

THE INJUSTICE OF THE PLEA BARGAIN

When attempting to analyze the effect of the plea bargain on the administration of justice within the United States, one must first understand exactly what the term plea bargain means. In essence, a plea bargain is a negotiated settlement between a “state”, usually known as “the people”, and an individual, usually called “the defendant”, who has received from that particular state what is called a “charging instrument” for allegedly committing some type of crime. The individual who has been issued the charging instrument, or who has been “charged” as is the common term, is, from the outset of issuance of the instrument, placed in an adversarial position in relation to the state. A line is drawn in the sand, and from that point on it is the mission of the state to obtain a conviction for the alleged crime at any cost. Unfortunately, this often takes place at the expense of the defendant’s constitutionally protected due process rights.

Knowing that most judicial systems in the United States of America operate their systems based on the crime control model instead of the due process model, it becomes clear that the plea bargain is utilized more as a matter of expeditious convenience than for any other reason. The plea bargain allows the prosecutors, or the attorneys who supposedly represent the people, to operate an assembly line-like process, perpetually depositing citizens into the criminal justice system.

To say that plea bargaining often leads to injustices is an understatement. In fact, the concept of the term plea bargain, to those who have been exposed to it, is diametrically opposed to the concept of justice, although not in the grammatical sense of the words, but

rather in terms of the actuation of the ideology. You see, a plea bargain is not cohesive with the United State's Judicial System's concept of due process, in that the function of the plea bargain is to usurp the constitutionally constructed, and theoretically constitutionally protected, due process amendments, and the rights afforded to the citizens therein. In other words, as one can see when studying the due process model of crime control in comparison with the now widely used crime control model, the due process model sees the crime control function as a means to ensure that the presumption of innocence is maintained until the accused is proven guilty. In contrast, the crime control model ensures that challenges by defense attorneys are kept to a minimum, and that an individual is in fact assumed guilty as accused. Where the due process model ensures that defendants are given equal protection under the law, including a chance to adequately defend themselves, thus placing justice first, the crime control model sees the repression of criminal behavior as far more important than justice, and places due process on the back burner; all at the expense of the liberty of the United States citizen.

Although not birthed by the crime control policies of today's criminal justice system, plea bargaining has become popular within the judicial system, especially among prosecutors. Because of the arithmetical increase in crime over the last several decades, and public outcry to address this issue, the courts have, with the implementation of the crime control model in most every state, placed a heavy emphasis on a high rate of apprehension and conviction, with a premium on speed and finality. In doing this, prosecutors have determined that the plea bargain is an effective means of eliciting a conviction, regardless of the guilt or innocence of the suspect.

Just as well, defense attorneys coming ostensibly as defenders of the constitution and the accused, more often than not, vicariously engage in this tyrannical practice by knowingly allowing their clients to submit to various types of coercion in order to conveniently dispose of a case via the vehicle of the plea bargain. Once again, this is done regardless of the guilt or innocence of the suspect. A guilty plea saves the state time and money and expediently disposes of an issue, thus efficiently fueling the crime control machine. The defense attorney is satisfied because he or she is able to dispose of a case with virtually no effort, whereby perpetuating the process that at least one leading criminologist has likened to a “conveyor belt, down which flows an endless stream of cases processed by workers who perform routine tasks.” (Packer; 1968:158); all the while, with prosecution and conviction as the primary objective, due process lingers on the sidelines, as an injured player, waiting on the coach to put him back in the game.

Although another leading criminologist, Hugh D. Barlow, addresses the issue of bargained justice in his text, *Introduction to Criminology, Seventh Edition* (1996:366), including the advantages and disadvantages of this process to both the prosecution and the defense, what Mr. Barlow fails to fully address are the ineluctable injustices that are intrinsic not just to the plea bargain itself, but also to the often nefarious steps taken by the judicial system in order to obtain a plea. Case in point: Bryan _____, a man from _____, Florida, is arrested for a crime, and because he cannot afford an attorney, he is appointed a public defender by the state. Mr. _____; posts bail, and upon his arraignment, his public defender, (who is employed by the state), informs him that the prosecutor, (who is employed by the state), has offered to make a deal to resolve the issue. This deal consists of Mr. _____'s admission of guilt in exchange for a reasonable period of

probation, along with a guarantee of no jail time. Although Mr. [REDACTED] is hesitant to so easily concede his guilt in exchange for the encumbering conditions that are inherent to probation (e.g. fines, costs of supervision, waiver of civil and human rights, etc.), his public defender advises him that the judge, (who is also employed by the state), has indicated that if he does not take the plea and accept the probation, and instead opts to go to trial and then loses, he will be sentenced to the maximum penalty allowed by law. Mr. [REDACTED], a naïve, middle-aged black male, on advice of counsel, and in fear of losing his case in front of an all-white jury, is psychologically coerced into pleading guilty as charged.

This common scenario seems reasonable enough. One could argue that Mr. [REDACTED], although manipulated into taking the plea, was probably guilty of the crime anyway, and is receiving a lesser sentence than he would have, absent the plea bargain. One could also claim that defense counsel, sensing that the case was strong enough to produce a conviction, felt that it was his “professional obligation” to do what was best for the defendant, that being a plea bargain. Certainly those within the judicial system are not going to disclose the fact that a defense attorney’s “career is dependent on good relations with other actors in the system” (Barlow, 1996:370). Surely the public defender is not going to afford his client the opportunity of knowing that “attorneys may be excluded from information sharing and from conferences” if they are not amenable to the state’s plea offer (Barlow, 1996: supra). Proponents of the plea bargain would never have us believe that most criminal lawyers are poorly trained in criminal law (Downie, 1972). Neither will they admit that there is also evidence that criminal law attracts less competent and less ethical lawyers (Carlin, 1968).

