CRIMINAL LAW — PLEA BARGAINS — DISTRICT COURT DENIES PLEA BARGAIN DUE TO THE PUBLIC INTEREST IN UNDERSTANDING THE OPIOID EPIDEMIC. — *United States v. Walker*, No. 2:17-cr-00010, 2017 WL 2766452 (S.D. W. Va. June 26, 2017).

Can one judge fight the opioid crisis by wielding his or her power to deny plea deals? Rule 11 of the Federal Rules of Criminal Procedure grants judges unchecked discretion to deny a plea bargain, with no guidelines about which standards should be applied when making the decision to deny.[1] Judges, however, rarely use this power.[2] Recently, in *United States v. Walker*,[3] a federal judge denied a plea deal in a drug case on the grounds that the bargain was against the public interest.[4] He found that the public has an interest in participating in the criminal justice system through open jury trials[5] and that "[t]he jury trial reveals the dark details of drug distribution and abuse to the community in a way that a plea bargained guilty plea cannot."[6] While the judge identified compelling concerns about the legal system's reliance on plea bargains in the context of the opioid crisis, his solution — denying an individual plea bargain — neither meaningfully addresses the crisis nor adequately accounts for the impact on the defendant.

Starting in April 2016, the Metropolitan Drug Enforcement Network Team (MDENT) used confidential informants to "conduct seven controlled buys" of heroin and fentanyl from Charles York Walker.[7] On July 14, 2016, MDENT arrested Mr. Walker.[8] In September of the same year, he was indicted on three counts of distributing heroin and two

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[1] *See* FED. R. CRIM. P. 11(c). Indeed, the advisory committee notes on Rule 11 state: "The plea agreement procedure does not attempt to define criteria for the acceptance or rejection of a plea agreement. Such a decision is left to the discretion of the individual trial judge." FED. R. CRIM. P. 11 advisory committee's note to 1974 amendment.

[2] *See* HUMAN RIGHTS WATCH, AN OFFER YOU CAN'T REFUSE: HOW US FEDERAL PROSECUTORS FORCE DRUG DEFENDANTS TO PLEAD GUILTY 88 (2013), https://www.hrw.org/sites/default/files/reports/us1213_ForUpload_0_0_0.pdf [https://perma.cc/H4WQ-PWZK] ("Plea agreements must be approved by judges, but they will approve most agreements if the defendant has made a knowing and voluntary waiver of her right to trial, and if the plea is founded on some 'factual basis.'" (internal quotation marks omitted) (quoting FED. R. CRIM. P. 11(b))); Stephen J. Schulhofer & Ilene H. Nagel, *Plea Negotiations Under the Federal Sentencing Guidelines: Guideline Circumvention and Its Dynamics in the Post-*Mistretta *Period*, 91 NW. U. L. REV. 1284, 1303–05 (1997) (discussing judges' reluctance to deny plea deals under the sentencing guidelines). In 2016, over ninety-seven percent of federal criminal convictions were attained by plea rather than by jury trial. U.S. SENTENCING COMM'N, 2016 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS S-23 fig.C (2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2016/FigureC.pdf [https://perma.cc/5U4G-QTXC].

[3] No. 2:17-cr-00010, 2017 WL 2766452 (S.D. W. Va. June 26, 2017).

[4] *Id.* at *13.

[5] *Id.* at *12.

[6] *Id.* at *13.

[7] *Id.* at *1–2.

[8] *Id.* at *2.

counts of distributing fentanyl in violation of 21 U.S.C. § 841(a)(1),[9] as well as one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1).[10] Mr. Walker entered into a plea bargain: he would plead guilty to a separate single-count information of heroin possession with intent to distribute in violation of § 841(a)(1), and the government would move to dismiss the charges from the grand jury indictment.[11] On January 26, 2017, Mr. Walker entered his plea in the U.S. District Court for the Southern District of West Virginia.[12] Judge Goodwin accepted the guilty plea but deferred acceptance of the agreement until he could review the presentence investigation report.[13]

