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PLEADING GUILTY FOR CONSIDERATIONS: A STUDY OF BARGAIN JUSTICE

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The data presented here were gathered by the author in 1954. The study was suggested to the author while he was participating in research conducted by the American Bar Association in connection with their "Survey of the Legal Profession."—EDITOR.

One of the major problems faced by social scientists interested in studying criminal behavior involves obtaining samples of offenders to be used as units of research. Ordinarily such samples are drawn from prisons or probation files because the study of unapprehended criminals is extremely difficult. Conviction by a court or authorized agency is, therefore, the usual basis of sample selection[1]. Virtually all sociologists admit the inadequacy of such a technique and qualify their samples as non-representive of any kind of a criminal universe. At the same time, the conviction record of the offenders who are selected for study from prisons and courts is used as the basis for typing the offenders and for various statistical computations. In general, the man's conviction record is assumed to be a quasi-automatic legal stamp which defines those activities which make him a criminal.

Of course very few researchers would treat a person such as Al Capone as merely an income tax violator, but this is because they would know, or think that they know that such an individual had committed other offenses or had different patterns of criminal behavior than those for which he was sentenced. In less notorious cases, however, the type of offense and the severity of the sentence, remain the pivotal points around which research is pursued and prison classification systems are built.

This does not mean that sociologists naively accept conviction on a specific charge as definitive nor that they have little interest in the mechanics of justice. The reverse, of course, is more accurate. But the emphasis of both sociological exposition and research has been on the *gross* misuse of justice, on methods used by criminals, political officials and the business elite to avoid conviction. It is also true that some sociological interest has been shown in procedural variation, particularly brutal, and in many cases, illegal, arrest and interrogation methods. The police particularly have come under sociological scrutiny.[2] Nevertheless, apart from the "fix" and the "third degree", the conviction process has generally been neglected in research as of minor importance in the complicated process of defining "criminal" as the basic unit of research.

[1] See PAUL TAPPAN, *Who is the Criminal?* in: AMER. SOCIOL. REV., Vol. 12, no. 1 pp 96–102 and DONALD R. CRESSEY *Criminological Research and the Definitions of Crimes* AMER JOUR. OF SOCIOL. Vol. 57, May 1951) pp 546–551.

[2] WILLIAM WESTLEY, *Violence and the Police* (in: AMER. JOUR. OF SOCIOL., July, 1953) pp 34–41 and ERNEST J. HOPKINS, OUR LAWLESS POLICE (New York: Viking Press, 1931).

Methods of Studying the Conviction Process

In order to bring to light some of the less apparent factors influencing the procedural steps by which society labels the criminal, a sample of men, all convicted of "conventional" felonies in one court district was interviewed in regard to the processes involved in their own convictions. Men from a single county were selected in order to keep formal legal procedures and court and prosecuting officials constant for each case. The lawyers and judges of this district had been interviewed previously by the author,[3] so that information was available about conviction processes from the legal participants viewpoints. The county was located in the mid-west (Wisconsin) and was of "medium" size, neither rural nor metropolitan. The county seat had a population of approximately 100,000 persons. Furthermore, the district was politically clean, having no widespread organized crime or vice nor a tradition of "fixing" criminal cases by bribery or intimidation. Supposedly in such a setting, felony convictions would follow a quasi-automatic, "combat" theory of criminal justice, involving a jury trial or at least an unconditional plea of guilty.

Most Convictions the Result of Guilty Pleas

The felons who were interviewed, a group of ninety-seven representing all men from the district under active sentence, had all been convicted of felonies ranging from non-support to murder. There were no white-collar criminals in the group, except for three clerks serving sentence for embezzlements, nor were there any racketeers or professional criminals such as confidence men, and no individuals sentenced from Juvenile Court were included. The men were serving sentences under the following conditions:

State prison	34
State reformatory	6
Parole	9
Probation	48
Total	97

Most of the convictions (93.8 percent) were not convictions in a combative, trial-by-jury sense, but merely involved sentencing after a plea of guilty had been entered. On the surface this might lend support to the contention that most convictions are mere rubber stamps of the court applied to the particular illegal behavior involved in each case.

