
III. LAW ENFORCEMENT AND THE COURTS

ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS

January 31, 2003

Thank you for inviting me to be your keynote speaker this evening when we honor the many members of law enforcement who have given so much of themselves, their courage and bravery, so that we may all continue to live in freedom.

Tonight, I simply want to share with you a few of my thoughts about how we who serve in the judicial system are acutely aware of the many considerations of public safety that impact the lives of so many of our citizens, particularly the members of this audience who seek to enforce the laws of our state on a daily basis.

I have been on the Supreme Court for a little over a year and have found the work to be intellectually stimulating and an altogether enjoyable experience. I hope, also, that I have contributed in some small measure to the development of the law in California. I have had the privilege of participating in a number of significant cases, which I will tell you a little about in a few moments.

You know, as a trial court judge for fifteen years in both the state and federal judicial systems, I was able to participate in thousands of cases. One of my favorite moments came in a case which I heard when I was sitting as a judge in the Compton Municipal Court and a certain deputy, Tom Layton, from the Carson station was testifying in a motion to suppress, a section 1538.5 hearing. As the prosecutor was attempting to refresh Deputy Layton's recollection about the specific facts of the case, something the prosecutor had to do repeatedly, since the deputy's memory was not being refreshed by examining the police report, I had to intervene and pointedly asked Deputy Layton if he had any recollection whatsoever about this particular arrest, which involved a miniscule amount of rock cocaine. Much to his credit, and much to my astonishment, Deputy Layton indicated that he had no independent recollection of this case whatsoever, whereupon I asked the young deputy district attorney if he had any further questions.

The D.A. meekly replied that he had no further questions. Fortunately, however, the defendant did have a probation violation hanging over his head and a deal was quickly worked out. As far as I know, Tom has never let that one ruling affect his perception of my judicial skills.

I also recall another case out of Compton where the Compton Police Department got a tip of an impending commercial burglary. As they staked out the location, a man and woman, using a brick, broke the glass to the business, gained entry and were caught, property in hand. At the preliminary hearing, the female defendant testified over her attorney's strenuous objection. Those of you who appear in court know that defendants never testify at the preliminary hearing. Well, she thought she had a good defense. She explained to me that she broke the glass not to "rob the store," but because she wanted to recycle the glass. While that was a tough decision, she was held to answer.

I have certainly come a long way since those days in Compton. And from my years in the Criminal Courts Building downtown.

This past year, for example, our Court ruled on a number of significant issues and I want to talk briefly about a couple of those decisions because they impact directly on the kind of work that you all do on a daily basis.

The Court is concerned in almost every criminal case it decides with the question of public safety and the delicate balance that comes into play when weighing concerns about individual freedoms protected and guaranteed by our Constitution.

In a pair of cases we delineated the proper scope of searches of persons and vehicles when drivers could not produce any evidence of personal identification or registration. Our California Constitution tells us to follow federal law in this regard, but federal law does not always squarely address specific fact patterns or delineate the exact parameters of a proper search. We held in *Arturo D.*⁶ that it was reasonable for an officer to search underneath a driver's seat for evidence of personal identification and registration since documents could reasonably be expected to be found there. That is, the officers were not strictly limited to the glove compartment, a location which had been considered a traditional repository for such documents to be located. We held instead that the government interest in ascertaining

⁶ In re Arturo D., 27 Cal. 4th 60 (2002).

the identity of an individual and the identity of a registered owner of a motor vehicle justified a limited intrusion into other areas where such documents could reasonably be found.

In a time when we are constantly required to produce evidence of identification, the justification for a limited search here was sufficient since it would make no sense for a police officer to issue a citation to a phantom defendant, that is, someone without some form of identification. In other words, there was no need to accept the suspect's word as to his name, address, and date of birth when documents confirming his true identity could be ascertained by a minimally intrusive search.