After reviewing the presentence investigation report, Judge Goodwin rejected the plea agreement on June 26, 2017.[14] In explaining his reasoning for this rejection, the judge considered further factual background regarding the defendant. First, he discussed what he described as "a number of troubling facts regarding Mr. Walker's criminal history and the criminal conduct at issue" that had become apparent in the report.[15] These facts included a history of juvenile theft charges beginning at age thirteen, as well as convictions on eighteen charges as an adult, including three drug possession and two firearms charges.[16] Judge Goodwin also documented the defendant's history of illicit drug use[17] and noted that the defendant, who appeared to be "engaged in a continuing drug dealing enterprise,"[18] had mentioned to a confidential informant "that some of [his] other purchasers had recently overdosed."[19]

Moving on from the factual background, Judge Goodwin explained that the Federal Rules of Criminal Procedure grant district judges broad, unguided discretionary power over plea bargains.[20] He then laid out a scheme for assessing such bargains, asserting that the judge's role in the process should include protecting democratic involvement in the

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[9] Indictment at 1–5, United States v. Walker, No. 2:16-cr-00174 (S.D. W. Va. Sept. 13, 2016), ECF No. 18 (citing 21 U.S.C. § 841(a)(1) (2012)).

[10] *Id.* at 6–7 (citing 18 U.S.C. § 922(g)(1) (2012)).

[11] Plea Agreement at 2, *Walker*, No. 2:17-cr-00010, ECF No. 9.

[12] *Id.* at 8; *Walker*, 2017 WL 2766452, at *1.

[13] *Walker*, 2017 WL 2766452, at *1.

[14] *Id.*

[15] *Id.*

[16] *Id.* Ten of the named charges were traffic related. *Id.*

[17] *Id.* at *2. Mr. Walker "began using marijuana at age twelve, cocaine at age thirteen, alcohol at age twenty, PCP at age twenty-six, pills such as Subutex, Roxicodone, and Xanax around age twenty-six, and heroin at age thirty." *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* (quoting FED. R. CRIM. P. 11 advisory committee's note to 1974 amendment).

criminal justice system. He explained that the United States is a "participatory democracy"[21] and that participation must extend to the judicial system.[22] If criminal cases are not brought to trial, the people are denied their right "to participate in the administration of the criminal justice system."[23] Thus judges must give "close consideration" to plea deals in order to vindicate "the people's general interest in observing and participating in their government."[24]

Judge Goodwin expressed extreme skepticism about what he described as the "primary justification" for plea bargaining: that courts and prosecutors are "overworked."[25] He explored the history of plea bargains in the United States, suggesting that they were "discourage[d]" prior to the Civil War[26] but rose to prominence over the late nineteenth and twentieth centuries because of "rising crime rate[s], limitations of local law enforcement resources, and busy dockets."[27] In 2015, only 2.9% of federal criminal cases went to jury trials.[28] While acknowledging that there may once have been circumstances that made plea bargains "acceptable," Judge Goodwin asserted that those circumstances no longer hold, at least in federal court, because courts and prosecutors "are no longer overburdened."[29] Concluding that the need to reduce the burden on courts and prosecutors is not currently pressing, the judge asserted that courts should examine plea agreements closely and reject them "upon finding that [they are] not in the public interest."[30]

Judge Goodwin proposed a four-step process for making this public interest evaluation. The first step is to "consider the cultural context"

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[21] *Id.* at *8.

[22] *See id.*

[23] *Id.* at *10.

[24] *Id.* at *11. To bolster this assertion, the judge listed several circuit court decisions that "have approved consideration of the public interest in accepting or rejecting a plea agreement." *Id.* at *11 n.105 (citing *In re* Morgan, 506 F.3d 705, 712 (9th Cir. 2007); United States v. Carrigan, 778 F.2d 1454, 1462 (10th Cir. 1985); United States v. Bean, 564 F.2d 700, 704 (5th Cir. 1977); United States v. Bednarski, 445 F.2d 364, 366 (1st Cir. 1971)).

[25] *Id.* at *10.

[26] *Id.* at *7 (citing Albert W. Alschuler, *Plea Bargaining and Its History*, 79 COLUM. L. REV. 1, 5–12 (1979)).