On closer analysis, however, it was seen that over a third (38.1 percent) of the men had originally entered a not guilty plea, changing to guilty only at a later procedural stage short of an actual trial. The question immediately arose; why did these men change their minds? Was it because of a promise of leniency or some such bargain as suggested by the Wickersham report, Moley and other writers of a decade ago?[4] A second question followed. Did the men who pleaded guilty immediately do

[3] This study took place in 1951 and 1952 as part of the American Bar Association's study entitled *Criminal Law and Litigation.*

[4] National Commission on Law Observance and Enforcement, *Report on Prosecution*, Bulletin 4 (Washington, D. C.: Government Printing Office, 1931); and Raymond Moley, Our Criminal

TABLE I

TYPE OF PLEA BY RETENTION OF COUNSEL

Retention of Counsel	Type of Plea		
	Guilty	Changed not guilty to guilty	Total
Offenders with lawyers	21 (23.2)	24 (26.3)	45 (49.5)
Offenders without lawyers	39 (42.7)	7 (7.8)	46 (50.5)
Total	60	31	91*
percent	(65.9)	(34.1)	(100.0)

* Offenders pleading not guilty and retaining this plea through a jury trial were eliminated. All, however, had counsel.

$\chi^2 = 14.713$, d.f. = 1, significant at the 5 percent level. Yules Q = −.728 indicating a negative correlation between initial admission of guilt and the retention of counsel.

so unconditionally to the charge as contained in the complaint or was there any evidence of informal "arranging" of the sentence so widely alleged in criminology texts?

Pursuing these lines of inquiry, an interesting difference between the two groups of men was seen. Men entering an initial plea of not guilty were significantly more often represented by defense attorneys than the men pleading guilty immediately. On all other demographic characteristics, age, gross type of offense for which sentenced (personal, property, sex, and miscellaneous violations such as carrying a concealed weapon), education, occupation, residence and so on, the groups showed no significant differences. Furthermore, on the eventual disposition of the cases, e.g., whether sent to prison or placed on probation, the groups did not differ. In fact, only one other difference besides the retention of counsel was noted. It was found that the men who initially pleaded guilty and who more often than not did not hire or request counsel were recidivists, whereas the men with lawyers, who at first pleaded innocent, were more often experiencing their first conviction.

This phenomenon is rather curious when it is recalled that the groups showed no differences in the frequency of being placed on probation. It might logically be expected, in the light of current sentencing practices, that first offenders would more likely receive probation than men with previous convictions, particularly if, as was the case, there was no significant variation in the types of crimes for which they were sentenced. The implications of this lack of difference in sentences for the role of the lawyer in the conviction process was so great that the men were further analyzed by dividing them into two groups, one characterized by the retention of counsel, the other comprising men who pleaded without an attorney.

COURTS (New York: Minton, Balch Co., 1930) and POLITICS AND CRIMINAL PROSECUTION (New York: Minton, Balch Co., 1929). See also NEWMAN F. BAKER and EARL H. DELONG, *The Prosecuting Attorney: Powers and Duties in Criminal Prosecution* (in: JOUR. OF CRIM. L. AND CRIMINOL., Vol. 24, No. 6, March-April 1934) and NEWMAN F. BAKER, *The Prosecutor—Initiation of Prosecution* (in: JOUR. OF CRIM. L. AND CRIMINOL. Vol. 23, No. 5, September, 1933).

