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## Human Element in Justice

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## THE HUMAN ELEMENT IN JUSTICE

GEORGE EVERSON<sup>1</sup>

In the "Merchant of Venice" Portia pleads that Mercy season Justice. In her plea she implies that Justice as the usual thing is abstract, colorless and devoid of human attributes. Nor is her conception of Justice different from that of most of us. We are accustomed to regard her figuratively as a thing apart, standing alone, blindfolded and holding the scales. When a particular offense is placed on the one side of the scales sufficient retribution, punishment or restitution must be placed on the other side to even the balance. This trite mental conception is carried through all our ideas of courts of law and judicial procedure.

The warm human attributes of our ministers of justice, our magistrates and our justices, their peculiarities of temperament, their chance prejudices, their warm open-heartedness or their petty tyrannies, their leniencies or their severities are all supposed to be charmed away by the donning of judicial robes and the justice they dispense is supposed to be an abstract thing as immutable as the law of gravitation.

In New York City the Committee on Criminal Courts of the Charity Organization Society had the temerity to question the validity of this time-honored notion. They studied the handling of similar classes of cases by different magistrates and found that justice is far from the abstract thing of popular opinion. It is disconcertingly human, reflecting to an astonishing extent the personalities of the judges.

In the New York Magistrates' Court there are forty-two judges sitting in rotation in two-thirds as many different courts. In the course of the year these courts handle in the neighborhood of a quarter of a million cases.

It is a vast human problem involving the petty offendings of the careless and thoughtless, the misfortunes of the weak, the false steps of the misguided, the crimes of the crafty and the misfortune of their cats-paws. There are tens of thousands of the willing and unwilling victims of drink—from the shame-faced first offender to the most

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abandoned old drunken derelicts. There are great numbers of vagrants, from the hardy fakirs to the imbecile wrecks of beggars. There are the hot-tempered, the bullying, the quarrelsome, the rowdy brought in for disorderly conduct. There are wayward boys and girls, non-supporting and abusive husbands and drunken and disorderly women with the cause of their difficulty rooted deep in the family life. There are violators of the petty ordinances that are designed to keep our city a suitable and proper place to live in. There are those endangering the public health or safety for gain; there are the prostitutes and their parasites; there are the mashers, the pickpockets and gangsters.

One would look far for a more cosmopolitan lot, more humanly interesting and with a more vital connection with the lives of the poor and the lowly of our city with its powerful influence reaching deep into the vitals of our body public.

The great horde of these people do not come before one single tribunal sitting in a single place, but before more than a score of courts sitting in various parts of the city to suit the convenience of the neighborhoods. These courts are presided over by the different magistrates sitting in rotation in each court. A magistrate by the system of rotation established sits fifteen days in one court and then after a few days' rest goes on to another court. By this arrangement in the course of a year each magistrate will have presided over a majority of the courts of the system for a longer or shorter time.

With so large a number of men sitting alone, to a limited extent the sole arbiters of the fate of the unfortunates, the ignorant and the vicious that come before them, there is bound to be almost as many kinds of justice as there are magistrates to administer it.

Under the plan of rotation of judges it can reasonably be assumed that each magistrate handles practically the same class of cases as those handled by his colleagues. For no matter whether it be Judge Simms on Monday or Judge Barlow on Saturday sitting in the East Side 3rd District Court the grist will be the same. There will be a certain number of peddlers brought in for plying their trade without licenses—they will be of the same ill-clad, garlic emitting variety, some mocking their poverty with a simulation of greater poverty, a few protesting loudly that they knew not of the necessity of a license, others simulating an amazing ignorance and stolidity that even an interpreter cannot penetrate and still others with true Hebrew resignation meekly accepting whatever the court may impose as a penalty with

the mental reservation that they will peddle again without license as soon as released and again run the risk of being caught; all violently protesting when the usual fine is exacted.

On whatever day of the week or whoever the judge, there will be the same lot of violators of petty ordinances, such as mixing garbage with ashes, leaving food exposed for sale uncovered and violations of other health and street cleaning regulations. There will be an occasional pickpocket arrested for jostling, a vagrant now and then, and a few persons charged with disorderly conduct or intoxication.