[27] *Id.* According to Judge Goodwin, the use of plea bargains was further incentivized by the advent of the then-mandatory United States Sentencing Guidelines in 1989, which gave prosecutors significantly more power over sentencing than they had previously wielded. *Id.* at *8 (first citing Mistretta v. United States, 488 U.S. 361, 412 (1989); then citing Ronald F. Wright, *Trial Distortion and the End of Innocence in Federal Criminal Justice*, 154 U. PA. L. REV. 79, 129–32 (2005)).

[28] *Id.* at *9 (citing U.S. SENTENCING COMM'N, *supra* note 2, at S-23 fig.C).

[29] *Id.* at *10. He backed up this declaration with data indicating that while the number of federal criminal trials has decreased significantly since 1970, the number of federal prosecutors has increased, such that while in 1973 federal prosecutors handled an average of eight criminal trials each, in 2016 the average was down to 0.29 trials. *Id.* He showed a similar inverse relationship between the number of federal trials and the number of federal district court judges. *Id.* at *11.

[30] *Id.* at *11.

of the criminal behavior.[31] Here, that context is the national opioid crisis — heroin overdoses tripled between 2010 and 2014[32] — which Judge Goodwin called "one of the great public health problems of our time."[33] The crisis, he noted, is especially acute in West Virginia.[34]

The second step is to "weigh the public's interest in participating in the adjudication" at hand.[35] In this case, the judge explained, the existence of the opioid crisis gave the public a "high interest" in participating in the adjudication of opioid-related crimes.[36] He opined that members of the jury would come away from the trial more informed about the inner workings of the opioid crisis and that the media attention jury trials engender could highlight "that such conduct is unlawful and that the law is upheld and enforced."[37]

The third step in Judge Goodwin's approach tasks courts with considering whether, given the nature of the crime at hand, denying a public jury trial would prevent necessary "community catharsis" from occurring.[38] He did not explore this point deeply in relationship to Mr. Walker's case, simply stating: "The crimes alleged in Mr. Walker's indictment involve heroin and other opioids and are 'vicious criminal acts.'"[39]

The fourth and final step asks judges to consider whether the plea agreement appears to be motivated by a desire to "advance justice" or instead by simple expediency.[40] Here, he noted that the plea agreement traded five counts of distribution and one firearms charge for a single distribution charge, concluding: "The principal motivation appears to be convenience."[41] In sum, he found "the plea agreement [not to be] in the public interest" and rejected it.[42]

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[31] *Id.*

[32] *Id.* at *3 (citing *Drug Overdose Deaths Hit Record Numbers in 2014*, CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 18, 2015, 2:00 PM), https://www.cdc.gov/media/releases/2015/p1218-drug-overdose.html [https://perma.cc/UL4Q-2848]). Judge Goodwin documented the crisis in detail. *Id.* at *3–6.

[33] *Id.* at *5.

[34] *Id.* at *6–7. Judge Goodwin highlighted that "West Virginia has the highest rate of fatal drug overdoses in the nation." *Id.* at *6.

[35] *Id.* at *12.

[36] *Id.*

[37] *Id.* at *13 (citing Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 572–73 (1980) (plurality opinion)).

[38] *Id.* at *12 (quoting *Richmond Newspapers*, 448 U.S. at 571 (plurality opinion)).

[39] *Id.* (quoting United States v. Lewis, 638 F. Supp. 573, 580 (W.D. Mich. 1986)).

[40] *Id.* Judge Goodwin suggested the answer would "probably" be expediency in most cases. *Id.*

[41] *Id.*

[42] *Id.* at *13. The government subsequently dropped the single-count information of heroin possession, Order at 1, *Walker*, No. 2:17-cr-00010, ECF No. 41, and proceeded to trial against Mr. Walker on four of the original six counts, United States v. Walker, No. 2:16-cr-00174, 2017 WL 4251482, at *1 (S.D. W. Va. Sept. 25, 2017). He was sentenced to ten years in prison in February 2018. *Charleston Drug Dealer Sentenced to 10 Years in Federal Prison for Opioid and Gun Crimes*,

Judge Goodwin's analysis raises a compelling and oft-overlooked point about the public's interest in jury trials as a matter of democratic involvement in the government, especially during an acute social crisis. But the problem he identified is not well addressed by the remedy he offered. Public ignorance of the opioid crisis cannot be meaningfully mitigated through the denial of a plea bargain. Furthermore, his framework ignores the defendant's interest in being able to negotiate a lower sentence through a plea bargain, leading to an arbitrary denial of choice for defendants like Mr. Walker, with little if any public benefit accruing to justify the tradeoff.