TABLE II

EXPECTED PUNISHMENT BY RETENTION OF COUNSEL

Punishment Expected at time of Arrest	Retention of Counsel		
	Offenders with lawyers	Offenders without lawyers	Total
Expected same as actual or didn't know what to expect	3 (3.2)	10 (10.3)	13 (13.5)
Expected less severe than actual	11 (11.3)	11 (11.3)	22 (22.6)
Expected more severe than actual	37 (38.1)	25 (25.8)	62 (63.9)
Total	51	46	97
percent	(52.6)	(47.4)	(100.0)

$\chi^2 = 5.827$, d.f. = 2, not significant at five percent level.

TABLE III

NON-REPRESENTED OFFENDERS REASONS FOR NOT RETAINING COUNSEL

	Percent
Obviously guilty, hoped for mercy from the court	19.5
Made deal for concurrent sentence or had charges dropped	30.4
Made deal for lesser charge or a light sentence	23.9
Don't trust lawyers	4.4
Had no money, didn't know about court-assigned lawyers	13.0
Other*	4.4
Not ascertained	4.4
Total	100.0

* These cases claimed that they were subjected to long and arduous questioning and "confessed" to "get it over with" and thus had neither the time nor the inclination to get a lawyer.

The outcome of the conviction process from the point of view of the offender is satisfactory or unsatisfactory depending upon the actual sentence he receives compared to his expectations of punishment at the time he is arrested. It might be supposed that a violator who expected a severe sentence would seek legal advice. However, an analysis of the responses of the men showed that their expectations was not the determining factor in their decisions to retain counsel or to plead without counsel.

REASONS FOR PLEADING GUILTY WITHOUT A LAWYER

The reasons given for claiming or for disdaining counsel varied from confessions of "obvious" guilt and a hope for mercy from the court to poverty coupled with ignorance of provisions for state-paid defense attorneys. The chief reason, however, appeared to be an expedient one, related to the factor of past experience in going through the conviction process. The recidivists were both conviction wise and con-

viction susceptible in the dual sense that they knew of the possibility of bargaining a guilty plea for a light sentence and at the same time were vulnerable, because of their records, to threats of the prosecutor to "throw the book" at them unless they confessed. Over half (54.3 percent) of the men claimed that they had bargained for their sentences, and 84 percent of these men had been convicted previously. A number of factors, all interrelated, seem to account for this. First, a general fear expressed by multiple offenders of facing a jury or of antagonizing sentencing officials was revealed in most cases. Some felt that their records would be held against them by a jury (actually the admission in court of the offender's previous criminal record is closely regulated by law to assure a fair trial on the current charge). They felt conviction would be more certain because in the public mind they were "ex-cons". A more general fear, however, was that the judge would be especially severe in sentencing if they did decide to fight and then lost. They felt that pleading not guilty and hiring a lawyer would only irritate the various officials, particularly the prosecutor, whose recommendation at the time of sentencing is an important consideration of the court. One of the men said:

> When the day comes to go and the D.A. stands up and says you're a dirty rat and a menace to society and should be locked up and have the key thrown away—then look out! You're going away for a few years.

These fears, whether justified or not, undoubtedly made these men more amenable to an informal "settling" of their cases.

A second factor making for bargaining and the rejection of counsel was the experience of these men gained in previous convictions. Many of the recidivists, particularly those with two or more convictions, knew the sentencing judges and some of the prosecutors quite well and all of the offenders knew most of the police. They were on a first name basis with many of these men and could bargain in a friendly or even a jocular manner. One man (on probation) said:

> Old ——— told me he was going to throw the book at me. I told him he didn't have a damn thing on me. He said I'd get five to ten. I told him he couldn't even book me, that's how little he had. I knew he was riding me; he didn't mean a thing by it. I've known him for years. He just likes to act tough.

Men who had been convicted in other states or in other counties but never before in this district were quite conscious of this "friendship" factor in the bargaining processes. Each of them expressed the belief that had he been a "local" he would have fared better.

