The Constitutional Implications of Discovery Practice in Quasi-Criminal Prosecutions in Illinois

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The Constitutional Implications Of Discovery Practice In Quasi-Criminal Prosecutions In Illinois

**QUASI-CRIMINAL PROSECUTIONS:**
**DISCOVERY ONLY BY LEAVE OF COURT**

Prosecutions for municipal ordinance violations in Illinois place defendants in a most precarious position. The courts of the state have consistently adhered to the long-standing principle that such offenses are "quasi-criminal," being civil in form, but criminal in character. The nature of the offense has overtones of a criminal violation, a wrong against the public; but as incarceration is not a possible sanction, the form of proceeding governing the adjudication of a quasi-criminal prosecution is essentially that of a civil trial. The dual aspects of this nomenclature have created serious procedural problems, particularly in the area of pre-trial discovery.

It would seem logical to expect that since municipal ordinance violations are regarded as civil in form, such proceedings and available discovery devices should be governed by the provisions of the Civil Practice Act or, alternatively, being criminal in nature, by the rules governing criminal procedure. Unfortunately, this is not the case. The quasi-criminal classification has effectively removed prosecutions of this nature from the body of rules governing both civil and criminal discovery.

A 1970 amendment to the Illinois Municipal Code provided that all municipal prosecutions imposing possible jail sentences upon conviction are to be governed by the rules of criminal procedure. This amendment had no effect, however, upon defendants facing charges for which the penalty consists of a fine only. In a quasi-criminal prosecution punishable by the imposition of a fine, the defendant is not entitled to any discovery provisions as a matter of right, under either the civil or criminal rules. The present state of

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2. ILL. REV. STAT. ch. 110 (1973). The applicability of the act is defined in § 1, which, in pertinent part, reads:
   The provisions of this Act apply to all civil proceedings, both at law and in equity, except . . . other proceedings in which the procedure is regulated by separate statutes.
3. ILL. REV. STAT. ch. 110A, §§ 401-500 (1973). The applicability of the Rules is defined in § 411 which, in pertinent part, reads:
   These rules shall be applied in all criminal cases wherein the accused is charged with an offense for which, upon conviction, he might be imprisoned in the penitentiary.
the law permits discovery only by leave of court; the defendant is limited to those devices made available at the judge’s discretion.

The Supreme Court of Illinois affirmed this rule in City of Danville v. Hartshorn, holding that the right of the defendant to obtain pre-trial discovery in quasi-criminal cases is solely within the discretion of the trial court. A defendant must move the court for permission to obtain discovery and will be limited to those devices, if any, which the trial judge deems appropriate under the circumstances of the case.

The limitation on the scope of discovery in quasi-criminal prosecutions is a decision of policy. The judiciary has taken the position that the taking of property in the form of a fine should not be afforded the same privileges and protections that are given as a matter of right in civil litigation or when the possibility of imprisonment exists. Further inquiry, however, reveals that this approach may be short-sighted, because collateral consequences result from conviction under a quasi-criminal ordinance.

The rationale underlying the policy is purely practical: due to the proliferation of this type of prosecution, it is in the best interest of justice to provide a method for the expedient disposition of such cases. The question arises as to whether or not this policy leads to a truly just disposition and whether it affords a defendant his constitutional guarantees of fair trial. The Hartshorn rule may very well place expediency above justice.

The problems created by the hybrid nature of quasi-criminal offenses were considered by the Study Committee on Procedures in Quasi-Criminal and Ordinance Violation Cases during the 1975 meeting of the Illinois Judicial Conference. The Committee, in its report, recognized the inadequacy of the current state of the law in this area:

[Quasi-criminal] proceedings are governed by a unique procedure which is embodied only in a confusing body of case law and miscellaneous statutory provisions. Because of the uncodified nature of quasi-criminal procedure, there is no clear, authoritative guideline for the trial judge to follow . . . . [T]he net result is a wide

5. 53 Ill. 2d 399, 292 N.E.2d 382 (1973).
variance in the practice among the various courts throughout the state.9

This statement, however, appears to understate the problem. The allowance of total judicial discretion on the issue of discovery in quasi-criminal prosecutions may lend itself not only to variances among the State's courts, but also to arbitrary and discriminatory practices within courts of the same district or even among different defendants before the same judge.

