DO YOU UNDERSTAND?

Unrepresented and Unknowing Rights Waivers by Misdemeanor Defendants

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> *"Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open."* --Justice Potter Stewart, *Faretta v. California* (1975)[1]

Abstract

Previous research suggests that *Miranda* rights warnings are linguistically difficult for the average defendant to understand, and one might expect similar difficulties would be encountered with other documents involving legal rights. Few studies, however, have examined the language of common criminal court rights advisement and waivers. Whether conducted in writing, orally, or both, informing a person of their rights, the impact of waiving those rights, and the potential consequences of entering into a plea agreement, is one of the most critical tasks the court performs in a criminal case. Despite both the importance and frequency of this responsibility, little research has been done to examine these communications. To bridge the gap, this report applies linguistic document analysis to determine the comprehensibility of written forms, and critical genre and conversation analyses to evaluate the efficacy of oral colloquies for unrepresented misdemeanor defendants. We find parallel linguistic difficulties with both rights-waiver and counsel application forms and the judicial process for determining knowing and voluntary waivers of counsel and trial. We also find structural deficiencies in judge-defendant conversations that impede unrepresented defendants' ability to express or resolve confusion before waiving counsel and entering a plea. Finally, we provide policy recommendations for improving the layout and language of legal forms as well as the way rights are explained to better ensure knowing, competent and informed decisions.

Introduction

Plea "bargaining" for unrepresented misdemeanor defendants is a misnomer as there is little bargaining or negotiating that actually occurs.[2] Typically unrepresented defendants, are presented with a unilateral "offer" to admit guilt and accept some form of sanction (be it a fine, community service, the completion of a course or period of probation, an active or suspended period of incarceration or some combination of these) or to plead not guilty and return to court, suffering the adverse effects of added delays, including costs and stress.[3] It is a further fallacy that these unrepresented defendants are entering informed pleas.[4] Limited prior research suggests that defendants lack

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understanding of their rights and the consequences of pleading guilty[5] because judges rely on inaccessible written rights-waiver forms[6] and perfunctory oral plea colloquies.

In our courts, the primary methods of ensuring that waivers of counsel and trial rights (hereinafter "rights waivers") are knowing and voluntary are through the use of written tender-of-plea forms and oral plea colloquies.[7] Given the complexities of legal language,[8] critics argue that the law's linguistic register[9] is not understandable to most laypeople,[10] and legal language and court documents should be written more plainly.[11] Despite a patchwork of changes by rules, statutes, and court decisions, a plain-language scholar recently lamented that "[i]t turns out plain language laws are anything but plain."[12] Language in legal documents,[13] courtroom exchanges,[14] and other criminal legal system interactions[15] remain complex and inaccessible to the general public.

Assembly-line proceedings and heavy reliance on legal forms dominate the misdemeanor courts, reducing the chance that unrepresented defendants receive sufficient information to understand and make informed decisions regarding their rights.[16] A thorough linguistic analysis of arraignment and plea hearings and rights waivers by unrepresented misdemeanor defendants is underexplored by prior research.[17] The present study begins to fill some of the literature gaps and offers practical improvements by examining the following research question:[18]

> **How do rights-waiver forms and judicial discourse structures encourage or discourage understanding of and questions about rights waivers and case outcomes for unrepresented defendants in misdemeanor cases?**

Part I of this report discusses previous literature on plea bargaining and rights waivers and the theoretical framework guiding the present study. Part II describes our study's research design and methodology, the site and setting, data collection, and analytical approaches to examining the data. Part III reviews our analytical findings on the plea and rights-waiver exchanges between judges and unrepresented defendants. In Part IV, we advance conclusions and make several recommendations for improving the process.

I. Literature Review and Theoretical Framework

A. Plea "Bargaining"

In 1938, in *Johnson v. Zerbst*,[19] the Supreme Court established the standard for constitutional waivers of rights.[20] In *Zerbst*, the Court held that waivers of counsel must be made competently and intelligently to be valid.[21] Later decisions reaffirmed the *Zerbst* standard, holding that valid guilty pleas and rights waivers are those that are "voluntary" and "knowing."[22] Voluntary and knowing guilty pleas require "sufficient awareness of the relevant circumstances and the likely consequences."[23] When that awareness is absent, the plea violates due process and is void.[24] In practice, however, voided pleas are extraordinarily rare.[25] "Waiver[s] by plea bargain [are] deemed

voluntary despite enormous disparities between the choices offered to the defendants" or prosecutors "effectively punish[ing] defendants for refusing a waiver by plea bargain."[26] Furthermore, courts have upheld waivers even when counsel's advice is wrong "in rethe admissibility of the defendants' earlier confession" or the prosecutor fails to disclose exculpatory impeachment evidence,[27] if the court concludes that such a waiver was done "knowingly."

Plea bargaining "is not some adjunct to the criminal justice system; it *is* the criminal justice system."[28] Recently, the Supreme Court aptly described the current criminal legal system as "a system of pleas."[29] With few guilty pleas appealed, particularly from misdemeanor cases,[30] ensuring rights waivers are knowing and voluntary is critical. The "bargaining" and waiver process presume and presuppose that defendants understand their rights and are rational decision-makers operating within a fair negotiation system. In reality, "[p]leas are offered and retracted at the unfettered discretion of prosecutors [and] [b]argains themselves are undocumented and largely unchallenged, save for a few formal questions meant to establish that the plea is 'voluntary, intelligent, and knowing.'"[31]

This is especially true in misdemeanor cases, where defendants are typically offered "standard dispositions" that are "accepted with little, if any, actual deliberations."[32] There is little bargaining, with cases resolved quickly and often at the first court appearance.[33] Scholars have described misdemeanor or lower court case processing as "cattle herding," "assembly-line processing," or "McJustice"[34] and some research shows that defendants leave their arraignment hearings without understanding their rights, case outcomes, or the consequences of their quickly entered pleas.[35]

B. Knowing Waivers and Comprehension of Rights

Up until now, comprehension and waiver studies have largely focused on felony cases and *Miranda* warnings, primarily addressing two questions[36] relevant to our current consideration of pleas by unrepresented misdemeanor defendants: (1) Do defendants understand their plea and case outcomes, and (2) Are defendants provided sufficient information to make knowing and voluntary decisions to waive their rights?[37] Research suggests the answer to these questions is *no*, finding discrepancies in "defendants' average reading and listening [ ] abilities and the levels required to fully understand oral colloquy and written tender-of-plea forms."[38] As a result, defendants are not given sufficient information to make valid rights-waiver decisions,[39] and they fail to grasp the complex language of their legal rights.[40] Studies show adult felony defendants generally exhibited poor comprehension of their rights and understanding of what had transpired,[41] and comprehension-confirming questions, like "Do you understand?" did not adequately test defendants' knowledge.[42]

Defendants' understanding across legal settings is often illusorily inflated with defendants believing they understand more than they do.[43] As one study demonstrated, surveyed prospective jurors, undergraduates, and defendants overestimated their understanding of *Miranda* rights. When asked, nearly all of them believed they

understood the warnings, however testing revealed that 20% of the prospective jurors, 26% of the undergraduates, and 31% of the defendants wrongly believed silence ***could*** be used as incriminating evidence.[44] These same misunderstandings plague the plea process. Interviews with defendants in criminal cases surveyed after pleading guilty, nearly all (99%) claimed to understand their charges, the plea process, and their plea deal, but when tested, the percentage who actually understood dropped to below 60%.[45] Based on this research, Redlich and Summers argued that plea colloquy proceedings failed to adequately ensure that defendants' pleas were "knowing and voluntary."[46]

One potential explanation for this lack of comprehension is the linguistic complexity of the legal language in plea and interrogation warnings and waivers.[47] Sociolinguistic scholars have observed that legal rights and *Miranda* warnings contain complex and embedded clauses—clauses joined or introduced by the words *and*, *but*, *or*, *when*, *if*, *so*, and *that* or multiple prepositional phrases within one sentence.[48] Increased embedding makes comprehension more difficult.[49] While an average listener can understand two or three embedded layers; the *Miranda* warning usually is formatted to have five to six layers.[50]

Additionally, the *Miranda* warning typically contains two or more homophones -- words with the same pronunciation but different meanings or spellings (e.g., write and right). The frequent use of homophones in legal rights advisements raises the difficulty of the warnings beyond the average reading level.[51] Another criticism of the *Miranda* warnings is the illogical sequence of advising people of their rights,[52] progressing from suspects first determining whether to remain silent *before* being notified of their right to counsel, who might influence their decision to speak or remain silent.[53]

Comprehension can be further muddied by how legal professionals (including judges, bailiffs, clerks, or even lawyers) typically respond to a defendant's questions. When asked for additional insights or information faced with questions, many respond using the same formally stated rights. While this may protect system actors when it comes to an appeal or avoid ethical limitations judges or clerks may face on giving legal advice it does not improve comprehension.[54] Although most research conducted on misdemeanor proceedings has been critical of the quick nature of resolving cases[55] and has highlighted the inadequacy of rights-waiver comprehension,[56] few have linguistically and microscopically examined the typical methods of rights waivers by examining the appointment of counsel and rights-waiver forms and oral plea colloquies.[57]

C. The Interaction Ritual of Plea Bargaining and Rights Waivers

Rights waivers are face-to-face and bureaucratic interactions,[58] where most defendants seem to automatically cooperate.[59] Goffman's interaction ritual and participation framework[60] provides a theoretical structure for understanding "institutional talk" in the misdemeanor courts. The "interaction order" is grounded in pre-existing rituals that structure social interactions.[61] Using the theatre metaphor, Goffman described social interaction as dramaturgical, identifying differences in backstage behaviors and front-

stage scripted performances.[62] The highly structured and institutional setting of rights-waiver proceedings offers opportunities for examining front-stage performances within the participation framework, involving speakers, hearers, audience members, and other active and nonactive role participants,[63] and how "standard practices" effect the taking of guilty pleas.[64]

Despite the busyness and chaos of the lower criminal courts, Douglas Maynard described misdemeanor court as exhibiting "particular forms of order" [65] and observed three dominant/subordinate encounters: the judicial encounter, the negotiation encounter, and the public defender-client encounter.[66] Through observations and recorded interactions, Maynard examined misdemeanor public defenders, prosecutors, and judges negotiating plea deals, hidden from defendants.[67] This differs in one analytical regard from the present study proceedings where defendants were unrepresented and had to fend for themselves and interact directly with judges. The microanalysis of discourse is critical for understanding the structure and interaction of spoken language within an institutional environment and "exploring forms of talk as decision-making routines."[68] The participation framework provides a structure for understanding how unrepresented defendants engage with judges in resolving their cases.

The judicial encounter, described by Maynard as the most important with its hierarchical and highly organized interactions, is most relevant to the present study,[69] where the "bureaucratic" courtroom is part of the "underlying structure [of] the participation framework,"[70] and together with defendants' disenchantment from the criminal legal system and interest in receiving the minimum sanction, structurally encouraged or motivated guilty pleas.[71] Maynard characterized the bargaining sequence as a type of organizational "coercion . . . for inducing situated compliance" that was "oblique and circuitous."[72]

Further, Maynard's microanalysis of the participation framework and transcribed plea-bargaining conversations[73] revealed subtle structures of linguistic coercion.[74] In Maynard's work, where the plea bargaining occurred among the lawyers, it involved two turns: (1) "an announcement of a preference or a proposal" and (2) a reply by the other party "exhibiting agreement or disagreement with the presented position."[75] Resolution was reached when both parties agreed on the disposition (dismissal, guilty plea, trial, or continuance).[76] Employing conversational analysis, Maynard identified three negotiating patterns that resulted in pleas rather than trials:[77] (1) "*unilateral opportunity* – one party makes an offer to which the other agrees,"[78] (2) "*bilateral opportunity*: each party advances a position; one relinquishes and agrees to adopt the other's"[79] (3) "*compromise*: each party takes a position and relinquishes it for an intermediate one."[80] The three patterns involved "routine practices, rather than rational calculations" and "taken-for-granted mechanics" that "exert[ed] pressure for guilty pleas."[81] As such, these legal participation frameworks produce and reproduce everyday practices and routinized discourse that encourage guilty pleas among represented defendants.[82]

Notably, these same frameworks likely promote rights waivers by *un*represented defendants as well. A key theme of prior research that likely influences interactions with unrepresented individuals is that courtroom interactions are characterized by pre-allocated turn-taking, which restrict speaking and responding orders and are influenced by external forces that establish content and length of the interaction.[83] Unrepresented defendants interact with judges within highly structured institutional settings, restricted by procedures of *pre-allocated* turn-taking,[84] influenced by judicial perspectives and approaches, and unduly focused on procedural efficiencies over comprehension.[85]

The present study expands on Maynard's work[86] and explores how language and participation frameworks affect judge-defendant interactions during rights-waiver hearings (rather than bargaining among lawyers). First, we examine the comprehensibility of two forms that were given to misdemeanor defendants as they entered the courtroom for arraignment (the application for appointed counsel and rights-waiver forms)[87] using methods from Flesch-Kincaid,[88] Tiersma,[89] Stygall,[90] and Shuy.[91] Second, we employ the methods of genre analysis and conversation analysis to dissect the unrepresented defendant's dialogue with judges in entering plea agreements and waiving their rights to counsel and trial. We found the legal forms had readability scores that exceeded that of the average reader, and the discourse structure of the rights waiver and plea colloquies routinized the delivery of complex information and lacked adequate markers of defendant comprehension or opportunities to raise questions.

II. Research Design and Methodology

This report is part of an extensive study and series of reports focused on why misdemeanor defendants resolve their cases without counsel and the consequences of that decision. The larger project employs several methods, including interviews and administrative and case file data, allowing for triangulation of the data findings.[92] The present study focuses on how the incomprehensibility of legal forms (request for counsel and rights waiver) and the linguistic features of rights-waiver colloquies might encourage guilty pleas and undermine knowing rights waivers.

A. Study Site and Setting

The study was conducted in two Southeastern lower criminal courts, one in a smaller county and the other in a larger county. The research sites are adjacent, employing lawyers from the same prosecutor and public defender offices but in geographic areas with contrasting economic and demographic communities. The larger community has over one million people, compared to the smaller county, with less than 500,000 people. The median income in the larger community is higher, with more college-educated and fewer Hispanic residents. In this state, appointed counsel is not free; defendants seeking representation must pay application and lawyer fees. Misdemeanor crimes and criminal traffic infractions heard in these courts range from petit theft, battery, and trespassing to driving with a suspended license or while intoxicated. (See Appendix A for an overview of misdemeanor case processing in these counties).

B. Data Methods and Collection Procedures

Data collection included both observations and documents. First, observations of misdemeanor courts allowed us to become aware of the announcements and other communication with defendants appearing for arraignment, collect relevant cases by identifying unrepresented defendants who plead guilty, and obtain the court reporters' audio recordings of their rights-waiver exchanges.[93] Second, research assistants collected the forms provided to misdemeanor defendants at arraignments (see Figures 3 and 4 for redacted versions).

Both counties used the same application for the appointment of counsel and rights-waiver forms. In the larger county, county court bailiffs instructed each defendant to complete *both* forms (even though they were mutually exclusive, i.e., defendants who entered pleas were not asking for counsel). In the smaller county, defendants were expected to listen to a brief, two-minute video recording advising them of rights and court procedures (recorded advisements were rare in the larger county)[94] after which public defenders interacted with each defendant (whether representing them or not) and only provided the relevant forms, i.e., rights waiver or counsel request.

The data analyzed for this study included:

- The application for appointment of counsel (Figure 3),
- The rights-waiver form (Figure 4), and
- Twenty-six transcripts of plea colloquies with unrepresented misdemeanor defendants, including a sub-sample of 8 transcripts for conversation analysis (Appendix C for a description of the data collected and history of Conversation Analysis along with the transcribed subsample).

The hearing lengths, the plea entered, and whether the defendants (identified by their chosen pseudonyms) had previous court exposure are shown in Table 1.

Table 1: Sub-Sample Snapshot[95]

Defendant Transcript	Court Location	Judge	Hearing Length	Plea	Previous Court Exposure
Steven	Small	1	1:57	Guilty	Yes
David	Large	5	2:17	Guilty	Yes
Natalie	Large	9	2:11	No Contest	Yes
Sabrina	Large	4	2:11	Guilty	(Not Available)
Marcus	Large	3	2:01	No Contest	No

Matt	Small	1	2:29	Guilty	Yes
Butter	Large	7	6:40[96]	No Contest	No
Devon	Large	4	2:17	Guilty	Yes

C. Methodological Procedures for Data Analysis

Prior research has investigated defendant understanding of courtroom processes using post-hoc surveys and interviews.[97] In the present study, we used, several linguistic analytic methods to investigate misdemeanor defendants' interactions with judges and other legal actors as they occurred *during* the actual hearings. In the sections below, we share our linguistic analytic methods for the legal documents we collected and the arraignment hearings we transcribed. The arraignment hearings were transcribed using Jeffersonian conventions for transcription,[98] focusing on the actual words spoken, the pacing of uttered words, pauses and overlapping conversation, silence, and available paralinguistic behaviors.[99] The symbols mainly represent interruptions, pacing, silences, and auditory but non-verbal communications, such as grunts or throat clearing.

1. Legal Documents Analysis

We employed the Flesch Reading Ease and Flesch-Kincaid readability assessments on the application for appointed counsel and the rights-waiver forms as a reliable and standardized measure of readability.[100] The Flesch reading-ease score estimates the proportion of adults who can comprehend the reading passages,[101] and the Flesch-Kincaid score estimates the grade level necessary for understanding the reading passage by employing a formula that combines sentence length and average syllables per word.[102] In evaluating the readability and understandability of *Miranda* warnings, Rogers and colleagues set the "basic criterion [at] 'fairly easy reading material' (FRE> 70), which should be understood by 80% of the general population."[103]

Studies of everyday literacy (i.e., "understanding, evaluating, using and engaging with written text to participate in society, to achieve one's goals and to develop one's knowledge and potential")[104] among incarcerated adults show higher rates of low literacy compared to average households.[105] Even "[g]eneral population guidelines typically suggest a target readability range from the 6th - 8th grade with more population inclusive recommendations suggesting a target reading level of 4th - 6th grade."[106]

Table 2 shows the Flesch Reading Ease and Flesch-Kincaid scores and their corresponding grade level estimates. For this study, we set the expected reading-level-target norms of misdemeanor defendants at 6th - 8th grade, which encompassed Rogers et al.'s "basic criterion" for relatively easy reading at the 7th grade or lower level.[107]

Table 2: Flesch Reading Ease and Flesch-Kincaid School Level Chart

Flesch Reading Ease Score	Flesch-Kincaid Readability Scores	School Level
90 to 100	5.0-6.0	5th grade
80 to 90	6.0-7.0	6th grade
70 to 80	**7.0-8.0**	**7th grade**
60 to 70	8.0-10.0	8th and 9th grade
50 to 60	10.0-12.0	10th to 12th grade (high school)
30 to 50	12.0-16.0	College
0 to 30	16+	College Graduate

After the initial readability analysis, we applied Tiersma's [108] and Stygall's [109] lists of features that impeded communication. Tiersma's list includes technical vocabulary; archaic, formal and unusual words; impersonal constructions, overuse of nominalizations and passives; modal verbs; multiple negatives; long and complex sentences; and poor organization.[110] To this list, Stygall[111] adds "references to inaccessible texts; critical background texts not apparent to lay readers; repetitive use of formal legal names of entities; and common words used with a specialized legal meaning." The remaining investigation of the waiver forms were informed by Roger Shuy's linguistic observations and assessment of *Miranda* rights forms,[112] which similarly focus on the complexities in lexical content and syntactic logical structures. Our findings identify potential linguistic impediments for understanding the written rights-waiver and counsel application forms.

