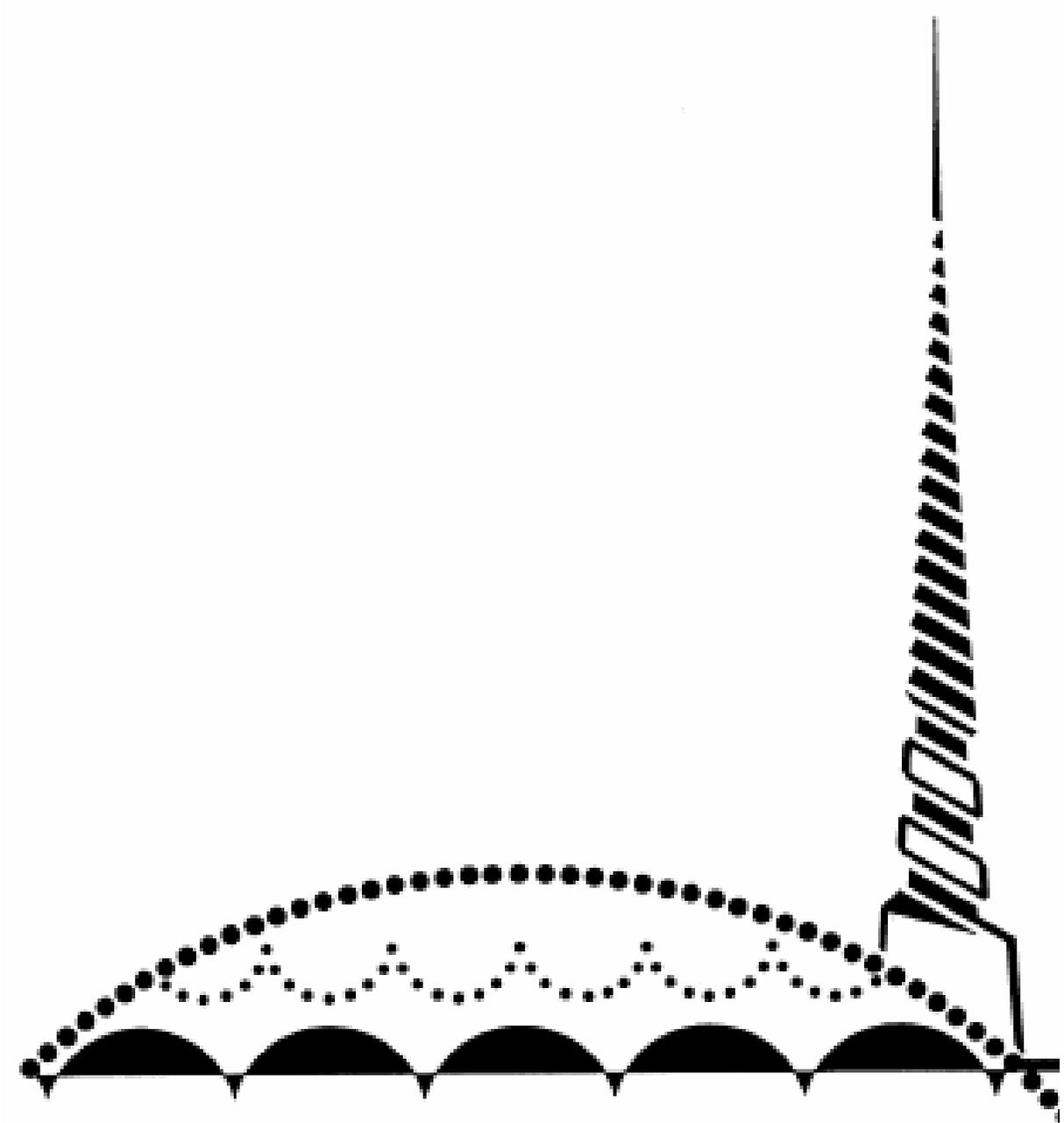
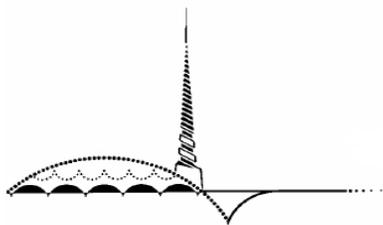


