A Game of Justice

The Perils of Plea Bargaining

By Leonard Downie Jr.

Steve Sachs, talks tough—a handy trait for a prosecutor. In late 1969, a hulking, troubled man came into the Baltimore federal courthouse office Sachs then occupied as U.S. Attorney for Maryland. "He just walked in," Sachs recalled of Natham Cohen's first visit, "and said, in effect, 'I've got a Congressman for you.' "

Until then, Sachs had known Cohen only from an ongoing federal investigation of the illegal sale of unregistered stock in companies Cohen controlled in Maryland. At the same time, the U.S. Attorney's office in the District of Columbia was investigating Cohen for his operation of the Monarch Construction Co., a notorious fly-by-night outfit that defrauded 1,000 inner city Washington families of $5 million through shoddy home improvements during the mid-1960s.

Cohen had first telephoned Sachs in October, 1969, with a mysterious offer to help Sachs "prosecute a very important case." Sensing that the caller was looking for some kind of deal to get himself out of trouble, Sachs ignored the offer. Instead, the prosecutor informed Cohen that he was himself a target for prosecution in "a very important case" and that if he wanted to visit Sachs he had better bring a lawyer.

Cohen, a tall, portly man weighing somewhere between 250 and 300 pounds, showed up in Baltimore anyway and surprised Sachs by announcing he could prove that a U.S. Congressman had solicited and accepted a large bribe. Cohen said he could prove it because he had himself paid the bribe to the Congressman—Rep. John P. Dowdy, the veteran law-and-order conservative Democrat from Texas—in an unsuccessful attempt to stop the federal investigation of the Monarch fraud. Cohen told Sachs that at a clandestine rendezvous in the Atlanta airport Dowdy had been handed a suitcase filled with $20, $50 and $100-bills totaling $25,000.

"I was panting inside," Sachs recalls. "But outwardly I acted very cold. Cohen wanted to make a deal right away for his information against Dowdy. But I made him come back two or three times."

The two men had begun a high stakes game of plea bargaining in which Cohen, a lawyer himself, demanded that the government promise not to prosecute him in either Maryland or the District of Columbia in exchange for his help in indicting and convicting Dowdy.

"He wanted everything dropped," Sachs says. "But I wasn't going to go along with that. If the Monarch cases were dropped, Cohen would have succeeded in that way in what he had failed to do by bribing Dowdy. In no way, shape or form was the government going to drop the Monarch case."

However, that initial blustery antagonism gradually evolved into a close working partnership as Sachs—the single-minded big game hunter that a hard-charging prosecutor must be—grew increasingly preoccupied with closing in on Dowdy. To do so, he needed help from Cohen, who at one point was wired up with a hidden miniature tape device to record an important incriminating conversation with Dowdy. Even though Sachs remained firm in his refusal to allow the Monarch case to be dropped, he eventually wound up helping Cohen achieve *his* ultimate goal in their plea bargaining game—freedom.

In the end, Cohen pleaded guilty to a single fraud count in the Monarch case, in exchange for Sachs' written promise not to prosecute him in the Maryland stock case. Sachs also agreed to bring Cohen's cooperation with the government to the attention of the judge sentencing him in Washington. In turn, Cohen also provided information that led to guilty pleas by other Monarch officials. A (fairly) clean sweep.

"It was a good plea bargain," Sachs says, pointing to the five years the plodding Monarch investigation consumed without producing any assurance that the clever Cohen or his accomplices could have been convicted of fraud by a jury.

To close out his end of the deal, Sachs came to Washington to see federal Judge Edward M. Curran in his chambers just before Cohen was to be sentenced. Sachs requested Curran to give "heavy consideration" to Cohen's cooperation with the government. "I never asked the judge to keep him out of jail," Sachs said.

Yet, when Cohen was then freed by Judge Curran on five years' probation, Sachs experienced, as he remembered recently, "some feeling of pleasure, although that's much too strong a word for what I mean, about his light sentence." After pausing for reflection, Sachs, now a defense lawyer, adds, "You know, a peculiar relationship grows up between a prosecutor and an informant."

For many of Monarch's victims, the leniency won by Cohen must have seemed a bitter injustice. And Rep. Dowdy insisted that it all showed that Cohen had simply invented the bribe story to save his own skin.