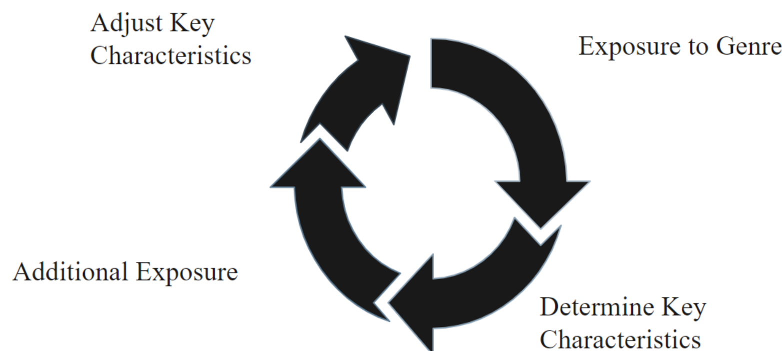
2. Critical Genre Analysis of Arraignment Transcripts

In examining the 26 transcribed arraignment hearings, we employed Bhatia's critical genre analysis,[113] which builds on genre theory to analyze how power is constructed through both *text* and *context*, uncovering the conventions, expectations, functions, goals, values, practices, and target audiences of communicative events.[114] A genre is socially situated, intertextual, carried out in multiple modes of communication, and reflects and enforces the existing structures of power.[115] In our study, the arraignment is a genre as it is socially situated within the misdemeanor courts and relies on the intertextuality

of criminal charges and other legal documents, employs multiple forms of communication (e.g., what the judge says, the rights-waiver forms, and arrest reports),

as well as the oral plea offers given by the prosecutor and other information provided by the clerk. Taken together, the intertextual[116] and interdiscursive[117] social interactions during the arraignment hearing reflects and enforces a system that disempowers unrepresented misdemeanor defendants.[118] Critical genre analysis moves the investigation beyond the text to consider how the context influences what is said, and how genres are exploited to serve the hidden interests of those in power.[119] The broad steps of genre analysis are depicted in Figure 1.

Figure 1: Cycle of Genre Analysis



Genre analysis is iterative, adding nuance as more data are reviewed (here, additional transcribed plea hearings). The cycle begins with *exposure to the genre*, in which the analyst reads through the full corpus to determine the broad patterns of the genre, in this case, the 26 arraignment hearings. After discerning the broad patterns, *key characteristics* that define or distinguish the communicative structures are tentatively identified and compared to other interactions, allowing for the *confirmation or adjustment* of the observed pattern.[120] These key characteristics are called *moves*, [121] and they are next broken down into smaller *steps* to analyze the *rhetorical strategies* that the speaker employs to control the conversation. *Moves* are the rhetorical units or chunks that shape the broader functions of texts, and the *steps* are the parts of conversations within that move. As key characteristics are identified, the analyst re-reads the corpus to evaluate which moves are *routine,* or appear in most cases, and which are less frequent, or *optional*, only occurring in a few of the transcripts. [122] This analysis unveils how speech is structured by speakers and how it may produce effects on listeners of the standardized norms and the subtle nuances of those norms.

Move analysis[123] breaks down each part of the genre by its *rhetorical function*, that is, the way language is used to accomplish a purpose, particularly with regards to maintaining power for those in control. From there, an even more fine-grained analysis examines the *steps* within each move. With move and step analysis, we can identify any micro-structural mechanics that might encourage unrepresented defendants to enter pleas and waive counsel, as well as uncover and describe how institutional participant roles (e.g., judge and defendant) during the oral exchange ultimately affected

defendants' pleas and rights waivers.

The arraignment hearings were more than a fixed genre, however, because they involved two (or more) persons in conversation. To consider the ways defendants participated in and/or disrupted the genre, we randomly selected eight arraignment transcripts for conversation analysis to apply a closer analysis of the specific interactions between judges and defendants.

3. Conversation Analysis and Power

Conversation analysis "describe[s] the underlying social organization—conceived as an institutionalized substratum of interactional rules, procedures, and conventions—through which orderly and intelligible social interaction is made possible."[124] (See Appendix C for a brief explanation of Conversation Analysis). In this report, we focus our analysis of the sub-sample on courtroom interactions and aim to describe how speaking structures and coordinates institutional events,[125] and particularly on how "institutional realities are evoked, manipulated, and even transformed in interaction"[126] by examining the meaning and context of the interactions through the sequencing of words in action.[127] Participation frameworks allow for examining institutional talk by speakers and hearers (participants) and how participation demonstrates understanding or misunderstanding in the highly structured legal setting.[128] The identified categories of the participants, actions, and contexts are derived from the studied social interactions[129] by probing six unique features of legal interactions:

1. **Turn-taking by participants**: Examining the mechanism through which speakers manage the exchange of turns in a conversation, which may include verbal and non-verbal cues, like eye contact, gestures, or filler words to signal speech turns or yielding the floor.[130]
2. **Broad organization of turn-taking interactions**: Identifying the various ways interactions are organized, often depending on the setting, e.g., formal meeting and casual conversations.[131]
3. **Sequencing interactions**: Investigating the structural relationships among participants that effect the sequencing of turn-taking and the coherence and logical flow of conversations, e.g., the typical courtroom exchange dominated by question-answer sequencing.[132]
4. **Turn design**: Focusing on the goal of each turn to accomplish actions, like requesting, informing, or challenging, and in courtroom settings, legal decision-making.
5. **Lexical choice**: Scrutinizing the specific word or phrase choices, including jargon, politeness strategies, or inclusive language that shape the dynamics of interactions, particularly in situations of participant imbalance with one party having mastery of a specialized language, and the other not.[133]
6. **Asymmetrical exchanges**: Uncovering hierarchical disparities in power or knowledge among individuals during conversation exchanges, e.g., in the court setting where the judge has authority and exhibits control over the conversation with lawyers or defendants.[134]

Legal and sociolinguistic scholars observe that legal structures, rules, and procedures control and define courtroom talk.[135] This is the case even during plea-bargaining among lawyers – the structured talk encourages guilty pleas.[136] Given the prior research, close examination of the judge-unrepresented defendant exchange during rights-waiver hearings is necessary to understand how turn-taking, sequencing, lexical choice, and controlling topics reduce questions and promote guilty pleas.[137]

Our mix of data sources and analytic approaches avoids the "rather implausible image . . . of conversation as a skilled social practice existing in a social vacuum"[138] and the bias of preconceptions of power and status rather than data revealing those dynamics among participants. The combined approaches highlight the context and intertextuality of rights-waiver hearings, the generic norms established to reinforce power structures, and the micro features of interactive speech acts that reinforce or disrupt the judge's control of the conversation. In the following sections, we will share the findings of these varied analyses of our data sources, starting with the legal documents, then considering the intertextual nature of the arraignment genre, and ending with investigating the sequencing of interactions and language occurring between judges and defendants.

III. Findings

Our findings demonstrate that legal documents and judicial discourse may impede misdemeanor defendants' understanding of rights and waivers. In the first section, we report the document, readability, and comprehensibility analysis of the application for counsel and the rights-waiver forms. We found that the overwhelming impediments to the comprehensibility of the forms make it unlikely that the misdemeanor defendants completely understood their rights or the consequences of waiving those rights. In the second section, using genre analysis, we deconstruct the patterned interactions of the arraignment plea hearing for 26 unrepresented misdemeanor defendants. We found that even though judges varied in how they initially interacted with defendants, every judge, early in the exchange, asked defendants for their plea *before* formally advising them of their rights and, after defendants pleaded guilty or no contest, each judge relied on a nearly identical scripted and structured plea colloquy.[139] In the final section, we closely examined the hierarchical structure, sequencing, and closed-ended questions of a subsample of eight judge-defendant interactions and uncovered how those patterned exchanges discouraged defendants from raising questions or expressing confusion. From our assessments of the rights-waiver hearings, we conclude that it is unlikely that unrepresented misdemeanor defendants are making informed waivers of their rights.

A. Document Analysis and Findings

Before the arraignment hearings formally began, the defendants were handed two forms: the request for appointed counsel form (Figure 4) and the rights-waiver form (Figure 3). In the larger county, defendants were directed to fill out *both* forms, even though they were mutually exclusive (i.e., individuals who pleaded at arraignment did so without counsel).[140] In the smaller county, public defenders circled the room to answer questions about the forms and the hearing, while in the background a video played

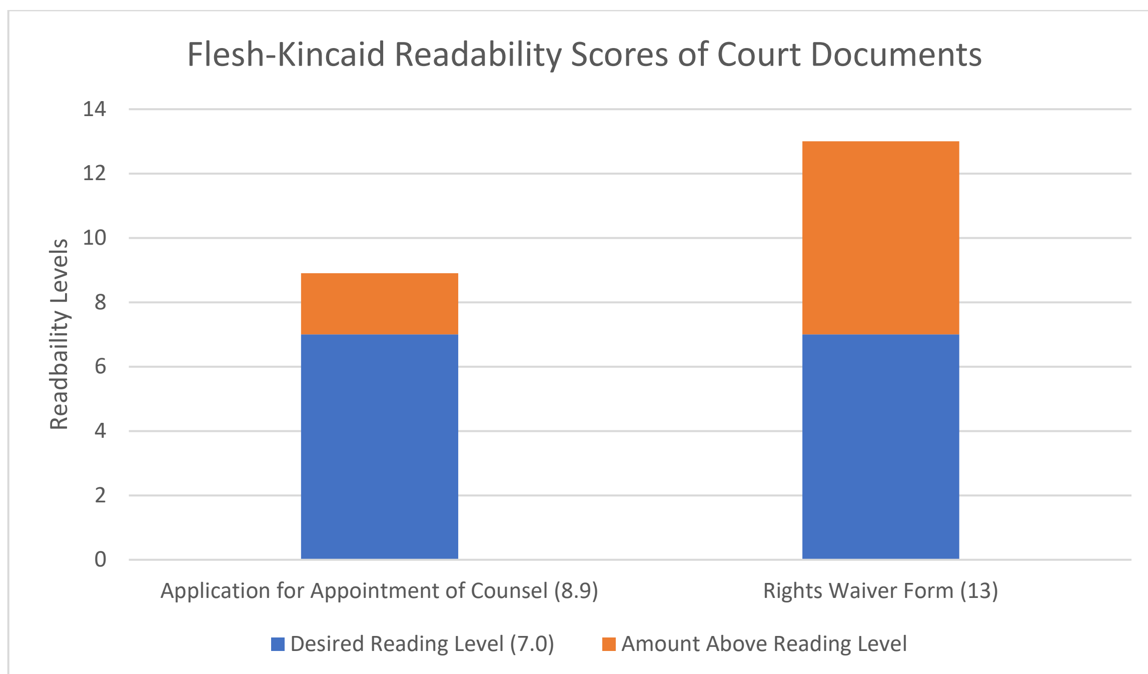
advising defendants of their rights (see Appendix B).[141]

First, we focus our study on the knowing waiver of rights by applying linguistic analysis to the two court forms to determine whether they are likely to be readable and comprehensible for the average defendant. If the forms are readily readable and understandable, we might assert that defendants who signed the Rights-Waiver Form knowingly waived their rights; if not, we would hope to see the judges' plea colloquy help bridge that gap, by undertaking a substantive, clear explanation of the rights being waived. Additionally, we would wish to see that the process created spaces for defendants to ask questions and express any confusion. The arraignment hearing is thus an intertextual and interdiscursive event that relies on both the spoken exchange, the written forms, and routinized practices analyzed below.

1. Flesch-Kincaid Scores

The Readability Scores are shown in Figure 2 below, which shows the normed readability for the average reader -- 7th grade (blue bars) -- compared to the readability scores of the application for counsel and the rights-waiver forms -- 9th grade, and 13th grade respectively (orange bars). The request for appointed counsel form had a Flesch-Kincaid readability score of 8.9 (nearly 9th grade). [142] The rights-waiver form had a Flesch-Kincaid readability score of 13th grade (13.0 or college). If the defendants could only read at or below the national literacy average of 6th- to 8th-grade, the request for counsel and rights-waiver forms would not have sufficiently contributed to their understanding or valid waivers of counsel and pleas.[143]

Figure 2. Flesch-Kincaid Readability Scores for Written Materials Provided to Defendants



2. Impediments to Comprehension in Legal Writing

The preliminary analysis of readability scores opens the door to more closely examine the linguistic complexities that impede comprehension. These impediments include poor organization, convoluted sentence structure, and ambiguous word choice. Below, we explore the specific words and sentences in each form that contribute to their complexity.

(a) Poor Organization. Stygall identified poor organization as a contributing factor to the incomprehensibility of legal writings.[144] In the rights-waiver form, the most important information on the form is the advisement that the defendant is waiving their rights. Despite its import, this important point is buried in the middle of a long, convoluted sentence which minimizes it.

An additional layer of organizational challenge lies in the formatting of the waiver process. First, the language indicating a person is giving up their rights is steeped in complex structure, enumerating three distinct clauses all of which a defendant is agreeing to by endorsing the waiver form:

> *By pleading Guilty or No Contest, I swear under oath before the Judge that [1] I have read and understand the rights and consequences of entering a plea of Guilty or No Contest contained on this Form and [2] I wish to give up the below listed rights and [3] have the Judge impose the sentence to which I agree to in open court:*

Following this complex statement, the form contains a list of twelve rights. Despite representing rights a person is waiving, each is written using positive language, adding to the complexity. Nowhere within the list is it reiterated that these are rights being given up. The organizational structure of the form visually separates the waived rights from the sentence that references “understanding” those waived rights with a large margin. A redacted versions of the rights-waiver form is reproduced in Figure 3.

Figure 3 County Court Rights-Waiver Form titled: Plea of Guilty or No Contest To a Criminal Charge In County Court

I have appeared on the below listed date in County Court, XXX County, XXX, have been advised by the Judge of the criminal charge(s) against me, and desire to give up the following rights and plea GUILTY or NO CONTEST to the charge(s) before the Judge. By pleading Guilty or No Contest, I swear under oath before the Judge that I have read and understand the rights and consequences of entering a plea of Guilty or No Contest contained on this form and I wish to give up the below listed rights **and have the Judge impose the sentence to which I agree to in open court:**

I UNDERSTAND THE FOLLOWING:

1. The nature of the charge(s);
2. The difference between the pleas of Guilty, No Contest, and Not Guilty, and the effect of each plea;
3. The right to trial before a Judge or a Judge and jury;
4. The right to an attorney and the right to have an attorney appointed if I cannot afford one, and to know if the Judge is considering a jail sentence on this charge;
5. The right to be presumed innocent until proven guilty beyond a reasonable doubt;
6. The right to confront and cross examine the witness and evidence at trial;
7. The right to call witnesses of my own at trial and have those witnesses subpoenaed by the Court;
8. The right to remain silent and not to have that fact considered by the Judge or jury at trial;
9. The right to testify at trial and have my testimony considered by the same standards as the other witnesses;
10. The right to have a court reporter make a complete record of the court proceedings;
11. The right to appeal any harmful error to a higher court; and
12. The maximum and minimum sentences listed on the reverse side of this document or as I have been advised. (A First Degree Misdemeanor is punishable by up to 1 year in jail, 1 year of probation, and $1,000 in fines, and a Second Degree Misdemeanor is punishable by up to 60 days in jail, 6 months of probation and $500 in fines.) (See reverse side for specific DUI Penalties.)

I ADDITIONALLY UNDERSTAND AND AGREE THAT:

13. If I am unrepresented by an attorney, I hearby waive my right to consult with an attorney or to have one appointed for the plea and sentencing in this case. I fully understand there are dangers and disadvantages of representing myself and that by not obtaining the assistance of counsel I might be accepting a plea to a charge that could otherwise have been successfully challenged and I recognize that a lawyer might have helped me obtain a better plea offer.
14. I am not under the influence of any alcohol or drugs at this time and fully understand the Judge's instruction, and what my rights are. I am entering my plea free of any promises or threats other than any plea offers made in open Court.
15. I have thirty (30) days to file a written appeal of the judgement and sentence imposed with the Clerk of the Court. I further understand that I have the right to have an attorney appointed for the appeal if I cannot afford one.
16. By entering this plea of Guilty or No Contest here today, I may be subjected to greater penalties if I am ever convicted again. If the current offense is a traffic offense, I may be declared a Habitual Traffic Offender.
17. If I am not a U.S. citizen, I understand that as a result of entering a plea of Guilty or No Contest here today, I will be subjected to deportation proceedings.
18. If I am on probation in another case, by entering a plea of Guilty or No Contest in the current case, the current plea will be used to prove a violation of probation against me.
19. By entering a plea of Guilty or No Contest prior to trial, I am giving up the opportunity to challenge the admissibility of any evidence against me and any opportunity to have the case dismissed.
20. If the charge to which I am pleading is a sexually violent or sexually motivated offense or if I have been previously convicted of such an offense, my plea may subject me to involuntary civil commitment as a sexually violent predator upon the completion of my sentence.

ATTORNEY: ______________________ DEFENDANT: ______________________
(Please Sign) (Please Sign Name)

BAR NUMBER: ____________________ ADDRESS: ______________________

After the twelve rights are listed, a new heading reads "I ADDITIONALLY UNDERSTAND AND AGREE THAT:" followed by eight more statements regarding rights waivers. However, these statements are numbered continuously from the 12

rights, starting at 13 and ending at 20. This makes it unclear why there is a new heading or what the difference is between the first half of the list and the second half.

Mirroring complexity in *Miranda* and the illogicality of the sequencing of rights identified by Roger Shuy,[145] the same formatting and ordering of rights in this waiver form challenges a defendant's cognitive load, potentially leading to confusion about what rights are being relinquished and complicating the reader's ability to understand what they are waiving.

When examining the Application for Counsel form, we again see poor organization in key areas. The form is reproduced in Figure 4.

First, defendants are expected to check one box denoting the frequency of payments for their income:

> *I have other income paid ( ) weekly ( ) every two weeks ( ) semi-monthly, ( ) monthly, ( ) yearly. (Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")*

Figure 4 Application for Criminal Indigent Status

IN THE CIRCUIT/COUNTY COURT OF THE CIRCUITJUDICIAL CIRCUIT
IN AND FOR COUNTY COUNTY, STATE

STATE OF STATE,

vs. **Case #:** ____________________

Defendant/Minor Child.

APPLICATION FOR CRIMINAL INDIGENT STATUS

______I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER
OR
______I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENT STATUS FOR COSTS.

Notice to Applicant: The provision of a public defender/court appointed lawyer and costs/due process services are not free. A judgment and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for who you are making this application. There is a $50.00 fee for each application filed. If the application fee is not paid to the Clerk within 7 days, it will be added to any costs that may be assessed against you at the conclusion of this case. If you are a parent/legal guardian making this application on behalf of a minor or tax dependent adult, the information contained in this application must include your income and assets.

1. I have ______dependents. *(Do not include children not living at home and do not include a working spouse or yourself.)*

2. I have a take home income of $______________ paid ( ) weekly ( ) every two weeks ( ) semi-monthly ( ) monthly ( ) yearly
*(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, **minus** deductions required by law and other court-ordered support payments.)*

3. I have other income paid ( ) weekly ( ) every two weeks ( ) semi-monthly ( ) monthly ( ) yearly. *(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")*

Social Security benefits .... Yes $__________ No
Unemployment compensation .... Yes $ No
Union Funds .... Yes $ No
Workers Compensation .... Yes $ No
Retirement/pensions .... Yes $ No
Trusts/gifts .... Yes $ No

Veterans' benefits .... Yes $ __________No
Child support or other regular support
from family members/spouse .... Yes $ __________No
Rental income .... Yes $ No
Dividends or interest .... Yes $ No
Other kinds of income not on the list .... Yes $ No

4. I have other assets: *(Circle "yes" and fill in the value of the property, otherwise circle "No"; use the back to provide additional information)*

Cash .... Yes $__________ No
Bank account(s) .... Yes $__________ No
Certificates of deposit or
money market accounts .... Yes $__________ No
*Equity in motor vehicles/boats/ .... Yes $__________ No
other tangible property
List the year/make/model & tag # ____________________
____

Savings .... Yes $ __________No
Stocks/bonds .... Yes $ No
*Equity in real estate *(excluding homestead)* .... Yes $ No

** Equity means value minus loans. Also list any expectancy in an interest in such property.*

List the Address of this property.
Address:____________________
City,State,Zip:____________________
County of Residence:____________________

5. I have total liabilities and debts in the amount of $__________

6. I receive: *(Circle "Yes" or "No")*
Temporary Assistance for Needy Families – Cash Assistance .... Yes No
Poverty-related Veterans' Benefits .... Yes No
Supplemental Security Income (SSI) .... Yes No

7. I have been released on bail in the amount of $_________ **Cash** ___ **Surety** ___ Posted by: Self ___ Family ___ Other _____

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under section of STATE STATUTE, commits a misdemeanor of the first degree, punishable as provided in the section STATE Statutes, or section of STATE Statues. **I attest that the information I have provided on this application is true and accurate.**

Signed on ____________________.

