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# Criminal Justice in a Metropolitan Court by Harry I. Subin

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# Book Reviews

CRIMINAL JUSTICE IN A METROPOLITAN COURT. By Harry I. Subin. New York: Da Capo Press, 1973 (reprint of 1966 edition). Pp. 209.

The American criminal justice enterprise has become a whipping-post for reformers of every ilk. Liberals and conservatives, lawyers and laymen, and countless public and private groups have studied various aspects of the system and have submitted reports containing remarkably similar conclusions.<sup>1</sup> Professor Harry Subin's<sup>2</sup> *Criminal Justice in a Metropolitan Court* is another contribution to the literature of criminal court reform. Originally published in 1966 for the Office of Criminal Justice of the United States Department of Justice, the volume has recently been republished in its original form. *Criminal Justice in a Metropolitan Court* is an explanation and evaluation of the processing of serious criminal cases in the District of Columbia Court of General Sessions. This court dealt with at least the initial procedures of approximately ninety percent of all criminal cases involving adults charged with felonies or serious misdemeanors in the District of Columbia. To obtain information for the study, the author and his staff observed the handling of routine cases and conducted a two-week statistical survey of the cases handled by the Court of General Sessions.<sup>3</sup>

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<sup>1</sup> E.g., PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* (1967); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *TASK FORCE REPORT: THE COURTS* (1967); AMERICAN BAR FOUNDATION, *LAW ENFORCEMENT IN THE METROPOLIS* (McIntyre ed. 1967); S. BING & S. ROSENFELD, *THE QUALITY OF JUSTICE IN THE LOWER CRIMINAL COURTS OF METROPOLITAN BOSTON* (1970); L. DOWNIE, JR., *JUSTICE DENIED: THE CASE FOR REFORM OF THE COURTS* (1971); *THE PHILADELPHIA ENQUIRER*, *CRIME AND INJUSTICE* (1973); VIRGINIA LEGAL STUDIES, *MASS PRODUCTION JUSTICE AND THE CONSTITUTIONAL IDEAL* (1970); R. POUND, *CRIMINAL JUSTICE IN AMERICA* (1930); J. CASPER, *AMERICAN CRIMINAL JUSTICE: DEFENDANT'S PERSPECTIVE* (1972); H. JAMES, *CRISIS IN THE COURTS* (1968); A. NEWMAN, *CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL* (1966); Symposium, 328 *THE ANNALS* 1-163 (1960); W. DIENSTEIN, *ARE YOU GUILTY?* (1954).

<sup>2</sup> Harry I. Subin served as both a trial attorney for the Organized Crime Section of the Department of Justice and a staff attorney for the Office of Criminal Justice of the same Department. He then served as an associate director of the Vera Institute of Justice in New York City. In the last few years he has been on the faculty of the School of Law of New York University.

<sup>3</sup> The author candidly admits that the statistics upon which the book is based are of questionable accuracy because of the lack of adequate uniform data collection facilities. Because of the broad range of topics explored in the study, however, it is doubtful if anything but the grossest statistical errors would destroy the validity of the author's conclusions.

The volume is composed of nine chapters and five appendices. Chapter One provides an overview of the functions and procedures of the General Sessions Court. Subsequent chapters discuss in detail the role of the police and prosecuting attorney in the cases that did or could have come before the Court. Chapter Four presents the administrative details of the Court's handling of the case calendar, bail and trial. The next chapters discuss the provision of defense and probation services. Finally, the author discusses the effect of recent reform efforts and presents his own conclusions and recommendations. The appendices present data on the problem of collecting crime statistics, the daily case log (Marshall's List), the administrative paperwork in a misdemeanor case, the forms used to collect information for the study, a synopsis of three proposed projects involving improved court reporter and probation services, and a Citizen's Information Service.