If we stopped in at the Men's Night Court on 57th street any night in the year, we would find a totally different class of offenders from those found in the district court, but in this court as in the other there would be very little change in the types from week to week, no matter what judge were sitting. There would be a preponderating number of disorderly conduct and intoxication cases.

On practically every night in the year those brought before the bar for intoxication would run the gamut from farce and light comedy of the occasional tippler who had gotten too much and the young fellows out for a good time, to the tragedy of the young renegade on the verge of delirium tremens and the old doddering soak through whose body, wrecked by excess and dulled by the pain of miserable debauchery, there is left but the ever present and persistently burning desire and perverted, but unescapable necessity—that for more drink. The percentage of these various types would be about the same night after night throughout the year.

The disorderly conduct cases would represent the same kind of street brawls, the same rowdyism, the same type of fights from night to night.

There will be the same humorous instances of brawny sons of Erin who have gotten so much satisfaction out of giving the other fellow what was coming to him that any sentence within the power of the court would be small penalty indeed. Others there would be of the Slavic type whose story told of the fight over a woman, common to both of them, or over money or property reveals criminality as primitive and shocking as it is naive. Their brute-like silence and stolidity cover a world of sullen devilishness and cold-blooded maliciousness and animal desire.

There will be the same percentage of "Smart Alec" boys, rowdyish lads that have gotten into bad company. Similar numbers of the weak and badly advised, the irresponsible and the wayward.

If we went to other courts we would find from day to day that the type of the grist varied little in the respective districts. In the various neighborhoods the types of offenders would reflect to a certain extent the life of that section.

The magistrates handling as they do in the year's grist a similar class of cases, it had been almost taken for granted that ascending to the judge's bench clothed each magistrate with the wisdom of Solomon and dignified his rulings with the oracular wisdom of Justice herself and had entirely freed him from any personal bias or eccentricity.

Yet if one went about the courts from day to day he would note a variation among the different magistrates. He would notice that one magistrate was particularly severe with some class of offenders, while not so severe with another. Another would be lenient with nearly all. While yet another would be uniformly severe, except in cases of some particular class of offenses.

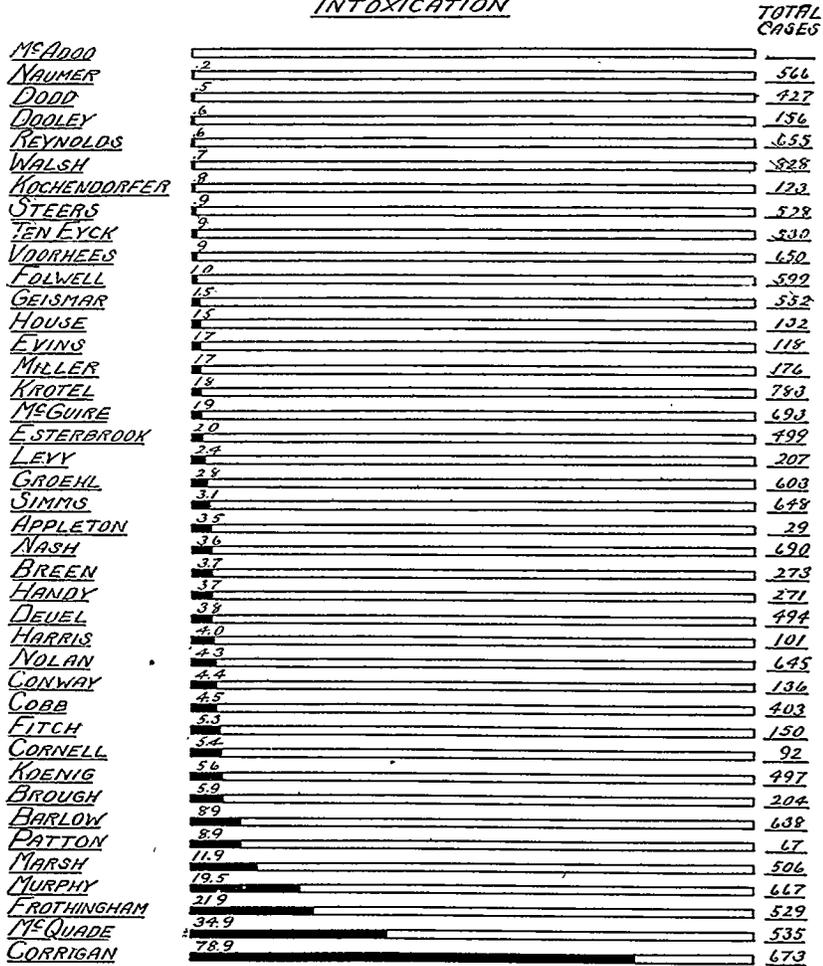
The crooks and their clever attorneys were the first to find this out. They soon knew the "easy" magistrates from the hard ones. If the hazards of their profession brought them before a hard magistrate they asked for a postponement until an easy magistrate might come along. If this were not granted they sought a transfer of the case to another district court, presided over by an easy magistrate. This had grown into quite an abuse when in 1913 the Committee on Criminal Courts fathered and secured legislation prohibiting such transfers.