In focusing on the effect of plea bargains against the backdrop of the opioid epidemic, Judge Goodwin's inquiry puts a novel spin on the public interest concerns that have traditionally been evoked concerning plea bargains[43] and open trials,[44] creating a unique public harm argument against the general use of such bargains in the context of crimes relating

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CLAY COUNTY FREE PRESS (Feb. 6, 2018), http://claycountyfreepress.com/charleston-drug-dealer-sentenced-to-10-years-in-federal-prison-for-opioid-and-gun-crimes/ [https://perma.cc/6PLV-EBVC]. Judge Goodwin has since applied this same logic to reject a plea bargain in a similar drug distribution case, *United States v. Wilmore*, No. 2:16-cr-00177, 2017 WL 4532156 (S.D. W. Va. Oct. 10, 2017).

[43] As Judge Goodwin noted, several other courts have suggested that the "public interest" is one of the factors a judge should consider when deciding whether to reject a plea bargain under Rule 11. *See, e.g.*, United States v. Carrigan, 778 F.2d 1454, 1460 (10th Cir. 1985) ("Rule 11 also contemplates the rejection of a negotiated plea when the district court believes that the bargain is too lenient, or otherwise not in the public interest." (quoting United States v. Miller, 722 F.2d 562, 563 (9th Cir. 1983))).

[44] The Supreme Court has suggested the public has an interest, grounded in democratic legitimacy, in public jury trials. *See, e.g.*, Powers v. Ohio, 499 U.S. 400, 406 (1991) ("The opportunity for ordinary citizens to participate in the administration of justice has long been recognized as one of the principal justifications for retaining the jury system." (citing Duncan v. Louisiana, 391 U.S. 145, 147–58 (1968))); Balzac v. Porto Rico, 258 U.S. 298, 310 (1922) ("One of [the jury system's] greatest benefits is in the security it gives the people that they, . . . being part of the judicial system of the country[,] can prevent its arbitrary use or abuse."). Several scholars have also taken up this theme. *See, e.g.*, Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L.J. 1131, 1196–99 (1991); Stephanos Bibas, Essay, *Originalism and Formalism in Criminal Procedure: The Triumph of Justice Scalia, the Unlikely Friend of Criminal Defendants?*, 94 GEO. L.J. 183, 196–97 (2005) ("Unlike the Sixth Amendment, Article III is not phrased as a right belonging to the accused. It was meant to be a right of We the People to administer justice . . . ."); Steven A. Engel, *The Public's Vicinage Right: A Constitutional Argument*, 75 N.Y.U. L. REV. 1658, 1661 (2000) ("Community participation injects a democratic component into the application of the laws and the outcome of the criminal trial.").

These accounts tend to suggest jury trials are particularly useful for (1) increasing the public's understanding of and trust in the jury system, *see, e.g.*, *Powers*, 499 U.S. at 407 ("I look upon [the jury] as one of the most efficacious means for the education of the people which society can employ." (quoting 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 337 (Henry Reeve trans., Schocken Books 1961) (1840))); (2) allowing communities to express their understanding of what the law is and should be, *see* Engel, *supra*, at 1661; and (3) making room for catharsis through public justice, *see, e.g.*, Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 571 (1980) (plurality opinion) ("[T]he open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion.").

to public health crises. One of his primary arguments for proceeding to trial is the informative value of such a trial for the public. But unlike other thinkers who have emphasized the educational value of trials,[45] Judge Goodwin does not seem primarily concerned with the public learning *about the criminal justice system*. Instead, he envisions a trial as a platform for informing the populace about the details of how the opioid crisis actually operates.[46] Similarly, the public catharsis that jury trials offer is normally suggested to be particularly important for "shocking" crimes, so as to prevent the people from resorting to mob justice.[47] While, in *Walker*, Judge Goodwin gestured at heroin distribution as being particularly "vicious,"[48] he never attempted to argue that low-level drug dealing is on par with the horrific, violent crimes that the public catharsis arguments for open jury trials normally envision. Instead, his opinion is grounded in a concern that allowing drug distribution charges to be settled in "the shadows of . . . private meeting[s] in the prosecutor's office"[49] robs members of the community of the opportunity to learn about and seek justice brought for the hundreds of small crimes that slowly chip away at their health and safety.