The committee's report deals largely with ambiguities arising in the area of discovery and proposed adoption of the following rule:

Rule 241 Definition of a Civil Offense

For the purposes of Rule 241 through 251, a civil offense is a violation of any ordinance enacted by a county, city, [or] town . . . which ordinance is punishable by fine only. Unless otherwise specifically provided . . . these rules shall govern procedures for the trial of civil offenses. Procedures for which, upon conviction, the accused might be imprisoned shall be governed by the Code of Criminal Procedure.10

This proposed rule is but little improvement. Further reading of the committee's comments indicates that the purpose of Rule 241 is to codify the common law doctrine confirmed in the Hartshorn11 decision, i.e., discovery in cases where the only sanction is a fine is to be permitted solely by leave of court. Defendants facing possible prison or jail sentences, however, would receive criminal discovery rights.12 The inequities perpetuated by the quasi-criminal classification for fine-only prosecutions would still remain, as defendants would continue to be faced with an undefined and purely discretionary scope of discovery.

This article suggests that the limited scope and arbitrary application of discovery rules in quasi-criminal prosecutions is an infringement upon the due process and equal protection rights of defendants. Municipalities have a legitimate interest in establishing rules for judicial proceedings, but this interest must be balanced against the rights of individuals to liberty and property.

The power of the trial court to allow or disallow discovery in quasi-criminal prosecutions appears to be inconsistent with recent United States Supreme Court decisions in the due process and equal

9. Id. at 43-44.
10. Id. at 47.
11. 53 Ill. 2d 399, 292 N.E.2d 382 (1973).
These decisions have established a definite trend towards extending these rights in two ways: first, by affording defendants greater and more defined rights in procedural matters, and second, by tipping the scales in favor of individual rights in the absence of a clear and convincing legitimate state interest.

These problems can be illustrated by a comparison of the restricted scope of discovery in quasi-criminal cases with the discovery provisions applicable to prosecutions for felonies and misdemeanors, and these applicable to civil litigation.

**CIVIL PRE-TRIAL DISCOVERY: RELEVANT INFORMATION AIDS THE TRUTH SEEKING PROCESS**

Civil discovery rules were established for the benefit of the litigants and trial court alike. The Supreme Court of Illinois gave expression to this sentiment in *Stimpert v. Abdnour,* stating that the Supreme Court Rules manifested legislative intent to broaden the scope of pre-trial discovery. The ultimate function of the trial court is to provide an arena where litigants will receive a fair and just determination of disputes. In addition, the discovery rules were designed to provide for efficiency as well as fairness. All litigants in civil cases are entitled to the rights and privileges of these rules as a matter of right.

The principle underlying pre-trial discovery in civil cases is that legal disputes are more fairly decided when each party enters the

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13. For example, in Douglas v. California, 372 U.S. 353 (1963), an indigent defendant obtained reversal of his conviction, on equal protection grounds, as the Supreme Court determined that the trial judge should not have denied the defendant appointment of counsel on appeal merely because he felt there was "no good reason" for the appeal. Also, in Barker v. Wingo, 407 U.S. 514 (1972), although the court refused to set up strict guidelines for determining whether the defendant's due process right to speedy trial was violated, it did list factors to be considered: length and reason for delay, the defendant's assertion of rights, and possibility of resulting prejudice. These cases illustrate that the Supreme Court believes that the establishment of some criteria to circumscribe the trial judge's discretion is a necessity when dealing with equal protection and due process rights.


15. In *Wardius v. Oregon*, 412 U.S. 470 (1973), the Court held that the due process clause of the fourteenth amendment guaranteed the defendant the right to reciprocal discovery and that this safeguard must be incorporated into a state's alibi rule. In the state court, the defendant was denied the right to present his alibi evidence because he refused to provide the state with a list of witnesses, claiming the state's rule was unconstitutional as it provided for no reciprocity. See also *People v. Jarrett*, 22 Ill. App. 3d 61, 316 N.E.2d 659 (1974).

16. 24 Ill. 2d 26, 179 N.E.2d 602 (1962).

trial aided by as much relevant information as possible without prejudicing the rights and privileges of the other.\textsuperscript{18}

There are, however, limitations placed upon discovery in civil cases, as the trial judge has authority to deny pre-trial discovery requests. This is in great contrast to quasi-criminal prosecutions, where discovery is allowed only by leave of court. In civil cases, the bounds of the trial judge's discretion are adequately defined by an existing body of recent and uniform decisions which have interpreted many of the civil discovery rules. In quasi-criminal cases, however, a defendant is provided with no right to any pre-trial discovery. It is entirely within the discretion of the court whether to grant discovery at all. Moreover, there is no body of case law defining the scope of this discretion.

The general rule applicable to civil discovery in Illinois is that everything is discoverable if it is relevant to the issues properly provable in the case at bar and not privileged.\textsuperscript{19} Constraints upon the discretion of a trial judge are provided by decisions which define privileges and which act to guide the judge in the disposition of a discovery motion.