This, however, was merely stopping a rat hole leak of a few clever criminals in the vast bin of the great grist that is ground through these courts each year. It did not touch the great problem of the honest variation in treatment of similar cases of offenders by the different magistrates.

A few minutes' conversation with the observant court attendants would bring forth such comment as this: "Yes, Judge A. soaks his 'intox' cases. He's light on the 'vags' (vagrants) though. Now Judge B., who was here last week, discharges most of the drunks and is hard on the peddlers. Yes, he fines every one of them," and so on. If you listened long enough you would get an off-hand judgment of half a dozen magistrates, and it stands to reason if judges sit alone and get little, if any, chance to study their work in comparison with their colleagues that they will develop personal characteristics almost amounting to eccentricities.

SHOWING VARIATIONS BY DIFFERENT MAGISTRATES IN PERCENTAGE OF CON-  
VICTIONS IN SIMILAR CASES

CHART NUMBER 5  
PERCENTAGE OF CASES DISCHARGED  
INTOXICATION

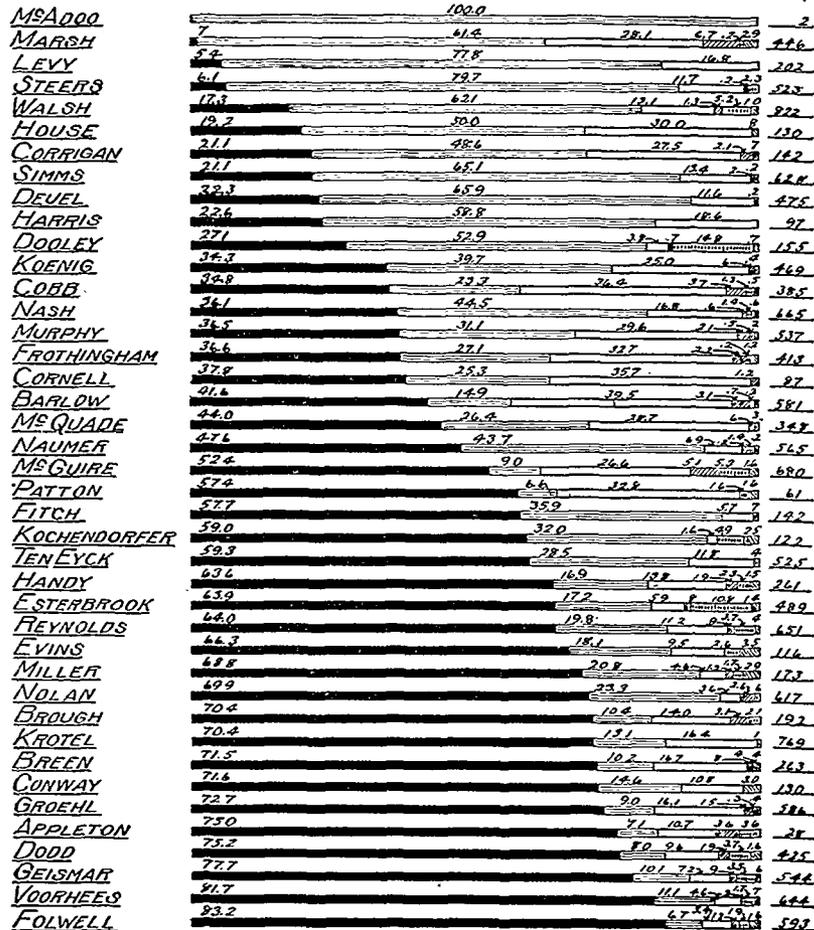


KEY ■ DISCHARGED  
□ CONVICTED

(Chart No. 5 in the 1916 Annual Report, City Magistrates' Courts, New York City)

ILLUSTRATING VARIATION OF MAGISTRATES IN DISPOSING OF SIMILAR CASES AFTER CONVICTION

CHART NUMBER 22  
DISPOSITION OF CONVICTIONS  
INTOXICATION  
PERCENTAGES



KEY ■ SUSPENDED SENTENCE  
 ▨ FINES  
 ▩ WORKHOUSE  
 ▤ REFORMATORY  
 ▥ PROBATION  
 ▦ CITY HOME, GOOD BEHAVIOR BOND AND OTHERS

(Chart No. 22 in the 1916 Annual Report, City Magistrates' Courts, New York City)

With the consent of the Chief City Magistrate the Committee on Criminal Courts went over the records of the 155,000 or so cases disposed of in 1914 with the special purpose of finding to what an extent this personal equation really did enter into the dispositions by the different magistrates in the various classes of cases coming before them.

Their study covered some 40 pages of statistical tables, showing the difference in treatment of the various classes of offenses by the individual magistrates. They illustrated these tables with graphic charts, or "barber poles," as the Chief City Magistrate called them. The results were so striking that they were published as a major portion of the report of the Magistrates' Courts for that year. Since then similar tabulations have been made for the succeeding years and have been published. The tabulations showed that the magistrates did differ to an amazing degree in their treatment of similar classes of cases.