But Judge Goodwin neglected to truly grapple with the ways in which he, as a judge with power over only the plea bargains that he oversees, is ill-situated to address the public interest issues he raises. Judge Goodwin's concerns are not with the leniency or content of a particular bargain but rather with the aggregate effect of having almost every case settled without a trial. The latter is a systemic problem that cannot be convincingly addressed by the actions of a single judge. Even if Judge Goodwin intends to deny every plea that comes before him in opioid-related cases — a policy he did not officially announce in this decision but that might be suggested by his promise to "carefully scrutinize" such bargains[50] and his subsequent denial of a plea agreement in a similar case[51] — he is only one federal district judge, in a state with

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[45] *See, e.g.*, 1 DE TOCQUEVILLE, *supra* note 44, at 337 ("[The jury] may be regarded as a gratuitous public school ever open, in which every juror learns to exercise his rights . . . and becomes practically acquainted with the laws of his country.").

[46] When similarly denying a plea bargain in *Wilmore*, Judge Goodwin explained that while he did not think West Virginians were unaware of the crisis, he did "believe that many in our community do not understand how this epidemic operates." 2017 WL 4532156, at *8. He hoped taking these cases to trial would expose details such as "daytime drug deals at our pharmacies, our fast food restaurants, and even our schools." *Id.* at *8 n.57.

[47] *See, e.g.*, *Richmond Newspapers*, 448 U.S. at 571.

[48] *Walker*, 2017 WL 2766452, at *12 (quoting United States v. Lewis, 638 F. Supp. 573, 580 (W.D. Mich. 1986)).

[49] *Id.* at *14.

[50] *Id.* at *7.

[51] *See Wilmore*, 2017 WL 4532156, at *1.

nine other federal district judges[52] and seventy-four state court trial judges.[53] It may very well be that if many or all such crimes were dealt with through open trial the public as a whole could be educated and experience catharsis thanks to exposure through jury service and media coverage. But Judge Goodwin cannot achieve that effect alone: rather, it would require a statewide (or at least community-wide) policy against plea bargains in opioid-related cases.

Not only is Judge Goodwin's ability to address the opioid crisis limited, but by attempting to solve a systematic problem through a single trial, his decision is also ultimately unfair to Mr. Walker, a reality Judge Goodwin ignored by neglecting to make room in his analysis to consider the impact of the denial of the plea bargain on the individual defendant. His structure focuses only on the public's interest in a jury trial as weighed against the "expediency"[54] rationale for plea bargains, which he sees as particularly weak.[55] What is not weighed is Mr. Walker's interest in being able to take advantage of the plea bargaining system to negotiate a lighter sentence in the face of harsh mandatory minimums faced at trial.[56] While Rule 11 does not create a right to have one's plea bargain accepted, the reality is that such bargains are — for better or for worse[57] — how most federal criminal cases resolve,[58] a fact that judges should not ignore when evaluating the consequences of denying a bargain. Indeed, normally when such bargains are denied, it is because the judge is concerned that the specific bargain is overly lenient given the

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[52] *See Judges' Info*, U.S. DISTRICT CT.: NORTHERN DISTRICT W. VA., http://www.wvnd.uscourts.gov/judges-info [https://perma.cc/23EL-ZYWF]; *District Court Judges and Staff*, U.S. DISTRICT CT.: SOUTHERN DISTRICT W. VA., https://www.wvsd.uscourts.gov/district-court-judges-and-staff [https://perma.cc/J8QR-9B6L].

[53] *Lower Courts*, W. VA. JUDICIARY, http://www.courtswv.gov/lower-courts/index.html [https://perma.cc/9W3D-PVU5].

[54] *Walker*, 2017 WL 2766452, at *1; *Wilmore*, 2017 WL 4532156, at *1.

[55] *Walker*, 2017 WL 2766452, at *11; *Wilmore*, 2017 WL 4532156, at *9.

