

There should be a moratorium on violation pleas at arraignments. In valuing expediency above all else, the current system ignores and even propagates grievous social ills. Pleading guilty to a violation could lead to disastrous collateral consequences for an accused. At arraignments, the attorney-client relationship is so new that a lack of trust may cause a defendant to withhold key information from his lawyer. Bad police practice is allowed to continue because illegal stops and searches go unchallenged, which affects a disproportionate number of minorities and impoverished people. The diverse and pervasive nature of the problems frustrate individuals and embitter communities. An overhaul is required, an overhaul that motivates defendants themselves to assert their rights in response to the harms that violation pleas at arraignments cause.

In 2007, close to 100,000 violation pleas were entered at arraignments. For people with clean or minimal records charged with so-called “quality of life” crimes, such as Trespass and Drug Possession, the District Attorney’s Office routinely offers violations as a plea bargain at arraignments. Similar pleas are not offered to individuals charged with crimes where there is a specific victim, to those with extensive criminal records or to people facing felony charges. A unique class of “criminals” is eligible for violation pleas at arraignments. They are neither hardened nor savvy about the criminal justice system.

Devastating to some and terrifying to others, the arrest-to-arraignment process itself coerces pleas. When a member of this class of accused persons is arrested he is uprooted from his life for at least one day (more likely, several days). Arresting officers shuttle him to a police precinct where he is held for hours before delivering him to a courthouse where he is detained in various holding cells, then interviewed by an employee of the Criminal Justice Agency and then by a defense attorney before he sees a judge. After this conveyor-belt journey, the accused is offered a violation plea – an end to the ordeal. Bail is a non-issue. This group is almost always offered a non-incarceratory plea bargain and runs a negligible risk of being held in on bail if the case is unresolved at arraignments. Countless people regularly have this experience and many, disoriented and fatigued, accept this outcome.

Violation pleas, though generally innocuous in the criminal context, carry collateral consequences in realms of housing, employment and immigration, areas where criminal attorneys and judges lack proficiency. By way of example, I will briefly focus

on immigration. In the past decade, Congress has authorized changes that increase criminal grounds of deportability while simultaneously reducing discretionary relief. Consequences of violation pleas in an immigration context can be devastating: a non-citizen could be deported for pleading guilty to a violation. Even if we were to assume that criminal attorneys and judges garnered expertise in immigration matters, problems with effective representation would persist. Quite simply, an attorney may not be aware of a person's immigration status. Upon questioning, a defendant may be reluctant to respond truthfully. Consider the experience he has undergone. The same people who arrest and detain him, turn him over to an unknown person who he is told represents his interests. It would be reasonable for an accused to believe it best to remain silent or misrepresent his immigration status, thereby depriving even the most immigration-savvy defense attorney an opportunity to dispense adequate legal advice.

In addition to potential collateral consequences, which affect individuals, the grossly disproportionate number of those arrested who are minorities and impoverished points to systemic issues of racism and classism, issues which affect society at large. A recent article in the New York Times reported that last year, the New York Police Department (NYPD) conducted 531,159 street stops, ten percent of which led to summonses and arrests.<sup>1</sup> Of course, everyone has the constitutionally protected right to conduct themselves without fear of arbitrary police interference. The legal standard to make a lawful stop requires that a police officer have a reasonable articulable suspicion that criminal activity is afoot. Considering ninety percent of the stops (470,043!) yielded no illegal conduct or paraphernalia suggests that police officers are making unlawful stops. That the overwhelming number of people stopped and arrested are Black, Hispanic and poor, suggests that the NYPD is stopping people because they are Black, Hispanic and poor.

By allowing violation pleas at arraignments to continue, we are not only allowing the wheels of this destructive machine to keep on turning, we are greasing them. Were a moratorium imposed, an individual would be given an adjourn date, and thereby a period of time in which he may recover from his arrest and give calm and thorough attention to his case. Between his arraignment and the following court date, he would have an

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<sup>1</sup> Baker, Al. "Police Get Added Order: Stop, Frisk and 'Explain'." The New York Times, 30 April 2009. <http://www.nytimes.com/2009/05/01/nyregion/01frisk.html>

opportunity to discuss housing, employment and immigration issues with his lawyer and whosoever else he chooses in order to understand potential consequences. Additionally, considering these sorts of cases are relatively simple, the District Attorney's Office could turn over discovery before the adjourn date, giving a defense attorney an opportunity to review arrest-related materials in order to determine whether cognizable legal issues exist. If an individual then makes an *informed* decision that he will plead guilty to a violation, he may do so. On the other hand, if he decides to contest the charges, the case will survive the first adjourn date.

Opponents of a moratorium will argue that allowing violation pleas is necessary because it protects individuals from more punitive sentences in the future. Rarely, however, does the District Attorney's Office impose a one-time-only violation offer at arraignments. Prosecutors offer violation pleas because they believe they are appropriate. One would hope a responsible prosecutor would not rescind a violation offer in an attempt to thwart a person from asserting his constitutional rights. More persuasively, opponents of a moratorium will argue that the people accused will not want to make additional court appearances, either because they find coming to court unpleasant (long lines, extended periods of waiting, multiple adjourn dates) or because they have other obligations (jobs, child care, personal affairs). While this point merits sympathy, the evils of maintaining the status quo greatly outweigh the benefits.

It is the aggrieved class which must assert its rights. Without a doubt, the people who are arrested are most directly affected by the issues presented. Temporarily dislocated from their lives and then put through a "justice" mill bent on churning out violation pleas, they understandably become disillusioned. That it is arduous to come to court is an unacceptable stance. Consider jury duty. Many dread it, and surely, many would not comply if given a choice. But, because the right to a trial by a jury of one's peers is central to our notions of justice and democracy we require it of our citizens. Similarly, requiring this class of people to return to court despite its being burdensome may also be seen as imposing a civic duty. In this instance, the civic duty would fall on the accused class, placing an affirmative duty in its control. Empowering the accused himself would invigorate the system, propelling change from the ground up.