

³⁴ See also MSGC, *supra* note 10, at 79.

trol mechanisms may also explain why greater socio-economic disparities in charging and plea bargaining practices did not materialize after the sentencing guidelines were passed.

Participation in a "workgroup" or "courthouse subculture" is an initial constraint on prosecutorial discretion.³⁵ Specifically, prosecutors' daily working relationship with other criminal justice officials in addition to legal safeguards against unfounded prosecution offer some control over abuses in power. Furthermore, while external structural changes such as the implementation of sentencing guidelines may temporarily adjust the actors' positions, membership in this "workgroup," shared norms about the appropriate penalties for particular crimes and system requirements (e.g., management of workload, limited allocation of scarce resources) may also minimize individual interests and thwart efforts by prosecutors to exercise their greater discretionary power.

Several additional social control mechanisms may also limit abuses of prosecutorial discretion in charging and plea bargaining practices. For instance, the district attorneys' offices in the large metropolitan counties in Minnesota had developed at least informal policies concerning charging and plea bargaining practices around the time of implementation of the sentencing guidelines.³⁶ While such self-imposed standards are not likely to eradicate all abuses in prosecutorial power, they may nonetheless diminish the likelihood of major adjustments in plea bargaining practices after imposition of sentencing guidelines. Similarly, regardless of the accuracy of such beliefs, prosecutors may perceive the development of regulations on judicial discretion as an initial step in restructuring the entire criminal justice system. Perceptions of subsequent control over their discretionary power may also limit the greater use of prosecutorial discretion. Thus, contrary to the popular view that displaced discretion will undermine the success of sentencing guidelines that regulate only judicial discretion,³⁷ these alternative mechanisms of social control will likely minimize the possibility of major prosecutorial adjustments over previous practices even when the reform effort does not explicitly include prosecutorial discretion.

Although the time-specific models for various types of plea bargaining do not indicate displaced discretion per se, these models do

³⁵ See J. EISENSTEIN & H. JACOB, *FELONY JUSTICE* (1977); A. ROSSETT & D. CRESSEY, *supra* note 7.

³⁶ See MSGC, *supra* note 10, at 86.

³⁷ See generally B. Verdun-Jones & D. Cousineau, *supra* note 2; Alschuler, *supra* note 1; Clear, Hewitt & Regoli, *supra* note 2; Coffee & Tonry, *supra* note 1.

illustrate how prosecutors have changed their practices over time.³⁸ Most of the specific changes, however, were not attributable to factors that are typically viewed as major enticements for entering a guilty plea under sentencing guidelines. For instance, given that the severity of the convicted offense is the major determinant of sentencing decisions under the authority of the guidelines,³⁹ changes in initial charging practices should be observed over time. Specifically, the average severity of initial charges should increase over post-guideline periods if prosecutors are "overcharging" as a means of enticing the defendant into pleading guilty to a reduced charge. Furthermore, the severity of the initial charges and whether the case straddled the dispositional line should have greater importance in post-guideline decisions to reduce charges because both of these factors can greatly effect whether a stayed prison sentence is the presumptive disposition. However, contrary to these predictions, the average severity of the initial charge changed little over time *and* the impact of charge severity and whether the case straddled the dispositional line actually became *less* dramatic in post-guideline periods. On the other hand, prosecutors may entice post-guideline felons to plead guilty through vertical charging and increasing the number of alleged behavioral incidents. Yet, while the number of alleged incidents per individual increased slightly over time, this variable had a less pronounced net impact on the likelihood of receiving a post-guideline charge dismissal and had similar effects across pre- and post-guideline periods on the granting of charge reductions.

The implications of this study can be briefly stated. Contrary to the conventional wisdom about determinate sentencing and other reform efforts directed at a particular component of the criminal justice system, the results of this study suggest that the hydraulic displacement of discretion is not inevitable and does not necessarily dampen the success attributed to the primary reform effort. Even

³⁸ While this analysis focuses on general changes in the nature and determinants of charging and plea bargaining practices over pre- and post-guideline periods, subtle changes and adaptive responses are likely to occur after the imposition of sentencing guidelines. Unfortunately, a general modeling approach is limited in its ability to detect and isolate these particular changes. In fact, several changes have occurred that seem especially likely to influence plea bargaining practices in Minnesota after passage of the guidelines. These changes include increasing the mandatory minimum for using a dangerous weapon and the successive escalation of the criminal history score for each separate behavioral incident resulting in conviction. While these changes are likely to enhance prosecutors' bargaining power and may serve as major enticements for guilty pleas, this study does not directly address the impact of these specific changes. For a more complete discussion of these and other changes, see MSGC, *supra* note 10.

³⁹ See MSGC, *supra* note 10, at 21.

when sentencing guidelines do not explicitly regulate prosecutorial discretion, various mechanisms of social control still operate to limit its use and possible abuse. Initial charging and plea bargaining practices did change after sentencing guidelines were implemented, but greater socio-economic disparities in non-regulated prosecutorial decisions did not circumvent the goals of sentencing neutrality and uniformity. Thus, coupled with previous evaluations of sentencing practices,⁴⁰ the results of this study suggest that the Minnesota guidelines have been a successful experiment in criminal justice reform. Whether this success can be replicated in other states which adopt a Minnesota-like model and do not explicitly regulate prosecutorial discretion, however, remains an open question.

⁴⁰ See, e.g., MSGC, *supra* note 10; Knapp, *supra* note 10; Miethe & Moore, *supra* note 3; Moore & Miethe, *supra* note 10.