Previous sentences served in institutions also seemed to be relevant to bargaining without a lawyer. Former inmates were more legal-wise; their conceptions of their offenses were not primarily in terms of guilt or innocence but contained more references to evidence and its relation to the outcome of the conviction process. They referred to how much the prosecutor "had on me" and the ability of the prosecution to make a charge stick. One of the men expressed it this way:

> The D.A. needed my help. His evidence was all circumstances (*sic*). He knew I done it but he couldn't ever prove it. But I couldn't go to court and take a chance with my record. When I saw he was going to stick me with something, I was willing to make the best deal.

Not only does a quasi-legal knowledge evidently develop in incarceration (most of these men knew the statute numbers of their offenses and all knew such terms as "preliminary hearing", "arraignment" and "pre-sentence investigation") but those men seemed better able to recognize a good bargain when they saw one. Although all offenders recognized probation as the best break, of course, and many knew the possible length of sentence for their particular crime, recidivists knew customary sentences (and court district variations) for their offenses. In short, they recognized a "good-as-compared-to-other-guys-I-know" sentence when they faced it.

Offenders Who Retain Counsel

Over half (52.6%) of the men in the total sample retained lawyers and proceeded through more of the formal stages of the conviction process (preliminary hearing, arraignment) than those men who pleaded without attorneys. As anticipated from the analysis of the group of non-represented offenders, the factor of recidivism with its accompanying implication of bargaining skills learned from past experience was almost completely absent from this group. As one of these men expressed it:

> I'd never been in trouble before. I didn't know which end was up. I thought sure I was going to prison. It seemed as if they had a million laws I'd broken. The only thing I could think of was calling my wife to get me a lawyer.

These men with their lawyers, either privately hired or court assigned, significantly more often pleaded not guilty when first apprehended, changing their pleas only later in the process. On the surface, this observation might lead to one of two conflicting conclusions. The fact that the retention of counsel correlated with a change of plea to guilty might mean that the lawyers, having a better grasp of the legal worth of the evidence against their clients, advised them to plead guilty and that the clients followed their advice. Or, it could with equal validity indicate that perhaps the lawyers, through informal bargaining skills similar to the non-represented recidivists, had arranged satisfactory charges or more lenient sentences than originally expected by their clients. The latter would seem to be the most convincing in view of the offenders' responses. When asked their lawyer's advice in regard to pleading, 75 percent of those first pleading not guilty and then guilty, responded that their counsel's advice was to maintain a not guilty plea "until something can be arranged." This they did. The remainder were advised to plead guilty without promise of any arrangement, although bargaining is not thus ruled out.

Only fifteen of the represented offenders said that their convictions were the result of unconditional pleas of guilty. The remainder, including not only the offenders whose lawyers' advice was to hold off pleading guilty until settlement was made, but twelve of the men who entered initial guilty pleas as well, claimed to have received some consideration in the nature of the charge or type and length of sentence in exchange for their admissions of guilt.

Types of Bargaining Where Attorney Has Been Retained

While the frequency of claimed bargaining does not differ significantly between the groups of offenders without lawyers and with lawyers, there is some difference

TABLE IV

OFFENDERS PLEADING GUILTY AFTER BARGAINING OVER CHARGE OR SENTENCE

Retention of Counsel	Offenders Pleading Guilty		
	Pleaded guilty for consideration	Pleaded guilty without bargaining	Total
Offenders with lawyers	30 (33.0)	15 (16.5)	45 (49.5)
Offenders without lawyers	25 (27.4)	21 (23.1)	46 (50.5)
Total percent	55 (60.4)	36 (39.6)	91 (100.0)

$\chi^2 = 1.443$, d.f. = 1, not significant at 5 percent level.

