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THE QUALITY OF JUSTICE IN MISDEMEANOR ARRAIGNMENT COURTS

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The massive increase of population in Los Angeles has had a peculiarly harmful effect on the conditions of our municipal arraignment courts. The increasing volume of cases now scheduled for hearing in Los Angeles arraignment courts has raised many serious problems concerning the quality of law enforcement and the quality of justice meted out in these courts.

Recently, community leaders and the newspapers have been clamoring for stiffer penalties and greater individual attention on the part of judges in cases involving vice, narcotics, drunk driving, traffic safety, and delinquent parents. In excess of 1,000 cases involving these problems are brought before municipal arraignment courts every day. During March, 1961, there were 27,442 arraignments in the Los Angeles Judicial District. Arraignment courts must assume a major share of the responsibility in these fields because in excess of 80 per cent of the defendants plead guilty at the time of arraignment.

The tremendous volume of cases which must pass through these arraignment courts in a given period of time necessarily limits the opportunity of the judge, city attorney, and the defendant or his attorney to give more than perfunctory attention to any individual case. Frequently, it is physically impossible for the deputy city attorney to know anything about the details of the charge, the background of the defendant, or his record. As a result, both the quality of law enforcement and the rights of the defendants are made to suffer. Police officers and complaining witnesses often feel that their case has not received proper attention. In many cases, defendants enter a plea without any conception or understanding of the law. Often, the defendant pleads guilty "to get it over with." Under such conditions, remedial or beneficial results to the community or the defendant are only incidental.

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Traffic Cases

In the main traffic arraignment court, Division 50, there are more than 400 arraignments a day. This means that with a court day from 9:00 to 12:00 a.m. and from 1:30 to 4:30 p.m., with two ten-minute recesses, there are only 220 minutes to handle these cases, *or an average of 51 seconds per case.* Of course, many traffic citations involve routine matters, and in such cases a minimum of time is required to arraign the defendant, receive the plea, and impose sentence. But it should be remembered that the Los Angeles Municipal Court does not require a defendant to make a personal appearance in traffic court until he has received citations for three moving violations within a 12 month period, or has been cited for an extremely high rate of speed, or some other more flagrant type of alleged violation. By the time a defendant is obliged to make a personal appearance in a traffic court, he has developed a pattern of unsafe driving habits quite unlike the average driver. (According to a survey of the National Safety Council, the average driver receives an average of three traffic citations in ten years.)

The appearance of a citizen in traffic court should be a meaningful experience. Defendants should not get the impression that the purpose of the appearance is to shepherd them in lines to the cashier's window. Each case should receive individual attention from the judge, the deputy city attorney, and the defendant or his counsel. Under the present physical conditions this is impossible.

In a study of "California Traffic Law Administration," the authors state:

> "It is clear that the average traffic court is ill equipped to handle the pressure traffic violations place upon it.... This pressure, as well as the factual simplicity and general minor character of the offense, has motivated the use of a simplified procedure. But considering the important part played by procedure in our

system of justice such a simplification could constitute the denial of fair trial. This danger is intensified by the fact that appeals from traffic convictions are so rare that in effect *the traffic court is a court of last resort.*

"... the traffic court ... does not adequately promote traffic safety because it fails to deal effectively with the convicted violator .... Adequate treatment directly affects traffic safety through deterrence of future violations."[1] (Emphasis supplied.)

In commenting upon the traffic courts, Associate Justice Tom Clark, of the United States Supreme Court, has stated:

"Those who are charged, or who go into our traffic courts not being charged but just as visitors, see in action perhaps the only court they know anything about. The condition of that courtroom, the manner in which its procedures are carried out, the demeanor of the judge and the attaches of the court, the method in which the court is carried on, and the time, perhaps, one has to wait in order to have his case called, all these things are impressed indelibly upon those people who come and sit in that courtroom .... There can be no more important court in this whole land than the traffic courts .... Here is where respect or disrespect for law, for order, for the courts, and for government is fostered."

Physical Conditions in Arraignment Courts

The physical conditions in Los Angeles Municipal arraignment courts are not conducive to either justice or individual attention. In Divisions 50, 58, and 59, defendants are informed of their constitutional rights in crowds ranging in size from 100 to 300 defendants. In Divisions 58 and 59, there are no seats available for the defendants, and they are crowded into a small space between the counsel table and the courtroom seats, in conditions similar to those of New Yorkers crowded into a subway during the rush hour.