The last published annual report shows that in 1916, 17,075 persons were brought before the court for public intoxication. Of this number nearly 92 per cent were convicted of the charge and 8 per cent were discharged as not guilty. This does not mean that each of the forty-one magistrates who helped in disposing of this large number handled the cases in a similar manner. Five hundred and sixty-six persons were arraigned before Judge Naumer, who discharged only one of this whole number. Judge Corrigan had 673 persons brought before him. He found that 531, or nearly 79 per cent of the total number, were not guilty and discharged them. Between these two extremes the other magistrates are arrayed in different degrees of severity and leniency.

There were 43,096 brought into the courts for disorderly conduct. The variation among the magistrates in these cases, however, was not as great as the difference in the treatment of cases of public intoxication. Judge Simms, the most severe, discharged only 18 per cent of his cases and Judge Walsh, the most lenient, discharged 54 per cent. In other words, one coming before Magistrate Simms had only 2 chances in 10 of getting off. If he had come before Judge Walsh he would have more than 5 chances in 10 of getting off.

Judge Simms discharged only 4.5 per cent of the persons brought before him for vagrancy and Judge Fitch discharged 79 per cent of those brought before him.

After a magistrate has convicted a person he may do one of the

following things: He may suspend sentence, which is practically equivalent to discharge; he may fine a person; he may place a person on probation, or he may send him to the workhouse, to a reformatory or some other institution provided by the state or city.

During the year Judge McQuade disposed of 4,835 cases, 7 per cent of these were given suspended sentence; 84 per cent were fined; nearly 7 per cent were sent to the workhouse and a negligible number placed on probation or sent to reformatories or other institutions. The fine seemed to be, in Judge McQuade's opinion, the most potent instrument of punishment and reformation. At the opposite extreme was Magistrate Folwell, who suspended sentence in 59 per cent of the 4,253 cases brought before him. About 34 per cent were fined; a little more than 2 per cent were sent to the workhouse and the remainder sent to the reformatory or other institutions. Judge Folwell apparently believes in the efficacy of the suspended sentence as a means of reform and punishment.