____
Signature of Applicant for Indigent Status
Print Full Legal Name ____________________
Phone Number: ____________________

Date of Birth   Last 4 digits of Driver's License or ID Number

____
____
Address, City, State, Zip Code

CLERK'S DETERMINATION

_____ Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent.

_____ The Public Defender is appointed to the case listed above until relieved by the Court.

Dated: ____________________ Clerk of the Circuit Court by ____________________

This form was completed with the assistance of:
____
Clerk/Deputy Clerk/Other authorized person

APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME. Sign here if you want the judge to review the clerk's decision of not indigent. ____________

Following this single sentence is a list of eleven possible income sources, including Social Security benefits, retirement/pensions, and child support. The organizational problem is that each of these income sources might pay out on different schedules. For example, one might get paid from a job every two weeks but receive child support monthly. However, the form does not allow a person to indicate they have different rates

for different sources. This confusion can lead to an array of errors, from under or over reporting income, to excluding some forms of income because they are not paid on the schedule indicated, to heightened risk for mathematical errors if a person attempts to convert payments from different timelines into a single schedule.

Second, defendants are given the option to seek review by a judge if the clerk does not find them eligible for counsel. The initial determination of a person's eligibility for appointment of counsel is made by the Clerk. Individuals who are found ineligible have a right to ask a judge to review that determination. To invoke this right the person completing the form must indicate that on the form. However, the part of the form that includes the information on the right to judicial review is presented in a way that camouflages its existence.

Specifically, the form has a section labeled "CLERK'S DETERMINATION." That section contains a gray shaded box that demarcates it as a space to be filled in by the Clerk. The section for defendants to assert they would like to appeal a denial is located ***below*** that gray box, making it unclear that a defendant has another section which applies to them on the form. The organization of the form makes it unclear that the defendant has the right to appeal the clerk's decision, further undermining the defendant's ability to get counsel appointed.

Similarly, on the rights-waiver form, the lines that the judge is to fill out are differentiated using smaller print, but do not have a separate heading or colored box to indicate that the defendant should not fill out that section.

(b) Convoluted sentence structure. The length of each sentence, use of impersonal constructions, overuse of passives, and reliance on negatives are all aspects of convoluted sentence structure that can overwhelm the reader's cognitive load and render the sentences incomprehensible.[146] In the application for appointment of counsel form, complex syntax occurs largely in the form of conditional if/then statements.

The examples below from the two forms employ longer sentences that start with a conditional "if" clause and end with the potential consequence but are missing the usual "then" clause marker.

Application for Counsel	*If the application fee is not paid to the Clerk within 7 days, it will be added to any costs that may be assessed against you at the conclusion of this case.*
	If you are a parent/legal guardian making this application on behalf of a minor or tax dependent adult, the information contained in this application must include your income and assets.
Rights-Waiver Form	*If I am unrepresented by an attorney, I hereby waive my right to consult with an attorney or to have one appointed for the plea and sentencing in this case.*

If I am not a U.S. citizen, I understand that as a result of entering a plea of Guilty or No Contest here today, I will be subjected to deportation proceedings.

Much like in the reading of Miranda rights, this format requires that the reader be able to follow multi-phrasal sentences in addition to the complex vocabulary the sentences themselves often contain.[147] As well, the application for counsel contains other convoluted sentences that are too long for the average reader to follow or too vague in their wording.

Another challenge lies in the use of complex structure. For example, on the application for counsel form, defendants are expected to check one of two boxes, one box indicates they are seeking the appointment of a public defender, while the other includes both those who have private counsel and those planning to proceed pro se, but who are asking the court to consider their limited finances in connection with costs the court may impose. One of the threshold complexities of the format is that the two boxes are separated by the term "or" but the second option itself also uses the same "or" phrasing while combining it with an "and" clause.

__ I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER

OR

__ I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENT STATUS FOR COSTS

This use of multiple but combined exclusive options makes it difficult to understand when "and seek determination of indigent status for costs" applies: Does it apply to those who have a private attorney? Does it apply to those who are self-represented? Does it apply to both cases or only the latter? Does checking either box qualify the defendant for the appointment of counsel, or does only one box serve that purpose?

In another example, a lengthy noun phrase followed by a negative construction conceals the true meaning of the sentence:

> *The provision of a public defender/court appointed lawyer and costs/due process services are not free.*

Here, the form is indicating that there is a $50 fee for hiring a public defender along with other fees, but the sentence is constructed in the negative ("not free") instead of in the positive ("there is a fee"). The noun phrases ("public defender/court appointed lawyer" and "costs/due process") lists multiple nouns combined into two pairs that make it unclear whether public defender and court appointed lawyer are the same or different options, and whether costs and due process services are the same or different options, all while slowing the reader's ability to process what is "not free."

(c) Ambiguous word choice and absent context. Another type of complexity arises for readers when common words are used with a specialized legal meaning or when vocabulary is technical and rarely used outside a legal context. In the application for appointment of counsel and rights-waiver forms, legal terminology, without plain language definitions, abounds. Without clear explanation, the meaning and potential consequences of agreeing to statements including this jargon cannot be assumed to be understood by a layperson. The following legal words and phrases are used in the two forms without any context clues or definitions to help the reader understand their legal meaning:

Application for Counsel	*Appointment (of counsel)* *Determination (of indigent status)* *Indigent status* *Lien* *Real or Personal Property* *Assessed against you* *Due process services*
Rights-Waiver Form	*Sentence (the judge imposes)* *Waive (my right)* *Open Court* *Harmful error* *Subpoena* *Swear under oath* *Guilty or No Contest* *Adjudication* *Incarceration* *Revocation* *Habitual traffic offender* *Willful and wanton reckless driving* *Commission of any felony* *Vehicle impound or immobilization* *Ignition interlock device* *BAL (the acronym for Blood Alcohol Level)*

From this list, the words “appointment,” “determination,” “real [property],” “sentence,” “waive,” “open [court],” “harmful error,” “swear,” “contest,” and “habitual” are common words that have different definitions in an everyday context from their specialized legal meaning, yet the forms do not clarify these technical definitions. The remaining words are rarely used in everyday language and have specific legal definitions that are not provided to the laypeople reading the document.

Even the very titles of the forms include ambiguous legal language. We refer to the forms as “Application for Counsel” and “Rights-Waiver Form” for the sake of clarity, but the actual titles of the forms are, respectively, “Application for Criminal Indigent Status”

and “Plea of Guilty or No Contest to a Criminal Charge in County Court.” The first title includes the legal term “indigent” without any definition or clarification of the meaning. The second title is long and unwieldy and completely obscures the central idea that the form is about a defendant waiving their rights.

In other places, the forms reference specific laws (by their statue number) but copies of those laws or explanations of what they say are not accessible to the defendants at the time they are filling out the form. For example, the application for counsel form states:

> *A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under section XX.XX, [State] Statutes, commits a misdemeanor of the first degree, punishable as provided in the section XXX.XXX, [State] Statutes, or section XXX.XXX, [State] Statues [sic].*

In addition to referencing laws that the person will have no knowledge of and no easy way to access, the inclusion of these statutes in the sentence itself hampers its readability. The statute references elongate the sentence, separates the subject of the sentence (person who knowingly provides false information) from the predicate (commits a misdemeanor), and provides no helpful contextual information to the reader. The same is true on the back of the rights-waiver form, which lists DUI penalties and references the state’s statutes.

The rights-waiver form has a college-level readability score. Consistent with prior research,[148] the readability scores for both court forms (rights-waiver and appointed-counsel) do not align with the likely target reading levels for the misdemeanor court population at or below 7th grade. The scores suggest that the average person would need more information and clarification to understand their rights and the importance of waiving them. The content of the forms is not easily accessible for up to 70% of the US population, which indicates that most individuals in misdemeanor court likely do not understand their rights.[149] Relying on these legal forms may fail to satisfy the knowing waiver of rights standards. Judges relied heavily on these forms to convey essential information. Additionally, execution of these forms often serves as a basis for concluding a person was advised of, understood, and knowingly waived their rights. The validity of relying heavily on these forms is suspect when most individuals appearing before the court and receiving these forms may struggle to fully understand their meaning. To examine if the courts are taking steps to augment, support, or even scrutinize defendants’ understanding, we analyzed the oral colloquies below.

B. Oral Plea Colloquy Analysis and Findings

We began by examining the broad structure of the 26 arraignment hearings, which are deconstructed to expose the typical “moves” (i.e., the key characteristics and rhetorical units that shape the broader function of the arraignment) and “steps” (i.e., the strategies used by speakers in controlling the specific function) and in parentheses, the less frequents steps, that result in unrepresented rights waivers shown in Table 3. Then, conversation analysis of a sub-sample of 8 hearings investigates and uncovers the key characteristics of legal discourse that encourages rights waivers.

1. Analysis of the Arraignment Hearing Genre

Overall, the plea and rights-waiver structure involving pro se defendants resembles Maynard's "bargaining unit" among lawyers negotiating plea deals.[150] Maynard observed that lawyer negotiations comprise two steps: *offer* and *acceptance*. In our study we observed the judges were the person offering a plea bargain, which the unrepresented defendants quickly accepted. We identified four broad and sequential moves during judge-defendant arraignment and plea interactions:

(1) *Judicial Introduction*
(2) *Defendant Plea*
(3) *Plea Colloquy*
(4) *Judicial Closing*

In Table 3, we show examples of the arraignment hearing structure with the optional or less frequent[151] procedural steps shown in parentheses.

Table 3. Moves and Steps with Example Phrasing

Moves and Steps	Example Phrasing
Move 1: Judicial Introduction Step 1a: The judge identifies the defendant. Step 1b: The judge describes the charges. Step 1c: (The judge explicitly asks if the defendant understands the charges.)	"Are you [name?]" "You have been charged with [charges]" "Do you understand the charges?"
Move 2: Plea Offer Step 2a: The judge asks the prosecutor if there is a plea offer. Step 2b: Plea offer is described to the defendant.	("Prosecutor, is there an offer?") "The State is offering…"
Move 3: Defendant Plea Step 3a: The judge requests the plea: *Guilty, Not Guilty, No Contest, or acceptance of plea offer.* Step 3b: Defendant enters a plea or accepts plea offer.	"How do you plead?" OR "You wanna take that offer or plea not guilty?"" "Guilty" *or* "No contest." OR "I'll take it"
Move 4: Plea Colloquy Step 4a: The judge confirms advisement of rights by relying on the rights-waiver form. Step 4b: The judge asks about defendant's mental state as part of rights waiver identifying potential impediments.	"Have you read this [rights-waiver] form? Is this your signature?" "Are you under the influence of medication or drugs?"
Move 5: Judicial Closing Step 5a: The judge accepts the defendant's plea.	"I will accept your plea."

Step 5b: The judge reiterates the plea and sentence. Step 5c: The judge offers additional information, including deadlines and payment plans. Step 5d: (The defendant thanks the judge.)	"You have pleaded guilty to the charge of petty theft." "Can you pay the court fines today?" "Thank you."

This analysis provides the scaffolding needed to delve more deeply into the typical or normal judge/unrepresented-defendant interaction during rights-waiver hearings. The frequency of actions taken in these hearings as shown in Table 4 allows us to more robustly depict and describe the overarching rhetorical functions of each move. These functions, ultimately, provide insight into what type of information and conversation is prioritized or deprioritized in these hearings.

Table 4. Frequency Table of Moves and Steps (n=26)

Move	**# of hearings that include this move**	**%**
Move 1: Judicial Introduction		
Step 1a: The judge identifies the defendant.	25	96
Step 1b: The judge describes the charges.	25	96
Step 1c: (The judge explicitly asks if the defendant understands the charges.)	5	19
Move 2: Plea Offer		
Step 2a: The judge asks the prosecutor if there is a plea offer and[152]	21	81
Step 2b: Plea offer is described to defendant.	24	92
Move 3: Defendant Plea		
Step 3a: The judge requests the plea: *Guilty, Not Guilty, No Contest,* or acceptance the offer.	26	100
Step 3b: Defendant enters a plea (and/or accepts plea offer).	26	100
Move 4: Plea Colloquy		
Step 4a: The judge confirms advisement of rights by relying on the rights-waiver form.	26	100

Step 4b: The judge asks about defendant's mental state as part of rights waiver identifying potential impediments.	26	100
Move 5: Judicial Closing		
Step 5a: The judge accepts the defendant's plea.	26	100
Step 5b: The judge reiterates the plea and sentence.	26	100
Step 5c: The judge offers additional information, including deadlines and payment plans.	22	85
Step 5d: (The defendant thanks the judge.)	13	50

Next, we describe and include examples of each move and the steps necessary for misdemeanor waiver of rights and plea hearings among unrepresented defendants.

Move 1. *Judicial Introduction*. The initial move of the arraignment and rights-waiver hearing is the introduction, composed of two routine steps: (a) Confirming the defendants' identity and (b) Advising the defendants of their charges. The third less frequent, optional step (c) involves the judge expressly asking the defendant if they understand the charges, which occurred in just five of the 26 reviewed transcripts.

Generally, the *judicial introduction* served the rhetorical function of confirming standard information,[153] including defendants' names, and their charges.

Judge (J): Alright. Are you Sabrina?
Sabrina (S): Yes.
J: Alright, Ms. Sabrina, you've been charged with permitting an unauthorized person to drive. Do you understand the accusation?
S: Yes sir. (.) Yes.

The judge's exchange with Sabrina, who appeared in the large county, provides the typical introductory move and its steps, establishing her identity, describing the charges and asking if she understands it. Sabrina's affirmative responses to the judge's closed-ended questioning, *do you understand the accusation?,* are similarly reflected in all the other examined defendant-judge exchanges. The use of closed questioning, or questions that have limited appropriate responses (like *yes* or no) create an environment in which the defendant has very limited opportunity to express confusion or ask questions themselves.[154] This perfunctory exchange functioned as a legal checkbox to ensure that the person standing before the judge verified the information of the case rather than a true measure of defendant comprehension.

Move 2: Plea Offer The second move involves two steps: (a) The judge asks the prosecutor if there is a plea offer and (b) The plea offer is described to the defendant.

J: Alright. Uh, do you know how you wish to plead to the charge? State?
Prosecutor: Uh, State's offer is withhold adjudication, court costs, costs of prosecution, one hundred dollar.

In the brief exchange between the judge and prosecutor during Sabrina's hearing, the judge interrupts himself from asking for Sabrina's plea to request information regarding the plea deal from the prosecutor. The judge then provides Sabrina with more detailed information regarding fines described in the State's offer. Though Sabrina does insert *Plead guilty* during the exchange, the judge does not officially ask for her plea and whether she'd like to accept the plea offer until Move 3.[155]

Move 3. *Defendant Plea*. The third move involves two steps, (a) when the judge asks the defendants how they want to plead to their charges and (b) the defendant's response. Most commonly, the judge explicitly asks, *How would you like to plea?* or a similar question. The question anticipates one of three options: Guilty, Not Guilty, or No Contest. Pleading not guilty resulted in defendants having to return for court on another day.[156] Due to the participant selection protocol in the present study, no participants entered not-guilty pleas or requested counsel. In every case, the first two moves and steps were completed before this third move when the defendant enters a plea. The excerpt from Devon's hearing below provides a typical exchange:

J4: Alright. How do you wish to plea to the charge, sir?
D: Guilty. Guilty.

In nearly all instances, the defendant was aware of the plea offer (from Move 2b)[157] before the judge asked the defendant for their intention to plea in Move 3a. The excerpt below from Natalie's hearing provides an example:

J9: Ma'am, if you would like to resolve this case today. Um, the offer is an adjudication, credit time served for two days, I would reserve on restitution, joint and several with the co-defendant. So again, it's a time served offer, but it will be a conviction. Would you like to accept that offer?
N: Yes, ma'am.

In some cases, the judge conflates the plea offer with entering a plea of Guilty or No Contest. The excerpt from Marcus's hearing provides an example:

J3: So if you wanna resolve your case today, the offer is a withhold and court costs. Court costs are 233 dollars. It's the minimum offer. So, you wanna accept that offer or plea not guilty. Do you have any questions?

The typical response was for defendants to say *guilty* or *no contest*. The function of this move was to encourage the forfeiture of rights, which served the court's focus on efficiently moving cases along and saving resources by imposing court costs, not assigning public defenders, and resolving cases without having to schedule future court

dates or trials. Only three participants (Roger, Marcus, and Butter) gave atypical responses to the judges' plea question: They asked questions before resolving their cases with guilty or no contest pleas.

Move 4. *Plea Colloquy*. The fourth move concerns *the colloquy,* occurring immediately after the defendants enter their pleas. This move *is intended to* confirm defendants' pleas are knowingly entered. The judges engaged in two approaches for the colloquy. All judges asked the defendant if they read and understood their rights, however, as discussed below, there was no follow up. A handful of judges asked the defendants further questions about the specific rights they forfeited by pleading guilty or no contest, including, most broadly, the right to a trial. For the second step (b), the judge documented the defendant's mental state ("are you under the influence of medications") for the record during the rights forfeiture colloquy. As discussed more below, judges did not follow-up beyond yes/no questions to more explicitly confirm understanding.

Much like the preceding moves, the plea colloquy emphasized closed-ended questions calling for yes or no responses. The rights were also phrased in the negative, i.e., by asking if they understood the rights that they were giving up. For example, "Do you understand that by pleading, you are giving up your right to a trial?" *Every* defendant in our sample responded either "yes" that they understood the rights that they forfeited and "no" they were not under the influence of drugs and medication, nor were they coerced into entering their pleas. In the excerpt below, the judge asks Sabrina about the form and then reviews the rights that she was forfeiting by entering her plea.

J: =Is this your signature?
S: Yes.
J: Do you understand the rights you give up when you sign this?
S: Yes.
J: Are you doing this voluntarily?
S: Yes.
J: Has anybody promised you anything or threatened you? Forced you, tricked you, or made you do this against your will?
S: No.
J: Are you under the influence of any drugs, alcohol, or medication now?
S: No.
J: Do you suffer from any mental illness?
S: No.
J: Do you understand if you are not an American citizen, you subject yourself to the rules and regulations of the Immigration and Naturalization Service of the United States, and you could be facing deportation as a result of this case?
S: Yes.

The ostensible rhetorical function of these questions was intended to confirm that defendants knowingly waived their constitutional rights. As explored in our conversation analysis below, however, the scripted colloquy placed "listener comprehension" as

secondary.[158]

Move 5*. Judicial Closing.* In the final move, the typical hearing ends in two steps: The judge (a) *formally accepts* the defendants' plea and (b) *imposes the sentence*. Many judges include a final step by (c) offering additional information on payment of fine deadlines, the availability of payment plans, or directing the defendant to have a seat to wait for paperwork, and occasionally, the defendant engages in a concluding step by (d) expressing gratitude to the judge. An example of this can be seen in this excerpt from Natalie's case.

