

Why plea bargaining is a necessity for

HANNES is a San Diego Superior Court Judge.

By LAURA PALMER HANNES

Much public attention has focused on the issue of plea bargaining in criminal cases. Public attitudes toward the process are understandably negative. Some believe the practice to be morally wrong. To this, I provide one judge's perspective on the role of plea bargaining in our criminal courts today.

At its best, plea bargaining is a fair procedure for settling a significant percentage of criminal cases expeditiously, with justice for society and the accused. At its worst, plea bargaining is a necessary means of disposing of less serious cases to make room for more serious cases in an overloaded system. The best and worst aspects of plea bargaining are now evident in our criminal justice system.

When used properly, plea bargaining permits an experienced prosecutor and defense attorney to assess the strengths and weaknesses of a criminal case, measure the probability of conviction and determine the most probable sentence if the defendant is convicted.

Each side recognizes that a trial is always problematic, involving the availability of witnesses, the quality of testimony, the uncertainties of convincing 12 jurors of the facts, and finally, the discretion of the trial judge at sentencing.

Considering these and other factors, both the defense and prosecution are usually willing to give up something in the bargaining process in return for a guaranteed disposition that satisfies most of what they would hope to achieve through a trial. Thus, the prosecutor agrees to drop some charges or reduce a sentence in return for a guaranteed conviction. The de-

fense gives up the possibility for a complete acquittal for a reduction in charges or possible sentence.

In the plea-bargaining process, attorneys recognize that some criminal charges may simply be duplicate ways of alleging the same offense. Duplicate counts may be dismissed without changing the ultimate outcome of the case. Attorneys also understand that criminal charges do not always represent either the true seriousness of the specific crime or the true culpability of the defendant. Criminal charges are simply general descriptions of certain fact patterns which define categories of criminal activity.

For instance, burglary, a violation of Penal Code Section 459, is defined by the following general factual elements: A person: 1) enters a structure, 2) without permission, 3) for purposes of stealing or committing any felony. Burglary may be charged against an 18-year-old first-time offender who enters an open garage to steal a bicycle. Burglary may also be charged against an armed and hardened criminal who breaks into an occupied home to steal from the resident.

Plea bargaining permits the parties to resolve the 18-year-old's crime with a probationary sentence, possible jail time, restitution, a fine or community service. The hardened criminal would almost certainly be sent to prison.

The negative side of plea bargaining is this: In our seriously overloaded justice system, the process is a necessity to prevent dismissal of criminal cases. As criminal dockets have reached unworkable numbers, sentences offered for less serious crimes in the plea-bargaining process have become more lenient. Less serious cases must be settled without trials to make room for the more serious cases. This is not the way the system ought to

overloaded U.S. courts

work, but it is a reality.

In San Diego County, the district attorney is currently filing approximately 15,000 felony cases a year. San Diego courts can accommodate no more than 5 percent of these cases for trial. Ninety-five percent of cases must be plea bargained or the system would begin to collapse. This is so because there are only 30 felony trial courts. Defendants have a constitutional right to be brought to trial within 60 days of arraignment in Superior

Court. If there are no courtrooms available for a trial on the 60th day, the criminal case must be dismissed.

Are judges content with forced plea bargaining? No. Nor are they pleased that all but second- and third-strike offenders will automatically receive one-third to one-half off their sentences for "good" time or work time.

The criminal justice system has never been — and probably can never be — funded to handle adequately the number

of violent criminals and drug-addicted human beings who now come into its halls.

Courts and prisons can help deter crime, but they cannot stop a crime wave in an undisciplined society. Only two forces may be capable of doing that: a repressive police state, or a fundamental change in society's own self-governance.

Meanwhile, our criminal justice system works overtime to crowd more cases through the courts each year. Judges and the law remain tough on violent criminals, but this necessitates lenient treatment of less serious crimes.

As serious crimes preoccupy courts and jails, many thousands of misdemeanor crimes cannot be prosecuted. In San Diego, for lack of jail beds, misdemeanants each year are simply given citations to appear in court: when they fail to appear, warrants for their arrest simply stack up in the marshal's office. There are not enough marshals to serve misdemeanor warrants and not enough jail beds for the misdemeanants even if they were arrested.

While misdemeanors are being forced down and out of the system, California's felony prison population grows steadily. There are over 118,000 defendants in California prisons today. San Diego judges have been warned that if we continue at our present rate of sentencing defendants to state prison, California may soon see a federal limit placed on the prison population. This would mean that for every new defendant sentenced to prison, a current prisoner would have to be released.

The public has a right to know that judges do not approve of automatic sentence reductions, do not want to see misdemeanants go unpunished for lack of marshals and jail beds, and do not want to be forced to plea-bargain 95 percent of criminal cases.

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