"For me," Sachs says, "the bottom line of that deal is the answer to the question, 'Was it a price worth paying for the conviction of a sitting Congressman for corruption?' I say the answer is definitely 'yes' " The hunter had won out.

Nagging questions about deals like Cohen's keep coming up, however, as recent political corruption investigations have produced a parade of prominent businessmen, former White House officials and a Vice President of the United States managing through elaborate negotiations to plead guilty to greatly reduced charges and be assured of lenient sentences. Together, they have made plea bargaining—the traditionally hidden but essential device of assembly line justice in America's criminal courts—an issue of front page importance.

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In the most sensational case, Spiro T. Agnew used the Vice Presidency of the United States as the ultimate bargaining chip to escape documented bribery and extortion charges and win freedom on unsupervised probation for a plea of no contest to a tax law violation. Several of Agnew's accusers such as I. H. Hammerman, who have admitted deep involvement in the pervasive political corruption in Maryland also have won unusual leniency by trading their sworn testimony against Agnew and other high figures for permission to plead guilty themselves to relatively minor charges.

The Watergate investigation also has been dominated by noticeable plea bargaining. Among others, John W. Dean III, Egil Krogh Jr., Jeb Stuart Magruder and Fred C. LaRue — all of them former White House or Nixon campaign officials who admitted extensive involvement in either the Watergate bugging cover-up or the illegal activities of the White House "plumbers" — have each been allowed to plead guilty to federal conspiracy charges in exchange for their testimony against Nixon Administration figures. Krogh went to a minimum security prison camp to serve just six months of a two-to-six-year sentence, the rest of which was suspended; meanwhile, Dean, Magruder and LaRue remain free indefinitely, pending final sentencing.

These examples of plea bargaining have attracted considerable public attention to the practice recently, although most people probably still do not realize that nine of every ten "convictions" for stealing, assault and other common crimes in most big city courts also are guilty pleas rather than the results of trials.

These pleas are produced by a legitimatized courthouse conspiracy in which prosecutor and appointed defense lawyer, both overworked and underpaid, bargain away each defendant's constitutional right to a trial by jury to save themselves—and the overloaded system—a little time and trouble.

Until recently, it had been almost completely covered up by judges and lawyers who routinely lied for the court record at hearings for guilty pleas when they all denied that any "threats or promises" had been made to the defendant to elicit his plea.

"Like sex before Freud," Steve Sachs said of plea bargaining in the recent past, "everybody did it, but few discussed it."

In discussing it now, it is perhaps best to look at all plea bargaining as a kind of poker game. Whether the defendant appears to win or lose depends on the cards he holds and how he and his lawyer play them. The stakes involved—which can range from the necessity of keeping the court system moving, to the recovery of large amounts of stolen money, to the opportunity to make a case against a much more important wrongdoer — determine the kind of game the prosecutor is willing to play. And usually it is the prosecutor who controls the game, much as a blackjack dealer runs his show in Las Vegas.

Keeping the System Moving

Hamilton White, a short, wiry 21-year-old black Washingtonian, was huddled in a chair outside Courtroom 5 on the second floor of D. C. Superior Court Building at 4th and E Streets NW., when his assigned lawyer showed up a 9:15 a.m. on a Monday in March. The lawyer was a young Superior Court "regular" appointed to represent defendants like White who have no attorneys of their own. He said hello to White, disappeared down the hall and through the doors leading to the judges' chambers behind the courtrooms, then reappeared with a legal paper for White to read and sign.

"You have to sign this to waive your right to a trial by jury or a trial by the court," lawyer Jerry Dier told White. "It does what I told you about the other day. Read it carefully and I'll be back." Dier disappeared down the hall again.

For nearly 10 minutes, White sat there reading the waiver form over and over again until Dier finally reappeared and took him into the courtroom. There a clerk and a court stenographer awaited the judge's arrival. Dier and White went to the defense table in front of the judge's bench, and the lawyer gave White a pen to sign the waiver form. White continued to stare at the paper unsure, seemingly pained by the necessity for a decision.

"Don't you want to waive your right to trial by jury or a trial by the court in order to do what we discussed the other day?" Dier asked, spewing out legalisms like a machine gun. "You understand, don't you, what it means to waive your right to a trial by jury? You don't have to sign the form if you have any doubts. It doesn't matter to me what you do. Only sign if you understand what you are doing. It's what we talked about the other day."