While I do not have specific data concerning the dangerousness of traffic stops, it is common knowledge that even the most "routine" of stops present substantial and unknowable dangers to the police officers making those stops. At a minimum, taking the additional step of ascertaining the identity of a person appears to be a most reasonable and minimal intrusion into that individual's right to be free from unreasonable searches and seizures.

In another case decided this past term, our Court ruled on another type of security implicating the rights of police officers. Besides the dangers inherent in doing one's job as a police officer, there is the ever-present issue of complaints made by citizens against police officers and the collateral consequences that these complaints have on a police officer's career. In response to this issue, the Legislature enacted a statute making it a crime to make a knowingly false statement against a police officer, Penal Code section 148.6. Notwithstanding certain First Amendment considerations about the constitutionality of a statute which makes it unlawful to make a false statement against a public official, and officers are public officials, the Court upheld the constitutionality of Penal Code section 148.6.⁷ Although I did not fully agree with the reasoning of the majority in that case because the law is quite particular in protecting our rights to criticize all government officials, I found the law to be constitutional on the grounds that the state had a valid interest in criminalizing such knowingly false statements because of the negative impact that such statements trigger a mandatory

⁷ *People v. Stanistreet*, 29 Cal. 4th 497 (2002), *overruled by Chaker v. Crogan*, 428 F.3d 1215 (9th Cir. 2005).

investigation and record retention requirement which does not happen when false statements are made against other public officials. Considerable public resources are required to investigate these complaints, and the complaints may adversely, and uniquely, affect an accused police officer's career at least until the investigation is complete.

These cases illustrate the keen appreciation that those of us in the judicial system must have for the dedicated work of police officers.

Tonight, we honor many individuals who have demonstrated their uncommon valor by performing courageously and selflessly under the most dangerous of conditions and our tributes tonight are inadequate in expressing our true gratitude for their services.

But we must go beyond simply honoring these individuals, because there is a further point that cannot be denied: there are many, many others who serve in law enforcement who should be similarly honored and are honored — those of you who simply respond to any and every call you receive, those of you who have, luckily, never had to draw or fire a weapon while on duty, and those of you who have been able to calm a potentially dangerous situation through the use of common sense and good humor.

This was dramatically pointed out to me many years ago when I went on a series of ride-alongs with local law enforcement as part of my training as a deputy city attorney in Los Angeles. Of course, I opted for a graveyard shift with Rampart Division, a division that served the area in which I was raised. The call was a possible arson complaint at an old apartment building in the mid-Wilshire area. I realized quickly how dangerous a job the officers were doing when the two officers I was with proceeded up to the second floor of the apartment building and before us was a long, dark and narrow hallway at the end of which the suspect was reported to be living. The officers did not have to tell me more than once to stay where I was. At that moment I said that there wasn't any amount of money or psychic reward one could give me to walk down that hallway, knock on a door behind which who-knows-what lurked and to calmly and dispassionately deal with someone who ultimately turned out to be obviously intoxicated if not mentally disturbed as well. That vivid image and the emotions I felt that night remain with me still, notwithstanding the passage of twenty-seven years. While this was no doubt a "routine" call, it demonstrated to me that nothing in law enforcement is ever routine.

Sometimes those of us in the judicial system are accused of being abstract in our thinking and unconnected to the real world. In some instances that may be a valid criticism, but bear in mind that our job is to protect the Constitution and to protect those precious liberties that are the very foundation of our country. Protecting our freedom and our security, however, must be more than an abstraction. It is important to realize that our decisions have real world implications for thousands and millions of people in our society, and in particular, for those who serve in law enforcement. We as judges must never forget that.

All of you who respond to 911 calls or who are dispatched to the scene of a suspected crime or those of you who make traffic stops should be honored tonight. Not only should you be honored and proud of the work you do, you should be honored by the people you serve, and you should be honored by those of us in the judicial system who interpret the law and sometimes judge your actions with the benefit of hindsight. No more need be said.

Thank you for giving me this opportunity to address you this evening.

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