After defendants are informed of their constitutional rights, to facilitate the arraignment process, bailiffs are obliged to line up the defendants in long lines, blocking up the aisles of the courtroom. As the names of individual defendants are called off, each defendant moves up in the line, shepherded ahead by the bailiffs. Under such physical conditions, the deputy city attorney and the defendant are primarily concerned with a quick disposition of the case. By the time the defendant appears before the judge, frequently his only objective is to get out of the courtroom as fast as possible. Like assembly line workers in a factory, all parties operate under a climate which makes it appear that nothing may be permitted to interfere with the smooth operation of the line. Under such conditions, it is possible that defendants plead guilty without adequate knowledge of the charges against them, or sufficient information concerning the specific counts in a complaint, or even the number of counts in the complaint.

A plea of guilty under such circumstances does not create respect for the law enforcement process. It certainly does not create a climate for the education of the defendants.

The Importance of Law Enforcement in Municipal Courts

In the field of general criminal law, a larger number of defendants with felony records appear in Division 59 than in any other court in Los Angeles County. "The minor offense is often a prelude to a major crime. While usually only the more violent or vicious crimes make the headlines, the so-called 'petty' offenders or misdemeanants are also a serious problem and worthy of public concern. The minor offense of today may very well be the prelude to a major offense."[2]

Frequently, crimes of violence or crimes involving the use of concealed and deadly weapons, are reduced from felonies. In many of these cases, defendants who have been involved in an attempted robbery, rape, or stabbing are more than happy to plead guilty to a misdemeanor.

Although narcotic addiction cases are treated as misdemeanors, the confirmed narcotic addict usually has a long felony record to support his habit. The illegal use of dangerous drugs is frequently the beginning of a habit which will lead to heroin and other narcotic use and addiction, and later felony appearances for other crimes committed for the support of the habit.

Delinquent fathers who fail to support their families and neglectful parents are prosecuted for conduct which endangers the welfare of children or permits child delinquency. Husbands are

[1] *California Traffic Law Administration*, 12 Stan. L. Rev. 388, 388–89 (1960).

[2] J. Edgar Hoover, *The Minor Offense—Prelude to a Major Crime?* 1 Munic. Ct. Rev. 6 (1961).

prosecuted for wife beating under misdemeanor battery charges. The disposition of cases involving the family relationship is important to the continuance of the marriage and the well-being of the home and the children. In many cases, the conduct which is the subject of the complaint is the predecessor of future superior court proceedings in the domestic relations courts.

All forms of minor fraud are prosecuted in the municipal courts: petty theft, checks issued with insufficient funds, petty "bunco" schemes, and unemployment insurance fraud. Also included are violations of the Labor Code, the Revenue and Taxation Code, the Business and Professions Code, and even misdemeanor manslaughter cases. In such a wide area, affecting the entire scope of social relations, the community has a right to expect more than perfunctory attention in the disposition of cases. They should not be disposed of by a court in times averaging one minute or less.

Sentencing in Arraignment Courts

Justice Henry Alfred McCardie once said: "Trying a man is easy, as easy as falling off a log, compared with deciding what to do with him when he has been found guilty."

But in the municipal arraignment courts, where formal probationary procedures are used in only a minority of cases, it is difficult for a judge, under the physical conditions described above, to devote a sufficient amount of time to the sentencing of defendants. In a book published since his death, Judge Charles Fricke stated:

> "The imposition of a sentence or the granting of probation and the conditions attached thereto cannot, if justice is to be done, be based on a schedule or rule of thumb fixing a more or less standard penalty for each particular crime. Each case is a problem by itself depending partly upon the crime committed, partly on the manner in which it was committed and partly, and this is most important, upon the particular defendant before the court, his past education and environment, intelligence, predispositions and tendencies, his employment record, health and accident record, his past home life, the attitude of his parents and their treatment of him, his married life, if any, and his dependants, mental defects or disease, his habits and excesses, if any and, in fact, everything that can be learned about him and his past, even including his favorite manner of spending his leisure hours."[3]

I am aware of the argument that added attention to the record and background of each defendant will not change the habits or conduct of certain "repeater" defendants. But if this be true, conversely, the practices and system of the arraignment courts should not give advantage to the chronic law violator.

The sentencing of repeater defendants in vice and gambling cases is a continual problem. The "professionals" in these fields are continually shopping for sentences which may be considered no more than a tax or business expense for continued operation.[4]

The "repeaters" or their advisers are well versed in the calendar problems of the arraignment courts and are often able, because of the pressure of physical conditions, to induce the deputy city attorney to accept a reduced plea.