Dier then jumped up toward the clerk's desk to use the telephone to tell someone that he would be over there soon, right after he finished this plea in Courtroom 5. By the time he returned to White, the young man had signed the form and mumbled something about it. "You didn't have to sign the form if you have any doubts about it whatsoever," Dier told White again. "It doesn't matter to me what you do."

Then Judge George H. Goodrich came into the courtroom and took the bench.

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White's case was called first and Dier stood to recite, in his rapid-fire fashion, the pleading typed out on a sheet he held in his hand:

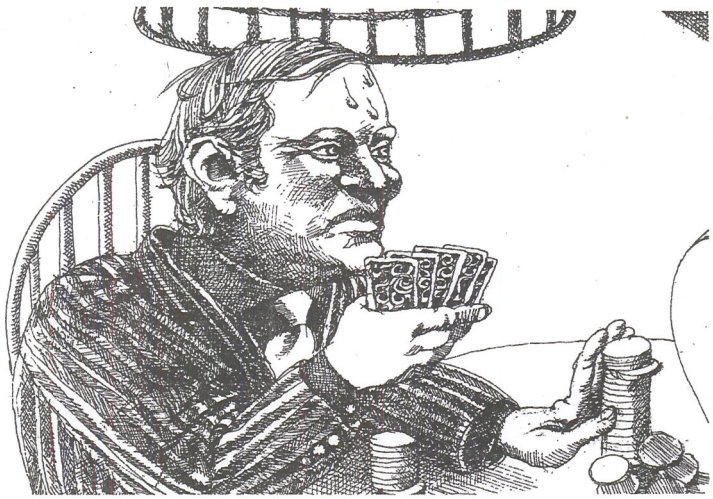
"Your honor, I have advised my client of his rights to a trial by jury or a trial by the court. He wishes to waive his right to a trial by jury or by the court and plead guilty to the third count of the indictment. He is pleading guilty because he is guilty. He understands that if he went to trial he would benefit from the presumption of innocence he would carry all through that trial. He understands that if he went to trial he could call witnesses on his behalf. And he understands that he would not be compelled to testify against himself at such a trial. He realizes he could be sentenced to up to 10 years in prison for the charge to which he is pleading guilty. He also understands that by pleading guilty he is waiving his right to appeal. He further understands that because he is 21 years old he could be sentenced to the Youth Center with an indeterminate sentence under the Youth Corrections Act. Understanding all of these factors, he has agreed to plead guilty as I have described. I have discussed this with him. He was not under the effects of alcohol or narcotics at the time, and he is not suffering from any mental disorder."

Hamilton White himself, still buttoned up in his black overcoat, stood before the judge and held his sunglasses behind his back. He was asked if he had anything to add to all this and answered with a barely audible "no."

"Have you talked with your attorney about this matter?" Goodrich asked. White nodded affirmatively. "Are you satisfied with what he has said here?" Another nod and a soft "yes." "No threats or promises have been made to you?" Another quiet "no."

The prosecutor, Assistant U.S. Attorney Peter Mueller is a well-dressed young man with curly blond hair and a long, wispy handle-bar mustache. He was then asked to describe briefly the case against White. It would have depended on testimony from the former bookkeeper of the Watergate restaurant, where White also had worked as a laborer, Mueller said. According to his account of the bookkeeper's story, the two men decided to split one Sunday's restaurant receipts and stage a fake robbery on Monday morning, with White faking an attack on the bookkeeper, to cover the embezzlement.

But, Mueller said, the bookkeeper would have testified that White never kept the Monday morning rendezvous and instead disappeared with his alleged $3,000 share of the money. The bookkeeper also



vanished for a time, but later turned himself in to the authorities and pleaded guilty to an embezzlement charge after implicating White.

Although the crime allegedly was committed in October, 1972, a warrant for White's arrest was not issued and served until almost a year later. Mueller never explained why.

Following his arrest, White was charged in a three-count indictment with embezzlement, conspiracy to commit embezzlement and receiving stolen property. He was now pleading guilty to the third count — receiving stolen property — which, like the others, was a felony carrying a maximum ten-year prison sentence.