> *J9: All right. I'll accept your plea in this case. I will adjudicate you guilty. We'll get some fingerprints from you, give you credit for two days time served, I'll reserve on restitution joint and several with the co-defendant for a period of 30 days. And, um, you owe court costs, court costs are 279 dollars. I'm also ordering no contact, no return with the victims of this case, and I'll give you until um September 17th of 2022 to pay your court cost. Is that enough time?*
> *N: Yes.*
> *J9: Okay. That's four months.*
> *N: That's fine.[Yes.]*
> *J9: [All right]. Thank you.*
> *N: Thank you.*

The rhetorical function of this final move in the arraignment hearing is to ensure that defendants understand their plea decision and its consequences. Follow up with a few of the individuals from this project made clear that they did not fully understand the consequences of their plea decision or their case outcomes, and they struggle to find pertinent explanatory information after leaving court.[159]

Structural Issues with the Arraignment Genre. The moves identified in the Arraignment Genre begin with the judge in power, deciding how the conversation will begin and controlling defendant responses by framing questions in a manner calling for one- or two-word responses by closed-ended questioning, particularly "yes" and "no" responses. Importantly in most cases the judges requested, and the defendants entered or accepted plea offers *before* the court had undertaken any effort to determine if the person knew or understood their rights. The judges rely on the written forms to present the rights information to defendants, and the oral colloquies mimic some of the content included in the rights-waiver form. With the judges' heavy reliance on the form, it would seem to be paramount that the form itself be very understandable and accessible, as evidenced by readability scores at or below the general population's 6th to 8th grade level or Rogers et al.'s "basic criterion" of 7th grade or lower.[160] However, that is not the case. As noted earlier, both the readability and grade level scores were much higher. [161] Based on the brevity of the oral plea colloquy and the very challenging language and structure of the form, it is unlikely that the average person appearing in these courtrooms fully comprehends their rights or the consequences of waiving those rights.[162] Next, the investigation is extended and deepened by employing conversation analysis to a sub-sample of 8 randomly selected arraignment transcripts to analyze *how*

the judge-defendant interactions were *scripted* to discourage questions, impede comprehension, and encourage counsel waivers and guilty pleas.

2. Conversation Analysis

In other research,[163] rights comprehension has been measured through comprehension tests administered to defendants after reading or listening to their rights. Conversation analysis is a different lens through which dialogue can be evaluated as encouraging or discouraging questions, granting or deterring power to initiate topics of conversation, and creating or removing opportunities for turn-taking. Although conversation analysis cannot definitively show that individuals understood or failed to understand their rights and the consequences of waiving those rights, it provides context for prior psychological research that shows individuals, including criminal defendants, have exhibited generally poor comprehension of their rights after being informed of their rights or waiving them to enter pleas.

Our analysis sheds light on structural and conversational conditions that may increase automated responses and difficulties in understanding rights and the consequences of waiving those rights. Employing Jeffersonian transcription conventions, the judge-defendant interactions are transcribed to reveal the pacing of spoken words, pauses, and overlapping conversation, silence, and even paralinguistic behaviors. **Table 5** details the transcription conventions employed for these exchanges.

Table 5: Transcription Conventions

Symbols	Description
J:/C:/P:/S:	Speaker Labels (J = Judge; C = Clerk; P = Prosecutor; Other Letters = Defendant Name, e.g., S = Sabrina)
[ ]	Encloses talk produced in overlap (i.e. when more than one speaker is speaking)
( )	Encloses unclear talk
(0.0)	Silence in seconds
=	Links talk produced with no intervening pause or silence
(( ))	Encloses description of nonverbal communication
-	Indicates incomplete words and stuttered syllables

Our findings expand upon prior scholarly research to show that the structures of the interaction rituals may be impeding true comprehension and understanding. Conversation analysis uncovers how the moves and steps were mechanized during the interactions and offers insight into how the hierarchical discourse encouraged guilty and no-contest pleas. This analysis allows for detecting the relevance of interaction sequencing, organization of turn-taking, and lexical choices that may influence the judge-defendant exchanges.

This close examination led to *three* key thematic findings. First, the judges controlled sequencing and turn-taking through closed-ended and confirmation-seeking questions, which limited response options and encouraged quick pleas and rights waivers. Second, the judges stifled interruptions to control the topics of discussion, discouraging questions, clarifications, and comprehension. Finally, the judges relied heavily on inaccessible documents to keep the hearing short, thus casting doubt on whether the waivers were knowingly made. Each of these themes is discussed in more depth below.

Theme 1: Closed-Ended, Confirmation-Seeking Questions Control Sequencing and Turn-taking and Limit Responses. Closed-ended questions that require a one-word response, and in particular confirmation-seeking questions that require a yes/no response, do not adequately determine that defendants comprehend or understand their charges or rights. The transcripts revealed answers that were automated, scripted, and performative.[164] The rhetorical function of the judicial introduction and plea offer was to confirm the defendant's identity and charges, and affirm how the defendant pleaded; however, we assert that to ensure that defendants fully understand their charges and the consequences of pleading guilty, more opportunity should be afforded for defendants to ask questions to clarify their charges and plea offers.

To begin the hearing, judges opened with confirmation of the defendants' name and charges (as shown in the genre analysis above). This resulted in the judge, from the outset, controlling the topic of discussion and turn-taking. By using close-ended questions, the judge also inherently limited the appropriate responses defendants could give. The excerpt between the judge and Sabrina shows the judge asking two closed-ended questions—one confirming of her name and the other confirming the charges. She responds with essentially one-word, respectful answers to the judge's questions.

> *J4: Alright. Are you Sabrina?*
> *S: Yes.*
> *J4: Alright, Ms. Sabrina, you've been charged with permitting an unauthorized person to drive. Do you understand the accusation?*
> *S: Yes sir. (.) Yes.*

Responding *Yes, sir. (.) Yes.* does not sufficiently establish that Sabrina, or any defendant, comprehended her charges, including the specific elements of the crime or

available defenses[165] because it is not an open-ended question that invites expressions of confusion, questions, or discussion. Furthermore, Sabrina's pause (indicated by (.) in the transcript) might indicate a moment of confusion in which she internally grappled with whether or not to interrupt the judicial control to ask a question. Instead, she gave the expected "yes." Closed-ended questions do not invite questions or elaboration. Rather, they maintain topic control and limit responses, directing the scripted exchange in favor of quick proceedings.

Unlike Sabrina's hearing, in David's hearing, the judge did not ask if he understood his charges. Instead, the judge immediately asked David, *How do you wish to plea to that?* The closed-ended question and list of appropriate responses left no room for any other response or clarifying questions.

> *J5:Alright, Mr. David, you're here today because the State of X alleges that on or about the 27th of March of 2022, you did in X County, X, ((cough)) in violation of [State] statute, xxx.xxx endeavor to obtain or use or did obtain or use the property of Walmart, and you did so with the intent to temporarily or permanently deprive them of the right to property, the benefit from the property, or to appropriate that property to your use. It was a a simple petty theft. How do you wish to plea to that? Guilty, not guilty or no contest.*
> *D: Guilty, Your Honor.*

In this exchange, the judge uses a long, unwieldy sentence to describe the charges, but simplifies at the end by saying, *It was a simple petty theft.* It is possible that this rewording was intended to improve David's comprehension; however, the absence of an explicit confirmation of comprehension limits this action to unproven judicial assumption.

In an even more condensed form, the judge at Steven's hearing did not read out the charges or ask for confirmation of comprehension. To start the hearing, Steven completed the rights-waiver form and handed it to the judge, signaling that he intended to plead guilty or no contest.

> *J1: Steven 22-XX. (10) All right. Good morning, sir.*
> *S: Good morning, your Honor.*
> *J1: Alright. Do you wish to enter into a plea for no valid driver's license, is that correct?*

The rights-waiver form operated as shorthand, with the judge not detailing the charge, but combining the notification of charges with the request to plead. The closed-ended, confirmation-seeking question *Is that correct?* invited the response *Yes [I wish to enter into a plea]* and limited the response, *No, I wish to plead not guilty.* Defendants were required to fill out the plea form before being called up to the podium to speak to the judge,[166] which begs the question whether Steven did want to enter a plea, or whether he was simply following the directions he was given. The judge did not provide the opportunity for questions or clarification about the meaning or significance of the plea

form. The judge controlled the sequencing of the arraignment hearing by directing the defendant toward the court's desired answer.

The same was true in the plea colloquy, when the judge confirmed knowing rights waivers through a series of closed-ended, confirmation-seeking questions. The plea colloquy began by asking whether the defendant understood that the rights they were giving up, asking whether any outside source influenced their decision (e.g., coercion, drugs, alcohol, medications, etc.), and asking whether the defendant understood a limited set of consequences of waiving their rights (e.g., deportation for non-citizens). The plea colloquy will be explored in more detail below (under Theme 3), but of significance here is the continued use of closed-ended, confirmation-seeking questions throughout the arraignment hearing. This question-answer format limited defendant questions, comprehension, and power, maintaining the control of the judge over the sequencing and turn-taking of the hearing.

Theme 2: Stifling Interruptions to Control the Topics of Discussion. The judges' exertion of control was evident throughout the exchanges, manifesting in suppressing questions even when defendants expressed confusion. This was evident in the few examples when defendants responded with something other than single word replies, asked a question, or needed clarification. The judges met these off-script interruptions by quickly returning to the expected exchange dialogue, sending the message to the defendant (and other defendants in the courtroom) that off-script comments were inappropriate or irrelevant.

The scripted exchanges were so ingrained that there are few examples of defendants responding to the judges' questions with anything other than single-word replies. The few instances of off-script questions show that judges discouraged further questions or requests for elaboration or clarification. The colloquies with David, Marcus, and Butter offer examples of how the judges dealt with off-script questions.

In the excerpt below, the judge was advising David on the deportation consequences for entering a plea if he was not a citizen.[167]

> *J5: Alright. You understand this is punishable, by up to 60 days in jail, up to a 500 dollar fine and that the entry of your plea could be used against you in any deportation proceeding if you're not a citizen (.) you understand? That's the maximum. It's not gonna happen. Don't wor-*
> *D: Right, no but-*
> *J5: [Okay.]*
> *D: [I-I'm] an American citizen, [so-]*
> *J5: [Okay.] I figured you are. I got- but the the law says I gotta tell everybody just in case.*
> *D: Right.*
> *J5: Alright, State, any, any record?*

Here, David interjected to let the judge know that he was an American citizen. David's response interrupted the typical colloquy and the predictable flow, structure, and standardization of the exchange. The judge's overlapping response to David explaining that he understood but was legally obligated to notify everyone, even when the information was not applicable. We note that, in this response, the judge interrupted David before he could finish his sentence and short-circuited his clarifying comment. Without pausing or further elaborating, the judge returned to the script. The judge's response, "*I figured you are. I got- but the the law says I gotta tell everybody just in case,"* prevented David from asking questions outside the scripted path, emphasizing that even if the law did not apply to him, he should still respond that he understood the caution. The formulaic nature of the proceedings sent the message that even pertinent interruptions were unwelcome, because the law and the colloquy were not specific to the defendant's case but were automated and bureaucratic.

Another off-script exchange occurred when Marcus asked the judge to clarify the difference between pleading guilty and no contest.[168] Offering misdemeanor defendants the chance to plead without admitting guilt may be attractive and encourages them to quickly resolve their cases. In the example below, the judge's characterization of *"no contest"* oversimplifies the choice and its potential consequences.

> *J3: Pleading "guilty" or "no contest" today?*
> *M: What's the difference?*
> *J3: "Guilty" means I did it and "No contest" means "I just wanna resolve it."*
> *M: No contest. Thank you, your Honor.*

In responding to Marcus, the judge emphasized that pleading no contest was the path of least resistance – resolving his case without saying *I did it.* Marcus quickly pleaded no contest in response, without asking for the clarification that might have led to a different outcome. This confusion presented an opportunity for Marcus to ask for a lawyer and discuss the options with a public defender, but the oversimplification of the issue led him to plead no contest.

Similarly, Butter requested clarification on the meaning of "withhold of adjudication," to which the judge responded,

> *J7: You're not formally-y if someone asked you, have you ever been convicted of a crime, the answer would be no. 'cause you're not being adjudicated –*
> *B: -- I'd like to take that offer today.*

The judge's simplistic explanation seems to encourage Butter to immediately accept the offer, before the judge could finish the sentence. Although the judge seemed to take the time to explain the differences in adjudication and answering Butter's questions, the judge's explanation that Butter, if asked, could say he was not convicted failed to fully convey the potential and collateral consequences of pleading to withheld or non-adjudication sentences, and by downplaying their negative effects, the judge motivates

Butter to plead.

The differences, or lack thereof, between being adjudicated and not, are actually more complicated. First, if a job application or background check asks if someone has been arrested or if they have appeared in court as a criminal defendant, Butter, like other defendants, would have to respond yes as the arrest remains.[169] Also, withheld and other non-adjudication sentences are treated differently for federal sentencing and immigration purposes. Since the judge must find sufficient evidence of guilt before accepting a plea, the federal government treats withheld adjudication as convictions for purposes of federal sentencing and immigration.[170] Finally, some collateral consequences still follow non-adjudication, including the potential of being denied public housing and college admission.[171] The short, incomplete explanation of the differences between adjudication and withheld adjudication encouraged Butter to quickly plead, but it left him without critical information about the potential for collateral consequences of that decision.

In David, Butter, and Marcus's hearings, the judges held the power in their institutional role as authority. By controlling the structure of the proceedings, discouraging questions, downplaying collateral consequences, and limiting the information communicated to defendants, they subtly encouraged defendants to plead and resolve their cases without complete information on the consequences. Both judges and defendants operated within the stilted, formal and highly structured court setting to perform in ways that aligned with expected behaviors. A performance that deviated from the expected roles and responses was rare, and when there was a deviation, the judge guided the outcome by controlling discourse and dominating the proceedings through topic control, closed-ended questioning, and narrowing the range of information all of which limited the appropriate range of defendant responses.

One behavioral interruption to the proceedings was defendant Sabrina's gum chewing, which prompted the judge to veer from the typical topic of discussion.

> *J4: Alright, so it's a one hundred dollar fine plus three hundred and one dollars in costs. (1) Do you wanna accept that?=*
> *S: =Yes.*
> *J4: Alright. Is that gum good?*
> *S: ((Chortle)) Yes.*
> *J4: Yeah. You gonna share a piece with me or what? (.) Alright, thank you. ((Clears throat)) Alright. Were you sworn to tell the truth earlier?*
> *S: Yes.=*

In asking, *Is that gum good?* and *You gonna share a piece with me or what?,* the judge engages an unscripted topic shift beyond the charge at hand. Although the question differs from the typical request by the judge on how the defendant wanted to plea, the judge still maintained control of the dialogue by using a closed-ended question and commanding a one-word response. And although the tone seems lighthearted, the question draws attention to Sabrina's behavior as outside the norms of the courtroom

and functions as a light chastisement that reminds other defendants to get rid of gum before approaching the judge. Topic control is further highlighted by Sabrina's immediate acceptance of the judge's abrupt shift back to discussions relevant to the case.

The judges' handling of interruptions, whether verbal or nonverbal, sent the message to the defendant in question and the defendants waiting for their hearing that the arraignment hearing would proceed according to the script, with as few delays as possible. The emphasis was clearly on bureaucratic processes, including plea colloquies that were not always relevant to the defendant, insufficient answers to pertinent questions, and lighthearted but firm corrections to inappropriate behaviors.

Theme 3: Over-Reliance on Inaccessible Forms Keep the Hearing Short, **Casting Doubt on the Intelligent Waiver of Rights.** After the defendants informed the judges that they wanted to enter a plea, the judges engaged in a shorthand and standardized review of the rights forfeited by the defendants. They relied on the rights-waiver form and, in some cases, summarized the rights-waiver questions. This overreliance on the written form was being used by the court to establish a formal record of knowing waiver of rights, but it likely did not determine actual comprehension.

The psychological and scholarly literature shows that a high number of individuals do not understand their rights,[172] and even after entering guilty pleas, do not comprehend the consequences of their pleas. We assert that judges' shorthand summaries and mechanical plea colloquies, with corresponding linguistic weaknesses and flaws, contribute to this lack of understanding. The colloquy is centered on rights-waiver forms that, as has been previously detailed, is complex in its structure and language.

In five of the eight arraignment transcripts examined, the judge relied exclusively on the form for the plea colloquy, simply confirming that the defendant read and signed the form (see Table 6).

Table 6. Judge's Reliance on Rights-Waiver Form

DEFENDANT	JUDGE'S RELIANCE ON RIGHTS-WAIVER FORM
David	"You understood the rights on this form before you signed it. Do you have any questions."
Sabrina	"Is this your signature? Do you understand the rights you give up when you sign this?"
Marcus	"Everybody should have been given a plea form. Make sure that you've read that form because if you resolve your case, and make sure you sign it. I'm gonna say, is this your signature?...Did you read it?...Do you have any questions? No? Yes or no?"
Matt	"I'm holding a plea form…as well as your waiver of right to counsel. Recognize both of these forms?...Any questions?"

Devon	“Were you sworn to tell the truth earlier?...Is this your signature?....Do you understand the rights you give up when you sign this?”

In the remaining three hearings (Steven, Natalie, and Butter), the judges supplemented the rights-waiver form with rights-comprehension questions. In Steven’s hearing, the judge added a reference to specific rights before asking if Steven understood. *Paragraph three on the plea form sets forth some constitutional rights such as the right to a speedy trial and the right to a jury trial. By accepting the State's offer do you understand that you're waiving those rights?* The judge in Natalie’s hearing supplemented the written form by asking, *Do you understand that we will not have a trial in this case based on your plea?* The judge also noted that Natalie’s charge, petty theft, was an enhanceable offense, a fact which was not on the written form. The judge explained that enhanceable meant that if Natalie committed *a future act of theft*, she would be *charged with a felony despite the value of the items*. She asked Natalie: *Do you understand that?* to which Natalie responded, *Yes ma’am*.

Butter’s arraignment hearing was atypical compared to the others in the genre: In addition to being significantly longer than other hearings in this sample, and the State had not yet determined if charges would be filed against Butter.[173] Uniquely, Butter initiated the plea by asking to resolve his case; it was his first charge, and he could pay a fine. The hearing extended beyond the typical few minutes for several reasons, including more questions asked by the defendant and pauses in the proceeding while the prosecutor developed a plea offer (which took about one minute and 30 seconds).

Another significant feature of Butter’s anomalous case is that the judge went into much more detail about the rights Butter would be waiving, likely because the judge was concerned about the implications of Butter entering a plea when the prosecutor had not formally charged him. First, the judge checked that Butter had read the plea form, and then he recited a list of some of the rights that Butter would waive by accepting the plea deal.

J: Did you have the opportunity to read the plea form?
B: Yes, sir.
J: Did you have any questions with regard to the plea form that you don't understand?
B: No, sir.
J: Do you understand that the plea form contains certain rights that you're giving up by entry of a plea today?
B: Yes, sir.
J: Do you understand that among those rights are the right to have a jury trial in this matter, to have the state present its witnesses and its evidence and prove this case beyond a reasonable doubt?
B: Yes, sir.

J: At that trial, you have the right to have an attorney represent you. If you cannot afford an attorney, the st- the court would appoint a public defender to represent you. You have the right to testify at that trial. You have the right, right to bring witnesses to testify for you, and you have the right to remain silent in that trial. Do you understand that, uh, entry of this plea could subject you to deportation in the future if you're not a United States citizen?
B: Yes, sir.

This list was longer than that of the other plea colloquies but was by no means comprehensive. Furthermore, the judge asked for questions before reciting the rights that would be waived but did not ask for questions at the end of the plea colloquy.

