

Moley's Wisdom and Insight Regarding Plea Bargains

As a quick perusal of the following quotes readily shows, Moley's insight regarding plea bargaining demonstrates the nature of the practice, even as it is practiced today.

Lists gains to the prosecutor and uses the phrase "batting average":

[There is no] onerous and protracted [trial, no risk of loss at trial, no risk of having to oppose an appeal, bargains count as convictions] and when he goes before the voters for re-election he can talk in large terms about securing convictions when, in reality, these "convictions" include all sorts of compromises. The district attorney's "record," as he usually interprets it to the public, rests upon the ratio of convictions to acquittals and means as much to him as a batting average means to a baseball player. (p. 103)

Even mandatory sentencing laws can be circumvented:

Here, then is exactly what the operation of the Baumes Law [a mandatory sentencing scheme] in the largest city of the United States finally came down to. It indicates that in cases where the evidence was fairly conclusive and the accused persons were willing to plead guilty, the discretion of the district attorney, with the consent of the court, permitted half of the cases in which guilt was established to escape the legislators' well made plans. (p. 113)

Bargains represent perverse logic:

Either a person is guilty of the crime charged, or he is not. It does not satisfy the requirements of justice to punish him for one crime because it is impossible to punish him for the correct one. (p. 124)

The importance placed on prosecutors' records facilitates bargaining:

With present methods of establishing his "efficiency" before the public, he is able through compromising large numbers of cases to appear to be getting large numbers of convictions when, in fact, his convictions are to a large extent merely theoretical. Moreover, it is easy for the prosecutor to avoid labor in the way merely for the purpose of expending his best energies upon sensational and politically advantageous exploits in court. (p. 125)

Plea bargaining is not rational and its goals are not justice:

It is in its methods and its implications a process of driving a bargain—a game of wits. It is psychologically more akin to a game of poker than to a process of justice. . . . It is not a search for truth; it is an attempt to get as much from an unwilling giver as is possible. (p. 125)

Source: R. Moley, 1928, "The Vanishing Jury," *Southern California Law Review*, 2: 98–127.