Prosecutor Mueller later told a reporter "it was a good plea," in part because 18 months had already passed since the crime allegedly had been committed and so old a case is always harder to win in trial. In addition, it was obvious that the government's case rested almost entirely on an unusual story told by a single witness who had already admitted embezzlement himself.

Mueller's boss, William Block, who is assistant chief of the U.S. Attorney's felony prosecution branch here and who screens every Superior Court felony plea bargain "to try to achieve equal justice for every defendant and the community," told a reporter that the court could not function as it does now without "volume" plea bargaining. "There is pressure to take pleas all through the system," Block said. "There is pressure on the prosecutor to dispose of cases, and pressure on the defendant because a judge might treat him harsher for going to trial and, if he takes the stand, perjuring himself in denying the obviously strong case against him." Defense attorney Dier, who said it would be improper to discuss specifics of White's case, agreed with Block about the necessity for plea bargaining to keep the criminal court system running.

So the only really worthwhile card most defendants hold in this plea bargaining game is the ability of each—as one more faceless body in the courthouse, one more number on an endless docket—to slow the process of assembly line justice.

"A lot of plea bargaining is psychological," Block said. "The defense attorney has to sell the case. The defendant has to see if the prosecutor has all the cards. It's funny how some defendants see some charges as somehow less serious than others, no matter what the penalty. Like White and the receiving stolen property charge, which is no different from embezzlement to us, but may have sounded like a lighter charge to him."

In any event, back in the courtroom, Hamilton White was never pressed to explain himself just why he had pleaded guilty to the receiving stolen property charge. The limited explanations had come instead from his lawyer and the prosecutor.

Without questioning anyone further about the deal, Judge Goodrich, a balding man with a kindly face and soft-spoken demeanor, turned to White and said that "based on what has been placed before me today, I accept your plea." A pre-sentence report by the court's probation office was ordered and a sentencing date set for six weeks hence. White was allowed to remain free until then on $3,000 bail bond, but he was asked to stay in the courtroom until a probation officer could come and meet him for the pre-sentence interview.

The whole affair had taken between five and ten minutes. Even before White had finished signing another court paper promising to show up for his sentencing, Dier rushed out of the courtroom without saying anything more to his client. In the hall, he passed Hamilton White's mother, who had chosen to sit out there and wait for her son rather than watch him plead guilty inside Courtroom 5.

Getting The Money

By the time the FBI caught up in January with all six suspects connected to last September's $547,000 armed holdup of the Maryland National Bank's Baltimore-Washington airport branch, the thieves had managed to hide $400,000 of the cash—half in a house in Baltimore and the other half in one of those hastily dug holes one reads about in fictional thrillers. This very real one was dug in muddy ground on a rural hilltop not far from the airport near Jessup, Md. Finding all that money became the number one objective of bank officials, who were afraid of what such a large loss would do to their insurance.

After the suspects were caught, according to Hilary Caplan, the lawyer for one man charged with actually taking the money, "there was a lot of pressure" from the bank.

"I sat there with (Assistant U.S. Attorney Michael) Marr for five hours hearing telephone calls," Caplan said later. "Marr would say something like, 'If we could get all your money back, what would your position be?' I assumed it was the bank." And without the bank's full cooperation at a trial, it would difficult if not impossible to convict the suspects.

Despite a formal denial by the bank of any participation in plea bargaining, a deal was obviously struck. Two of the three suspects led the FBI directly to the muddy hilltop, where a dozen agents with long-handled shovels dug up $200,000 in wet bills from their shallow grave, and to the house in Baltimore where the other $200,000 was found in a duffle bag. Although the bank never got the remaining $147,000—which presumably was spent by the thieves during the four months the FBI was looking for them—the government made good on its end of the bargain.

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Caplan's client James H. Wells, was out on parole from an earlier conviction. He had his armed robbery charge—with its 20-year prison sentence—reduced to larceny, the legal term for simple stealing without a weapon. (The plea bargaining practice of reducing an armed robbery charge to unarmed robbery, larceny or attempted robbery is often referred to by lawyers as "swallowing the gun.")

Prosecutor Marr further agreed in Wells' case to recommend to the sentencing judge that five years of the ten-year maximum for larceny be suspended and to ask the parole board not to lengthen Wells' previous prison term for violating his parole by robbing the bank. (After the deal received considerable publicity in Baltimore and Washington, the judge sentenced Wells to the full ten years, but did so in a way that would make him eligible for parole again in a short time.)