TABLE V

FREQUENCY OF TYPES OF BARGAINING BY RETENTION OF COUNSEL*

	Offenders With Lawyers	Offenders Without Lawyers	Total
1. Pleading to a lesser charge	8 (14.5)	3 (5.5)	11 (20.0)
2. Pleading for a light sentence	17 (30.9)	8 (14.6)	25 (45.5)
3. Pleading for concurrent sentences	3 (5.5)	9 (16.3)	12 (21.8)
4. Pleading for the dismissal of charges	2 (3.6)	5 (9.1)	7 (12.7)
Total percent	30 (54.5)	25 (45.5)	55 (100.0)

* Combining the first two types (lesser charge, light sentence) and comparing them with the last two (concurrent sentence, charge dismissed) a significant difference between types of bargaining and retention of counsel is seen. $\chi^2 = 23.72$, d.f. = 1, significant at 5 percent level. Yules Q = −.732 indicating a negative correlation between retention of lawyer and pleading guilty for considerations of concurrent sentences of dismissed charges.

in the frequencies of the various types reported. Men without attorneys significantly more often mentioned as the consideration they received in exchange for a guilty plea either the reduction of the charge or the promise of a suitable, fixed sentence.

It would seem from this that lawyers are more likely to be retained by offenders who fear a severe punishment or in cases involving a disputable charge whereas violators with many charges against them "cop a plea" directly from the prosecution or the court without a lawyer as intermediary. This would also seem to substantiate the evidence from the unrepresented defendants that the function of the lawyer in bargaining is not essential for all offenders, and that men experienced in the conviction process can informally and successfully arrange their own legal fate.

Types of Informal Conviction Agreements

The considerations received by the offenders in exchange for their guilty pleas were of four general types:

1. *Bargain concerning the charge.* A plea of guilty was entered by the offenders in exchange for a reduction of the charge from the one alleged in the complaint. This ordinarily occurred in cases where the offense in question carried statutory degrees of severity such as homicide, assault, and sex offenses. This type was mentioned as a major issue in twenty percent of the cases in which bargaining occurred. The majority of offenders in these instances were represented by lawyers.

2. *Bargain concerning the sentence.* A plea of guilty was entered by the offenders in exchange for a promise of leniency in sentencing. The most commonly accepted consideration was a promise that the offender would be placed on probation, although a less-than-maximum prison term was the basis in certain instances. All offenses except murder, serious assault, and robbery were represented in this type of bargaining process. This was by far the most frequent consideration given in exchange for guilty pleas, occurring in almost half (45.5 percent) of the cases in which any bargaining occurred. Again, most of these offenders were represented by attorneys.

3. *Bargain for concurrent charges.* This type of informal process occurred chiefly among offenders pleading without counsel. These men exchanged guilty pleas for the concurrent pressing of multiple charges, generally numerous counts of the same offense or related violations such as breaking and entering and larceny. This method, of course, has much the same effect as pleading for consideration in the sentence. The offender with concurrent convictions, however, may not be serving a reduced sentence; he is merely serving one sentence for many crimes. Altogether, concurrent convictions were reported by 21.8 percent of the men who were convicted by informal methods.

4. *Bargain for dropped charges.* This variation occurred in about an eighth of the cases who reported bargaining. It involved an agreement on the part of the prosecution not to press formally one or more charges against the offender if he in turn pleaded guilty to (usually) the major offense. The offenses dropped were extraneous law violations contained in, or accompanying, the offense alleged in the complaint such as auto theft accompanying armed robbery and violation of probation where a new crime had been committed. This informal method, like bargaining for concurrent charges, was reported chiefly by offenders without lawyers. It occurred in 12.6 percent of cases in which bargaining was claimed.

The various types of informal conviction agreements were described in the majority of the cases and, as mentioned, only six members of the sample went to jury trial. The remainder of the sample (37.1 percent) pleaded guilty, they said, without any considerations. It is possible, however, that in those 15 instances where the men had counsel, the attorney had bargained, or had attempted to bargain, without the knowledge of the offender.