Since most of the author's specific recommendations are of little interest outside the District of Columbia, I shall discuss only a few of the more important ones. The omission will not be significant, for the student of court reform will be neither challenged nor surprised by the description of the workings of the District of Columbia Court of General Sessions nor by the author's recommendations for improving that court. For example, what informed person would be remotely intrigued by discovering a metropolitan criminal justice system in which there are unsatisfactory physical facilities (p. 26), an absence of clearly articulated prosecutorial policies (p. 38), limited dispositional alternatives (p. 56), delays in bringing cases to trial (p. 74), a lack of uniform sentencing practices (p. 87), and inadequate defense (p. 93) and probation (p. 107) services? Virtually every observer of every urban lower criminal court has discovered the same pattern.<sup>4</sup> The only unexpected observation in this book is the author's posture on the common practice of plea bargaining. Professor Subin is a strong advocate of plea bargaining. Contrary to numerous calls for elimination of the negotiated plea, the author contends that adequate manpower and information would remove objections to the bargaining (pp. 112-14). He apparently believes that the potential for coercion inherent in the plea bargaining system can be overcome by improved supervision of the practice. Although it is true that plea bargaining enables a court to dispose of many cases quickly, the price of this "efficiency" is high. Considering the generally poor quality of the attorneys, judges, and physical facilities that traditionally have been

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<sup>4</sup> See sources cited in note 1 *supra*.

devoted to this level of the criminal justice system, it is difficult to agree with Subin's conclusion that adequate resources could ever be sufficiently plentiful to control the plea bargaining system.

The most intriguing question raised by *Criminal Justice in a Metropolitan Court*, and one which Subin considers only indirectly, is why the horrid conditions he describes are the rule rather than the exception. This question brings into focus the major weakness in this and similar investigations of a judicial system. Too often the evaluation is made without reference to a theoretical basis. It may be helpful to divide observations about a criminal justice system into at least three categories: administrative, legal, and policy. The administrative aspects, including such items as the efficient allocation of personnel, facilities, and record systems, involve few policy considerations. Recommendations for improvements in these areas should be made by people skilled in modern management techniques. *Criminal Justice in a Metropolitan Court* is filled with administrative observations. Examples include suggestions for altering the physical layout of the United States Attorney's Office (p. 25), more efficient allocation of judges (p. 133) and court sessions (p. 148). From the vantage-point of pure common sense, it is difficult to fault Subin's efforts to suggest improvements in the management of the District of Columbia Court of General Sessions.

The second category of observations about a criminal justice system focuses on legal components of the system. This group includes such matters as the quality of legal representation, compliance with legislative and judicial standards for search and seizure, confessions, waiver of constitutional rights, and a host of other traditional legal issues familiar to any attorney. Professor Subin investigates numerous legal questions. In examining the quantity and quality of defense services (p. 91), for example, he concludes that much needs to be done to improve the criminal defense work in the District of Columbia Court of General Sessions. Although he specifies weaknesses and proposes changes, he does not view the process from the perspective of an attorney seeking, as a minimum, to implement both the spirit and letter of relevant judicial and legislative pronouncements. Too often his analysis appears more based on common sense than legal imperatives.

The author also does not give enough attention to the impact of law-related pressures in achieving change in the legal aspects of the criminal justice system. The provision of defense services is an excellent example. The organized bar should be prodded to guarantee

adequate criminal representation. Subin's reliance on legislative and judicial supervision of defense counsel does not place responsibility on the organized bar, where it should be.<sup>5</sup>

The third category of observations directly or indirectly involves policy questions affecting the underpinning of the criminal justice system. Perhaps the major shortcoming in this study, and most other critiques of the criminal process, is the tacit assumption that the criminal judicial process can be studied as an entity rather than as part of a larger system.<sup>6</sup> This narrow focus results in a failure to build a theoretical foundation upon which the evaluation is based. Yet the functions that the author thinks are appropriate for the criminal justice system may determine whether a particular feature of that system is worth maintaining or is desperately in need of change.<sup>7</sup> Professor Subin, for example, could have begun his work by considering the difficult question of what end[s] the criminal justice system, and more particularly the District of Columbia Court of General Sessions, should serve. He might have considered traditional rationales such as rehabilitation, deterrence (special or general), incapacitation, retribution, and education. After determining the appropriate goal(s), he would have evaluated the system with those goals in mind. To determine the effect of a particular practice in serving the goal(s) of the system, an evaluator would need considerable expertise in human behavior. The variety of intellectual skills required for this determination might require the input of an interdisciplinary panel of experts.