The other five suspects in the airport bank robbery got off completely free in the deal. A second man charged with actually holding up the bank, had all the charges against him dropped. Two men charged with receiving stolen money, also had their charges dropped; prosecutor Marr said of one of those men it would be "totally unfair" to prosecute him while the others went free. And two other men, the ones who led the FBI to the money and whose names have not been released by the authorities, were never charged at all.

This plea bargaining game of getting the money is seldom played because most thieves are caught with the loot on them, in their cars or in their homes, where it is easily found by the police. But on those rare occasions when the defendant still has the money, it gives him a very important high card to play. The authorities often call it "making restitution," but because it gives some defendants an unequal advantage over others in plea bargaining, it smacks of the "purchasing of indulgences" or the buying of justice. And it takes place more often when the defendant is a "white collar" criminal and a rich man.

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One such was Marvin Greenfield, who pleaded guilty along with Nathan Cohen and Myrvin Clark in the Monarch home improvement fraud case. Greenfield was to all outward appearances at the time a legitimate millionaire businessmen with real estate holdings, a finance company, luxury cars and a big home in Bethesda.

But Greenfield also was an almost legendary figure in the closed Washington world of inner city fast-buck entrepreneurship. Over the years, he was involved in fly-by-night businesses that sold wigs, used cars and home intercom systems, depending on which was hottest on the market at the time. These outfits usually sold their merchandise on credit, at high interest rates. Greenfield bought promissory notes from these and other similar businesses, then collected them from hapless consumers through his Universal Acceptance Corporation in Silver Spring.

In 1964, Greenfield bought into the Monarch Construction Co., which then looked like Washington's most lucrative "big con." According to later court testimony by Clark, Cohen would introduce Greenfield to customers as "Stevens, the man in charge of the building and loan operation." Greenfield would then convince those who had already executed the standard $3,500 Towne House Front contract to sign two new contracts, ostensibly to reduce their monthly payments. Instead, however, the new notes obligated the signer to a much longer period of payments, totalling $6,900 in all. Many victims also discovered later, after all the contracts were switched, papers shuffled and documents falsely notarized, they had unknowingly signed mortgages on their homes as security for the inflated debts.

Eventually, Monarch was brought down by excessive greed and bickering among its executives and scrutiny by federal investigators. Greenfield eventually found himself implicated in the gigantic fraud scheme by Nathan Cohen in *his* plea bargaining. Greenfield's lawyer, Benton L. Becker, figured Greenfield was facing a certain two years in prison. So at Becker's urging, Greenfield offered to plead guilty and pay $200 each month for years—a total of $12,000, a paltry sum compared to what Monarch took in and what Greenfield was reputed to be worth—into a fund to be distributed among Monarch's many victims. In return, Greenfield was freed on probation.

When Greenfield went nervously before Judge Curran in federal court here, he told the judge, according to the transcript: "I am sorry for what has happened, and if given any opportunity at all, I will do everything in my power to try to make restitution to these people."

Judge Curran: You know what you did was most reprehensible . . .?

Greenfield: Yes, Your Honor.

Curran: The only reason I would even consider putting you on probation is because you are going to make restitution and it would help the poor who were defrauded by you. You ought to go to the penitentiary—you know that, don't you?

Greenfield: Yes, sir.

Curran: The court will impose a sentence of one to four years, the execution of which is suspended, and you are placed on probation for five years provided you join in . . . making restitution in this case.

As author Jean Carper pointed out in her book, *Not With a Gun,* a detailed retrospective on how Monarch victims were "robbed with a fountain pen" rather than with guns, the same week that Greenfield, then 55, won probation for his guilty plea to helping defraud 1,000 families, a 20-year-old woman was sentenced in the same court to up to 30 months in prison for attempting to rob a savings and loan office with a note in which she lied about having a gun, and a 20-year-old man was sentenced to 10 years for robbing the George Washington University cashier at gunpoint of $339.75.

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How Necessary An Evil? The Law Profession's Debate

Controversy is certain to swirl around plea bargaining, if only because it is finally being debated out loud in the legal community. The American Bar Association, the late President Johnson's National Crime Commission and the U.S. Supreme Court all have studied the practice in recent years and argued strongly for its retention and formalization.

