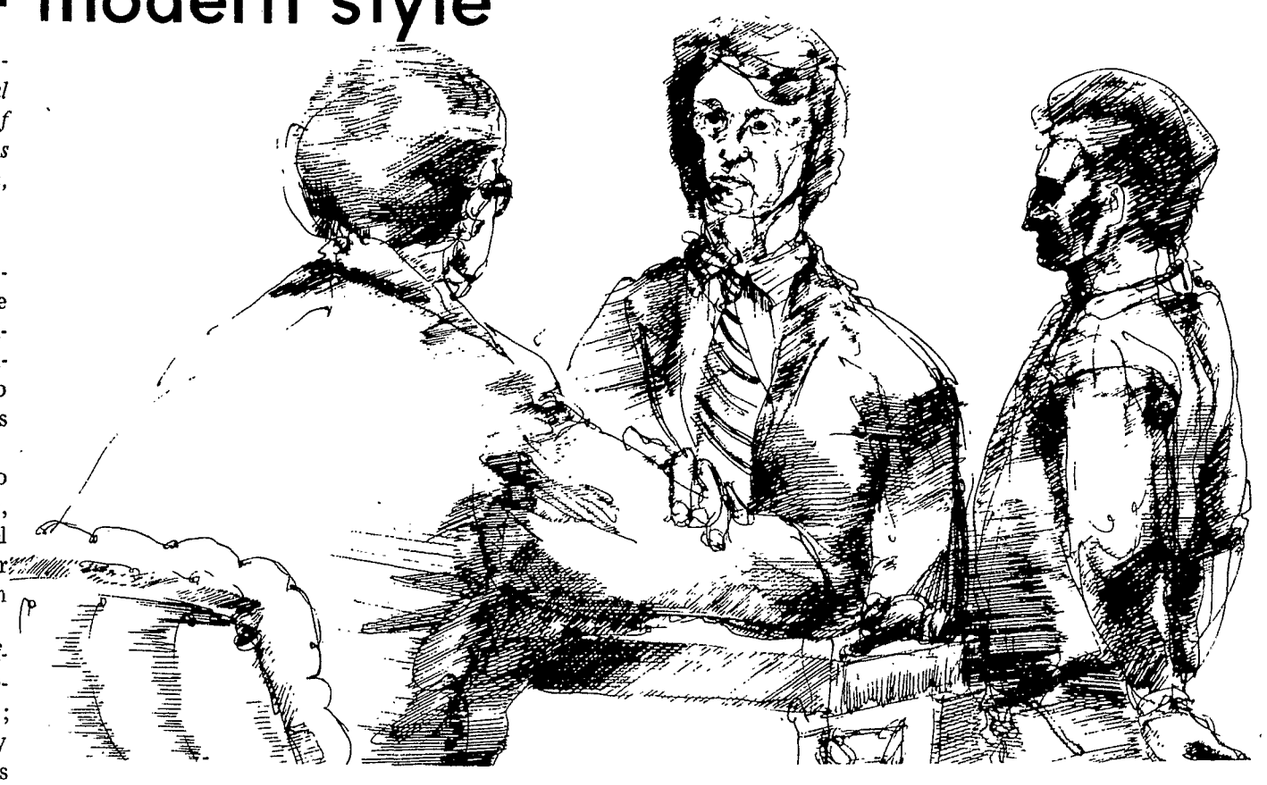
Pleading guilty - modern style

This is the second of a three-part series concerning plea bargaining in the American criminal justice system. Dr. Donald Newman, author of this series, is a professor at Albany State. This series is reprinted with permission from Search, SUNY's research magazine.

by Donald Newman



While efficiency, certainty, and avoidance of controversy are strong motivations for the state to make concessions in bargain justice, there is another consideration, one which is less self-serving. This is the individualization of justice. That justice is "blind" to individuals and impartial is its greatest merit - and its most inhuman aspect.

Plea bargaining allows prosecutors and judges to apply criminal sanctions with some sense of equity, to fit the consequences of conviction to the actual harm done by the violator or the degree of his or her culpability, and not merely to the formal label which defines his conduct.

Partners in a stickup, for example, may have different backrounds. One may be a ringleader, middle-aged, with an extensive criminal record since youth; while the other may be a teenager from a poor family with no prior record whose role in the hold-up was largely that of a lookout for the robber with a gun.

Yet technically both are guilty of armed robbery, and in some places statutes require long prison terms for anyone convicted of armed robbery. Confronted with such a case, the prosecutor , with a judge's approval, may find it more equitable to reduce the charge of the young person, while holding the older, hardened offender to the armed robbery count.

Plea bargaining thus provides a flexibility that is otherwise prohibited by statute.

It is this attempt to tailor justice to the specific, concrete circumstances of each case rather than following the rigid, abstract norms of the law that most supporters of plea bargaining use as their primary justification.

How pervasive is plea bargaining? We don't know exactly, because of records of each bargaining plea do not exist. Until recently, scholars had to study each case in specific jurisdictions to arrive are an estimate.

Scattered studies suggest that approximately 75 percent of all guilty pleas in the United States are preceded by overt plea bargaining. If the implicit bargain is added, the total approaches 100 percent.

As one prosecutor told me, "With all the lawyers around today, a defendant would have to be nuts to plead on the nose and get the maximum sentence."

As far as can be determined, plea bargaining occurs in all jurisdictions - rural and urban, south and north, west and east. Nor is it, as many European observers believed for along time, an "American disease", peculiar to a people whose politics is based on compromise.