Unfortunately, *Criminal Justice in a Metropolitan Court* never reaches the degree of sophistication permitting this kind of evaluation. Had the author presented a theoretical basis for his evaluation, many of his conclusions would be more palatable. For example, he discusses the exercise of discretion by police and prosecution, but he does not ask the crucial question of how the use of that discretion contributes

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<sup>5</sup> In recent years the American Bar Association has been assuming greater leadership in improving the quality of the criminal bar. See, e.g., ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO DEFENSE SERVICES (Approved Draft, 1968), and STANDARDS RELATING TO THE PROSECUTION FUNCTION AND THE DEFENSE FUNCTION (Approved Draft, 1971).

<sup>6</sup> In the Preface, the author suggests that although the nature and causes of crime in the nation's capital are important in evaluating the crime problem, that evaluation is beyond the scope of his study, which is merely a description of a judicial process.

<sup>7</sup> Although its conclusions are highly controversial, AMERICAN FRIENDS SERVICE COMMITTEE, STRUGGLE FOR JUSTICE (1971), a critique of parts of the American criminal justice system, provides a theoretical basis that adds considerable strength to the observations made later in the report and represents the approach Subin should have considered.

to the appropriate rationale(s) for the criminal justice system.<sup>8</sup> Thus, he does not consider the possibility that the liberal use of police discretion may serve to increase the rehabilitative function by avoiding the labeling phenomenon sometimes said to promote criminal behavior.<sup>9</sup>

To be fair, it must be noted that Professor Subin himself would probably agree that his study would benefit from a more theoretical, systemic perspective. He recommends the establishment of a permanent interdisciplinary agency of criminal justice for the District of Columbia which would facilitate comprehensive prevention and correctional programs (pp. 126-29).

Although the lack of a theoretical basis detracts from the credibility of the policy-related observations in this book, it does not mean that the book is not of considerable merit. The book's strength lies in its attention to particular administrative weaknesses in a single system. Unlike general surveys of the criminal justice system, Professor Subin's work makes sensible, specific recommendations to correct specific faults. With his guidance, reformers are given concrete suggestions in need of implementation. Although causation is always difficult to establish, many of the reforms Subin suggests were subsequently enacted into law in the District of Columbia Court Reorganization Act of 1970.<sup>10</sup> The new legislation contains provisions for improvements in the quality and quantity of judicial resources in the lower courts in the District of Columbia, including increases in the number and salary of judges, improved physical facilities, jurisdictional changes, and more efficient court administration. If this volume was instrumental in breeding these changes, it was most worthwhile.

Despite the continued need for improvements in metropolitan criminal courts, it is unlikely that *Criminal Justice in a Metropolitan Court* will appeal to a wide audience. Although generally well-written and exceedingly well-organized, this book is all business, often to the point of presenting tedious reading. The experienced practitioner will learn little from this volume; indeed, it was not written for him. The inexperienced attorney or the law student may enjoy perusing those

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<sup>8</sup> See, e.g., Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543 (1960).

<sup>9</sup> See, e.g., E. GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* (1963); E. SCHUR, *LABELING DEVIANT BEHAVIOR* (1971).

<sup>10</sup> Pub. L. No. 91-358 (July 29, 1970) (codified in scattered sections of the District of Columbia Code). For the legislative history of this Act, see D.C. CODE LEG. & AD. SERV. 898 (1971). See generally Tydings, *District of Columbia Court Reform and Criminal Procedure Act of 1970: An Overview*, 37 D.C.B.J. 20 (Dec. 1970).

chapters which describe the way an urban criminal justice system actually operates. The legislator or interested citizen will find in this volume areas upon which every court system should be evaluated. But the main function of this book, and its *raison d'être*, is its exploration of the lower criminal courts in the nation's capital. The fact that those courts really were (are?) as dysfunctional as Subin suggests tells us a great deal about the priorities of a civilized nation.

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