2005-2006 MARIN COUNTY CIVIL GRAND JURY

Defenseless at Arraignment: Lady Justice Lagging in Marin

April 25, 2006





Defenseless at Arraignment: Lady Justice Lagging in Marin

SUMMARY

Marin County does not provide legal representation to indigent criminal defendants at their first court appearance, the arraignment hearing. As a consequence, fundamental fairness may be compromised.

At arraignment, defendants are advised of their constitutional rights and read the charges against them contained in the criminal complaint. The proceedings are formal, adversarial, and on the record. An assistant district attorney is present, representing the state, and may make arguments that can have an impact upon decisions made by the presiding judicial officer.

Matters of critical importance are decided at this hearing. Shall the defendant be released from custody on his or her own recognizance or on bail? Will the defendant's release from custody be conditioned by court orders that may curtail a defendant's legal rights and interests? Will the court impose protective orders filed by the assistant district attorney?

Defendants are warned by the judicial officer (Commissioner) that whatever they say in court may be used against them. In speaking out, unrepresented defendants run a risk of accidentally violating their own constitutional right against self-incrimination. These defendants are faced with a dilemma: either remain silent and forego those rights or speak out and jeopardize their rights.

Few defendants have legal training. How many citizens in the general public would know how to make a meaningful legal argument? Who among us would know how to effectively assert his or her rights to bail or release from custody on his or her own recognizance or to protect oneself from the imposition of overly restrictive orders filed by the assistant district attorney?

Before their legal rights are fully protected, defendants who cannot afford to hire an attorney must await their second court appearance (Counsel and Plea hearing) when they will be appointed a lawyer to represent them. For in-custody defendants, that means more time in jail before any meaningful arguments can be made for their release. That could be days away.

Separate from the issues of fundamental fairness, there is an issue of efficiency. Virtually no misdemeanor cases are settled at arraignment in Marin County Superior Court. However, up to 80% of all misdemeanor cases are settled at arraignment in other counties surveyed by the Grand Jury where defense counsel is provided to all defendants. As a

result, there is a clearing of court calendars and a significant reduction in time spent by court and criminal justice personnel on each case. Cost effectiveness represents another justification for requiring that every defendant is represented at arraignment.

The Grand Jury recommends that the County of Marin provide legal representation at arraignment hearings to all defendants who are unable to afford private counsel.

BACKGROUND

All criminal cases in Marin County are tried in Marin County Superior Court. In these proceedings, the state is normally represented by an assistant district attorney from the Marin County District Attorney's office. The defendant is represented by a private attorney or if he/she is indigent, defense counsel from the Marin County Public Defender's office.

Early intervention by defense counsel is essential to ensure that a criminal defendant's constitutional rights are protected. However, except for a very small percentage of cases where defendants retain their own attorney, assistance of counsel for defendants in Marin County Superior Court does not begin at the arraignment hearing.

Standard Criminal Court Proceedings in Marin County

The defendant's first appearance is an arraignment presided over by a Commissioner. At arraignment, defendants are advised of their constitutional rights. This admonishment is either read from a form or paraphrased and recited from the Commissioner's memory. Each defendant is then individually called to a podium where he or she is informed by the court of the charges. The defendant is given a copy of the complaint and any documents the assistant district attorney may have brought to court concerning the case.

During this phase of the hearing, the assistant district attorney is free to make arguments regarding the denial of bail, amount of bail, or to argue against the release of the defendant on his/her own recognizance. The Commissioner will then set the bail amount, deny bail, or release the defendant on his or her own recognizance.

The Commissioner finally asks the defendant if he/she is able to afford an attorney. Defendants who state they cannot afford counsel are referred to the Public Defender to determine their eligibility for legal representation.