Though the judges in these three plea colloquies attempted to add clarity to the complex information in the rights-waiver form, the lexical choices oversimplified the rights being waived and disguised the consequences of accepting the plea bargain. Moreover, the judges repeated some of the specific rights on the form, using the same closed-ended questions and format, thus making the exchange less different from the generalized, “Do you understand” questions found in the previous examples. The scripted post-plea colloquy left little room for disparities and, although purportedly affirming an understanding of forfeited rights, the legal forms and the plea colloquy provided little evidence that misdemeanor defendants fully understood their rights or the potential consequences of entering pleas without counsel.

IV. LIMITATIONS

As with all studies, the present study has its limitations. First, conversation analyses cannot definitively show that individuals understood or failed to understand their rights and the consequences of waiving those rights, nevertheless, the findings provide context and support for prior psychological research that shows individuals, including defendants in criminal courts, have exhibited generally poor comprehension of their rights after being informed of their rights or waiving them to enter pleas. Second, our study was conducted in two Southeastern US counties that employed public defenders and imposed largely fine-only punishments. As such, the findings may not be generalizable to other locations or court proceedings. The findings, however, are likely to be transferable to other contexts, settings, or respondents.[174] Finally, our sampling methods focused on those defendants who waived their rights by pleading guilty or no contest, which limited our ability to make claims about cause-and-effect relationships between the court procedures, legal practices, and the judges’ control of discourse and the defendants’ decisions to waive their rights. Future research should include a mix of defendants who pleaded not guilty along with those who waived their rights, thus allowing for comparing how the structure of arraignment hearings and the nuances of judicial discourse might affect defendants’ decisions.

V. CONCLUSION AND RECOMMENDATIONS

The present study uncovered weaknesses in the language, style, and structure of rights and counsel waiver forms and oral colloquies in misdemeanor hearings involving unrepresented defendants. We contend that these linguistic features likely contribute to uninformed waiver decisions. Complex legal documents and interaction rituals between judges and unrepresented defendants resulted in routinized waivers of rights that lacked markers for insuring defendants comprehended their rights, their options, and the short and long-term consequences of resolving their cases without counsel. Rather, the highly specialized language and procedures used discouraged questions, minimized the seriousness of the case, and encouraged quick resolutions.

Linguistic analysis uncovered three significant findings about legal discourse that may impede the comprehension of rights. First, analysis of the application for counsel and rights-waiver forms revealed that they were highly complex, poorly constructed, and written at a grade level that exceeded the average reader. Second, genre analysis unveiled that the hierarchical and ritualized structure of the interaction discouraged defendants from raising questions or asking for clarification. Third, and consistent with the scholarly findings in other legal settings, [175] conversation analysis showed how judicial control of turn-taking and interruptions, scripted language, and closed-ended questioning failed to improve upon the written waiver forms and understandings of rights *before* defendants entered pleas of guilty or no contest.

Based on the findings, we recommend several changes that will improve how rights are communicated to unrepresented defendants and, we anticipate, can substantially improve their understanding of the charges, their rights, and the consequences of entering an uncounseled plea. Interactions with unrepresented misdemeanor defendant would be improved by:

1. **Reformatting Court Forms**: by making some changes to the format, design, and language of court forms, they will be more understandable, and their content will be more accessible to most people coming before the court. [176] Examples of steps that can be employed include:
    - Using plain language
    - Removing complex grammar and vocabulary
    - Clarifying the nature of rights and the significance of forfeiture
    - Creating more white space
    - Reorganizing the sequencing and highlighting constitutional rights
2. **Providing Access to Counsel**: Building on the small county practice of having public defenders available to assist all defendants at arraignment. Providing these services without a fee, will help increase the opportunity for defendants to understand their charges, their options on how to proceed, and the potential short- and long-term consequences of the proposed plea agreement. Attorneys can provide individualized legal guidance and, provide defendants the opportunity to ask questions and identify any difficulties individuals may be having understanding the court's forms
3. **Restructure Court Processes:** Making some changes to the sequence and timing of events can provide individuals with additional time to consider their

options, to ask questions, and seek assistance and input from their support networks. Most critical in this regard would be providing individuals with their plea offers well before they are standing at the podium.

4. **Revising Plea Colloquies**: Rescripting and restyling the questions asked by judges away from closed-ended questioning that call for single-word responses (e.g., Do you understand?) toward more open-ended questions that encourage questions by unrepresented defendants ("What questions do you have about your plea offer?") to reduce misunderstandings and alleviate pressure to quickly resolve their cases.[177]

The legal forms and scripted exchanges discouraged off-script comments, questions, or requests for clarification. The scripted exchanges, single-word responses, and succinct responses to defendants' questions preemptively protected the plea from being reversed on appeal, but did not ensure that defendants understood the complexities of their rights, waivers, legal decisions and the short- and long-term consequences of their quick decisions. The power and knowledge disparities between the roles of judge and unrepresented defendant illuminates and spotlights the inadequacies of plea and counsel-waivers, which rely on a highly complex and specialized language and documents within cattle-call proceedings that unduly focus on expediency.

Appendix A Description of Misdemeanor Case Processing

In both jurisdictions, cases begin when defendants are arrested or issued a notice to appear or summons. Defendants issued a notice or summons are given a date to appear in court. Arrested defendants may have a bond set, allowing them (if they have the resources to do so) to bond out of jail before their first appearance. Bonds are generally based on a schedule that sets the amount based on the crime(s) charged. If the person is unable to post bond or does not have a bond set, they will have a court appearance within 24 to 48 hours after their arrest. At this hearing custodial defendants appear before a judge, who reviews the initial charges by the police, determines eligibility for counsel (if the individual asks for court appointed counsel) and addresses possible pre-trial release. In some cases, incarcerated defendants may enter pleas at first appearance. If not (and most do not), the prosecutor's office reviews the charges and decides whether to file formal charges. When prosecutors decide to file charges, the judge, at the arraignment hearing, is tasked with advising defendants of those charges. The arraignment hearing is typically scheduled for three to four weeks after an arrest, notice, or citation. For those given a notice or citation or who bonded out before their first appearance, their first court appearance occurs at their arraignment hearing, where the judge advises the person of their charges, determines how defendants want to proceed (entering a plea or not) and addresses if unrepresented, the desire and eligibility for appointed counsel or time to hire counsel. Defendants may employ an attorney, request court-appointed counsel (if they qualify), or represent themselves.

Appendix B Video Advisement in Small County Court

> In Court Video by Judge: [Introduction music for the video] Good morning. I'm Judge [Jefferson]. Most of you are here this morning for an arraignment. An arraignment is an official proceeding in a criminal case, which has two main purposes. The first purpose is for the court to advise you of the criminal charges which may have been filed against you. The second purpose is for you to advise the court of how you wish to plea, whether you wish to enter a plea, a guilty, not guilty, or a plea of no contest. Before making this important decision, you should understand the legal rights that you have in court. Under the law, you are presumed innocent of the charges which have been filed against you. You have the right to a jury trial, or the state of [State] would have the burden of proving your guilt beyond all reasonable doubt to a unanimous jury, you have the right to an attorney, and if you cannot afford to hire your own private attorney, the court can appoint the Public Defender's office to represent you if you qualify. In order to qualify for the appointment of the Public Defender's office, you must complete an application this morning and bring it with you to the podium when your name is called. Make certain that you answer every question on the application. You also have the right to remain silent today in court other than telling me how you wish to plea and answering any questions I might ask you concerning your identification. Anything you say today in court could be used against you in a future proceeding. Finally, please make sure that all cell phones and electronic devices are turned off while you were in the courtroom. Turned off means that the phone or devices actually off and not in a silent or vibrating mode. Any cell phones observed to be in use will be confiscated by the court deputy and the time of its return will be in the court's discretion. Thank you for your attention. Court will begin momentarily.

Human working memory can hold a maximum of three to five chunks of verbal information at a time. [178] The video advisement of rights and procedures, however, contains at least ten unique statements regarding a combination of expected behavior in court and defendant rights during the justice process. It is unreasonable to expect defendants to retain all the information shared from the video recording, even if the language used was simplified to accommodate lower reading levels. Defendants charged with criminal offenses are highly stressed and anxious during their court appearance,[179] which may increase their difficulty in understanding and retaining information from the video into their working memory. Working memory refers to the process employed to allow the mind to perform complex tasks like reasoning, comprehension and learning.[180] Moreover, the research assistants who observed the court proceedings observed many impediments to the defendants’ attention and ability to hear the video.[181] While the video was playing, public defenders circled the room, answering questions impeding the defendants' ability to listen to the video advisement of rights and procedures.

Appendix C: Brief Explanation of Conversation Analysis and Transcripts of Unrepresented Misdemeanor Rights Waivers Sub-Sample (n=8)[182]

Arraignment and Rights-Waiver Transcript Data Collection and Transcription: The court reporter agencies provided audio recordings of the arraignment proceedings for 26 unrepresented defendants, each heard by one of nine judges.[183] Each defendant entered pleas of guilty or no contest and resolved their cases. The audio recordings were uploaded to an online service (Rev.com) for automated transcription, and the automated transcriptions were manually edited for accuracy. The eight transcripts in the sub-sample were transcribed using the conventions of Jeffersonian transcription.[184] Defendants chose pseudonyms, which were used to replace their real names in the transcripts. Judge names have been anonymized, and, in the transcriptions, they are referred to by assigned numbers (1 through 9). Other actors, including bailiffs, prosecutors, and public defenders, are not identified by names but by their roles in the proceedings.

For genre analysis, all 26 transcripts were reviewed and examined. For conversation analysis, recordings were assigned numbers (Smaller County Court transcripts were denoted by the addition of 'a' after each number), and using a random number generator, *eight* hearings were selected for analysis. Of the selected group, two participants resolved their cases in the smaller county and six in the larger county. Two participants (Natalie and Sabrina) were female, the remainder were male. On average, the sub-sample (n=8) hearings lasted for about two minutes and 46 seconds, ranging from one minute and 57 seconds to 6 minutes and 40 seconds.

Brief History of Conversation Analysis: At first, CA focused on understanding social interactions in ordinary conversations[185] by systematically examining how turn-taking structures between participants create and maintain social norms and boundaries.[186] The theory identified three interrelated ways of orienting conversation toward the social action it creates. These approaches included (1) framing talk,[187] (2) projecting subsequent actions,[188] and (3) producing actions.[189] Over time, the approach was applied to less ordinary and more institutional social interactions, like those in courtroom settings.[190]

Analyzing institutional-talk-in-interaction aims at describing how institutional practices are created through talk. Atkinson and Paul (1979) were instrumental in applying conversational analysis with an institutional focus to the courtroom and similar legal settings. Specifically, they delved into the intricacies of how language functions within high-stakes environments, where communication is not just about exchanging information but also establishing power, authority, and social order. One of their key contributions was the meticulous examination of transcripts, which revealed the structured nature of in-court interactions, including how judges managed the flow of conversation with specific question formats and turn-taking strategies that controlled proceedings and influenced witness testimony. They also uncovered that the way questions were framed elicited certain responses, which affected the case direction and perceptions about credibility. Their analytical findings, coined "institutional talk," reflect the unique linguistic practices which are shaped by the goals and norms of formal conversation, including within the legal system.

Eight Judge-Defendant Rights Waivers Transcribed Using Conversation Analysis

3a (Steven)
J1 = Judge; S = Steven

1. J1: Steven 22-XX-XXXX. (10) All right. Good morning, sir.
2. S: Good morning, your Honor.
3. J1: Alright. Do you wish to enter into a plea for no valid driver's license, is that correct?
4. S: Yes, your Honor.
5. J1: Okay. Adjudication of Guilt and Court Courts?
6. S: Uh (1) no contest.
7. J1: Okay. A plea of no contest.
8. S: And I will require a payment plan, your Honor.
9. J1: Okay, no worries. Go ahead and raise your right hand for me. Do you solemnly swear to
10. tell the truth, the whole truth, nothing but the truth?
11. S: Yes, your Honor.
12. J1: All right. Can you tell me your first and last name again?
13. S: Steven.
14. J1: And your date of birth is January 15th, 1972?
15. S: Yes, your Honor.
16. J1: I'm holding a plea form. You recognize this plea form?
17. S: Yes, your Honor.
18. J1: What about your waiver of Right to counsel?
19. S: Yes, your Honor.
20. J1: Do you have any questions about what you read on the plea form?
21. S: No, your Honor.
22. J1: Are you under the influence of any drugs or alcohol that's gonna impair your ability to
23. accept today's offer?
24. S: No, your Honor.
25. J1: Are you, um, being encouraged or forced to accept today's offer?
26. S: No, your Honor.
27. J1: Now, paragraph three on the plea form, sets forth some constitutional rights such as the
28. right to a speedy trial and the right to a jury trial, by accepting the State's offer do
29. you understand that you're waiving those rights?
30. S: Yes, your Honor.
31. J1: And do you understand that if you're not a US citizen by entering into this plea, it will be 32. grounds for deportation?
33. S: Yes, your Honor.

34. J1: I do find that there is sufficient factual basis to your plea to no valid driver's license. I will 35. accept your plea of no contest. You will be adjudicated guilty for this offense. Court
36. cost is two seventy one and I will place you on a payment plan.
37. [Any questions?]
38. S: Thank [you your Honor]. No, your Honor.
39. J1: Okay. So once you're done with court today, go ahead and go to the second floor so you 40. can set up your payment plan.
41. Okay?
42. S: Thank you, your Honor.
43. J1: Y-you're welcome. You have 30 days to appeal this sentence.

7 (David)
J5 = Judge; D = David; P = Prosecutor

1. J5: Come on up, sir. ((Clears throat)) You can just put your hat on that table.
2. D: Oh, right here?
3. J5: Yeah. There we go. (Nice) work. That'll work. Alright, your name, sir?
4. D: David.
5. J5: Alright, Mr. David, you're here today because the State of X alleges that on or
6. about the 27th of March of 2022, you did in X County, X, ((cough)) in
7. violation of [State] statute, xxx.xxx endeavor to obtain or use or did obtain or use the 8. property of Walmart, and you did so with the intent to temporarily or permanently
9. deprive them of the right to property, the benefit from the property, or to appropriate that
10. property to your use. It was a a simple petty theft. How do you wish to plea to that?
11. Guilty, not guilty or no contest.
12. D: Guilty, Your Honor.
13. J5: Alright. Are you under the influence of any drugs or alcohol today? (1) Drugs or alcohol 14. today? No?
15. D: [No. Absolutely] not.
16. J5: [Alright.]
17. J5: Okay. Go ahead, sign that. (3) Alright. Have you suffered from, or been treated for any 18. mental illness in the past?
19. D: Absolutely not, sir.=
20. J5: =Alright. You understood the rights on this form before you signed it. Do you have any
21. questions.
22. D: I have no questions.=
23. J5: =Alright. You understand this is punishable, but up to 60 days in jail, up to a 500 dollar 24. fine and that the entry of your plea could be used against you in any deportation
25. proceeding if you're not a citizen (.) you understand? That's the maximum. It's not gonna 26. happen. Don't wor-

27. D: Right, no but-
28. J5: [Okay.]
29. D: [I-I'm] an American citizen, [so]
30. J5: [Okay.] I figured you are. I got- but the the law says I
31. gotta tell everybody just in case.
32. D: Right.
33. J5: Alright, State, any, any record?
34. P: Yes, Your Honor. He pled to a petty theft on March 22nd. He pled No Contest.=
35. J5: =Alright. I will judge you guilty. (Then also) impose a fine of 100 dollars plus court
36. costs, 50 dollar cost of prosecution.
37. D: Thank you, Your Honor.
38. P: There's also a cost of investigation=
39. D: =Man, you're very reasonable.=
40. J5: =Just one second. She's got something else. What's [that]?
41. D: [alright.]
42. P: There's a cost of investigation.
43. J5: [Okay.]
44. P: [of 146] dollars
45. J5: Alright.
46. P: for the {City Name} Police Department.
47. J5: 146 O P D. Cost of investigation. That's gonna be about 410 or so. Can [you just pay that] 48. in 18 months?
49. D: [That's not bad]
50. J5: Can you pay it in 18 months? (.) Yes?=
51. D: =Absolutely. Absolutely.
52. J5: [You got it.] You're all set. You get paperwork.
53. D: Yeah. yeah. Thank you, sir.
54. J5: Mm-hmm. (1) He's gonna, they're gonna need prints too. Uh they need to get your
55. fingerprints though too, so you'll, they'll give you that.

12 (Natalie)

J9 = Judge; N = Natalie; P = Prosecutor

1. J9: What's your name?
2. N: Natalie
3. J9: Case number 2022-xx-xxx (.5) Ma'am, you are here for a charge of petty theft.
4. Um, state, does she have any history?
5. P: (3) Is this Natalie?
6. J9: Yes.
7. P: Okay. Um, yes. Previous history is uh 2007, a petty theft withhold and another one in

8. 2007.
9. J9: Ma'am, if you would like to resolve this case today. Um, the offer is an adjudication,
10. credit time served for two days, I would reserve on restitution, joint and several with the 11. co-defendant. So. again, it's a time served offer, but it will be a conviction. Would you
12. like to accept that offer?
13. N: Yes, ma'am.
14. J9: Do you need any time to speak with a lawyer?
15. N: No.
16. J9: Can you read, write, and understand the English language?
17. N: Yes, ma'am.
18. J9: I'm showing you this paper. Did you read it and understand it?
19. N: Yes, ma'am.
20. J9: All right, and how do you plea to the crime of petty theft, the misdemeanor of the
21. second degree? Guilty, No contest or not guilty.
22. N: No contest.
23. J9: (1) Did anybody force you to say no contest?
24. N: No, ma'am.
25. J9: Do you understand we will not have a trial in this case based on your plea?
26. N: Yes ma'am.
27. J9: Do you understand that if you're not a United States citizen, you will be subject to
28. deportation by entering a plea today?
29. N: Yes ma'am.
30. J9: Do you also understand that if you are on probation when you committed this crime by 31. pleading today, your terms of probation would be violated?
32. N: Yes, ma'am.
33. J9: And one thing that was not on the plea form is the fact that theft is an enhanceable
34. offense. I am going to convict you in this case. If you commit a future act of theft, you
35. will be charged with a felony despite the value of the items. Do you understand that?
36. N: Yes, ma'am.
37. J9: All right. I'll accept your plea in this case. I will adjudicate you guilty. We'll get some
38. fingerprints from you, give you credit for two days time served, I'll reserve on
39. restitution joint and several with the co-defendant for a period of 30 days. And,
40. um, you owe court costs, court costs are 279 dollars. I'm also ordering no contact, no
41. return with the victims of this case, and I'll give you until um September 17th of
42. 2022 to pay your court cost. Is that enough time?
43. N: Yes.
44. J9: Okay. That's four months.

45. N: That's fine.[Yes.]
46. J9: [All right]. Thank you.
47. N: Thank you.

16 (Sabrina)
J4 = Judge; S = Sabrina; P = Prosecutor; C = Clerk

1. J4: [Confidential] is your uh guy. Alright. Are you Sabrina?
2. S: Yes.
3. J4: Alright, Ms. Sabrina, you've been charged with permitting an unauthorized person to
4. drive. Do you understand the accusation?
5. S: Yes sir. (.) Yes.
6. J4: Alright. Uh, do you know how you wish to plead to the charge? State?
7. P: Uh, State's offer is withhold adjudication, court costs, costs of prosecution, one
8. hundred dollar fine.
9. S: Plead guilty.
10. J4: Alright uh- what are the court costs again, please?
11. C: One moment, Your Honor. Is it a withhold?
12. J4: Yes
13. C: It's three oh one already with cost of prosecution.
14. J4: and-
15. C: -Is there a fine?
16. J4: Yes. A one hundred dollar fine.
17. C: Four oh one.
18. J4: (.5) Total.
19. C: Total.
20. J4: Alright, so it's a one hundred dollar fine plus three hundred and one dollars in court
21. costs. (1) Do you wanna accept that?=
22. S: =Yes.
23. J4: Alright. Is that gum good?
24. S: ((Chortle)) Yes.
25. J4: Yeah. You gonna share a piece with me or what? (.) Alright, thank you. ((Clears throat)) 26. Alright. Were you sworn to tell the truth earlier?
27. S: Yes.=
28. J4: =Is this your signature?
29. S: Yes.
30. J4: Do you understand the rights you give up when you sign this?
31. S: Yes.
32. J4: Are you doing this voluntarily?
33. S: Yes.
34. J4: Has anybody promised you anything or threatened you? Forced you, tricked you, or
35. made you do this against your will?
36. S: No.