The role of the trial judge in ruling upon a motion to obtain discovery over objection is two-fold. He must first decide if the matter in question is relevant to a genuine material issue sought to be proven; further, relevancy considerations aside, the court may still deny the motion if the request violates a privilege created by law or statute.

Under these criteria, the plaintiff's request for car model production records for a period including model years 1960-65 was denied in People ex rel. General Motors Corp. v. Bua,\textsuperscript{20} when the issue of liability concerned only a defective 1961 model in an auto collision. The court reasoned that records for the time period requested were not relevant to the issue of liability.

The second tier of this test focuses on the question of privilege. Interpretations of what constitutes the attorney-client and work product privileges were provided, respectively, by the cases of Day v. Illinois Power Company\textsuperscript{21} and Monier v. Chamberlain.\textsuperscript{22}

The foregoing decisions greatly limit arbitrary application of dis-

\textsuperscript{19} Monier v. Chamberlain, 35 Ill. 2d 180, 226 N.E.2d 6 (1967). \textit{See also} Reske v. Klein, 33 Ill. App. 2d 302, 179 N.E.2d 415 (1961), which dealt with interrogatories lacking the specificity required to enable the court to determine relevancy.
\textsuperscript{20} 37 Ill. 2d 180, 226 N.E.2d 6 (1967). \textit{See also} Reske v. Klein, 33 Ill. App. 2d 302, 179 N.E.2d 415 (1961), which dealt with interrogatories lacking the specificity required to enable the court to determine relevancy.
\textsuperscript{21} 50 Ill. App. 2d 52, 199 N.E.2d 802 (1964).
\textsuperscript{22} 35 Ill. 2d 351, 221 N.E.2d 410 (1966).
covery rules and provide a standard for appellate review of discretionary abuse. Discovery motions will be denied when the requested information is irrelevant or would violate the privileges of the opposing party.

The courts have thus effectuated the policy underlying the Supreme Court's discovery rules in civil cases. Parties are aided by the discovery of all relevant information necessary to present their case at trial, and limited only by objectively applied rules of exclusion. This same policy-oriented approach is also evidenced in the area of discovery under criminal procedure.

**Criminal Pre-Trial Discovery: A Safeguard Against Unfair Surprise and Prejudice**

*Felonies*

The defendant in a quasi-criminal prosecution is not entitled, as a matter of right, to the benefits and safeguards of the criminal discovery rules. The duality issue, therefore, has been decided against the defendant on both fronts, civil and criminal. This situation is particularly alarming in light of the basic concept underlying the right of discovery in criminal prosecutions.

Criminal discovery is geared toward the protection of the defendant. Its purpose is to provide him with all reasonable safeguards to ensure against unfair surprise, and to bring all otherwise relevant material before the court for a just determination of guilt or innocence.

A defendant's right to discovery in a criminal prosecution is governed by Supreme Court Rules 411 - 415. These rules are deemed applicable

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23. **ILL. REV. STAT.** ch. 110A, § 411-415 (1973). These discovery devices are granted to the defendant as a matter of right, while others, enumerated in **ILL. REV. STAT.** ch. 110A, § 412(h) (1973) are granted at the discretion of the court. The statute provides that:

> Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court in its discretion may require disclosure... not covered by this rule.

24. Juvenile proceedings are a good illustration of the problems created when a case falls somewhere in between the provisions governing civil and criminal cases. In People ex rel. Hanrahan v. Felt, 48 Ill. 2d 171, 269 N.E.2d 1 (1971), a juvenile defendant facing charges for rape and robbery claimed entitlement to civil discovery, as prosecutions under the Juvenile Court Act, **ILL. REV. STAT.** ch. 37, § 701-1 et seq. (1973) were civil in nature. The court of review rejected his argument and held that juvenile delinquency proceedings were neither civil nor criminal. The trial judge was left with complete discretion regarding allowable discovery in order to create a balance between the interests of both the minor and the community at large. The trial judge granted defendant's motion for discovery, but the case was remanded because he did so under the misconception of automatic application and not on the basis of discretion.
in all criminal cases wherein the accused is charged with an offense for which, upon conviction, he might be imprisoned in the penitentiary. Under these rules, the state is required upon motion made by a criminal defendant, to disclose an enumerated list of information and, in addition, any other matter which the court, in its discretion, deems relevant and necessary. These provisions apply to all defendants in felony cases, and to a limited extent, to misdemeanor defendants and to defendants in ordinance violations as defined by the 1970 amendment to the Illinois Municipal Code.

Also, as provided for in civil discovery, the rules limit disclosure if the court, in its discretion, finds that such would violate some area of privilege or is otherwise contrary to principles of justice.

