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# AMERICAN JOURNAL of POLICE SCIENCE

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## PUBLIC RELATIONS BETWEEN COURTS AND LAW ENFORCEMENT OFFICERS AND THE PUBLIC

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Frank C. Haymond

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Hon. Frank C. Haymond, Judge of the Supreme Court of Appeals of West Virginia, has had wide experience in the legal profession. Since completing his studies at Harvard Law School he has served in the Legislature of West Virginia, as a Judge of the Circuit Court, as a member of the West Virginia Judicial Council, as a Lecturer on Criminal Procedure and Insurance Law at West Virginia College of Law, and in various capacities in both the American Bar and West Virginia Bar Associations. He is at present a member of the Board of Governors of the American Bar Association. During the meeting of the West Virginia Statewide Safety Council, March 26-29, 1947, Judge Haymond delivered the following address which because of its clarity and general interest to all law enforcement officials we feel privileged to publish at this time.—EDITOR

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The subject of Public Relations between Courts and Law Enforcement Officers and the Public covers a wide field, and it involves interesting and complicated situations. It cannot, of course, be adequately discussed within the space available.

Initially, it suggests the position of the judiciary in our governmental structure. The Constitution of West Virginia and the Constitutions of the other States and the Constitution of the United States separate the powers of government among the three distinct and independent branches or departments—the Legislative, the Executive, and the Judiciary. The Constitution of West Virginia declares in Article V, Section 1, “The Legislative, Executive, and Judicial Departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the Legislature.”

This doctrine of the division of powers is a salutary and essential principle of free government and is a cornerstone of American liberty. So long as it exists and operates there can never be a governmental tyrant or a dictator in this country. Because of this principle, each of these departments, within its constitutionally designated sphere of action, is free and independent of interference and control by the other, subject to well defined limitations in the nature of checks and balances.

The Legislature is vested with the power to make the law, the Executive is authorized and directed to execute and enforce the law, and the Courts are empowered to declare and interpret the law. But each is subject to some check by the other. The Legislature, possessing the power of the purse, fixes the salaries and regulates the financial requirements of the other two. The Executive, with the veto power and other powers, can check the action of each of the other branches. The Courts, vested with the power to declare laws unconstitutional and to invalidate unauthorized acts of the Executive and of the Legislature, exercise an effective limitation upon the power of each. And so, in our system of government we see the qualified restraint of the Legislature upon the Executive, of the Executive upon the Legislature, of each upon the other, of both upon the Courts, and of the Courts upon both of the others.

But in the constitutionally limited sphere of judicial operations the actions of the Courts, for practical purposes, are free from control or restraint by the other departments of government. The function of the Court is to entertain the case of the litigants, to hear it fully, to consider it carefully, to apply the law correctly, and to decide it promptly and impartially. It is never the province of a Court to formulate a policy, to instigate proceedings, or to investigate cases before they are instituted. A judge who becomes involved in a controversy, through interest or by prior investigation, disqualifies himself from participating in its decision. When a case has been decided by the Courts, the decision, if not appealed to, and reversed by, a superior court, and the judgments of the Court of last resort, forever settle and conclude the rights of the parties. They establish a rule of law which, until it is changed, by legislative enactment, which occasionally happens, or by subsequent contrary action in another case by the Court of last resort which pronounced it, which less frequently happens, must be observed by everyone within the jurisdiction of the Court. In our system of government, all the people never go to court, but some of the people always do. The decisions of the Courts in the cases brought to them by the small percentage of the public that invokes their aid and protection bring clarity and stability and effective application to the law.

Though our government, as every government must be, is administered by men, it is in truth a government of laws and not of men. No judge of any court is above the law. If he abuses his lawful power, his decision is subject to reversal by a higher court, which is always ready to reverse in a proper case.