37. J4: Are you under the influence of any drugs, alcohol, or medication now?
38. S: No.
39. J4: Do you suffer from any mental illness?
40. S: No.
41. J4: Do you understand if you are not an American citizen, you subject yourself to the rules 42. and regulations of the Immigration and Naturalization Service of the United States, and 43. you could be facing deportation as a result of this case?
44. S: Yes.
45. J4: Alright. I'm gonna accept your plea. There'll be a withhold of adjudication, one
46. hundred dollar fine plus four hundred and one dollars in court costs. Is that right?
47. C: It's a hundred dollar fine, court costs and prosecution which will total to four oh one.
48. J4: Right. Okay. And how much- do you need some time to pay that?
49. S: (1) Umm (1)
50. J4: Can you pay it today?
51. S: No.
52. J4: Alright. So you need some time?
53. S: Yeah.
54. J4: How much time are you gonna need?
55. S: A week.
56. J4: Alright, we'll give you 30 days. How's that?
57. S: Okay.
58. J4: Alright. If you have a seat, we'll get your paperwork to you. Alright?

1 (Marcus)
J3 = Judge; M = Marcus; P = Prosecutor

1. J3: Your name, sir?
2. M: (inaudible)
3. J3: 2022-X- X-xxxx disorderly conduct. Do we have an offer?
4. P: Yes, Judge. The offer for- this is Marcus, correct?
5. J3: Yep.
6. P: The offer would be a withhold of adjudication, court costs in the amount of 223 dollars
7. and a 10 dollar fine for being (inaudible).
8. J3: So if you wanna resolve your case today, the offer is a withhold and court costs. Court
9. costs are 233 dollars. It's the minimum offer. So, you wanna accept that offer or plea 10. not guilty. Do you have any questions?
11. M: I pay that and, uh, and I'm free?
12. J3: Yeah, I mean, you're free now, right?=
13. M: = I don't gotta come back here?
14. J3: Yeah, actually you posted a 250 dollar cash bond. Wh- who posted that?
15. M: My buddy.

16. J3: Your buddy? So yeah, we're gonna take your buddy's money and pay for this and then 17. you're gonna owe your buddy 223 dollars.
18. M: Okay.
19. J3: Sound like a plan?
20. M: That's good.
21. J3: Alright. [Al-]
22. M: [I can pay for it today.]
23. J3: No, no, it's already paid for.
24. M: Oh, okay.
25. J3: Yeah.
26. M: Thank you.
27. J3: =You're gonna pay your buddy today, right?
28. M: Yeah, I got to.
29. J3: Yeah.
30. M: Thank you, man. [Appreciate it.]
31. J3: [Got t- I didn't do anything.] She did it. Please sign.
32. P: This is Marcus?
33. J3: Yeah, I heard "pound"?
34. P: Pound?
35. C: Sign your signature here.
36. P: That's how I said it.
37. J3: I think that's how you said it. (4.5) Alright, so everybody, uh, should have been given a 38. a plea form. Make sure that you've read that form, uh, because if you resolve
39. your case, uh, and make sure you sign it. I'm gonna say, is this your signature?
40. M: Yeah.
41. J3: Did you read it?
42. M: Yeah.
43. J3: Do you have any questions? No? Yes or no?
44. M: No.
45. J3: Alright. If you're not a US citizen, you could be deported for this. Do you understand?
46. M: Yes.
47. J3: And if you've ever been convicted of a sexually violent or sexually motivated offense, 48. filing this plea today could subject you to involuntary civil confinement. Do you
49. understand that?
50. M: Yes.
51. J3: Pleading "guilty" or "no contest" today?
52. M: (2.5) What's the difference?
53. J3: "Guilty" means I did it and "No contest" means "I just wanna resolve it".
54. M: No contest. Thank you, your Honor.=
55. J: = I accept your no contest plea Withhold adjudication. The cost we'll take outta your cash 56. bond. You owe your buddy 223 bucks. Okay?
57. M: Thank you so much.=

58. J3: =Alright. 30 days to appeal. Have a seat over here on the first or second row. Wait for
59. your paperwork. When you get your paperwork, you're free to go.

10a (Matt)
J1 = Judge; M = Matt; P = Prosecutor; U = Unknown

1. J1: Matt 22-XX-xxxx (1.5) as well as 22-XX-xxxx. So your first case, you were charged with 2. no driver's license for the operation of a motorcycle. Your second case is no valid
3. driver's license (0.5) State, is there an offer? Oh, actually nevermind. I see it. (0.5)
4. So are you dismissing the 22-XX-xxxx in exchange to a plea to the 1950?
5. P: Yes, your Honor. That's correct.
6. J1: Okay. Alright. Mr. Matt, go ahead and raise your right hand for me. Do you solemnly
7. swear to tell the truth, the whole truth, nothing but the truth?
8. M: Yes, ma'am.
9. J1: Alright. Tell me your first and last name again.
10. M: Matt {Last Name}.
11. J1: And your date of birth?
12. M: 04/15/1995.
13. J1: I'm holding a plea form. It's in reference to the no valid driver's license, which is 22-XX-14. xxxx, as well as your waiver of right to counsel. Recognize both of these forms?
15. M: Yes ma'am.
16. J1: Any questions?
17. M: No, ma'am.
18. J1: Are you under the influence of any drugs or alcohol that may impair your ability to
19. accept today's offer?
20. M: No ma'am.
21. J1: Is anyone forcing you to take this offer?
22. M: No ma'am.
23. J1: Now, paragraph three on the plea form sets forth some constitutional rights such as the 24. right to a speedy trial and the right to a jury trial. By accepting the state's offer
25. do you understand that you're waiving those rights?
26. M: Yes ma'am.
27. J1: And do you understand that if you're not a US citizen by entering into this plea, it will
28. be grounds for deportation?
29. M: Yes ma'am.
30. J1: How do you wish to plea to no valid driver's license?
31. M: Um guilty.

32. J1: I will accept your guilty plea. I do find sufficient factual basis for your plea, and I do
33. find that you are alert and intelligent and that you're freely and voluntarily
34. entering into this plea. It will be an adjudication of guilt, 50 dollar fine, court cost
35. is 271, so your total is 323, is it 323.50?
36. U: Yes.
37. J1: Okay. 323.50. And how much time would you need to pay?
38. M: Um, can I get like 60 days?
39. J1: Alright. So what I'll do is just in case you need longer than the 60 days, I'll place you
40. on a payment plan. So once you're done with court today, go to the second floor,
41. which is the clerk's office, and set up the payment plan. Okay?
42. M: Yes, ma'am.
43. J1: So just wait for your paperwork.
44. M: Yes, ma'am.
45. J1: Any any questions?
46. M: No, ma'am.
47. J1: Alright. You have 30 days to appeal your sentence. Good luck to you.
48. M: Thank you.
49. J1: And State, do you have an announcement as to 22-XX-xxxx?
50. P: Yes, your honor. In 22-XX-xxxx State announces [inaudible]

3 (Butter)
J7 = Judge; B = Butter; P = Prosecutor; U = Unknown

1. J7: Sir, please state your name.
2. B: Butter.
3. J7: Mr. Butter, you're here in case number 2022-XX-xxxx charged with second degree
4. misdemeanor or petty theft punishable by a maximum of six months in jail. I'm sorry, 60 5. days in jail, six months probation or a 500 dollar fine. State, do you have an offer for Mr. 6. Butter?
7. P: The State, um, does not have an offer. The NPA was not good as provided [inaudible].
8. J7: Okay, sir. So like, like we were talking about before, we're gonna refer this case back to 9. the State Attorney's office for them to make a filing decision as to what they're
10. gonna do. If they drop, excuse me, if they drop the case against you, you don't have to
11. come back. If they decide to file a case against you, that paperwork you receive in the
12. mail is gonna give you another date and time to come back here for an arraignment
13. proceeding, much like today.
14. B: Is it possible to resolve it today?

15. J7: State, he's asking if you could make an offer if he's-
16. B: (3.0) I mean, I, this is my first charge, like ever.
17. J7: Remember, you're being recorded. I understand you're not saying anything bad now, but
18. just make sure-
19. P: One second, your Honor.
20. J7: Yeah, no problem.
21. B: And I can pay all the court fines. Sorry.
22. J7: Yeah, no problem. I'm just trying to protect you from yourself.
23. J7: (43.0) I have one case left and I just pulled up the docket, so it's good now.
24. P: (50.0) Yes, Your Honor. The State offer will be a withhold of adjudication and court
25. costs.
26. J7: (2.0) Thank you. Alright, sir. Um, just want to go over a couple of things with you
27. based on your statement before. The state is willing to offer you a withhold of
28. adjudication and court costs. Okay? It's not pretrial diversion, but it's not an
29. adjudication of guilt. It's kind of in the middle. So it would go on your record, but you
30. would receive a withhold of adjudication. Um, and just payment of court costs, court
31. costs on a misdemeanor with a withhold 273? So with 273 dollars, the case would be uh 32. the case would be concluded today.33. B: Mm-hmm.
34. J7: But the state has not received what they believe is enough information to file the
35. charges against you. So you're kind of in a tricky situation in the sense of you can get
36. it over with today for 273 dollars and you're gonna withhold the formal
37. adjudication on your record, but at the same time, the State's offer could get
38. better or worse in the future depending on what they decide with their filing decision.
39. B: Um, and the withhold adju- of adjudication means that it, it goes on the record, but I, I
40. wasn't like-
41. J7: you're not formally-y if someone asked you, have you ever been convicted of a crime,
42. the answer would be no. 'cause you're not being adjudicated-
43. B: I'd like to take that offer today.
44. J7: Okay.
45. B: (8.0) And then where do I go to pay the court fines?
46. J7: You're gonna receive that paperwork, um, before you leave today. You can make a
47. payment here on the fourth floor, around the corner in room 410, or you can
48. make it at a branch office location, or there's one in a (redacted) and one in
49. (redacted) or you can pay online. Uh, they have all of those options
50. available to you. Alright, sir, I'm holding up in my right hand a plea form, uh, with
51. your name on it. Is that your signature, sir?
52. B: Yes, sir.

53. J7: Did you have the opportunity to read the plea form?
54. B: Yes, sir.
55. J7: Did you have any questions with regard to the plea form that you don't understand?
56. B: No, sir.
57. J7: Do you understand that the plea form contains certain rights that you're giving up by
58. entry of a plea today?
59. B: Yes, sir.
60. J7: Do you understand that among those rights are the right to have a jury trial in this
61. matter, to have the state present its witnesses and its evidence and prove this
62. case beyond a reasonable doubt?
61. B: Yes, sir.
62.. J7: At that trial, you have the right to have an attorney represent you. If you cannot afford
63. an attorney, the st- the court would appoint a public defender to represent you.
64. You have the right to testify at that trial. You have the right, right to bring
65. witnesses to testify for you, and you have the right to remain silent in that trial.
66. Do you understand that, uh, entry of this plea could subject you to
67. deportation in the future if you're not a United States citizen?
68. B: Yes, sir.
69. J7: Okay. Uh, we went over the maximum possible penalties. Are you under the influence 70. of any drugs, alcohol, or medication affecting your ability to think clearly today?
70. B: No, sir.
71. J7: Has anyone forced you, threatened you or coerced you or promised you anything other 72. than what we've discussed on this plea form for you to make that plea today?
73. B: No, sir.
74. J7: Alright. Uh, yes ma'am?
75. P: It looks like he was also a trespass, so the State would have no return to the Home Depot 76. at {Address}.
77. J7: {Address}?
78. P: Correct. Yes.
79. J7: (7.0) And it is just that, just that location?
80. P: Just that Home Depot.
81. J7: Alright, sir. So let's just go over that again. So it's a withhold of adjudication, payment
82. of court cost in the amount of 273 dollars and no return to the Home Depot
83. located at {Address} in {City}. Alright. I find that your plea
84. is knowing, intelligently and voluntarily entered. I find that you've waived those rights 85. and accept the plea. Uh, sir, you're gonna receive some paperwork. Uh, just have a seat 86. on the front row once you receive that. Oh, I'm sorry. How much time do you need to
87. pay the 273 dollars?

88. B: Um, just gimme 30 days, but I'm, I'll probably just pay it all today.
89. J7: So I'll give him 60 days. 60 days, sir to pay it or your license will be suspended if you
90. don't pay it.
91. B: Sure. Alright. Thank you.
92. J7: Okay, no problem.

14 (Devon)
J4 = Judge; D = Devon; P = Prosecutor; U = Unknown

1. J4: Alright, Devon. (.5) Morning, Mr. Devon. I'm sorry it's taken so long.
2. D: It's alright.
3. J4: You're charged with having- not having a valid license. Do you understand?
4. D: Yes, your honor.
5. J4: Alright. Do you have a valid license with you today sir?
6. D: Yes sir.
7. J4: Alright. Does State have a recommendation?
8. P: uh, withhold adjudication and court costs, Your Honor.
9. J4: Do you understand the State's offer, Mr. Devon?
10. D: Yes, your Honor.
11. J4: Alright. How do you wish to plea to the charge, sir?
12. D: Guilty. Guilty.
13. J4: Alright. Uh, he does have one day according to the clerk's office.
14. P: That [inaudible]
15. J4: Alright. And waive court costs?
16. P: Waive costs? Yes sir-
17. J4: -Alright. Do you understand what we're doing?
18. D: Yes.
19. J4: Alright, well we would have to adjudicate him to do that. So here's your choice. You can 20. get an adjudication, which means this will be on your record and we'll give you one day
21. credit for the time you served, or you can get a withhold of adjudication and 301
22. dollars in court costs. Which one do you want to do?
23. D: I'll pay the court costs.
24. J4: You wanna pay the court costs? Alright. Were you sworn to tell the truth earlier?
25. D: Yes.
26. J4: Is this your signature?
27. D: Yes.
28. J4: Do you understand the rights to give up when you sign this?
29. D: Yes.
30. J4: And are you doing this voluntarily?
31. D: Yes.
32. J4: Has anybody promised you anything or threatened you? Forced you, tricked you or made 33. you do this against your will?
34. D: No, Your Honor.
35. J4: Are you under the influence of any drugs, alcohol, or medication?

36. D: No, sir.
37. J4: Are you suffering from any mental illness or have you ever been treated for any mental 38. illness?
39. D: Yes. ADHD and um=
40. J4: =I'm=
41. D: =autism
42. J4: I I'm sorry?
43. D: Uh, ADHD
44. J4: ADHD?
45. D: Yeah.
46. J4: Are you on medication now for that?
47. D: Um, yes.
48. J4: What kind of medication? Do you know the name?
49. D: No.
50. J4: Is it affecting your ability to understand what we're doing here today?
51. D: No.
52. J4: Alright. Do you understand if you're not an American citizen, you subject yourself to the 53. rules and regulations of the Immigration Naturalization Service and you could be
54. facing deportation as a result of this?
55. D: Yes.
56. J4: I'm gonna accept your plea, withhold adjudication, order you to pay 301 dollars in court 57. costs. Do you need time to pay that?
58. D: Yes.
59. J4: How much time do you need?
60. D: Like 30 days.
61. J4: 30 days?
62. D: Yes.
63. J4: Alright. We'll give you 30 days to pay that, sir. If you have a seat, we'll give you, um,
64. some paperwork. Make sure you take care of that.

END NOTES

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[1] Faretta v. California 422 U.S. 806, 835 (1975) (quoting Adams v. United States ex rel. McCann, 317 U.S. 269, 279 (1942)).

[2] DOUGLAS W. MAYNARD, INSIDE PLEA BARGAINING: THE LANGUAGE OF NEGOTIATION (1984) (examining the linguistic order of plea negotiations between prosecutors and defense lawyers).

[3] Malcolm M. Feeley, *The Process is the Punishment: Handling Cases in a Lower Criminal Court*, 78 MICH. L. REV. 805 (1979) (describing the taxing process of the lower criminal court proceeding for defendants); SARAH STICE & ALISA SMITH, Complex Decisions Under Short Time Constraints: Why Misdemeanor Defendants Proceed Without Counsel (2025).

[4] Eisha Jain, *Proportionality and Other Misdemeanor Myths*, 98 Boston U. Law Rev. 953, 962 (2018) (observing that defendants routinely agree to pleas without understanding the stakes.)

[5] *Id.* at 962-963; Allison Redlich & Alicia Summers, *Voluntary, Knowing, and Intelligent Pleas: Understanding the Plea Inquiry*, 18 PSYCHOL., PUB. POL'Y, & L 626, 634-40 (2012).

[6] Allison Redlich & Catherine Bonventre, *Content and Comprehensibility of Adult and Juvenile Tender-of-plea: Implications for Knowing, Intelligent, and Voluntary Guilty Pleas*, 39(2) LAW & HUMAN BEHAV. 162 (2015).

[7] *Id.*; Allison Redlich *The Validity of Pleading Guilty*, *in* 2 ADVANCES IN PSYCHOLOGY AND THE LAW, 1-26 (Brian Borstein & Monica Miller eds., 2016).

[8] See generally, PETER M. TIERSMA, LEGAL LANGUAGE (1999/2000).

[9] Linguistic registers are particular "kind[s] of language being produced by [] social institution[s]." Harold Schiffman, *Linguistic Register* (1997) (https://ccat.sas.upenn.edu/~haroldfs/messeas/regrep/node2.html) (last visited August 21, 2025).

[10] Robert W. Benson, The End of Legalese: The Game is Over, 13 NYU REV. L. & SOC. CHANGE 519 (1985); LAWRENCE M. SOLAN, THE LANGUAGE OF JUDGES (1993).

[11] See DAVID MELLINKOFF, THE LANGUAGE OF THE LAW (1963); Benson, *supra* note 10; SOLAN, *supra* note 10.

[12] Michael Blasie, *Regulating Plain Language*, 2023 WISCONSIN L. REV. 687, 687 (2023); Michael Blasie, *The Rise of Plain Language Laws*, 76 U. MIA. L. REV. 447 (2022).

[13] e.g., Eric Martinez, Francis Mollica, & Edward Gibson, *Even Lawyers Do Not Like Legalese*, 120(23) PROC. NATL. ACAD. SCI. U.S.A. 1 (2023).

[14] Judge Bridget Mary McCormack, *Access to Justice Requires Plain Language*, 100(2) MICH. B.J. 44 (2021).

[15] Aneta Pavlenko, Elizabeth Hepford, & Scott Jarvis, *An Illusion of Understanding: How Native and Non-Native Speakers of English Understand (and Misunderstand) Their Miranda Rights*." 26(2) INT. J. SPEECH LANG. LAW 181 (2019); Richard Rogers & Eric Y. Drogin, *Miranda Rights and Wrongs: Matters of Justice,* 51(4) CT. REV. 150 (2015); Blasie, *Regulating Plain Language*, *supra* note 12 at 721-26.

[16] ALISA SMITH & SARAH STICE, OFFSTAGE & OFF-SCRIPT: PERFORMING BUREAUCRATIC DUE PROCESS AND WAIVING COUNSEL IN THE MISDEMEANOR COURTS, (2025).

[17] Samantha Luna, Amy Dezember, & Allison Redlich, *The Validity of Misdemeanor Pleas*, in THE LOWER CRIMINAL COURTS 66, 67 (Alisa Smith & Sean Maddan, eds., 2019) ("The lack of research on misdemeanor pleas highlights a large gap in the literature surrounding plea bargains and the validity of pleading guilty in misdemeanor cases."); Susan U. Philips, *Strategies of Clarification in Judges' Use of Language: From the Written to the Spoken*, 8(4) DISCOURSE PROCESS. 42 (1985) (examining judges strategies for clarifying verbal explanation of constitutional rights, showing the judges regularly and systematically transformed the written rights-waiver from into verbal presentations).