The paramount consideration accorded to protection of the rights of defendants in felony cases was illustrated in People v. Jarrett, where the defendant appealed a conviction for theft and burglary, claiming that the state failed to give notice of their intent to call witnesses in rebuttal to his alibi. The court addressed the issue of whether the actions of the state constituted a denial of reciprocal discovery, causing unfair prejudice against the defendant and thereby necessitating remand for a new trial.

The court, deciding in the defendant's favor, held that although there is no requirement for a party to divulge the time at which, or

27. See note 34 infra.
29. ILL. Rev. Stat. ch. 110A, § 412(i) (1973) provides:
   (i) Denial of disclosure. The court may deny disclosure authorized by this rule and Rule 413 if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure which outweighs any usefulness of the disclosure to counsel.
31. See ILL. Rev. Stat. ch. 38, § 114-14 (1973), which required defendant to give notice of intent to present alibi defense at least five days before trial. This statute was held unconstitutional in People v. Cline, 19 Ill. App. 2d 466, 311 N.E.2d 599 (1974), affd., 60 Ill. 2d 561, 328 N.E.2d 534 (1975).
32. The defendant in Jarrett also claimed that the Illinois alibi rule was unconstitutional on the basis of the United States Supreme Court's decision in Wardius v. Oregon, 412 U.S. 470 (1973), but this contention was rejected. But see note 31 supra. The defendant prevailed because the court found that the state failed to comply with the rule itself as interpreted by the court in People v. Manley, 19 Ill. App. 3d 365, 311 N.E.2d 593 (1974), and not on the basis of the rule's unconstitutionality.
capacity in which, he intends to use a witness at trial, there is a continuing obligation to disclose the identity of a witness once an intent to call that witness is formulated. The court emphasized the necessity of maintaining strict safeguards in order to protect the defendant against unfair surprise and prejudice. When the actions of the state amount to an infringement upon the discovery rights of a criminal defendant, as illustrated in Jarrett, there may be grounds for reversible error. The defendant has absolute rights to discovery, limited only in specific instances and expandible by judicial discretion. This situation also exists, to a modified extent, in prosecutions for misdemeanors in Illinois.

Misdemeanors

A misdemeanor in Illinois is defined as: any offense for which a sentence to a term of imprisonment in other than a penitentiary for less than one year may be imposed. Defendants in these prosecutions are entitled to discovery, as a matter of right, under the rule adopted in People v. Schmidt. The trial judge in this case excluded evidence against the defendant when the state refused to comply with a pre-trial discovery order. The defendant was prosecuted for operating a motor vehicle while intoxicated, an offense which carried a fine, but no possible sanction of imprisonment. He was therefore restricted to those discovery devices provided by statute and case law in misdemeanor prosecutions.

The trial judge extended the scope of discovery in anticipation of the eventual automatic application of the criminal discovery rules to misdemeanor cases; in addition, the court believed that the

33. People v. Manley held that Supreme Court Rule 412(a)(i) required that the state must produce a list of intended witnesses without reference to the time a party intends to call them whether in chief or rebuttal. 19 Ill. App. 3d 365, 371, 311 N.E.2d 593, 598 (1974).
35. 22 Ill. App. 3d at 64, 316 N.E.2d at 661.
37. 8 Ill App. 3d 1024, 291 N.E.2d 225 (1972). In misdemeanor cases, the state requires that the defendant be furnished the following discovery as a matter of right: (1) a list of witnesses, Ill. Rev. Stat. ch 38, § 114-9, (1973); (2) any confessions by the defendant regarding his guilt or innocence, Ill. Rev. Stat. ch. 38, § 114-10, (1973); (3) in cases involving the operation of a motor vehicle while intoxicated, the results of a breathalyzer test, Ill. Rev. Stat. ch. 95-½, § 11-501(g). People v. Finley, 21 Ill. App. 3d 335, 315 N.E.2d 229 (1974).
power to extend additional discovery was a proper exercise of judicial discretion. The Appellate Court disagreed, and held that the approach taken by the trial judge was inconsistent with, and detrimental to, the rules governing misdemeanor prosecutions, and emphasized the policy behind their adoption. The court stated that the factors influencing the limitation of discovery rules in misdemeanor cases were (1) the vast number and less serious nature of these offenses necessitated a procedure by which they could be expeditiously disposed of and, (2) adherence to the rules for limited discovery would eliminate discretionary and diverse application of the general discovery rules in the various courts of the state.