If he is corrupt, dishonest, or faithless, even though he be a member of the highest Court, he is subject to removal from office and to punishment for his offense to the same extent as any other wrongdoer. In addition to his amenability to the law, the prestige and the responsibility which of necessity attend the judicial office constitute a potential force which constantly operates to produce honest conduct and faithful service to the people, who create the office, and from whom its power and authority are derived. Instances of corruption and wrongdoing in judicial office, though always widely publicised, are rare indeed; examples of honest, exacting, and faithful service exist beyond our means of computation. Inside the stronghold of individual freedom which our constitutional form of government in the State and in the Nation provides and sustains, the last and final barrier against oppression and tyranny is a fearless and independent judiciary, and within that citadel of liberty its position is upon the outer walls. When men are wronged or aggrieved by the acts of other men, of public officials, or of any agency of the government they rarely seek redress from the Legislature or the Executive. It is to the Courts, and to the Courts alone, that they come for justice and the relief which the law affords. It is the imperative duty and the solemn obligation of the Courts, all of them, from that of the justice of the peace or the municipal magistrate, to the Supreme Court of the United States, to administer justice, under law, impartially and without fear or favor. Throughout the entire period of the history of our State and of our Nation, in periods of calm and in times of stress and strife, in time of peace and in time of war, the Courts of this land, in the main, have faithfully performed that duty and discharged that obligation. This they must, and this they will, certainly continue to do.

As respects law enforcement officers who derive their authority and exercise their powers within the sphere of executive action, their primary function is to see that the law is obeyed and respected. Theirs is the task of detecting crime, apprehending the wrongdoer, and instituting the proceedings authorized by law for administering criminal punishment, the imposition of which rests with the Courts. Their activities have to do with the prevention and the punishment of crime. Their work is difficult, and it never ends. They are the people's police, at all times charged with the duty of prosecuting, but never persecuting, the wrongdoer, and of protecting and safeguarding alike the legal rights of those who violate, and of those who obey and respect, the law. In the performance of their duties they are the cross-fire target, which stands between their obligation to bring the

culprit to justice and their equally binding obligation that in so doing they violate none of his lawful rights.

The situations in which they operate often call for quick and positive action. They cannot consult a lawyer or obtain the ruling of a court while the aggressor attacks or the criminal tries to escape. Yet, at the instance of any person whose rights they may invade, they are subject to accountability for their action. For in enforcing the law, as its duly constituted officers, they must not violate the law in whose name they act. Of necessity, they are invested with adequate and special power and authority to deal properly and effectively with the situations with which they are confronted. Obviously, for lack of space, all situations cannot here be detailed or discussed.

A few of them with reference to arrests should perhaps be briefly and generally stated. The authority of peace officers to arrest persons charged with a felony, without a warrant, is well settled and is generally understood. A peace officer may legally arrest, without a warrant, for an offense not committed in his presence, if he has reasonable grounds to believe the offense so committed was a felony even though it was not. A peace officer may legally arrest, without a warrant, for a misdemeanor committed in his presence; but a warrant is necessary when the offense is not committed in his presence, and he must have the warrant with him at the time. A sheriff and his deputies are peace officers, or conservators of the peace, and as such they may, without a warrant, arrest one who commits, in their presence, a breach of the peace, or a misdemeanor which cannot be stopped or redressed without immediate arrest. A justice of the peace, or a mayor of a city or a town having similar power, may himself apprehend or cause to be apprehended, by word only, any person who commits a felony or a breach of the peace in his presence; but this power extends no further. In all other cases he must issue his warrant in writing for the arrest of the offender. A police officer, in his municipality, has the right to arrest, without a warrant, for an offense committed in his presence. A constable may make an arrest, without a warrant, for a misdemeanor committed in his presence. A member of the Department of Public Safety may, without a warrant, lawfully arrest a person, when such officer is a witness to the commission of an offense, whether it be a felony or a misdemeanor; but he cannot, without a warrant, lawfully arrest a person on mere suspicion that he has committed a misdemeanor.

A law enforcement officer may not unnecessarily injure, or threaten or mistreat, an accused. He may not unreasonably

detain him, but must deliver him seasonably into proper custody. He may not unreasonably search his person or his premises. But he may search one under lawful arrest and use as evidence articles then found upon his person. Prosecutors may not unfairly prosecute, or ever persecute, a defendant. Though occasional instances of unauthorized or irregular conduct have occurred, and will likely again occur, because of the practical difficulties which sometimes arise, or for any other reason, the record in general of the law enforcement officers, and their treatment of the public, has been most commendable, and justly entitles them to grateful recognition from those whom it is their duty to protect and to serve.

The relation of the individual member of the public to the courts and to the law enforcement officers is twofold in character. He is of the people who create the offices which they hold and from whom all their powers as public officers are ultimately derived. He is, too, when accused of crime, a single member of society charged with the violation of the laws which are enacted and enforced for his protection and the protection of all members of society.