[18] It is important to note that generalized readability assessments and linguistic analyses don't allow us to read participants' minds. Our findings cannot determine if individual participants understood their rights and decisions. Our analyses, however, uncover structured patterns that encourage plea and rights waivers and underscore how expressions of confusion by participants are dealt with (or not) by judges.

[19] Johnson v. Zerbst, 304 U.S. 458 (1938).

[20] U.S. CONST. amend. XIV, § 1; Boykin v. Alabama, 395 U.S. 238 (1969)

[21] *Johnson*, 304 US at 469.
[22] Brady v. United States, 397 U.S. 742 (1970) (holding voluntariness of entering pleas, even to avoid death, are considered by evaluating all relevant circumstances); Henderson v. Morgan, 426 U.S. 637, 645 (1976); Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005); United States v. Ruiz, 536 US. 622, 629 (2002).
[23] *Ruiz*, 536 U.S. at 629.
[24] McCarthy v. United States, 394 U.S. 459, 466 (1969).
[25] *See generally*, Sarah Williams, *Can You Appeal a Plea Bargain?*, FINDLAW.COM (September 18, 2023) (https://www.findlaw.com/criminal/criminal-procedure/can-you-appeal-a-plea-bargain.html).
[26] *Constitutional Waivers by States and Criminal Defendants*, 124 HARV. L. REV. 2552, 2565-66 (2021)) (citing *Brady* 397 U.S. 742 (1970); Bordenkircher v. Hayes, 434 U.S. 357 (1978)).
[27] Id. at 2566 (citing Parker v. North Carolina, 397 U.S. 790 (1970); *Ruiz*, 536 U.S. 622 (2002)).
[28] Missouri v. Frye, 566 U.S. 134 (2012)
[29] Lafler v. Cooper, 566 U.S. 156 (2012)
[30] Alisa Smith, *Misdemeanors Lack Appeal*, 45(2) AM. J. CRIM. LAW 305 (2019).
[31] Elizabeth Swavola, *From the Director* in IN THE SHADOWS: A REVIEW OF THE RESEARCH ON PLEA BARGAINING iii, at iii (2020).
[32] RAM SUBRAMANIAN, LEON DIGARD, MELVIN WASHINGTON II, & STEPHANIE SORAGE, IN THE SHADOWS: A REVIEW OF THE RESEARCH ON PLEA BARGAINING, 3 (2020).
[33] *Id*. at 16; Alexandra Natapoff, *Aggregation and Urban Misdemeanors*, 40(3) FORDHAM URBAN L. JOURNAL 1043, 1070-71 (2016); ISSA KOHLER-HAUSMAN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING 656-657 (2018; ALISA SMITH & SEAN MADDAN, THREE-MINUTE JUSTICE: HAST AND WASTE IN FLORIDA'S MISDEMEANOR COURT 14-15 (2011); Alisa Smith & Sean Maddan, *Misdemeanor Courts, Due Process, and Case Outcomes*, 31(9) CRIM. J. POL'Y REV. 1312 (2020).
[34] Alexandra Natapoff, *Misdemeanors*, 11 ANN. REV. L. & SOC. SCI. 255 (2015); ROBERT C. BORUCHOWITZ, MALIA N. BRINK, & MAUREEN DIMINO, MINOR CRIMES, MASSIVE WASTE: THE TERRIBLE TOLL OF AMERICA'S BROKEN MISDEMEANOR COURTS (2009); Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277 (2011); ROY B. FLEMMING, PETER F. NARDULLI, & JAMES EISENSTEIN, THE CRAFT OF JUSTICE: POLITICS AND WORK IN CRIMINAL COURT COMMUNITIES 108-111 (1992).
[35] Redlich & Summers, *supra* note 5 at 626; Jain, *supra* note 4, at 962-963.
[36] A third research question on defendants' capacity or competence with 40 years of study is beyond the scope of this paper and our research questions. *See* Luna, Dezember, & Redlich, *supra* note 17, at 68-69.
[37] Redlich & Bonventre, *supra* note 6 (finding forms are highly variable in their content and exceed the reading comprehension of most defendants); Redlich, *supra* note 7; Luna, Dezember, & Redlich, *supra* note 17 at 66-75.
[38] Luna, Dezember, & Redlich, *supra* note 17 at 66-75, citing HALEY BLACKWOOD, A COMPARISON OF MIRANDA PROCEDURES: THE EFFECT OF ORAL AND WRITTEN ADMINISTRATIONS ON MIRANDA COMPREHENSION (August 2009) (unpublished master's thesis, University of North Texas, 2009); Karl O. Haigler, et al., *Literacy Behind Prison Walls: Profiles of The Prison Population from the National Adult Literacy Survey*, DOE (1994); Redlich, *supra* note 6; Redlich & Bonventre, *supra* note 6.
[39] Redlich, *supra* note 6; *see also* Gail Stygall, *Textual Barriers to United States Immigration*, in LANGUAGE IN THE LEGAL PROCESS 35-53 (Janet Cotterill, ed. 2002) (identifying the textual and linguistic barriers to understanding rights in the immigration documents context).
[40] Daniel P. Greenfield, Edward J. Dougherty, Ryno M. Jackson, John W. Podboy, & Marc L. Zimmerman, *Retrospective Evaluation of Miranda Reading Levels and Waiver Competency*, 19(2) AM. J. FORENSIC PSYCH. 75 (2001); Rachel Khan, Patricia A. Zapf, & Virginia G. Cooper, *Readability of Miranda Warnings and Waivers: Implications for Evaluating Miranda Comprehension*, 30 L. & PSYCH. 119 (2006); Pavlenko, Hepford, & Jarvis, *supra* note 15.
[41] Redlich & Summers, *supra* note 5; Rogers & Drogin, *supra* note 15.
[42] Redlich & Summers, *supra* note 5 at 634-40.

[43] *Id.;* JOHN M. CONLEY, WILLIAM M. O'BARR, & ROBIN CONLEY RINER, JUST WORDS: LAW, LANGUAGE, AND POWER 62-80 (3rd ed. 2019); JOHN M. CONLEY & WILLIAM M. O'BARR, RULES VERSUS RELATIONSHIPS, THE ETHNOGRAPHY OF LEGAL DISCOURSE (1990).
[44] Rogers & Drogin, *supra* note 15.
[45] Redlich & Summers, *supra* note 5 at 634-40.
[46] Redlich & Summers, *supra* note 5.
[47] See e.g., Roger W. Shuy, *Bureaucratic Language in Government and Business*, 30 LANG. SOC. 107 (1998); Stygall, *supra* note 39 at 35-53 (identifying the textual and linguistic barriers to understanding rights in the immigration documents context).
[48] ROGER W. SHUY, THE LANGUAGE OF CONFESSION, INTERROGATION, AND DECEPTION 56-58 (1998).
[49] *Id*.
[50] *Id*.
[51] Pavlenko, Hepford & Jarvis, *supra* note 15.
[52] SHUY, *supra* note 48 at 54-56.
[53] *Id*. Miranda warnings advise suspects that they have the right to remain silent, anything they say can and will be used against them in a court of law. They have the right to an attorney, and if they cannot afford an attorney, one will be provided for them. Then they are typically asked: Do you understand the rights that were just read to you? With these rights in mind, do they wish to speak to the officer. *See* FEDERAL COURTS' EDUCATIONAL RESOURCES, INSIDE THE FIFTH AMENDMENT: MIRANDA WARNING, https://www.uscourts.gov/sites/default/files/mirandawarningfinal.pdf (last visited August 22, 2025)
[54] *See e.g.,* Philips, supra note 17 at 426-32 (identifying six clarifying and similar strategies employed by several judges in conveying rights and waivers to criminal defendants); Shuy, *supra* note 48 at 53 (observing that "[t]he first problem posed by [following a prescribed written form procedure] is that listener comprehension takes second place to accurate police performance" and he found that police are polite but not informative in responding to suspects' questions, including by rereading the same words read earlier).
[55] *See e.g*., SMITH & MADDAN, THREE-MINUTE JUSTICE: HAST AND WASTE IN FLORIDA'S MISDEMEANOR COURT, supra note 33 at 14-15; Smith & Maddan, Misdemeanor Courts, Due Process, and Case Outcomes, *supra* note 33
[56] *See e.g.,* Redlich, *supra* note 7; Redlich & Bonventre, *supra* note 6.
[57] Douglas W. Maynard, *Social Order and Plea Bargaining in the Courtroom,* 24 SOCIOL. Q. 233 (1983); Douglas W. Maynard, *The Structure of Discourse in Misdemeanor Plea Bargaining* 18 LAW & SOC'Y 75 (1984); Maynard, *supra* note 2.
[58] ERVING GOFFMAN, ENCOUNTERS: TWO STUDIES IN THE SOCIOLOGY OF INTERACTION (1961); Maureen Mileski, *Courtroom Encounters: An Observation Study of a Lower Criminal Court*, 5 LAW SOC. REV. 473 (1971); Stephen L. Brickey & Dan E. Miller, *Bureaucratic Due Process: An Ethnography of a Traffic Court*, 22 SOC. PROBL. 688 (1975).
[59] Maynard, *Social Order and Plea Bargaining in the Courtroom* *supra* note 57 at 233.
[60] See ERVING GOFFMAN, FORMS OF TALK 124 (1981) (calling the concept "footing); Stephen C. Levinson, *Putting Linguistics on a Proper Footing: Explorations of Goffman's Participation Framework*, in ERVING GOFFMAN: EXPLORING THE INTERACTION ORDER 163 (P. Drew & A Wootton, eds., 1988).
[61] ERVING GOFFMAN, BEHAVIOR IN PUBLIC PLACES: NOTES ON THE SOCIAL ORGANIZATION OF GATHERINGS (1963); ERVING GOFFMAN, FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE (1974); ERVING GOFFMAN THE PRESENTATION OF SELF IN EVERYDAY LIFE (1959); ERVING GOFFMAN, INTERACTION RITUAL: ESSAYS IN FACE-TO-FACE BEHAVIOR (2005); GOFFMAN, *supra* note 60; GOFFMAN, *supra* note 58.
[62] ERVING GOFFMAN, INTERACTION RITUAL: ESSAYS IN FACE-TO-FACE BEHAVIOR (2005).
[63] These roles are most relevant to what GOFFMAN, FORMS OF TALK 137 (1981) characterized as "podium talk." Differing from two-person conversations, this type of talk may involve "platform monologues"—long strings of words delivered by a single speaker to an audience. *Id*.; GOFFMAN, BEHAVIOR IN PUBLIC PLACES: NOTES ON THE SOCIAL ORGANIZATION OF GATHERINGS 10 (1963); John Heritage, *Conversation Analysis and Institutional Talk: Analyzing Data*, in QUALITATIVE RESEARCH: ISSUES OF THEORY AND METHOD (D. Silverman ed., 1997); GOFFMAN, *supra* note 60 at 137.

[64] SMITH & STICE, *supra* note 16; Maynard, *supra* note 2 at 31 (citing Erving Goffman, BEHAVIOR IN PUBLIC PLACES: NOTES ON THE SOCIAL ORGANIZATION OF GATHERINGS (1963); GOFFMAN, *supra* note 60; Maynard, *Social Order and Plea Bargaining in the Courtroom* *supra* note 57; *see also* J. MAXWELL ATKINSON & PAUL DREW, ORDER IN COURT: THE ORGANIZATION OF VERBAL INTERACTION IN JUDICIAL SETTINGS (1979)(extending conversation analysis to institutional interactions, identifying themes of routinized turn-taking, the nature of questioning in the courts, and connections between strategic interactions and power).
[65] Applying the microanalysis of ATKINSON AND DREW, *supra* note 64, in describing the interactions in non-trial situations, Douglas Maynard focused on how "patterns of talk are continuously and contingently constructed as participants act and react in real-time." Maynard, *supra* note 2 at 11
[66] Maynard, *Social Order and Plea Bargaining in the Courtroom, supra* note 57 at 236-40.
[67] The plea negotiation process varies from jurisdiction to jurisdiction, with some places having the court very involved in the process, while in others judicial involvement is strictly prohibited. See e.g., Samuel Strom, *Plea Bargaining: State Provisions*, FINDLAW.COM (December 17, 2023)(https://www.findlaw.com/criminal/criminal-procedure/plea-bargaining-state-provisions.html#Florida).
[68] Maynard, *supra* note 2 at 11-12.
[69] Maynard, *Social Order and Plea Bargaining in the Courtroom, supra* note 57 at 244.
[70] Maynard, *Social Order and Plea Bargaining in the Courtroom, supra* note 57 at 245.
[71] Maynard, *Social Order and Plea Bargaining in the Courtroom, supra* note 57 at 245-246.
[72] Maynard, *Social Order and Plea Bargaining in the Courtroom, supra* note 57 at 249.
[73] Maynard *supra* note 2 at 76-78.
[74] Most of the studies, including those in the courts, focus on situated talk without concern for the broader institutional context and the influence of power. See generally, Maynard, *The Structure of Discourse in Misdemeanor Plea Bargaining*, *supra* note 57 at 75. We agree with the call for reconciliation of conversation analysis and studies of power and inequality. Max Travers, *Understanding Talk in Legal Settings: What Law and Society Studies Can Learn from a Conversation Analyst*, 31 L. & SOC. INQUIRY 447, 453 (2006) (quoting Conley & O'Barr, *supra* note 43 at 138 "sociolinguists, conversation analysts and other scholars of language must shed any lingering reluctance to deal with questions of power.")
[75] Maynard *supra* note 2, at 77-8.
[76] Maynard *supra* note 2, at 79.
[77] Maynard *supra* note 2, at 80.
[78] Maynard *supra* note 2, at 80-82 (*emphasis added*).
[79] Maynard *supra* note 2, at 85-91 (*emphasis added*).
[80] Maynard *supra* note 2, at 91-98. (*emphasis added*).
[81] Maynard *supra* note 2, at 102.
[82] Maynard *supra* note 2, at 102.
[83] *See* Paul Drew & Fabio Ferraz de Almeida, *Order in Court: Talk-in-Interaction in Judicial Settings*, *in* THE ROUTLEDGE HANDBOOK OF FORENSIC LINGUISTICS 177 (Malcolm Coulthard, Alison May, & Rui Sousa-Silva, eds., 2nd ed., 2020); ATKINSON & DREW, *supra* note 64.
[84] *See* Drew & Ferraz de Almeida, *supra* note 83, at 177-192); ATKINSON & DREW, *supra* note 64.
[85] *See generally*, SUSAN U. PHILIPS, IDEOLOGY IN THE LANGUAGE OF JUDGES: HOW JUDGES PRACTICE LAW, POLITICS, AND COURTROOM CONTROL (1998); Conley & O'Barr, *supra* note 43.
[86] Maynard, *supra* note 2; Maynard, *The Structure of Discourse in Misdemeanor Plea Bargaining*, *supra* note 57; Maynard, *Social Order and Plea Bargaining in the Courtroom* *supra* note 57.
[87] SMITH & STICE, *supra* note 16.
[88] Rudolf Flesch, *A New Reliability Yardstick*, 32 J. APPLIED PSYCH. 221 (1948); Rudolf Flesch, *Measuring the Level of Abstraction*, 34 J. APPLIED PSYCH. 384 (1950); Gisli .H. Gudjonsson, *The "Notice to Detained Persons," PACE Codes and Reading Ease*, 5 COGNITIVE PSYCH. 89 (1991).
[89] TIERSMA, *supra* note 8.
[90] Gail Stygall, *Legal Writing: Complexity*, *in* THE ROUTLEDGE HANDBOOK OF FORENSIC LINGUISTICS, 32 (Malcolm & Alison Johnson eds., 2nd ed. 2021)
[91] SHUY, *supra* note 48.

[92] For a more detailed discussion of data collection and protocol changes, *see* Alisa Smith, Natalie Mousa, & Sarah K. Stice, *Studying Unrepresented Defendants in the Lower Criminal Courts: Methodological Lessons Learned*, LAW & METHOD. (2024).
[93] STICE & SMITH, *supra* note 3.
[94] In the smaller county, there were two judges. One played a video explaining rights and procedures in open court. The other played the same video in the lobby, posting a note for defendants to review the recording before entering court. *See* SMITH & STICE, *supra* note 16 for more details on these differences. *See* Appendix B for a transcription of the in-court video message and brief linguistic assessment of the recording. The lobby version was not recorded and is thus unavailable.
[95] To protect participant anonymity, participants in the study were asked to choose a pseudonym, which are used to identify them in this report.
[96] Butter's misdemeanor arraignment hearing was longer because the state had not filed charges, and Butter requested an offer to resolve the case without having to return for another court hearing. For this transcript, there are long silences while the prosecutor prepares an offer. The judge also spent more time with Butter to ensure that he understood that he was entering a plea before the prosecutor had made a formal filing decision. This was an anomalous case.
[97] *E.g.,* Redlich, *supra* note 7; Redlich & Bonventre, *supra* note 6.
[98] Steven Clayman & Virginia Tea Gill, *Conversation Analysis, in* THE ROUTLEDGE HANDBOOK OF DISCOURSE ANALYSIS 120 (Michale Handford & James Paul Gee, eds., 2012), *citing* Gail Jefferson, *Error as an Interactional Resource*, 2 LANG. SOC'Y 181 (1974).
[99] Some physical paralinguistic behaviors, including hand gestures, eye movements, or other physical actions, were unavailable for this study because only audio, not video data was available.
[100] Flesch, *A New Reliability Yardstick*, *supra* note 88; Flesch, *Measuring the Level of Abstraction*, *supra* note 88; Gudjonsson, *supra* note 88.
[101] Richard Rogers, Kimberly S. Harrison, Daniel W. Shuman, Kenneth W. Sewell, & Lisa L. Hazelwood, *An Analysis of Miranda Warnings and Waivers: Comprehension and Coverage*, 31 LAW & HUM. BEHAV. 177, 181 (2007).
[102] *Id.*, at 181.
[103] *Id., at* 181
[104] BOBBY D. RAMPEY, ET AL., SKILLS OF U.S. UNEMPLOYED, YOUNG AND OLDER ADULTS IN SHARPER FOCUS: RESULTS FROM THE PROGRAM FOR THE INTERNATIONAL ASSESSMENT OF ADULT COMPETENCIES (PIAAC) 2012/2014: FIRST LOOK (NCES 2016-039) (March 2016) National Center for Education Statistics (https://nces.ed.gov/pubs2016/2016039.pdf).
[105] BOBBY D. RAMPEY, ET. AL., HIGHLIGHTS FROM THE U.S. PIAAC SURVEY OF INCARCERATED ADULTS: THEIR SKILLS, WORK EXPERIENCE, EDUCATION, AND TRAINING, PROGRAM FOR THE INTERNATIONAL ASSESSMENT OF ADULT COMPETENCIES: 2014 (November 2016) National Center for Education Statistics (https://nces.ed.gov/pubs2016/2016040.pdf).
[106] Jessie L. Krienert, Jeffrey A. Walsh, & Malia A. Kohls, *An Empirical Analysis of the (Un)readability of Inmate Handbooks*, J. CRIMINAL JUST. 421, 422 (2023), citing Lih-Wern Wang, et. al., Assessing Readability Formula Differences with Written Health Information Materials: Application, Results, and Recommendations, 9(5) RES. SOC. & ADMIN. PHARMACY 503 (2013).
[107] Rogers et al., *supra* note 101, at 181.
[108] In *TIERSMA,* supra note 8, at 203, his chapter, titled *"What Makes Legal Language Difficult to Understand?"* lists features that "impede communication".
[109] Stygall, *supra* note 90.
[110] TIERSMA, *supra* note 8, at 203-210, cited Stygall, *supra* note 90, at 42.
[111] Stygall, *supra* note 90, at 42.
[112] SHUY, *supra* note 48.
[113] Vijay K. Bhatia, *Towards Critical Genre Analysis*, *in* ADVANCES IN DISCOURSE STUDIES 166 (Vijay Bhatia, John Flowerdew, & Rodney H. Jones, eds., 2008).
[114] Christine M. Tardy, *Genre Analysis*, *in* THE CONTINUUM COMPANION TO DISCOURSE ANALYSIS 54 (Ken Hyland & Brian Paltridge, eds., 2011); JOHN M. SWALES, GENRE ANALYSIS: ENGLISH IN ACADEMIC AND RESEARCH SETTINGS (1990); Andy Hopkins & Tony Dudley-Evans, *A Genre-based Investigation of the*

Discussion Sections in Articles and Dissertations, 7 ENGLISH FOR SPEC. PURPOSE 113 (1988); Vijay K. Bhatia, *Methodological Issues in Genre Analysis,* HERMES-JOURNAL OF LANGUAGE AND COMMUNICATION IN BUSINESS, 39 (1996).