Recent studies of bargain justice in England, Norway, Australia, West Germany, Holland, and Japan have reported its widespread use there.

So, what is apparent from the research is not only that the guilty plea process is more frequently used than jury trials but also that plea bargains play an overwhelmingly important role in the guilty plea process. Therefore, bargain justice is not a recent aberration of our system of criminal justice. It is our system of criminal justice - or the larger part of it.

If plea bargaining is so old, so wide spread, so dominant a procedure, and so advantageous to many persons, even to the public, why does it seem so new and so dangerous?

There are a number of reasons, the principal one perhaps is that plea bargaining is not new, just newly visible. Until very recently bargain justice was an informal, off-the-record, out-of-court process, taking place in the bullpens of a jail, the hallways of a courthouse, and the backroom in prosecutor's offices.

For the press, it lacked the drama and accusations of a trial. A formal arraignment in court, after a bargain, consists of little more than the charge (or reduced charge) being read to the defendant and his plea of guilty being recieved, with no hint of the prearranged plea agreements in the court records.

Bargaining practices were well known to habitues of the criminal courts, to prosecutors, judges, criminal lawyers, and experienced defendants, but they have long been a secret to all but a few outsiders, despite their widespread use.

A second reason is that cases involving bargained pleas rarely reached the appelate courts, where many of the great legal issues have been debated and where criminal law has been honed. If a bargain is successful, that is if the state wins a conviction and the defendant receives a break, there is no injured party to bring an appeal.

The crime victim may be outraged and the police angry but neither has standing ot appeal in such a c case. Appeals by defendants who alleged that the state had reneged on its bargain with them, or that a co-defendant had received a bargain but they did not, did occasionally reach the appelate courts. But the appelants had great difficulty because there were almost no records of the bargains. Even the Supreme Court did not directly address plea bargaining as a practice until 1971.

Third, there was very little in the professional literature of the bench or the bar about plea bargaining until the 1950's. At that time social scientists and legal scholars began to examine what was then called "law in action" as well as "law in the books". Stimulated principally by the American Bar Foundation (the research wing of the American Bar Association) and its major study of the administration of US criminal justice, a picture of the way criminal justice really works in our society began to emerge. The "war on crime" of the 1960's also helped draw attention to the prevalence of plea bargaining.

There are other reasons. In the late 1950's and 1960's many state began revising their criminal codes, which had fallen into disarray over the years. This forced people to deal in some open fashion with the *sub rosa* practice of bargained pleas.

Also, the Warren Court, which was the most active of the century in deciding criminal justice contoversies, greatly expanded the rights of suspects and defendants to have access to lawyers, not only at trials but at other stages of the criminal justice process.

And of course, the use of plea bargaining by some of this nation's leading politicians in the 1970's brought the process into the press, onto television, and into the scholarly journals and reports of the bar associations.

For all these reasons, and perhaps others, plea bargaining has burst on the American criminal justice scene in the past decade, and by 1970 was being widely debated. Underneath the debates there is one major issue: whether plea bargaining is a proper form of justice within our system.

continued next week

Hartman apologizes to Kilmartin

To the Editor:

No one is perfect or always right, we all make mistakes - Will Hartman is no exception. Though Will's philosophy includes improving society (in his efforts as senator, member of the "Will Henry Society", member of dorm council, or any other position).

He has never deliberately put someone down in order to promote his own viewpoint. Sometimes he has attacked issues and people based on how they appear to him. His remarks are designed to cause people to stop and analyze the situation. But he has failed. The majority don't really want change.

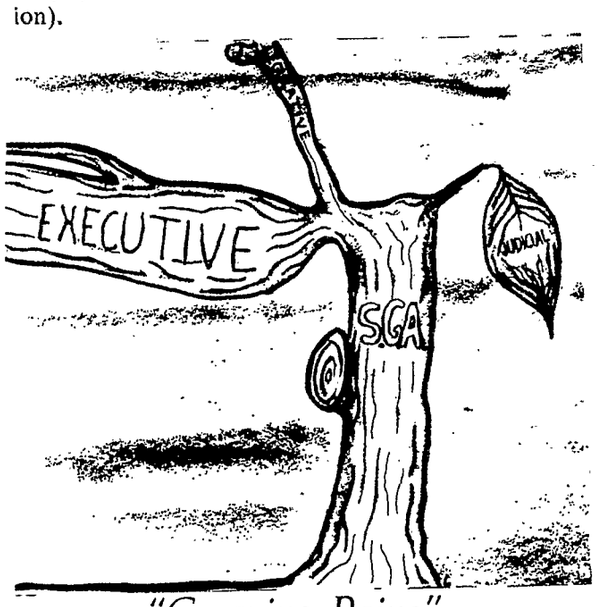
Maybe if there were improvements, the people would not have anything to complain about. People seem to thrive on complaining and doing nothing!

In last weeks article entitled "Rotten Apples In SGA" (not his title) he pointed out a number of situations which had appeared questionalbe. After situations which had appeared questionable. After a discussion with Mr. Kilmartin and a handfull of students, Will realized he had made a mistake and that last week's article had implied some erroneous things.

It was not Kilmartin's doings that had froze the Afro-American Society's funds, nor is it his fault that the budget had not been dealt with sooner. Kilmartin is not a puppet of Duggan and he definately has a mind of his own. Kilmartin is working very hard to reorganize the treasury system so many of the problems of the past will not occur again.

Mr. Hartman now supports Mr. Kilmartin and publically apologizes to him for anything implied in last week's paper.

Sincerely,
Senator Will Hartman



"Growing Pains"

Compiled by Deborah Ruocco