If it is true that there is one common element in all events, criminal or not, that being the element of opportunity, and that an opportunity makes an event possible, then a criminal opportunity makes a crime possible (Barlow, 1996, 494). Just as one cannot rob a bank without the existence of banks, one can not crucify due process via the plea bargain without the existence of plea bargaining. Granted, the purpose of most things, including the plea bargain, is not to facilitate crime. But the existence of a plea bargain, like the existence of a bank, creates immoral, unethical and even criminal opportunities for those within the criminal justice system who possess substandard values.

The abovementioned circumstances of Mr. [redacted], according to functionalists, would qualify as arising from a “latent dysfunction” of an otherwise useful process. In the case of the plea bargain, it is a dysfunction that enables opportunists to capitalize on it in order to achieve economic gain. Certainly our society is aware of the economic implications of the use of the word “charge” within the term criminal charge. Maybe not, because on the other hand, most Americans are as unaware of the use of the Uniform Commercial Code within the criminal justice system as they are unaware of the misuse of the plea bargain. Nevertheless, Mr. [redacted] is aware that there is some kind of problem. He is arrested, charged with a crime, appointed an attorney by the same system that has charged him, and before he knows it, he is standing in some dimly lit bathroom in a filthy state office with his hand as well as a probation officer’s eyes on his penis, and among other demands, is compelled to submit to the humiliation of the extraction and collection of his own body fluids. What does all this mean? Has an injustice actually occurred, or is the plea bargain, in reality, an efficient method of crime control that still allows the citizen

that he is not earning “gain time” while awaiting his hearing, would certainly be anxious to resolve this issue, one way or the other, in order to overcome the negative psychological impact of being in limbo, seemingly “spinning his wheels”. Even a prison sentence would afford him an opportunity to earn “gain time”, as well the procuring of job placement and educational opportunities, among the many other things that make prison appear more industrious than the unknowns of a county jail. Is it any wonder that 73 percent of chief prosecutors in a recent national survey said that they placed no time limits on negotiations (Dawson, 1992:6)? Of course not, for they are not the ones who are in jail.

Surely it is easy to make allegations that support the position that the plea bargain should be illegal, albeit, these are in fact only allegations. Ironically though, allegations were all that were necessary for the arrest, and ultimate coercion scheme, that imprisoned Mr. [REDACTED]. However, in the interest of justice, it would behoove the reader to take a look at an excerpt that was taken from Mr. [REDACTED], s actual transcript, which chronicles a conversation that took place in a meeting between a Mr. [REDACTED], the prosecutor, a Mr. [REDACTED], the public defender, and the judge, who is described as “The Court”. It is worth mentioning, once again, that all three of these actors are employed by the State of Florida.

(Thereupon, the following proceeding was held at 10:57 a.m.)

THE COURT: I’d like to do these at 1:00. What you’re going to need to do is let the clerk know.

How many we have, three?

MR. [REDACTED]: Your Honor, he’s got two.

What about [REDACTED] g? Where is that one at?

MR. [REDACTED]: He's also someone if you bring him over and put a little pressure - -

MR. [REDACTED]: Well, bring them all over.

At least you can address the issue of him continuing to represent or not.

THE COURT: Yes, sir.

MR. [REDACTED]: [REDACTED] and [REDACTED] are both individuals, Your Honor, they have not made a commitment to pleas, but they're in that area where they're about ready to be pushed over.

THE COURT: Okay. However many you need to bring over, bring them over at 1:00, and we'll address them at 1:00.

MR. [REDACTED]: Just bring all of his?

THE CLERK: Just let me know. You can come up here and just let me know.

MR. [REDACTED]: Okay. I didn't bring my files so I don't have their case numbers.

(End of Excerpt)

In viewing this excerpt, one can clearly see that all parties of this aspect of the criminal justice system are vicariously participating in a coercion scheme which will, and ultimately did, induce the plea bargain of [REDACTED]. [REDACTED] had been held in the county jail for a period of time necessary to, psychologically speaking, place him in a state of mind in which he was ready "*to be pushed over*". Noteworthy is the fact that

these “individuals” are being referred to as if they were cattle, thus supporting Packer’s “conveyor belt” analogy.

Is this what the authors of the Constitution of The United States of America intended when they spoke of due process? I think not. This authority was, at the time, placed in the hands of the states, therefore this injustice is the responsibility of the states. Should they not take a closer look at the vehicle of the plea bargain to ensure that a citizen receives due process? Most definitely. The State of Alaska has already banned the plea bargain, yet this process continues throughout the remainder of the republic. One thing is certain. Plea bargaining and justice have nothing in common, therefore, for the sake of accuracy, should we not, from this point on, refer to the “criminal justice system” as the “criminal plea bargain system”? It would definitely be more descriptive. Until the states, by and through the power of the citizens thereof, take the initiative to correct this injustice, we unfortunately have no choice. It is what it is. Unless we as a nation collectively address this effrontery, as we should with every assault that takes place against the liberties provided by the Constitution, plea bargaining, like a cancer, will only grow worse. May God bless these United States of America.

End of Lesson #18; Position paper #1; The Injustice of the Plea Bargain; Kurtis R. Jeter