The second court appearance, generally one to several days later, is called the Counsel and Plea hearing. In Marin County, the Superior Court does not assign indigent defendants legal representation until the Counsel and Plea hearing.

Previous Efforts in Marin County to Provide Representation

The Grand Jury and the Public Defender of Marin have advocated for providing legal representation of all indigent defendants at their arraignment hearings in Marin County.

The Grand Jury's report on the Public Defender's office, dated May 2003, recommended that the Public Defender provide legal representation at arraignment for all defendants eligible for their services.

In September 2003, the Marin County Public Defender drafted a proposal that its office represent all financially eligible defendants at their arraignments. The proposal was shared with the District Attorney, Superior Court, Sheriff's Department, and Probation Department. According to senior staff at the Marin County Public Defender's office, no party objected to the principle of providing legal representation to defendants at their arraignment. Yet, this proposal was not acted upon.

The Marin County Public Defender submitted a Budget Change Proposal for Fiscal Year 2005-2006 requesting \$56,000 to pay for a half-time attorney position and a half-time legal clerk to fund the cost of representing eligible defendants at their arraignments. The County Administrator, however, did not recommend funding of this request to the Board of Supervisors.

APPROACH

The Grand Jury conducted interviews with senior staff in the Marin County Public Defender's office and other attorneys whose practices involve representing defendants in Marin County. We also reviewed documents generated by the Public Defender's office in support of their prior efforts to secure legal representation of indigent defendants in Marin County.

Senior staff attorneys were interviewed and information gathered from Public Defender offices in other California counties including: Contra Costa, Los Angeles, Mendocino, Napa, Sacramento, Santa Barbara, San Diego, Santa Clara, San Francisco, and Sonoma.

Grand Jury members observed Marin County Superior Court arraignment hearings over a one month period.

DISCUSSION

The importance of adequate representation at every stage of criminal proceedings was eloquently stated by Justice Sutherland in a landmark United States Supreme Court case, Powell v. Alabama, 287 U.S. 45 (1932):

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge... He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him..."

According to the Marin County Public Defender's staff, more than 90% of criminal defendants appear at their arraignments without counsel. The vast majority of indigent defendants in Marin County must wait until their second court appearance when counsel is appointed before their rights may be fully protected. The consequences can be particularly unfortunate for defendants most vulnerable to an abridgement of their rights: those who lack experience in the criminal justice system, speak English as a second language, or are mentally ill.

Fundamental fairness requires that criminal defendants have an opportunity to be heard and to effectively assert their rights at their arraignments, but that requires legal knowledge that few defendants possess. This conclusion is supported by the Grand Jury's observations of arraignment hearings, by statements to the Grand Jury from senior staff at Public Defender offices throughout the state of California, from other members of the State Bar, and from landmark cases.

Defendants who are not represented at arraignment may suffer the following consequences:

- Defendants are often intimidated and confused when they appear in court. Many do not understand what the Commissioner is saying, do not know how to respond if they are questioned, and are too scared to defend themselves.
- Defendants who are not represented at arraignment frequently blurt out statements about their case in court and inadvertently compromise their right against self-incrimination.
- Defendants commonly feel compelled by pressing family or employment obligations to rationalize their alleged criminal conduct before the Commissioner. In doing so, they apparently hope to gain release from custody. Yet few defendants realize the Commissioner lacks the authority to dismiss the charges or that their statements may be used to incriminate them.
- Defendants, except in capital cases, are guaranteed a right to bail under the United States Constitution and California law. But few defendants have the knowledge to effectively assert this right. The right to bail cannot be effectively exercised at the arraignment hearing unless defense counsel is present to advocate for the defendant.
- California law specifies certain defendants are entitled to be released from custody upon their own recognizance. Some unrepresented defendants, however, have been denied such release at their arraignment, even when there is a favorable recommendation by the probation department supporting their release. The denial of a defendant's right to be released on his/her own recognizance occurs most frequently when the assistant district attorney argues against it. This right cannot be properly asserted at arraignment hearings unless defense counsel is present to advocate for defendants.
- Fairness issues are raised under Marin County's system of arraignment when restrictive orders may be issued by the court that affect a defendant's rights and interests in the absence of legal representation. A defendant may be ordered, for example, to stay away from places associated with the alleged victim. These orders may be faulty for a number of reasons. But in the absence of defense

representation, such orders are routinely imposed without legal challenge and evidentiary review.