As a result of the Schmidt decision, defendants in misdemeanor cases have a definite right to discovery, albeit such right is limited in comparison to that available in felony prosecutions. However, in the vast majority of quasi-criminal offenses, the defendant receives much less protection than that afforded to defendants facing charges for violations categorized as misdemeanors.

As previously stated, the majority of municipal ordinance violations do not impose penal sanctions upon conviction and therefore remain unaffected by the 1970 amendment to the Municipal Code which provided for application of criminal discovery rules where possibility of imprisonment exists. Defendants prosecuted under fine-only violations remain subject to the discretion by leave of court rule. The problem lies in the fact that conduct which may be characterized as a “quasi-criminal” offense under a municipal ordinance may be labeled a misdemeanor if prosecution is brought under a state statute.

For example, disorderly conduct is a common defense proscribed under municipal ordinances and is punishable only by a fine; but, under the state statute, this same offense is classified as a misde-


such hearing shall proceed in the court in the same manner as other civil proceedings.

The appellate court disagreed, citing Schmidt as authority for the proposition that automatic application of criminal discovery rules would thwart the purpose of the 1971 misdemeanor enactments. However, the court did not agree with the Schmidt decision regarding the issue of discretionary application of civil discovery rules. A trial judge may authorize further civil discovery upon a showing of good cause. Therefore, as the law now stands, defendants so charged may seek extended discovery under the civil, but not the criminal discovery rules by leave of court.
meanor. In the former case, the defendant is entitled to absolutely no discovery as a matter of right and may obtain the same only by leave of court. Because misdemeanor prosecutions carry a possible incarceration sanction upon conviction, however, a defendant charged under the state statute is entitled to certain discovery devices as a matter of right.\textsuperscript{3}

The sanction of imprisonment is the basis of distinction between these two violations. Under a state charge, the defendant is therefore afforded more rights than a defendant facing the same offense in violation of a municipal ordinance.

**Quasi-Criminal Offenses**

In *City of Danville v. Hartshorn*\textsuperscript{4} the Supreme Court of Illinois addressed itself, *inter alia*, to the issue of the defendant’s right to pre-trial discovery in a quasi-criminal prosecution. The defendant faced charges for resisting arrest, a typical disorderly conduct violation.

The defendant’s contention that he was entitled to pre-trial discovery as a matter of right under the rules of the Civil Practice Act\textsuperscript{45} did not prevail. The court, unwilling to deviate from existing appellate court decisions, reiterated the principle that ordinance violations were civil in form, but criminal in character.\textsuperscript{46} The offense carried only the imposition of a fine upon conviction, which placed it firmly into the quasi-criminal category. The duality\textsuperscript{47} inherent in the nature of the offense resulted in the denial of automatic application of the discovery provisions of the Civil Practice Act.

The violation itself contains elements of both a civil and criminal violation, but as neither statutory scheme is deemed to apply to quasi-criminal offenses, the right of the defendant to obtain pre-trial discovery in such cases is solely within the discretion of the trial judge.\textsuperscript{48}

\textsuperscript{3} See note 34 *supra*.

\textsuperscript{4} 53 Ill. 2d 399, 292 N.E.2d 382 (1973).

\textsuperscript{45} ILL. REV. STAT. ch. 110, §§ 1-100 (1973).

\textsuperscript{46} 53 Ill. 2d 399, 292 N.E.2d 382 (1973). This principle evolved from the following cases: Waylor v. City of Galesburg, 56 Ill. 285 (1870); Wiggins v. City of Chicago, 68 Ill. 372 (1873); City of Chicago v. Joyce, 38 Ill. 2d 368, 232 N.E. 2d 289 (1967).

\textsuperscript{47} The general scope of problems created by the dual nature of quasi-criminal prosecutions is discussed in Comment, *The Quasi-Criminal Ordinance Prosecution in Illinois*, 68 Nw. U.L. Rev. 566 (1973) [hereinafter cited as *Quasi-Criminal Ordinance Prosecution*]. The offenses referred to as quasi-criminal are fine only and typically include disorderly conduct, prostitution, housing code violations, vagrancy, etc.

\textsuperscript{48} This holding was in accord with People ex rel. Hanrahan v. Felt, 48 Ill. 2d 171, 269 N.E.2d 1 (1971). The court determined that the automatic application of civil practice discov-
The *Hartshorn* decision did little to erase the inequitites and confusion generated by the peculiarity of these hybrid prosecutions. It articulated no definitive standards or minimal guidelines by which the determination of the trial judge's bounds of discretion could be measured. It advanced no suggestions for an orderly procedure under which future defendants could be assured of a fair and unbiased avenue to procure the pre-trial information deemed requisite to an efficient and just disposition. Whereas under discovery provisions governing both felonies and misdemeanors defendants are guaranteed fixed rights with ascertainable limitations, it seems incongruous to give defendants in quasi-criminal prosecutions no discovery rights at all.