In instances where informal methods were used, the roles of the various participants were cooperative rather than combative. Central to the entire process were the roles

of offender and prosecutor; the defense attorney played a significant part chiefly in cases of first offenders and in instances where the nature of the charge was in dispute. The judge sometimes played an informal role in cases involving a fixed sentence, but even here the prosecutor's role dominated because of the common practice in the court whereby the judge asks for, and generally follows, the prosecutor's recommendation as to sentence in cases pleading guilty.

The Bargain Theory of Criminal Justice

The most significant general finding of the study was that the majority of the felony convictions in the district studied were not the result of the formal, combative theory of criminal law involving in effect a legal battle between prosecution and defense, but were compromise convictions, the result of bargaining between defense and prosecution. Such informal conviction processes were observed in over half of the cases studied.

In the informal process the accused, directly or through his attorney, offered to plead guilty to the offense for which he was arrested, providing it was reduced in kind or degree, or in exchange for a given type or length of sentence. The prosecutor benefitted from such a bargain in that he was assured of a conviction, yet did not have to spend the time and effort to prepare a trial case. He also avoided the ever-present risk of losing even a clear-cut case should the accused have gone before a jury. The court, too, benefitted. Court calendars were, and are, crowded and the entire court system would be admittedly inadequate to cope with criminal trials should all, or even a fraction of the felony arrests decide to go to trial. This, coupled with a generally favorable attitude toward bargaining processes on the part of the lawyers, civil and criminal, in the local bar, made informal methods of conviction almost inevitable.

Instead of proceeding through all the formal stages of conviction such as hearing before a magistrate, preliminary hearing, arraignment, etc., the majority of the offenders waived most of these procedures and because of informal promises of leniency or threats of long sentences, entered guilty pleas and were sentenced. About half (50.5 percent) of the sample went to preliminary hearings of their cases but only 6.2 percent proceeded through a jury trial.

Conclusions: Significance of Informal Conviction Processes to Criminology

Criminological research has generally ignored methods of conviction in conventional felony cases except the illegal "fix" and brutal "third-degree" as primarily legal steps automatically defining the unit to be studied. The automatism of conviction has here been challenged, and within the limits of the present research, interaction processes of sociological interest in themselves, have been outlined.

It was felt in conducting this research that, if informal methods of convictions were discovered, they would be of a nature to negate the use of conviction records in many types of research and correctional administration. In the typology of criminals, in prison classification, and in other applied fields such as parole prediction, bargaining techniques would rule out the accuracy of the "paper" conviction as an index of the offender's actual patterns of criminality. In spite of the high incidence

(56.7 percent) of admitted bargaining in the sample, however, only a very small proportion of cases admitted guilt to offenses grossly different from those alleged in the complaint, and only a small proportion had offenses dismissed so that they did not appear at all on the offenders' records. In other words, the informal conviction processes tended to result in guilty pleas to the same or very similar offenses, so that the offenses for which convicted did not usually deviate greatly from the crime actually committed. The greater proportion of the bargaining was concerned with directly gaining a lighter sentence regardless of the offense, rather than indirectly by pleading to a lesser charge.

One of the most important implications of the informal methods is the effect of these processes on selection for probation. A promise of the prosecutor's recommendation for probation was one of the most common values given in exchange for a guilty plea. This occurred in 34.5 percent of the cases reporting bargaining. With such informal tactics, selection for placement on probation is determined by the skill of the offender or his lawyer in bargaining, rather than on factors of the case which would have more relevance to successful rehabilitation by field rather than institutional placement.

The existence of informal methods also has broader significance to law and law enforcement as well as to criminology and related areas. The use of such methods involves a differential implementation of the law comparable to the discrepancies noted by Reckless in his "categoric risk" of conviction and Sutherland in his conceptions of white collar crime.[5] An analysis of the sample of offenders showed no clear cut categories separating bargained from non-bargained convictions, yet the fact that some offenders, without going to trial, pleaded guilty without any considerations in the charge or in sentencing while others "settled" their cases informally, raises again the sociological, and presumably the moral, problems of criminal justice.