They see plea bargaining as a necessary evil to keep the courts from being overwhelmed by criminal trials. The Supreme Court ruled in Santobello v. New York that because judges and court facilities and personnel "would need to multiply by many times . . . if every criminal charge were subjected to a full-scale trial," plea bargaining "is not only an essential part of the process but a highly desirable part" which "is to be encouraged."

Before this Supreme Court decision, it was required that guilty pleas be spontaneously "voluntary," without either coercion of or reward for pleading, and that every defendant be prosecuted "to the full extent of the law." This is not what was actually happening in the pervasive backroom plea bargaining in most criminal courts, however, so it was necessary to lie about it in the courtroom. When the defendant pleading guilty was asked if any threats, promises or inducements had been made, he usually responded, as instructed by his lawyer, "no." And when asked if they knew the defendant's answer to be the truth, both the defense lawyer and the prosecutor would routinely answer "yes." Of course, everyone, including the judge, knew these statements to be pro forma lies for the record. The defendant went along with the charade for fear of worse happening to him.

This institutionalized cover-up of plea bargaining hid the railroading of defendants who never really understood what they were pleading to and ultimately got no help from the judge. It also covered up bargains made in the interest of clearing the calendar that let professional felons off easy after being arrested for serious crimes.

So in giving their approval to plea bargaining, the ABA and the Supreme Court laid down guidelines for full-dress court hearings on guilty pleas in which the judge is to make certain that the defendant commited the crime in question and that the plea and sentence are appropriate for the circumstances.

D.C. Superior Court Judge Tim Murphy said recently that this is the way plea bargaining is now handled in Washington, with everything "done on the record and subjected to judicial scrutiny." But that scrutiny can vary greatly from judge to judge. Willie King, a top assistant to U.S. Attorney Earl Silbert here, said "I love the fact that everything is spread out on the court record here so that the defendant can't say he did not know what he was doing," so long as "a judge like Murphy" meticulously questions him. But King admitted that not all Superior Court judges take nearly the same care that Murphy does.

Harsh dissents from this qualified endorsement of plea-bargaining are not uncommon in the legal profession. A lack of belief in the thoroughness of judicial oversight of plea bargaining, in part, prompted the Justice Department's Advisory Commission on Criminal Justice Standards and Goals to disagree with the Supreme Court and call earlier this year for a complete abolition of plea bargaining "as soon as possible, but in no event later than 1978."

A "horsetrading atmosphere" is "inevitable" in any plea bargaining, the commission contended, and justice inevitably suffers in cases in which pressures to dispose of cases wrongly force some defendants to give up their right to trial and wrongly reward others with leniency inappropriate to their crimes.

The Harvard Law Review also recently argued that plea bargaining was an unconstitutional deprivation of the right of every defendant to a trial. If plea bargaining were outlawed, the Review contended, the criminal court chaos that has always been predicted as a consequence might lead to long-needed reforms of American courts and correctional systems.

Most recently, Manhattan's new District Attorney, Richard H. Kuh, ordered his prosecutors to stop bartering with judges and defense lawyers over what sentence might be imposed if a defendant is allowed to plead guilty to a reduced charge. Bargaining over sentencing is "a wrongful usurpation by the prosecutor's office of the court's function," Kuh said in an unusual public memorandum to his staff in March. Kuh also promised a written codification of plea bargaining guidelines for the Manhattan prosecutors, something he had advocated only two months earlier, when he was still in private practice, in an article in The New Leader.

In some ways, plea bargaining can be seen less as a problem in itself than as a symptom: Why can't more defendants be given trials? Why can't judges be expected to see that justice is properly done in each case? Is there no other way to detect, punish and stop corruption than with leniency willing by rewarding participants in that corruption who agree to become stool pigeons?