Judge Marsh convicted 1,117 cases of violation of corporation ordinances. He fined them all but six and suspended sentence on these. Judge McGuire convicted 778 of this offense. He suspended sentence in 480 of these cases, or nearly 61 per cent of them, and fined the rest. These men are the opposite extremes in disposing of this particular class of offenders.

In the case of disorderly conduct one magistrate suspended sentence in a little more than one out of every fifty of his cases, while another suspended sentence in 50 per cent of his cases or in every alternate one. The suspended sentence is the favorite means of disposing of cases of intoxication. Forty-eight per cent of the 15,683 who were convicted of this offense were so disposed of. Some of the magistrates, however, did not put much faith in this method of disposition, while others used it almost exclusively. Judge Marsh suspended sentence in less than one out of every hundred, Judge Levy in one out of every twenty, Judges Naumer, McGuire, Patten and Fitch suspended sentence in about half of the cases; Judges Dodd, Geismar, Voorhees and Folwell let three out of every four go on suspended sentence. Judge Steers fined 80 per cent of his cases, while Judge Folwell fined only 7 per cent.

Judge Levy fined all of his cases convicted of peddling without license and Judge Kochendorfer fined one in every ten and suspended sentence on the remainder.

Judge Brough suspended sentence in no cases of vagrancy. Judge

Conway suspended sentence on every alternate one. Judge Brough sent 80 per cent of his cases to the workhouse and Judge Conway only about 17 per cent.

In petty misdemeanor cases Judge Marsh suspended sentence in only 1.9 per cent of his cases, Judge McGuire in 72.5 per cent of his cases.

In the figures given above we have shown to what a remarkable degree the individuality of the magistrates is mirrored in their disposition of cases. Justice is a very personal thing reflecting the temperament, the personality, the education, environment and personal traits of the magistrate. The magistrates are not to be condemned for this variation, nor are the lenient magistrates to be condemned for their leniency or the severe magistrates for their severity. It would be presumption on the part of anyone to put himself up as a judge in these matters. It is assumed that each magistrate is doing his duty as he sees it and is rendering his best service in disposing of cases brought before him.

However, it is to be doubted if there is any public position where one may be more of a czar than in the Magistrates' Courts. The magistrate sits alone and often during the course of a day disposes of from 50 to 100 cases. He must get the facts quickly and decide quickly. It is the easiest thing in the world therefore for him to get into a rut in handling different kinds of cases. Before the publication of the 1914 Report of the Courts he has never had an opportunity to compare his work with that of his colleagues and from year to year his personal peculiarities were inclined to become accentuated. The figures published in the court reports show that this is true.

It is believed by those who are responsible for showing these comparisons of the magistrates' work that by the publication of these records the magistrates will come to a better understanding of their own work and bring to it a viewpoint somewhat tempered by the knowledge of what the other judges are doing and with a broader viewpoint of the problems before them. Each magistrate will come to recognize his own personal peculiarities and seek to correct any that cannot be justified in the light of the records of his associates and that a more or less flexible standard of justice can be approached in disposing of similar classes of offenders.

It is certain that if we made a similar comparison of the work of judges in the various courts of the communities throughout the country that there would be the same diversity in the treatment of

offenders by the various local judges. In addition to this personal variation in treatment of offenders the findings of the courts and the penalties imposed would reflect the temper of the communities in which the courts are situated as well. In some communities where there is a blue law public conscience, the disorderly individual, the vagrant and the petty misdemeanant would be shown to fare badly in the hands of the law. In other communities where there is more tolerance and an easy going code of public deportment, the offenders guilty of similar infractions of the law would be found to receive light punishment, if any at all.

These studies of the work of the magistrates' records in the New York courts are startling because they show us so clearly to how great an extent justice resolves itself into the personality of the judge. However good or however inadequate the laws may be, their enforcement depends upon the magistrates' attitude toward them and toward those guilty of breaking them.

The New York judges publish the facts about their individual records, accepting whatever praise or blame the records may invoke and by this publication are well on the way to establish a flexible but more equitable standard of justice.