Evidently the criminal law is not only differentially enforced in general, but as far as this study shows, this also occurs within groups of offenders convicted of the ordinary (or conventional) felonies of robbery, homicide, burglary, larceny and sex offenses. Certain proportions of these violators (56.7 percent in this sample), without resorting to bribery or other methods of the professional "fix", can modify the nature of the charge against them or the length or type of their sentences in much the same manner as the white collar offender.

Whether bargaining is legal, that is, whether men convicted as the result of bargaining are convicted by due process of law, is a difficult question to answer without referring the decision to a specific case. Likewise, whether bargaining is ethical cannot be summarily answered. Certainly in cases where bargaining is misused, where the accused is exploited or the community subjected to danger, the issue is clear. Under these conditions bargaining is not only unethical but would probably be held unconstitutional, as a violation of the "due process" clauses of the Constitution.

When compromise is used, however, to gain a certain conviction of a surely guilty offender, the question is not so clear. Defense lawyers, prosecutors, and criminal

[5] See WALTER RECKLESS, THE CRIME PROBLEM, 2nd edition, (New York: Appleton-Century-Crofts, Inc., 1955) pp 26–42; and EDWIN H. SUTHERLAND, WHITE COLLAR CRIME (New York: Dryden Press, 1949) pp 3–14.

court judges interviewed in an earlier study overwhelmingly favored bargain-justice where judiciously used. They felt it to be the most expedient way of gaining justice. Likewise the offenders who bargained successfully were well satisfied with this process. It was the men who went to trial or who failed to bargain successfully who more often claimed injustice in their cases.

As the lawyers said, bargaining appears to be an expedient method of answering numerous problems of the administration of justice. Our criminal procedure is cumbersome. Legal defense is expensive both for the state and the accused. Court calendars are crowded and would not be able to cope with the number of trials which would ensue if all arrestees pleaded not guilty. Furthermore, no conviction is ever a sure thing, no matter how overwhelming the evidence, if the case goes before a jury. Prosecutors, who need convictions to be successful, know this. For these reasons, "bargain-justice" appears the natural answer to lawyers and court officials and, of course, to offenders who are guilty. For these reasons, too, the problem of bargaining cannot easily be corrected, if it should be corrected at all. Bargain-justice appears as a natural, expedient outgrowth of deficiencies in the administration of our "trial-by-combat" theory of justice. It is supported by both the attitudes of offenders who see justice as a purely personal thing, how well they fare in sentencing, and by the attitudes of lawyers and court officials who can only "get things done" in this way.

While bargain-justice may thus be an expedient and at present even a necessary and legitimate legal phenomenon in certain cases, some broader implications of bargaining should be mentioned. Cases of conventional felonies that are "settled" may well result in strengthening attitudes which favor a general disregard for law and for justice, in much the same way as does the differential legal treatment of business and political violators. If conviction on a charge is to be determined in great part by skill of the offender in bargaining with the court or in hiring a lawyer to bargain for him, then our concept of impartial justice based upon facts and rules of evidence becomes meaningless. Furthermore, the fact that opportunities and techniques for bargaining exist in our system can have an adverse effect upon attempts to rehabilitate offenders and generally to decrease crime rates. What happens, for example, when one man, merely because he is unsophisticated, does not know of bargaining techniques nor of the right lawyer to contact, is sentenced to prison while another more sophisticated offender, a recidivist who commits the same offense, arranges a sentence to be served on probation? Certainly the rationalizations of the man sentenced to prison to the effect that he is a "fall guy", and his conception of himself gained from serving prison time, make rehabilitation far more complex if not impossible. The way bargaining now works, the more experienced criminals can manipulate legal processes to obtain light sentences and better official records while the less experienced, occasional offenders receive more harsh treatment. Under these conditions the effectiveness of law as a means of social control is seriously jeopardized and any long range attempts to build respect for the law and law abiding attitudes will prove extremely difficult.