

1947

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Recommended Citation

Robert G. Simmons, Look Ahead in Misdemeanor Cases, 37 J. Crim. L. & Criminology 329 (1946-1947)

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LOOK AHEAD IN MISDEMEANOR CASES

Robert G. Simmons

(On April 26 of this year at the Second Annual Cook County Traffic Courts Conference, the Honorable Robert G. Simmons, Chief Justice of the Nebraska Supreme Court, addressed the Conference on the subject of the traffic problem and the handling of misdemeanor cases. In the following article he highlights the many points of interest which he discussed at the Conference.—EDITOR.)

The American Bar Association and affiliated organizations are constantly striving to improve the administration of justice. It has committees dealing with the problems of courts that handle traffic cases and misdemeanors. This paper has to do with those activities.

There are four interlocking objectives that should be in the minds of judges, prosecutors, and law enforcement officials: First, the recognition of the importance of each court, whatever its jurisdiction; second, the proper determination of the particular case that comes before the court; third, consideration of the effect created by the disposition of that case upon other violations and other cases that may come before the court; and fourth, recognition of the effect created by the disposition of cases upon the public and its attitude toward the courts and government generally.

Courts which handle the type of cases we here are considering are generally referred to as inferior courts. That designation is erroneous. It has created in the minds of courts, the idea of inferiority with too often resulting inferior work. It likewise has created the same notion in the public mind with resulting inattention to personnel, quarters, and quality of judicial action.

There are no inferior courts in the true sense. There are courts of different jurisdictions, but each court in and of itself in the exercise of its functions is not inferior to any other court. Whether it be a justice of the peace court, or the supreme court of the state or nation, each and every court operates in its own field, limited by statute or constitution. Within the boundaries of that jurisdiction, each court is inferior to no other one. Appellate courts may review, affirm, reverse, or modify the judgments of trial courts, but that is not because of superiority, but because of difference in jurisdiction. Trial courts exercise original jurisdiction generally denied appellate courts. If the appellate court is superior in one instance, then the trial court is superior in the other. The truth is that neither is inferior or superior to the other. We who are concerned directly in administering justice should view our courts in that

light, and also undertake to secure that understanding of courts by the general public.

Relatively few litigants present their cause to appellate courts. A larger number present their cause to the trial courts of general jurisdiction. By far the greatest number have their only contact with the judicial system in the justice of the peace and municipal courts of the country. They know justice, or what passes for justice, as it is administered there. There the standards are set that guide the individual's conduct and determine his attitude. There he learns respect or disrespect for law.

The means of accomplishing the proper determination of a particular case may be simply stated. Proper charges should be brought, the evidence weighed, and a determination of guilt or innocence arrived at under established rules. When a finding of guilt is made, adequate penalties should be assessed in the light of the particular offense committed. Punishment should be sure and administered alike to all persons. For many judges and officials the case ends there. But that is not the end. What we do in the case before the court sets the standards for other cases yet to come, and affects vitally the administration of justice and the cause of good government.

We use the term "law enforcement." But we should so proceed as to encourage law observance. Trial and punishment are the exercise of a power from without and generally against the will of the one accused; law observance is the exercise of a desire and a willingness from within to comply with established rules, and is to be sought not only in the mind of the particular person before the court, but in the minds of all persons.

That motive to observe the law is retarded where political or so-called social or financial standing or position or other elements influence either the filing of charges, their prosecution, or the penalty. Respect for law, the judicial system and government generally is either encouraged or discouraged in direct proportion to the quality of justice that is administered.

It is trite; but it bears repetition, to say ours is a government of divided powers. Note the difference in the functions when applied to the individual.

Many of our people have access, properly, to the chief executive of a state; relatively rare is the person who can present his cause to the chief executive of the nation. But when he does, he reaches that official by way of privilege, not by way of right. It is not the function of the executive to determine the personal problem of the individual citizen. He acts for the body politic as a whole.

Legislative bodies, state and national, act for the general

public. No citizen now is permitted to go before a legislative body and say, "Here is the wrong I have suffered and here is the right I demand." He may be permitted to tell his story to a legislative committee and ask for remedial legislation, but determination of his problem is not a matter of right.

It is to the courts and to the courts alone that a person may go for justice when his rights are invaded or when charged with a law violation. There he may go as a matter of right, and there secure a judicial determination of the problem that confronts him. That feature distinguishes our system of government from many others now in existence elsewhere. The administering of justice according to law is a judicial function. As we administer it, or fail to do so, so do we promote and strengthen, or weaken and tend to destroy our American system. It is in the courts that the individual sees and knows justice or the lack of it, either as it is administered to him or to others.

How then may we promote this respect for law and law observance? First, in the physical set-up of the courtroom — it need not be elegant; it should be clean and orderly. The conduct of the trial should be dignified and yet considerate; it should not be, as too often it is, a hurried, careless procedure that becomes frequently a burlesque. This means that judges, prosecutors, and officers should respect themselves, their positions, and the functions they perform. From the judge's standpoint, the case may be routine, the issue trivial, the question uninteresting. From the litigant's standpoint, the case, the issue, the outcome, are important. He stands momentarily helpless before the judge. The power of government is touching him directly. It is his case that is being tried. That to him is the then important matter. The judge should so weigh his task as to recognize its gravity to the individual who is on trial. The judicial procedure and attitudes that exist in appellate courts could substantially and with profit be followed in every court, because in all courts government by law is functioning and justice to the individual is being administered.

Favoritism has no place in the administration of justice, yet too often it exists in many courts dealing with traffic violations and misdemeanors, and that to the detriment of good government. For instance — ticket fixing. If every person knows that every violator is dealt with equally and according to law, he is encouraged to respect the courts and the law. But where John Doe knows that Richard Roe and many others have been excused, either by arresting officers or courts, and he is held to account, then disrespect is taught concretely. The American instinctively believes in fair play. When an officer or a court consents to fix a traffic violation ticket so as to avoid trial or

penalty, the standard of law enforcement is fixed in their court. It is just one step more for the public, who know traffic tickets can be fixed, to think that the officer or court can be fixed in other cases, and again the individual and the judicial system and good government suffer.

By the same token, uniformity of penalties should be assessed in like cases where guilt is admitted or determined. John Doe will feel much better toward the courts and his government if he knows that Richard Roe has had the same measure of justice dealt out to him. Law observance or disrespect for law is taught also in proportion to the equality of treatment.

The nation is concerned with the problem of the delinquent youth. Parents, and the indefinite thing called society, are being blamed. May I suggest that a part of the cause for the delinquent youth who becomes a hardened criminal, lies in the faulty administration of justice in those courts that deal with the youth who has committed a traffic violation or a misdemeanor. Almost always that is his first contact with the judicial system. If he there learns that in these courts justice, so-called, is a matter of influence, or favoritism, if the proceedings are a burlesque, then he learns the means and hope of escaping the penalties for misdeeds. However, if there he learns of law enforcement, sure and without favoritism, he there learns of law respect and resulting law observance. Good citizenship can be taught to the youth of the land by courts as well as schools, and parents, and churches. The courts cannot escape the blame for their part in failing to set standards for the youth in the practical administration of justice. The courts can correct the situations for which they are responsible and by proper administration teach good government and respect for and observance of law.

The standards are being set by those agencies that are promoting these activities. But all they do is draw the blueprints and encourage the construction and the conduct of a better system of administering justice. Upon all of us in all the courts, citizens and judges alike, rests the responsibility of building, rebuilding, and strengthening the structure. That is a part of our job; it is large and important. We should strive to do it well.