Defendants prosecuted for felonies are afforded discovery rights pursuant to the Supreme Court Rules; they are entitled to the protections so provided. Defendants facing prosecutions for misdemeanors and municipal ordinances where there are penal sanctions imposed are given those rights to discovery as defined by the *Schmidt* decision. Conversely, when an offense falls within the quasi-criminal category, the defendant may obtain discovery rights only by leave of court. The need for protection of the defendant’s rights in such cases is superseded by the court’s interest in expeditious disposition of quasi-criminal cases. This is a decision of policy which may be placing expediency before justice. Whether or not this policy decision can be justified raises serious questions regarding a quasi-criminal defendant’s guarantees to due process and equal protection of the law.

**The Collateral Consequences of Discretionary Discovery: The Equal Protection and Due Process Issues**

Equal Protection and due process overlap: legislation that is discriminatory or otherwise violative of equality may amount to a deprivation of due process.  

The due process restraints imposed upon the states through the fourteenth amendment provide that no state may:

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deprive any person of life, liberty, or property, without due process of law...^{51}

This, in effect, stands for the proposition that there are certain procedural as well as substantive requirements which must be met in order to insure the constitutional guarantees to a fair trial.

The right to equal protection guarantees an individual that he will be treated equally under the law, unless differential treatment is based upon a reasonable classification justified by some legitimate state interest.\(^2\)

The concepts of equal protection and due process stress that the ultimate goal of our judicial system is to place every defendant in a position of equality before the law.\(^3\) However, the quasi-criminal classification of municipal offenses has placed a particular group of defendants at a tremendous disadvantage. They have been denied both the privileges available to civil litigants and the constitutional protections available to criminal defendants in regard to the rights of discovery.\(^4\)

The question arises as to the legitimate interest of the state in denying these defendants the discovery rights afforded automatically to individuals under the civil and criminal rules. One factor...
influencing the establishment of the discovery by leave of court rule is that the great volume of these offenses necessitates a procedure by which cases may be disposed of expeditiously. The statistical data available in support of this contention, however, leaves room for considerable doubt as to whether this justification is indeed valid.

A second reason for adopting the rule of discretionary discovery lies in the belief that the effect of convictions for quasi-criminal violations are often regarded as less serious than those for criminal offenses. Consequently, they should command less of the court's time and attention. The fact that these offenses carry only the sanction of fines is often cited as a justification for this position. It should be noted, however, that there are serious collateral consequences which may result from a conviction for these offenses.

In *Mayer v. City of Chicago*, an indigent defendant wished to


56. In 1973, there were 266,653 misdemeanors and ordinance violations in the City of Chicago. A DECADE OF PROGRESS, ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS, ANNUAL REPORT TO THE SUPREME COURT OF ILLINOIS, 154 (1973). The method of disposition of a vast majority of these did not result in a determination by trial. Actually, of these 266,653 violations 235,889 were dismissed for various reasons: Discharged: 25,813; D.W.P.: 35,986; Leave to File Denied: 98,993; Non-Suit: 24,153; Nolle Prosqui: 8,444; Stricken Off-Leave to Reinstate: 41,933; Other: 566. The cases that resulted in sentences consisted of 10,844 misdemeanors and 21,920 ordinance violations. Together, they comprised roughly 13% of those violations originally recorded.

There is no data compiled regarding the number of these 30,764 cases which actually went to trial. The defendant may merely plead guilty and receive a sentence.

The number of actual trials cannot be determined but the number of these cases in which leave to appeal was filed was only 100. This figure was obtained with the help of Mr. Dominick Grieco, supervisor in the Office of the Clerk of the Circuit Court of Cook County. This figure bears margin for error as its finding necessitated a search through several hundred pages of the appellate record of Branch 91 Appeals-Circuit Court of Cook County-Municipal Division, January, 1973 - December, 1973. Of these, only 10 were appeals of city disorderly convictions, while the remaining 90 consisted of separate cases brought against repeated offenders under the City of Chicago's obscenity ordinance.

Although figures for actual trials are unavailable, the fact that there were only 100 appeals, only 10 of which involve the city disorderly statute, Chicago, Ill., Municipal Code ch. 193 (1973), shows that the prophesy of judicial overload if full discovery were permitted in quasi-criminal prosecutions may be unfounded.

The costs of discovery are prohibitive. The expedient disposal of the majority of these prosecutions will not be affected by allowing those individuals with meritorious claims of innocence access to discovery.