As a defendant he is entitled to every safeguard which the law affords. He may not be illegally placed under arrest. He may not be subjected to unreasonable search. He may not be unnecessarily injured, or mistreated. He is entitled to a fair, prompt and public trial. He is protected by the presumption of innocence. He may not be forced to incriminate himself. He may not be wronged in any way, and he may not be subjected to cruel or unusual punishment. When he has been fairly and legally tried and found guilty, he may be, and he should be, promptly and adequately punished. He should be treated at all times, from his arrest to his conviction or acquittal, in a manner which tends to create and promote respect for law and obedience to constituted authority and to foster an attitude upon the part of the general public of due appreciation of the dignity and the power of the judicial and the administrative processes. He may at no time resist valid legal process. He must be mindful, at all times, as emphasized by a Justice of the Supreme Court of the United States in a recent decision of nation wide interest, that "no one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case," and that courts are created and maintained for the purpose of resolving the controversies which arise.

Until now, we have considered in general the threefold relationship which exists between the courts and the law enforce-

ment officers of the government on the one hand, and the public, by which is meant the members of society, individually and collectively, on the other. Before concluding, let us refer specifically to the so-called traffic courts and their judges. Strictly speaking, there are no traffic courts by that name in this jurisdiction; but there are several different tribunals in West Virginia in which traffic cases are tried. These courts of original jurisdiction consist of municipal courts, presided over by the mayor of the city or the town; a police judge in a few of our cities; justices of the peace, who are constitutional officers, in each magisterial district in the various counties; judges of statutory courts possessing criminal jurisdiction; and judges of the constitutional circuit courts.

The traffic court should administer justice under law, as should every other court. Whether it consists of the mayor, the police judge, the justice of the peace, or the judge of a court of record, the traffic court is often spoken of as the people's court. It is so characterized because more people, of different types, come in contact with it than any other tribunal, and because it is often the only court of which the citizen ordinarily has any personal knowledge. It is said that there are at least fifty million automobile drivers in this country, perhaps more than a half million of them in West Virginia alone, and that the number of people who annually appear in traffic cases, in the nation, exceeds the impressive total of seven million persons.

In the hearing of the traffic case, as in every case, it is essential that the trial be prompt, fair and strictly according to law. An unfair trial is infinitely worse than no trial at all; and justice delayed in practice is justice denied. The dishonest or corrupt judge has no place in any court except in the role of a defendant. The judge in a traffic case should, above everything else, be honest and impartial, and his conduct should always be dignified and free from suspicion and distrust. He must know no friends, and he must recognize no enemies. He must be concerned solely with the right, the justice, and the law of the case. No judge should be mean, insulting, or arbitrary, and it is never necessary to scold or humiliate a defendant in order to punish him according to law and the very right of the case.

The judge who tries a traffic case should be capable of realizing the important responsibility that rests upon him. Because of the peculiar and diversified character of traffic cases, it should be his special endeavor to improve the administration of justice, which is one of the chief ends of democratic government, and to reduce the number of traffic accidents and, in so doing, to contribute to the safety and the welfare of the public.

Of the qualifications of the judge who tries a traffic case it has well been said that he should possess a legal background, but that such an attribute, alone, is not sufficient. He should have a practical knowledge of traffic police requirements and of engineering; an understanding of the traffic safety field and of the law applicable to the case, even though he may not be a lawyer; and an appreciation of human nature. He should also be able to appraise and discriminate between different types of cases. The driver who, drunk or sober, speeds through a traffic light, or a congested district, and recklessly and deliberately imperils the lives and the safety of human beings, is usually a different type of individual from the driver who stays too long in the only available parking space. Each merits and each should receive a different kind of treatment. He should be capable too of realizing that in the performance of his duties he has an unusual opportunity to render just judgments and to make a substantial contribution in preserving the safety of his community and in securing public acceptance of traffic law observance. His judgments, if just and firm, can be preventive as well as punitive. He should also understand that his action exerts an important influence upon the administration of justice because the appearance of the majority of those who come before him represents their only experience in courts and affects their attitude and belief with regard to courts and judges in general. Finally, he should never forget that in most of the cases in which he acts there are no appeals and that his decision is indeed the law for those whose cause he hears and upon whom his judgments operate.