

# PLEA BARGAINING IN PROSECUTIONS

Guest-Lecture Fall 2020

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# INTRODUCTION

## *Morton College*

- *Professor of Criminal Law II*
  - *Criminal Procedure*

## *Education*

- *Juris Doctor: The John Marshall Law School, cum laude*
- *Undergraduate: DePaul University, cum laude*

# INTRODUCTION

## – Publications

- *Wayne State Law Review- constitutional law, and the Supreme Court.*
- *Florida Coastal Law School Law Review- Administrative law, the D.C. Judicial Circuit, and the Supreme Court.*
- *University of Toledo Law Review- constitutional law, and the Supreme Court.*
- *Arizona State University Sports & Entertainment Law Review – labor rights and the Supreme Court.*
- *Cleveland State Law Review- labor rights, and the Supreme Court.*
- *UIC John Marshall Law Review- legal history, constitutional law, and the Supreme Court. Coming Winter 2020.*

# INTRODUCTION

- *Law Enforcement - Legal Work:*
  - *Former Assistant State's Attorney with the Cook County State's Attorney's Office*
    - *CCSAO: Second Largest Prosecutorial Body*
- *Prior Law Enforcement Legal Work :*
  - *Illinois Attorney General's Office of Illinois: clerkship*
  - *DuPage County State's Attorney's Office: clerkship*
  - *U.S. Court of Appeals for the Seventh Circuit: judicial internship to the Honorable Judge William J. Bauer, former U.S. Attorney for the Northern District and former State's Attorney for DuPage County Illinois.*
- *Additionally:*
  - *certified court-appointed mediator in Cook County.*
  - *Chief Research Assistant to Assistant Samuel Vincent Jones at the John Marshall Law School*
    - *Utah Law Review.*

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# **WHAT IS A PLEA BARGAIN?**

# WHAT IS A PLEA BARGAIN?

An arrangement between a prosecutor and a defendant in which the defendant agrees to plead guilty to a lesser charge or sentence as an alternative to trial.

# **TYPES OF PLEA BARGAINING**

1. Charge bargaining
2. Count Bargaining
3. Sentence Bargaining
4. Fact Bargaining

# **1. CHARGE BARGAINING**



# 1. CHARGE BARGAINING

This type of bargaining pertains to the charges brought against the defendant.

Number: The bargaining will pertain to the number of charges

## **2. COUNT BARGAINING**

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- *Type of Charges:* A defendant may be willing to plead to a sentence for an alternative non-violent charge that is the equivalent to the initial offer.
  - *Severity:* Sometimes pleas can be to downgrade a class of crime into a lesser crime.

NOTE: The difference between a misdemeanor and a felony

- Felony is any crime that carries a minimum punishment of more than a year.
- Misdemeanor is any crime that carries less than a year for maximum penalty.

# **3. SENTENCE BARGAINING**

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- Length of sentence.
- Negotiating requirements.
  - Examples:
    - » Mental health evaluation and treatment.
    - » Substance abuse evaluation and treatment.
    - » Restitution.
    - » Community Service.
    - » Sex Offender Evaluation and treatment.
    - » Alcoholics Anonymous.
    - » Anger management
    - » Reporting change of address.
    - » GPS or Electronic Monitoring.

# 3. SENTENCE BARGAINING: TYPES OF SENTENCES

- Supervision:
  - Non-conviction, guilty plea
- Conditional Discharge and Probation:
  - Similar
  - Time periods
  - Probation is more regulated
- Jailtime
  - Actual time vs. “Time served”
- Deferred prosecution
  - “Restorative justice.”
  - Community Service
  - Classes/ Alternatives

# **4. FACT BARGAINING**

## 4. FACT BARGAINING

- Prosecutors agree to not introduce certain evidence. Some judges do not allow this.
  - Generally regarded as controversial.
  - Reasoning is to allow a defendant to negotiate and limit the exposure at trial.
  - Fact bargaining can achieve a trial for a lesser amount of contraband or less conduct.



# **PROS & CONS OF PLEA BARGAINING**

**PROS**

# PROS

- Defendant's desires:
  - Embarrassment
  - Control of Record
  - Early jail departure
  - Legal Fees
    - “Indigency”
  - Friends & family

# PROS

- State and Defendant: Eliminates Uncertainty:
  - Judge or Jury
  - Guilt or Acquittal
  - Witnesses
  - Sentence Structure
  - Aggravation
  - Other variables of trial
- State's Attorney (or District Attorney) statistics

# PROS

- Victim's needs:
  - Altering charges to ensure needs.
  - Victim embarrassment.
  - Interstate travel
  - Uncertainty
  - Civil Suit

# PROS

- Finite Resources
  - Tax money
  - Prosecutors
  - Expert Witnesses
  - Time of the court
  - Public defenders

# PROS

- Alternative to Dismissal
  - Timeliness: “the clock”
  - Gathering witnesses and evidence

**CONS**



# CONS

- Justice Seemingly Lacking.
  - Defendant confusion
  - Victim disappointment
  - Community disappointment

# CONS

- The Victim's "Day in Court"
  - Any conviction, any plea
  - Only a trial
    - Bench vs. Jury trial
      - Waiving juries
      - Can a victim demand a jury?
  - TV/ film disappointment

# CONS

- Risks of Accusations
  - Perception of victims, the community, and politicians can undermine the conviction's integrity.
  - Prosecutorial and Judicial Immunity.
  - Legitimacy of the Justice System

# CONS

- Case-Gauging
  - Defense
  - Prosecutors

*NOTE: Prosecutors are not allowed to try a case in which they believe the defendant is innocent.*

# **MIXED PROS & CONS**

# PROS & CONS

- Subject to Politics
  - Elected Officials
  - Administrative Goals
  - Shifting Political Pressures
    - Conviction vs. Trial- Statistics
    - Election Season Variables

# CONS

- Case-Assessing
  - Defense
  - Prosecutors

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# **FUNCTIONAL OUTLINE OF PLEA BARGAINING**



# FUNCTION

- How a plea bargain functions:
  - Offer
    - Defense Suggestion
    - Prosecutor must agree
    - Defendant must accept
  - Judge may reject the plea bargain
    - Reasoning
      - always best on the record
      - Variables by state
    - State judges are elected officials
      - State vs. federal
  - Guilty Plea
  - Conviction

# **RELEVANT ALTERNATIVES TO PLEA BARGAINING**

# SIMILAR ALTERNATIVES

- 402 Conference
  - Prosecutor must agree to this
  - Defense client must waive rights
- Blind Plea
  - At any time
  - Risks

# **VARIABLES OF PLEA BARGAINING**

# VARIABLES

- The variables of a plea bargain
  - Time.
  - Cost.

**QUESTIONS?**

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