The quasi-criminal classification has resulted in a needless restriction upon the scope of discovery as both the civil and criminal discovery provisions have inherent limitations and the trial judge may also deny discovery motions where there is no showing of relevancy or good cause.

57. 404 U.S. 189 (1971).
appeal a conviction on two counts of disorderly conduct which resulted in a fine of $500. He moved for free transcripts on the basis of his indigency, but this motion was denied because the rule for acquisition of such transcripts was held applicable solely to felony cases. 58

The defendant contended that the rule was an unconstitutional violation of his fourteenth amendment rights to equal protection and due process of law, as it denied him an equal right to seek appellate review. 59 The Supreme Court of the United States affirmed this contention:

The distinction between felony and nonfelony offenses drawn by rule 607(b) can no more satisfy the requirements of the Fourteenth Amendment than could the like distinction in the Wisconsin law, held invalid in Groppi v. Wisconsin, 400 U.S. 505 (1971), which permitted a change of venue in felony but not in misdemeanor trials. 60

In addition, the Court recognized that there are other effects which may occur as a consequence of convictions for petty offenses which should not be minimized. The imposition of a fine may be a great burden upon an individual who can ill-afford to pay it. It may lead to difficulties in obtaining future employment, and to embarrassment or jeopardy in a present job if garnishment proceedings are instituted. These consequences raise serious due process considerations.

There is no constitutional right to discovery. It is, rather, a privilege bestowed upon the parties to a judicial proceeding by legislative enactment. The rights accorded the citizens of the state, however, may not arbitrarily be denied to a specific class of persons. There are relevant constitutional restraints which restrict the power of the

58. Ill. Rev. Stat. ch. 110A, § 607(b) (1969). This rule provided that:

In any case in which the defendant is convicted of a felony, he may petition the court . . . for a report of proceedings at his trial.

This rule was amended in 1971 to apply to all defendants facing possible imprisonment for more than six months. Ill. Rev. Stat. ch. 110A, § 607(b)(1973).

59. In Griffin v. Illinois, 351 U.S. 12 (1956), the United States Supreme Court held that there was no logical relationship between the guilt or innocence of a defendant and his ability to bear the burden of trial costs. See also Rinaldi v. Yeager, 384 U.S. 305 (1966).

60. 404 U.S. at 195-96. The value of transcripts as a discovery device and the right of any defendant to obtain them for purposes of appeal is illustrated by the following decisions. In Britt v. North Carolina, 404 U.S. 226 (1971), Justice Douglas stated in dissent that the transcript of a prior mistrial is of value to the defendant as a discovery device in trial preparation and for use at trial for the impeachment of witnesses. 404 U.S. at 228. See also Rinaldi v. Yeager, 384 U.S. 305 (1965), where a law requiring only unsuccessful appellants to pay for transcripts was a violation of equal protection.
state to extinguish an entitlement whether it is classified a right or a privilege.\textsuperscript{61}

Both the possibility of property loss in the nature of penal fines, and the far-reaching, adverse consequences which result from conviction of a quasi-criminal offense indicate that defendants are denied procedural due process whenever their rights to present an adequate defense are abridged by discretionary denial of requested discovery devices.

In addition, the Court in \textit{Mayer} also emphasized that laws which allow defendants to experience discriminatory treatment at trial produce a general hostility toward the courts of the state. The Study Committee on Quasi-Criminal Cases recognized the fact that arbitrary and discriminatory application of discovery by leave of court is prevalent throughout the State.\textsuperscript{62} Judges may grant some defendants discovery devices under the civil and/or criminal rules while categorically denying others any form of discovery.

Statutes conferring different rights upon defendants predicated solely upon mere categories of offenses have been held invalid by the Supreme Court of the United States on both due process and equal protection grounds.

Twenty years ago, an indigent defendant in Illinois could obtain free transcripts for purposes of appeal only upon the condition he first be sentenced to death.\textsuperscript{63} This law, and many others similar in principle\textsuperscript{64} have since been held unconstitutional. A mere classification is insufficient justification to deny an individual his full rights under the judicial process.

In \textit{City of Chicago v. Mayer},\textsuperscript{65} the defendant, a third-year medical student, was convicted of disorderly conduct under a municipal ordinance for interfering with a police officer in the performance of his duty. The conduct in question consisted of his refusal, both verbal and physical, to allow a police officer to move an injured man.