It may well be that plea bargaining can somehow be fitted out with sufficient constitutional and courtroom protections to keep the innocent from being railroaded and the obviously guilty from escaping justice. But it should also be clear that reliance on plea bargaining for 90 per cent of any court's convictions is prima facie evidence, as the lawyers might say, that the American criminal justice system is in no way functioning the way we all learned in school that it should, or as lawyers and judges will portray it in Law Day lectures this week. □

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Trading Up

"There is probably not a white collar crime that I haven't been involved in other than forgery," Joel Kline boasted during his several days of testimony at the recent federal bribery, extortion and tax fraud trial of Baltimore County Executive Dale Anderson. In the first of several promised star appearances as a witness at trials growing out of the ongoing Maryland corruption investigation, Kline, only 34 years old, listed his myriad illegal activities in matter-of-fact detail:

He defrauded dozens of investors in his many shell companies through manipulation of their stock. He bribed government officials, bankers and businessmen for special favors. He hid some of those bribes, along with bribes being paid or collected by associates of his in business and government, including Anderson, by making them appear to be lawyers' or consulting fees. He systematically evaded income taxes by setting up family philanthropic foundations and visiting Las Vegas frequently to create the false appearance that he was incurring heavy tax-deductible gambling debts. And he tried to sabotage a federal investigation of his schemes by paying off prospective witnesses.

So it would figure that the government would prosecute and convict Kline for any number of his admitted crimes, lock him up and throw the key away.

Not so. Last year, Kline was allowed to plead guilty to a single count of conspiracy to obstruct justice and was sentenced to serve just six months in prison and to pay a $10,000 fine. In return for the plea and Kline's continuing cooperation with federal government, the federal prosecutors agreed to drop all the other cases they could have prosecuted Kline on.

Kline was supposed to serve the six-month prison sentence in company with former White House aide Egil Krogh Jr. at the "celebrity convict" minimum security Allenwood prison camp at Lewisburg, Pa. But Kline instead spent most of his short term on the Fort Holabird military post in Baltimore, near the federal courthouse where he went almost daily on virtual "work release" as a professional witness.

Government officials never would say what kind of quarters Kline occupied at Fort Holabird, but Kline's defense attorney, Steve Sachs (yes, the same Steve Sachs who had been U.S. Attorney for Maryland) said "it was without question a detention facility. It had barbed wire around it and U.S. marshals guarding it, although I guess you would say the building itself had a barracks-like quality." Kline's prison term ended in March and he is now free on parole.

Why such leniency for a man who has admitted so much wrongdoing? Simply because the short, balding, bespectacled Kline, who had lost his paper millions, private airplanes, yachts and Rolls Royce when his kited stock empire crashed, still had plenty that federal prosecutors wanted in return for letting him off easy.

On thousands of 3-by-5 filing cards, Kline had partially coded notes of his illegal activities during the past decade ("Dale 25X," for example, stood for $25,000 Kline said Dale Anderson paid him in one stock manipulation scheme), which have provided the prosecutors with investigative leads and incriminating testimony against Anderson and several still uncharged business and political figures in Maryland. As a result, Kline held a strong plea bargaining hand, and in Steve Sachs, he had an experienced plea negotiator to play it.

"The government is getting its money's worth from Kline," declared Sachs, now on the defendant's side of the plea bargaining table. "Kline is cooperating with grand juries in Washington and Baltimore, as well as with the FBI, Securities and Exchange Commission and the Internal Revenue Service.

"And remember," Sachs added, "Kline was looking five years straight in the eye in this case. That's the maximum possible sentence for the conspiracy to obstruct justice charge he pleaded to. Nobody made him any promise he was going to a lighter sentence. I was only authorized to say to the judge (Gerhard Gesell of the federal court here) on behalf of (the federal prosecutors in Washington and Baltimore) that Kline was cooperating with them."

This particular plea bargaining game, a most rewarding one for defendants with the cards to play it, is called trading up—or "dealing up" as Sachs, who has played from both sides of the table, prefers to call it. Certain kinds of criminals, who have information implicating someone more criminally or politically important than themselves, are able to trade that information for leniency in their own cases.

In the Watergate case, Donald Segretti of "dirty tricks" fame traded up to former White House aide Dwight Chapin, Jeb Stuart Magruder traded up to John Dean, and John Dean has been trying to trade all the way up by testifying against, among others, Richard M. Nixon.

Like John Dean, Joel Kline offered information against a bewildering multitude of others. He began his plea bargaining by going to Sachs, who now practices as a criminal defense lawyer out of a comfortable 13th floor office in the new Mercantile Bank and Trust tower in the Charles Center in downtown Baltimore, after Kline learned that he had been caught trying to bribe his way out of a Securities and Exchange Commission investigation in Washington. Like John Dowdy, Kline had been ensnared by his words recorded by a tape recorder hidden on a government informant.

