

## DISCUSSION

The discussion of Goldstein's paper opened with an investigation of the extent to which, in light of the plea bargaining process, the "not guilty" are forced to accept a guilty plea. One participant noted that the affluent accused, or those with influential family ties, tend to avoid incarceration and bond problems easily. The disenfranchised, he said, do not.

In response Goldstein pointed out that most suspected are poor and that a large number of them are criminals. Even if innocent of the crime for which they are arrested, they are often guilty of some crime. Plea bargaining imposes a regime of approximate and imperfect justice for such persons. As far as family ties are concerned in dealing with pretrial release, it is a fact that many people are detained illegally if there is an apparent lack of family ties. This is a result of the fear that suspect will leave and not return for trial.

One participant put forward the concept of substituting sentence bargaining for bargaining about the charge. In the case of a rape charge, for example, there is more likelihood of defendant contesting such a charge than of acquiescing in the same sentence for a lesser charge of assault.

The next participant commented on several issues presented in Goldstein's paper. These included: the "gap" in theory between idealists and realists, the difficulty in balancing the scales or justice, and the delegalization of the justice system through plea bargaining. This participant was not convinced that "closing the gap" of "balancing the scales" are ideal ways to solve problems that exist in an inherently asymmetrical system. The problems of poor people, it was stated, could not be balanced through "access", through some institutional framework, or through a process of delegalization or plea bargaining. The real question is whether a method of control, legal processing as well as imprisonment is a method of controlling deviant behaviour. By discussing incarceration alone, we have avoided discussing systemic problems and processes.

Goldstein in return argued that plea bargaining is not a delegalization of the system. The difficulty is that in the decentralized American system, plea bargaining enables individuals at various levels of the judicial system to tailor outcomes too easily to their own benefit and not in the public interest. This low-visibility process has necessitated the gradual emergence of a body of law drawing on the model of judicial review of official action.

A participant argued that this "administrative law" merely creates a new kind of bureaucracy which promulgates administrative, not judicial, justice. A supposition was made that problems such as plea bargaining, court back-ups and jail-crowding are symptomatic of inherent contradictions within an unduly individualistic society. People call for law and order and yet are unwilling to pay the price necessary to bring about law and order. Lack of participation in and understanding of the legal process are, a participant commented, leading to a systemic breakdown; there is increasing movement toward anarchy in a system too much affected by the American frontier mentality. Plea bargaining constitutes a kind of fantasy world which has gradually replaced justice. In the following exchange, one discussant asked whether this problem indeed constituted a systemic breakdown, or rather an unwillingness of the public to pay the price for an equitable judicial system.

Finally, one participant commented that he was troubled by the failure to discuss de-criminalization. He considers de-criminalization to be a major option for the system. Plea bargaining, he contended, was part of a larger system oriented toward the criminalization of illegal acts. It "manufactures crime," he said. The discussion ended on this note.