There seems to be a presumption among "repeaters" that in return for a plea of guilty in the arraignment or master calendar court, the sentence will be within a certain range, and lighter than in the trial court. This expectation is founded upon the understanding of a simple fact. An increase in not guilty pleas of only 5 per cent in the arraignment and master calendar courts would result in a flooding of the trial courts and a breakdown of the entire system. Cases which could not be sent to trial within the statutory 30-day period would be dismissed.

Of course, "judicial shopping" has always been a serious problem in any busy metropolitan court which utilizes a master calendar and arraignment system, separate from the trial courts. Nor is reference to this fact to be construed as a criticism of the statutory right of a defendant to exercise his challenge of an individual judge. Judicial "shopping" is largely confined to defendants who make regular appearances in municipal arraignment courts. This practice, when used in conjunction with and under the physical conditions of the present overcrowded arraignment courts, has redounded in favor of the professional criminal or "repeater" as opposed to the first offender.

In many occasions, the "repeater's" knowledge of the arraignment system enables him to obtain a sentence of less severity than the first offender,

[3] Fricke, Sentence and Probation 4 (1960).
[4] Note, *Metropolitan Criminal Courts of First Instance*, 70 Harv. L. Rev. 320, 337 (1956).

who, in many cases, can neither afford the price of bail nor obtain counsel.

Possible Denial of Rights to Defendants

Recently, Attorney General Robert Kennedy stated: "I have a strong feeling that the law, especially in criminal cases, favors the rich man over the poor in such matters as bail, the cost of defense counsel, the cost of appeals and so on."[5] This statement is pertinent to our municipal arraignment courts.

> "The present Los Angeles system of having separate courts for arraignment and for trial may make the choice of plea a difficult one even for a defendant who believes himself to be innocent. A defendant who pleads guilty in arraignment court will be sentenced at once; one who pleads not guilty will be forced to wait several weeks because of the separation of arraignment and trial courts. The delay will usually involve additional detention if the defendant cannot afford the cost of a bail bond, and the trial will necessitate a higher lawyer's fee."[6]

The great majority of our defendants who have any financial resources or earn their living are not represented by attorneys in misdemeanor arraignment courts. Court attaches estimate that less than ten per cent of all defendants are represented by counsel.

The indigent defendant is entitled to representation by the public defender, and, of course, has the benefit of the public defender's experience in the arraignment courts. But the average citizen, without benefit of counsel, is completely unfamiliar with the processes of the criminal law. If he has enough money to make bail, it is extremely unlikely that he will have sufficient funds to pay the cash required by most attorneys before they will make an appearance. In addition, those defendants who are not paid on a weekly salary basis are faced with loss of a day's wages for every day they make an appearance (usually a minimum of three days if they plan to litigate the case). Under such circumstances, in a case involving a first offense, the average citizen without benefit of counsel will plead guilty.

The law enforcement process will not be materially benefited if a guilty plea is entered under such conditions. A plea of guilty must be meaningful to the defendant. If the defendant has not received competent legal advice, he can always rationalize a guilty plea on the ground that he was forced to do so by conditions, or he had no other choice because of financial reasons. In such a case, the sentence may have some deterrent effect, but it is extremely unlikely that it will have any rehabilitative effect. The defendant will not feel that the sentence is based on his needs, because he will feel that he never should have pleaded guilty in the first place.

[5] Look, March 28, 1961, p. 23 at 24.
[6] *Supra* note 4, at 337.

Conclusion

Each defendant is an individual and must be treated as such. This concept is fundamental to our American system of democracy. It requires that punishment shall not only fit the crime, but that it shall also fit the character of each individual defendant in so far as this may be achieved within the framework of the law in question. Our aim should not only be to prevent future crime by the individual defendant and others who learn of this punishment, but also in some way assure that the defendant who has admitted his guilt in the arraignment court will, in the future, be more of an asset than a liability to the community.

The problem of maintaining justice in a mass society, with a population exploding in geometric ratios, may be one of the greatest challenges of our democracy. Justice cannot be mass produced. We must be ever alert that our traditional concepts of justice are not eroded by the sheer volume of cases which are now flooding our courts. Under the present physical conditions in our arraignment courts, it is increasingly more difficult to give even the appearance of justice.

Obviously, there are no quick remedies for these problems. As tentative solutions, I would suggest the following:

(1) The alarming increase in crime makes it imperative that lawyers and judges must devote more time to the problems of law enforcement and misdemeanor courts. There has been a tendency to minimize misdemeanors as matters of small importance. In many cases the distinction between misdemeanors and felonies is artificial. This is particularly true in crimes involving violence to the person and cases involving drugs and narcotics.

(2) It has been necessary for municipal courts to use summary probation procedures more frequently than formal probation. Summary