- Under the current system, in the unusual case that an in-custody defendant wishes to plead guilty at arraignment to a minor offense, such as one that carries no jail time upon conviction, he or she would be released that day with probation conditions. However, some of these defendants might be concerned about the consequences of entering a plea without the benefit of counsel. These defendants could be forced to spend one to four more days in jail just to exercise their Sixth Amendment right to counsel.

Separate from the issue of fundamental fairness, there is an issue of efficiency. There are some cases that arguably should be settled at arraignment, such as misdemeanor offenses that carry no jail time upon conviction. Yet these cases are rarely settled at arraignment in Marin County Superior Court. Even more disturbing is a report from a senior staff attorney at the Marin County Public Defender’s office that very few cases are settled at the second hearing, called the Counsel and Plea hearing. In-custody defendants wait in jail while the legal process drags on.

Significant efficiencies in the administration of justice have been achieved in other counties where all defendants are represented at their arraignments. Senior staff at the Public Defender’s offices in San Diego and Los Angeles counties reported that approximately 80% of misdemeanor cases were settled at the arraignment hearing after attorneys had an opportunity to read police reports and other relevant documents and to consult with their clients.

Table 1 Survey of Public Defender Arraignment Practices

Public Defender Office	Represents misdemeanor defendants at arraignment	Represents felony defendants at arraignment
Contra Costa	No	No
Los Angeles	Yes	Yes
Mendocino County	Yes	Yes
Napa County	No	Yes
Sacramento	Yes	Yes
San Diego	Yes	Yes
San Francisco	Yes	Yes
Santa Barbara County	Yes	Yes
Santa Clara	in-custody defendants on a limited basis	Yes
Sonoma County	Yes	Yes
MARIN COUNTY	NO	NO

Only Marin and one other county fail to provide any legal representation to eligible defendants at their arraignment hearings out of the eleven Public Defender offices in California surveyed by the Grand Jury, as indicated in Table 1 above.

Fair play and justice demand that Marin County ensures legal representation is available to all defendants at arraignment. The inefficiencies of the current system compel it.

FINDINGS

- F1. Marin County does not provide legal representation at arraignment hearings for defendants who are unable to afford counsel.
- F2. Defendants who appear without counsel at arraignment hearings may suffer negative consequences including:
- Failure to be released on their own recognizance, resulting in unnecessary jail time
 - Failure to be released on bail, resulting in unnecessary jail time
 - The imposition of unfairly restrictive court orders, resulting in the compromise of legal rights and interests
 - Compromise of their constitutional right to remain silent
 - Compromise of their right against self-incrimination
- F3. If all defendants in Marin County were represented at arraignment, cost effectiveness could be achieved by speedier case settlements, more efficient utilization of court, District Attorney and Public Defender resources, and decreased jail time for defendants.

RECOMMENDATIONS

- R1. The County of Marin should provide legal representation at arraignment hearings to all defendants who are unable to afford private counsel.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

- Board of Supervisors: F1-F3, R1

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933(c) and subject to the notice, agenda, and open meeting requirements of the Brown Act.

The California Penal Code section 933(c) states that "... the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M. Brown Act requires that any action of a public entity governing board occur only at a noticed and agenda public meeting.

From the following individual:

- The Marin County District Attorney: R1

The Grand Jury invites the following individuals to respond:

- The Marin County Administrator: F1-F3, R1
- Public Defender of Marin County: F1-F3, R1

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.