On appeal, the defendant asserted that there was reversible error in the trial judge's refusal to tender certain self-defense instructions

\textsuperscript{62} See note 9 \textit{supra} and accompanying text.
\textsuperscript{63} See Griffin v. Illinois, 351 U.S. 12 (1956), where defendant claimed Illinois Supreme Court Rule 65, ILL. REV. STAT. ch. 110, § 101.65 (1955), violated his equal protection and due process rights.
\textsuperscript{65} 56 Ill. 2d 336, 308 N.E.2d 601 (1974).
to the jury,\textsuperscript{66} which would have been available to the defendant as a matter of right under the criminal code, but were held inapplicable to municipal disorderly prosecutions.\textsuperscript{67}

The Supreme Court of Illinois, finding for the defendant, refused to accept the argument that the instruction should not be available to defendants facing charges for non-penal violations. By the court's reasoning, if such a defense were available to one who committed a serious crime, there was absolutely no logical basis upon which to forbid its use of a defendant facing charges for a violation less serious in nature.

Applying this same reasoning to the issue of discovery, is there any rational basis to refuse the use of discovery devices to quasi-criminal defendants when, under a municipal statute, only the penalty is considered less serious in nature and not the offense itself? If this same offense was prosecuted under the state statute prohibiting disorderly conduct, the defendant would be entitled to automatic application of discovery rights pursuant to the rule governing misdemeanors. Under the quasi-criminal rule however, he is entitled to only those discovery benefits conferred by the court. In this situation defendants accused of the same prohibited conduct, are afforded different treatment under the law. The Illinois legislature and courts, having established the right to discovery, appear to be violating the rights of defendants in quasi-criminal prosecutions on the basis of a mere classification.\textsuperscript{68}

At the very least, due process implies that a defendant is entitled to reciprocity. The state should not be allowed to assume an advantageous position in preparing its case against him.

It was on the basis of this principle that the Supreme Court in \textit{Wardius v. Oregon}\textsuperscript{69} ruled that the due process clause of the four-

\textsuperscript{66} Instructions tendered by the defendant but refused, were based upon ILL. REV. STAT. ch. 38, §§ 7-13 (1971), reading as follows:

Conduct which would otherwise be an offense is justifiable by reason of necessity of the accused was without blame in occasioning . . . the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct.

\textsuperscript{67} 56 Ill. 2d 366, 308 N.E.2d 601 (1974). Only those municipal ordinances enacted under section 1-2-1.1 of the Municipal Code or section 6(e) of Article VII of the Constitution are considered to be violations of penal statutes. \textit{Id.}


This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts.

\textsuperscript{69} 412 U.S. 470, 475 (1973).
teenth amendment\textsuperscript{70} required that the state's alibi rule provide reciprocal discovery rights. The Court, in recognition of the important role liberal discovery plays in perpetuating justice stated:

In absence of a strong showing of state interest to the contrary, discovery must be a two-way street.\textsuperscript{71}

The rule of discretionary discovery in quasi-criminal cases in Illinois fails to incorporate this minimal due process requirement. Theoretically, under the standardless discretionary discovery rule, the state may be permitted to obtain discovery while the same request made by the defendant is subject to denial. Justice is wanting when an individual is subject to judicial proceedings stripped of his constitutional safeguards.

\textbf{CONCLUSION}

There are definite constitutional limitations upon the power of the state to terminate certain rights or privileges of its citizens.\textsuperscript{72} In order to do so, there must be some legitimate state interest, the value of which outweighs any incidental infringements upon equal protection or due process rights.\textsuperscript{73}

Quasi-criminal offenders are, as a class, being denied these basic rights. The state of the law regarding discovery rules in Illinois as applied to quasi-criminal prosecutions is undefined and subject to arbitrary application, placing these defendants in a disadvantaged position before the law. The state cannot justify a constitutional infringement by placing expediency before justice, especially when there is doubt as to the merit of the claim of expediency.\textsuperscript{74}

There is no legitimate reason to deny defendants charged with fine-only violations at least the same minimum discovery rights available to defendants in cases of misdemeanors. Quasi-criminal violations are criminal in nature. An individual prosecuted under this classification does not face the possibility of imprisonment, but this basis of distinction cannot be justified in light of the adverse consequences which may result from conviction of a quasi-criminal offense. These defendants should not be denied the opportunity to protect their interests in judicial proceedings. An absolute right to

\textsuperscript{70} \textit{U.S. Const. amend. XIV.}


\textsuperscript{74} It seems unlikely that full discovery would lead to a substantial increase in the number of trials for quasi-criminal prosecutions. The expense of litigation is a factor which a defendant with little merit to his claim of innocence will surely consider.
discovery as provided for in misdemeanor prosecutions seems the best solution to this problem; defendants in quasi-criminal cases should not be treated unequally in the eyes of the law when the conduct constituting an offense is identical, but merely the form of punishment differs.

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