After Kline told all to Sachs in early 1973, Sachs went to Baltimore to see his successor, U.S. Attorney George Beall, and his assistants. They were already embarked on their massive probe of Maryland political corruption. In "innumerable conversations" with Beall and his staff, Sachs said he convinced them that Kline would be an indispensable witness against Dale Anderson and others. "I had to get Baltimore to demand Kline so that the Justice Department would allow D.C. (the federal prosecutors here) to drop their case against him," Sachs explained.

But Assistant Attorney General Henry Petersen, the man in charge of criminal prosecutions in the Justice Department, refused to allow all charges against Kline to be dropped. "Petersen told them to stand fast," Sachs said. "We were eyeball to eyeball and my client had no alternative but to blink." So they struck a bargain. But Joel Kline got off mighty easy.

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Trading up is not that new or uncommon a plea bargaining game. Prosecutors have always used promises of leniency to pry testimony against criminal ringleaders from their "less guilty" associates, such as getaway car drivers and receivers of stolen goods. And judges have usually gone along with this strategy.

Prosecutor James R. Thompson in Chicago has answered critics of the practice, which allows some of the wrongdoers to go free, by arguing that only in this way can law enforcement officials climb "the ladders of corruption" to the most highly placed offenders in bribery and public misconduct cases.

"Bribery is a very secret kind of crime," Thompson said. "Most often prosecutors only find out about bribery after it happens. Then you must have the testimony of one of the parties involved, because there are no other witnesses. Like every other prosecutor, I would like to prosecute both parties, but I can't always reach that ideal." In choosing to let the briber go free in the prosecution of the public official he bribed, Thompson said he is adhering to his personal belief that, in addition to the law violation involved, there is a particularly odious "violation of the public trust" whenever an official engages in a corrupt act.

Steve Sachs similarly argued that trading up is an "indispensible investigative technique" in political corruption cases. "The nature of corruption is such," he said, "that the big men at the top tend to insulate themselves with front men. If you can't break through that insulation, you can't reach the men really responsible for the criminal conduct."

So, Sachs said, the prosecutor often has no alternative but to turn to, deal with and rely on those "front men" who can be persuaded to become informants. "We used to talk about getting some kind of emblem or battle patch for those defendants who deal up," Sachs mused, "something on the order of a stool pigeon on a field of yellow."

Spiro T. Agnew had no one to trade up to in the Maryland corruption investigation conducted by Sachs' successor as U.S. Attorney, George Beall. So he successfully sought lenient treatment through political plea bargaining, with his high-powered New York and Washington lawyers threatening to play a number of strong cards. They threatened to force the government to impeach Agnew and remove him from the Vice Presidency before it could try him, a tactic threatening obvious national trauma against a background of the Watergate affair. They moved to drag newspaper, news magazine and television reporters into court to force them to reveal sources of their reporting about the Agnew case or face the prospect of going to jail. And they stood back as Agnew toured the country fighting the case and further embarrassing the Nixon administration.

The strategy worked. One of President Nixon's own White House lawyers, J. Fred Buzhardt, brought top Justice Department officials and Agnew's lawyers together in lengthy, complicated plea bargaining negotiations.

In the end, pressure from the top of Justice Department forced the federal prosecutors from Baltimore to drop their demand that Agnew accept a prison sentence. Attorney General Richardson agreed to recommend formally in court against a prison term and Judge Hoffman, thus taken off the hook, agreed in turn to guarantee to Agnew's lawyers that his sentence would be unsupervised probation and a fine.

Despite the public furor that the deal negotiated by Agnew raised, it may have set a precedent of sorts. Already, Rep. Wilbur Mills, the powerful Arkansas Democrat, has urged Congress to pass legislation that would make Richard Nixon immune to criminal prosecution and civil suits arising from the Watergate affair if Mr. Nixon agreed to resign the Presidency.

To a great extent, the plea bargaining already consumated advantageously by a number of Watergate defendants has amounted to political plea bargaining in an atmosphere of great public pressure on the special prosecutor's office to get everything out in the open and over with as quickly as possible. John Dean's bargaining was the most political of all; it won him immunity from the Senate Select Watergate Committee and a good guilty plea deal from the special prosecutor. ■