[115] Tardy, *supra* note 114, at 55.

[116] Adam Hodges, *Intertextuality in Discourse*, in THE HANDBOOK OF DISCOURSE ANALYSIS 42 (D. Tannen, H.E. Hamilton, & D. Schiffrin, eds., 2015) (describing the complexities of intertextuality in the understanding of how meaning is shaped by referencing another texts).

[117] Vijay K. Bhatia, *Interdiscursivity in Professional Communication*, 21 DISCOURSE & COMM. 32, 32 (2010) (defining interdiscursivity as a function of appropriation of generic resources across discursive, professional and cultural practices).

[118] Vijay K. Bhatia, *Legal Genres in Interdiscursive Contexts*, *in* RESEARCH HANDBOOK ON JURILINGUISTICS 159 (Anne Wagner & Aleksandra Matulewska, eds. 2023) (focusing on the interdiscursive appropriation of socio-cultural text-external resources, which seems to be one of the most important aspects of legal genres).

[119] Bhatia, *supra* note 113, at 175; Tardy, *supra* note 113, at 60 (pointing out that "Genres reflect their users' values and practices, which are neither neutral nor free of power dynamics. As such, they must be viewed as not just a reflection but also a reinforcement of the power structures that exist in the community within which they are used.").

[120] SWALES, *supra* note 114 (applying move analysis to understand how research report introductions were constructed, identifying three broad *moves*: 1) Establishing a territory, 2) Establishing a niche, and 3) Occupying the niche, and introducing the concept of *steps* or the precise fragments forming the larger *moves*).

[121] *Id*. Claiming topic centrality, 2) Making topic generalizations, and/or 3) Reviewing items of previous research.

[122] *Id*. at 197-8; Tardy, *supra* note 114; Christine M. Tardy & John M. Swales, Genre Analysis, *in* HANDBOOK OF PRAGMATICS 165 (Wofram Bublitz, Andreas H. Jucker, & Klaus P. Schneider, eds., 2011). Linguistic studies account for rhetorical structures of speech acts, and linguists typically refers to speech or text that are "routine" as "obligatory" steps and those that are "less frequent" as "optional." In our report, we chose to use "routine" to avoid confusion with the non-linguistic meaning of "obligatory" that may arise in the legal context.

[123] Tardy, *supra* note 114.

[124] Charles Goodwin & John Heritage, *Conversation Analysis*, 19 ANNU. REV. ANTHROPOL. 283, 283 (1990). (Conversational analysis developed in the 1960s through the collaborative efforts of Harvey Sacks, Emanuel Schegloff, and Gail Jefferson).

[125] Anita Pomerantz & B.J. Fehr, *Conversation Analysis: An Approach to the Study of Social Action as Sense Making Practices*, DISCOURSE AS SOCIAL INTERACTION, VOLUME 2, 64 (Teun A. van Dijk, ed., 1997); Clayman & Gill, *supra* note 98.

[126] Heritage, *supra* note 63 at 223.

[127] Heritage, *supra* note 63 at 223.

[128] Goodwin & Heritage, *supra* note 124, at 292-95.

[129] Goodwin & Heritage, *supra* note 124, at 295 (noting that CA's approach to context has been its most controversial and misunderstood component); Heritage, *supra* note 63 at 224-25.

[130] *See, e.g.,* Atkinson & Drew, *supra* note 64 (focusing primarily on turn-taking in lawyer-witness exchanges during trials)

[131] This involves mapping the typical phases of turn-taking (including opening, identifying the problem, resolving, and closing).

[132] Identifying how participants initiate, develop, and conclude interactions.

[133] Describing whether formal or ordinary words are employed during institutional exchanges.

[134] Heritage, *supra* note 63 at 225-40 (revealing aspects of asymmetries in lay participant interactions.)

[135] Amanda Izes. *"#MeToo, Discursive Injustice, and Shifting Social Norms-A Linguistic Case Study of Commonwealth v. William Henry Cosby Jr."* 10 JLL 48 (2021); Susan Berk-Seligson, *The Miranda warnings and linguistic coercion: The role of footing in the interrogation of a limited-English-speaking*

murder suspect, LANG. LEGAL PROCESS 127 (2002); Atkinson & Drew, *supra* note 64; CONLEY, O'BARR, AND RINER, *supra* note 43.
[136] Maynard, *Social Order and Plea Bargaining in the Courtroom* *supra* note 57; Maynard, *The Structure of Discourse in Misdemeanor Plea Bargaining*, *supra* note 57; Maynard, *supra* note 2.
[137] Emily Brissette, *Bad Subjects: Epistemic Violence at Arraignment*, 24 THEOR. CRIMINOL. 353 (2020); Benjamin Spivak, James R.P. Ogloff, & Jonathan Clough, *Asking the Right Questions: Examining the Efficacy of Question Trails as a Method of Improving Lay Comprehension and Application of Legal Concepts,* 26 PSYCH., PSYCH, & L. 441 (2019); CONLEY, O'BARR, AND RINER, *supra* note 43, at ch. 4.
[138] NORMAN FAIRCLOUGH, LANGUAGE AND POWER 12 (1989).
[139] As used here, the term "scripted," does not mean that the judges delivered *identical* plea colloquies to every person, but rather the oral advisement of the rights was highly structured by 1) how the colloquies were delivered; and 2) the high level of overlap across questions between judges and with the written plea forms, particularly on the format and function of colloquies. These observations that judge-defendant exchanges were highly structured and formulaic is consistent with other legal research, showing that written jury instructions, which are stylistically archaic, influenced the spoken instructions and judicial responses to clarifying questions from juries (see e.g., Chris Heffer, *Beyond 'Reasonable Doubt': The Criminal Standard of Proof Instruction as Communicative Act,* 13(2) INT'L J. SPEECH, LANG., & L. 159, 162 (2006).
[140] See SMITH & STICE, *supra* note 16.
[141] In another paper, we called into question whether this video was effective, given the conditions under which it was played prevented them from giving the video their full attention. *See* SMITH & STICE, *supra* note 16.
[142] The Flesch Reading Ease and Flesch-Kincaid readability score (grade-level) software is available in Word. The Flesch Reading Ease score uses the average number of words and syllables to generate a result; the higher the score (0-100), the easier the materials are to read. The Flesch score and associated grade levels are shown in Table 2 above.
[143] Some judges also provide advisement through a video at the beginning of arraignment hearings. While readability cannot be easily translated to aural comprehensibility, we note that linguistic complexity and burden on short-term memory make this type of guidance unhelpful to the defendant. See, e.g., Tiffany P. Goan, Suzanne M. Adlof, & Crystle N. Alonzo, *On the Importance of Listening Comprehension*, 16 INT. J. SPEECH-LANG. PATHOLOGY 199 (2014). The transcribed video was short and combined rights advisement and courtroom behavioral announcements. The video had a Flesch-Kincaid readability score of nearly an 8th-grade level (7.7), and our observation study (*see* SMITH & STICE, *supra* note 16) revealed that few individuals listened to the video or were distracted while it played. The transcription of the recorded video and a brief discussion of the difficulty of remembering its contents are included in Appendix B.
[144] Stygall, *supra* note 90.
[145] SHUY, *supra* note 48 at 54-57.
[146] Stygall, *supra* note 90
[147] SHUY, *supra* note 48 at 57 ("Most listeners can process two or three levels of embedding without difficulty; the Miranda statement requires the listener to process embedding five to six layers deep[.]")
[148] Redlich & Bonventre, *supra* note 6 at 171 ("Tender-of-plea [ToP] forms in our sample are likely to be incomprehensible to the average defendant. More specifically, we found that of the ToP forms that are presumably used, the level of comprehensibility would exceed the abilities of most adult and juvenile defendants. . . . The average reading level . . . was about 9th grade [and] [u]sing the more strict criterion of 100% comprehension (i.e., the SMOG), which arguably would be a more relevant standard given the forms' purpose, the average reading grade level approached 12th grade.")
[149] Rogers et al., *supra* note 101, at 181.
[150] Maynard, *supra* note 2.
[151] Only two moves satisfy the scientific standard for distinguishing between conventional and nonconventional rhetorical moves, which sets the standard of occurring less than 60% of the time. *See* Budsaba Kanoksilapatham, *Rhetorical Structure of Biochemistry Research Articles*, 24 ESP 269, 272 (2005); Budsaba Kanoksilapatham, *Writing Scientific Research Articles in Thai and English: Similarities and Differences*, 7 SILPAKORN U INT'L J. 172, 177 (2007).

[152] In the remaining three of the five remaining hearings, the judge notified the defendant of the plea offer without conversing with the prosecutor. In the other two hearings, punishments are not shared with defendant until after the plea colloquy. In these cases, the fines are not framed as plea offers, but penalties, by the presiding judge.
[153] Hanni Woodbury, The Strategic Use of Questions in Court, 48 SEMIOTICA. 197 (1984); Susanne Philips, The Social Organization of Questions and Answers in Courtroom Discourse: A Study of Changes of Plea in an Arizona Court. 4 TEXT-INTERDISCIPLINARY JOURNAL FOR THE STUDY OF DISCOURSE 225 (1984); John Gibbons, *Questioning in common law criminal courts*, *in* DIMENSIONS OF FORENSIC LINGUISTICS 115-130 (John Gibbons & M. Teresa Turell, eds., 2008).
[154] *See* Frances Rock*, Talking the Ethical Turn: Drawing on Tick-Box Consent in Policing, in* Discursive Constructions of Consent in the Legal Process 93 (Susan Erlich, Diana Eades, & Janet Ainsworth, eds., 2016) (uncovering that consent exchanges with the police were focused on the "tick-box" approach, which routinized the procedures and inadequately ensured truly voluntary consent).
[155] In Sabrina's exchange, Move 3 includes the following:

> *J: Alright, so it's a one hundred dollar fine plus three hundred and one dollars in court costs. (1) Do you wanna accept that?=*
> *S: =Yes.*

[156] Our project excluded any individuals who plead not guilty or requested counsel, but our field study work revealed that defendants who requested counsel or completed the affidavit for the appointment of court appointed counsel entered not guilty pleas and their cases were postponed for another court date. *See* SMITH & SARAH STICE, *supra* note 16 at 15.
[157] In the two exceptional hearings, the judge asked the defendants for their plea before notifying them of the offer. In the two anomalous cases, David (7) and Mark (8) appeared before the same judge (J5), so, the anomalous pattern might reflect the idiosyncratic approach the particular judge.
[158] SHUY, *supra* note 48 at 53.
[159] Sarah K. Stice & Alisa Smith, "You feel like you ruined your life when you go through something like this": The compounding negative consequences of misdemeanor penalties (forthcoming NACDL).
[160] Krienert, Walsh, & Kohls, *supra* note 106; citing Lih-Wern Wang, et al., *Assessing Readability Formula Differences with Written Health Information Materials: Application, Results, and Recommendations*, 9 RES. SOC. & ADMIN. PHARMACY 503 (2013); Rogers et al., *supra* note 101, at 181.
[161] The finding is generally consistent with the inaccessibility of legal language and court opinions. See generally, the discussion of readability of court documents and opinions, in RYAN C. BLACK, ET AL., U.S. SUPREME COURT OPINIONS AND THEIR AUDIENCES 40-59 (2016), at pp. 40-59.
[162] The finding is generally consistent with the inaccessibility of legal language and court opinions. See generally, the discussion of readability of court documents and opinions, in *id.* at 40-59.
[163] See the literature discussed in Section IB, Knowing Waivers and Comprehension of Rights.
[164] In fact, none of the defendants in our sample answered a *do you understand* question by saying "*no*."
[165] See Section B of Literature Review for associated research explaining why Sabrina's "yes," though voluntary, does not suffice to prove comprehension.
[166] SMITH & STICE, *supra* note 16.
[167] Advising defendants, including misdemeanor defendants, that they might be subjected to deportation for entering a plea to criminal charges if they were not citizens became routine after the United States Supreme Court decision, in *Padilla v. Kentucky*, 559 U.S. 356 (2010). IMMIGRANT DEFENSE PROJECT & NYU SCHOOL OF LAW IMMIGRANT RIGHTS CLINIC, JUDICIAL OBLIGATIONS AFTER PADILLA V. KENTUCKY: THE ROLE OF JUDGES IN UPHOLDING DEFENDANTS' RIGHTS TO ADVICE ABOUT THE IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS (2011).
[168] No contest pleas permit defendants to enter pleas without admitting guilt.
[169] George E. Tragos & Peter A. Sartes, *Withold of Adjudication: What Everyone Needs to Know*, 82 THE FLORIDA BAR JOURNAL. 48 (2008).
[170] *Chapter 2 Adjudicative Factors, C1* U.S. CITIZENSHIP AND IMMIGRATION SERVICES POLICY MANUAL, (August 21, 2025), https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-

2#:~:text=A%20conviction%20for%20immigration%20purposes,a%20finding%20of%20guilt%3B%20and]
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[171] ACLU Florida Greater Miami, Misdemeanors. Collateral Consequences Resulting from Misdemeanor Convictions and Withhold-of-Adjudication, https://www.pdmiami.com/resources-pd/documents/misdemeanor-collateral-consequences-october2020.pdf].

[172] See Section B of Literature Review for associated research explaining why Sabrina's "yes," though voluntary, does not suffice to prove comprehension.

[173] Several observers saw that other defendants also arrived at arraignments when the prosecutor had not made a formally filing decision. In those instances, defendants left court, and the trial judge advised them that the state might not file charges, but if they did, they would be notified for another arraignment hearing. *See* Smith & Stice, *supra* note 16.

[174] Renée E. Stalmeijer, Megan E.L. Brown, & Bridget C. O'Brien, *How to Discuss Transferability of Qualitative Research in Health Professions Education*, 21 Clin. Teach. (2024).

[175] Ronald W. Casson, Order in Court: The Organization of Verbal Interaction in Judicial Settings. 129 U. Pa. L. Rev. 1006 (1981); Pavlenko, Hepford, & Jarvis, *supra* note 15; Spivak, Ogloff, & Clough, *supra* note 137.

[176] Aneta Pavlenko, Elizabeth Hepford, & Scott Jarvis, An Illusion of Understanding: How Native and Non-Native Speakers of English Understand (and Misunderstand) Their Miranda Rights, 26 Int. J. Speech Lang. Law. 181 (2019); Rogers & Drogin, *supra* note 15.

[177] Pavlenko, Hepford, & Jarvis, *supra* note 15; Rogers & Drogin, *supra* note 15.

[178] Nelson Cowan, *The Magical Mystery Four: How is Working Memory Capacity Limited, and Why?*, 19 Curr. Dir. Psychol. Sci. 51 (2010; Amanda Gilchrist, Nelson Cowan, & Moshe Naveh-Benjamin, Working Memory Capacity for Spoken Sentences Decreases with Adult Ageing: Recall of Fewer but Not Smaller Chunks in Older Adults, 16 Memory. 773 (2008); George A. Miller, The Magical Number Seven, Plus or Minus Two, 63 Psychol. Rev. 81 (1956). These sources define a "chunk" of information as a meaningful piece of information, be it letters, digits, words, or –in this case– sentences.

[179] Stice & Smith, *supra* note 3.

[180] Alan Baddely, Working Memory, 20 Curr. Biol. R136 (2010).

[181] Smith & Stice, *supra* note 16.

[182] **Transcription Conventions:**

Transcription Symbols	Description
J:/D:/N:/P:	Speaker Labels (e.g. J: = Judge; P: = Prosecutor)
[ ]	Encloses talk produced in overlap (i.e. when more than one speaker is speaking)
( )	Encloses unclear talk
(0.0)	Silence in seconds
,	Short pause (less than 0.5 seconds)
=	Links talk produced with no intervening pause or silence

(( ))	Encloses description of nonverbal communication
-	Indicates incomplete words and stuttered syllables

[183] Research assistants observed eleven judges but only interviewed defendants from nine. There were 32 defendants who were interviewed in the larger study (see STICE & SMITH, *supra* note 3; Sarah K. Stice & Alisa Smith, *"You Feel Like You Ruined Your Life When You Go Through Something Like This": The Compounding Negative Consequences of Misdemeanor Penalties,* NACDL (forthcoming), but not all defendants provided identifying information, so we were unable to obtain the recordings from their rights waivers at arraignment.
[184] Clayman & Gill, *supra* note 98, *citing* Jefferson, *supra* note 98.
[185] Travers, *supra* note 74 at 448 (citing Harvey Sacks, *Notes on Methodology*, *in* STRUCTURES OF SOCIAL ACTION: STUDIES IN CONVERSATION ANALYSIS 21 (J. Maxwell Atkinson & John Heritage eds., 1984).
[186] Goodwin & Heritage, *supra* note 124 at 284.
[187] "In constructing their talk, participants normally address themselves to preceding talk and, most commonly, the immediately preceding talk. In this simple and direct sense, their talk is *context-shaped*." Heritage, supra note 63 at 223 (citing Harvey Sacks, *On the Preferences for Agreement and Contiguity in Sequences in Conversation*, TALK AND SOCIAL ORGANIZATION 54 (Graham Button and John R. E. Lee, eds., 1987); HARVEY SACKS, LECTURES ON CONVERSATION, VOLUMES I, II (Gail Jefferson, ed., 1992); Emanuel A. Schegloff & Harvey Sacks, *Opening Up Closings*, 8 SEMIOTICA. 289 (1973); Emanuel Schegloff, *On Some Questions and Ambiguities in Conversation*, *in* STRUCTURE OF SOCIAL ACTION 28 (J. Maxwell Atkinson & John Heritage, eds., 1984)).
[188] "In doing some current action, participants normally project (empirically) and require (normatively) that some "next action" (or one of a range of possible "next actions") should be done by a subsequent participant. They thus *create* (or *maintain* or *renew*) a context for the next person's talk." Heritage, *supra* note 63 at 223 (citing Emanuel A. Schegloff, Repair after Next Turn: The Last Structurally Provided Defense of Intersubjectivity in Conversation. 95 AM. J. SOCIOLOGY 1295 (1992)).
[189] "By producing the next actions, participants show an understanding of a prior action and do so at a multiplicity of levels – for example, by an "acceptance," someone can show an understanding that the prior turn was complete, that it was addressed to them, that it was an action of a particular type (e.g., an invitation), and so on. These understandings are (tacitly) confirmed or can become the objects of repair at any third turn in an ongoing sequence. Through this process they become "mutual understandings" created through a sequential '*architecture of intersubjectivity*.'" Heritage, *supra* note 63 at 223-224 (citing Emanuel A. Schegloff, *Repair after Next Turn: The Last Structurally Provided Defense of Intersubjectivity in Conversation,* 97 AM. J. SOCIOLOGY. 1295 (1992); JOHN HERITAGE, GARFINKEL AND ETHNOMETHODOLOGY (1984)).
[190] ATKINSON & DREW, *supra* note 64; Drew & Ferraz de Almeida, *supra* note 83, at 177-192.

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