[56] Many scholars argue that in a criminal justice system whose sentencing and charging scheme has been shaped by the prevalence of plea bargaining, those defendants who choose — or, in this case, are forced — to go to trial face a "trial penalty" of potentially much longer sentences. *See, e.g.*, Paul J. Hofer, *Has* Booker *Restored Balance? A Look at Data on Plea Bargaining and Sentencing*, 23 FED. SENT'G REP. 326, 327 (2011) ("[I]n a world where almost everyone pleads guilty[,] . . . a sentencing differential conceived as a reduction soon becomes its inverse in practice — a penalty . . . ."); Candace McCoy, *Plea Bargaining as Coercion: The Trial Penalty and Plea Bargaining Reform*, 50 CRIM. L.Q. 67, 90 (2005) ("[T]he trial penalty was statistically significant in *all* offence categories.").

[57] Scholars who dislike the plea bargain system see the trial penalty as unduly coercive, *see, e.g.*, Rachel E. Barkow, *Separation of Powers and the Criminal Law*, 58 STAN. L. REV. 989, 1034 (2006) ("[P]lea bargaining pressures even innocent defendants to plead guilty to avoid the risk of high statutory sentences."), while those who are in favor of the system reframe the trial penalty as simply the price a defendant can choose to pay for the chance to be found not guilty, *see, e.g.*, Frank H. Easterbrook, *Plea Bargaining as Compromise*, 101 YALE L.J. 1969, 1975 (1992) ("Defendants can use or exchange their rights, whichever makes them better off.").

[58] *See, e.g.*, U.S. SENTENCING COMM'N, *supra* note 2, at S-23 fig.C.

particular crime committed by the *particular* defendant.[59] Here, Mr. Walker found his choice to enter a favorable plea bargain denied, not because of his particular background or a particularly unique aspect of his crime,[60] but because he happened to be in front of a judge who had decided to try to tackle the opioid crisis in this surprising manner. While some level of arbitrariness is inherent in a criminal justice system where individual judges are given great discretion, that does not excuse ignoring a defendant's interests when determining whether to deny his or her bargain.

The public's interest in jury trials during a time of crisis is certainly worthy of consideration, but the goals of education, democratic participation in governance, and community catharsis are best addressed by significant and uniform policy changes.[61] As long as judges operate under a system in which plea bargains are the overwhelming norm, they must think carefully and holistically about whose interests they consider when exercising their power to deny plea bargains. While the public interest may be one useful factor to weigh, judges should be realistic about how much can be achieved through the denial of individual bargains, and they should remain attentive to the single individual at the center of their decision: the defendant.

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[59] *See, e.g.*, *In re* Ellis, 356 F.3d 1198, 1209 (9th Cir. 2004) ("The district court viewed the sentence resulting from Ellis's plea bargain as not in the best interest of society, given Ellis's criminal history and the circumstances of the offense charged."); United States v. Aegerion Pharm., Inc., No. 17-10288, 2017 WL 5586728 (D. Mass. Nov. 20, 2017) (denial of overly lenient punishment of misbehaving pharmaceutical company); United States v. Freedberg, 724 F. Supp. 851, 853–56 (D. Utah 1989) (denial of a bargain dropping *all* charges against an individual defendant and charging only the corporation he worked for).

[60] While Judge Goodwin gestured at Mr. Walker's extensive criminal history and the "leniency" of his past sentences, *Walker*, 2017 WL 2766452, at *1, he did not explicitly link that history to a concern about the harshness of the proposed sentence at hand. Furthermore, the argument that Judge Goodwin was suggesting this history made Mr. Walker a particularly appropriate target for this plea denial is undercut by the fact that in *Wilmore*, the Judge denied a similar bargain despite admitting the defendant had "a rather sparse criminal history." 2017 WL 4532156, at *2. It seems clear that the deciding factor in both these cases was that the defendants were opioid dealers who happened to land in Judge Goodwin's court.

[61] Along with significantly decreasing if not abolishing plea bargains, some scholars have proposed other creative ways to integrate these values into the plea bargain system. For instance, Professor Laura I. Appleman suggested the creation of a "plea jury," or a lay panel charged with deciding plea and sentence acceptability. *See* Laura I. Appleman, *The Plea Jury*, 85 IND. L.J. 731, 731 (2010).