

Prosecutor Tells Lawyers

By Leonard Downie Jr.
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The Government's chief prosecutor in the Court of General Sessions took the role of lawyer last night and instructed other Washington lawyers on how to use the court's plea-bargaining system.

Tim Murphy, chief assistant U.S. attorney for General Sessions, told the lawyers that if they defend a man arrested for a felony, up to 90 per cent of the time, the case will never be tried.

"Your services to your client will be almost completely devoted towards seeking to get the charges dropped, reduced or to plead (guilty) before a favorable judge," he said.

Speaking to 300 criminal lawyers and law students at the Junior Bar's annual Criminal Practice, Murphy defended the General Sessions plea-bargaining sys-

tem. He said it was necessary to deal with the court's heavy caseload.

The long entrenched system, in which most criminal cases are settled with guilty pleas or dropped charges rather than trials, was detailed in The Washington Post in a recent series of articles on General Sessions.

Practice Defended

Murphy said, "There has been much ado in the press lately about judicial barter, bargain basement justice . . . to describe an age old part of the adversary process . . . negotiation and settlement of cases.

"This process will continue to exist because it is an absolutely indispensable part of the administration of criminal justice," he added.

"With congested court calendars in the U.S. District Court as well as General Sessions, the U.S. Attorney's office will in the fore-



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TIM MURPHY

... how to use the system

seeable future be forced to continue to dispose of cases with an eye on the courts' calendars."

Murphy said his prosecutors do not charge defendants with more serious crimes — or several charges all pertaining to the same crime — to force them to plead guilty to lesser or fewer charges. He said that would be immoral.

But he said he sees nothing wrong with "charging a

man with what he did and then subsequently dropping the charges or accepting a plea to a lesser offense because of the circumstance of the case."

Caseload Cited

If a trial were held in every case, Murphy said, it would wreck the court calendars in the District because we do not have enough judges."

And if "every defendant was convicted of what he technically did," he added, "he would be much worse off than under any plea-bargaining system."

It is nearly always the defense attorney, not the prosecution, who offers to have the defendant plead guilty in return for a reduction in charges, Murphy said.

The prosecutor then outlined the "system," telling the lawyers now to use it to their clients' advantages from the time they first see the clients at police pre-

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incts until they appear in court.

He told the lawyers they would get more cooperation from policemen if they were friendly rather than aggressive.

Tip on Witnesses

"Police officers, like lawyers, are unable to keep quiet," he advised, "and if you are solicitous and friendly with them . . . they will undoubtedly reward you with all the information we wish they would keep to themselves."

Murphy said that when the lawyers get to court,

they will find it easy to make "fruitful" contact with prosecution witnesses because General Sessions has no witnesses' lounge where they can be kept in seclusion.

"I disapprove of this system," he said. "But the physical layout of General Sessions makes this inevitable."

He also told the lawyers how to bargain with the prosecutors at the counter in the court's U.S. Attorney's office—a practice that has been attacked recently by some General Sessions judges.

Three weeks ago, Chief Judge John Lewis Smith Jr. called a halt to the practice of defense lawyers taking U.S. Branch criminal cases from the courtroom "back downstairs" to the prosecutor's counter for hearings.

Smith said he did it to stop the plea-bargaining that goes on there.

How to Sidestep Rule

Murphy did not comment specifically on Smith's action last night, but he did tell the lawyers how they could get around it.

"If you are before a judge who does not permit cases

to go downstairs for hearings once they are called in court," he said, "I would suggest you contact the police officer in advance of the continued date.

"Ask if he would meet you prior to 10 a.m. in the U.S. Attorney's office and arrange (to have) an assistant U.S. attorney have a hearing that morning prior to court."

Other court sources said earlier yesterday that some defense attorneys have found another way around Smith's ban.

They get the case continued, usually by requesting a jury trial, and then arrange for a counter hearing to be held before the case is due to come up again.

If the practice becomes too widespread it could add further to the court's massive jury trial backlog. Smith has been attacking the backlog with two separate jury trial calendars and three judges assigned to jury trial duty.