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THE FACE OF CRIMINAL JUSTICE IN CALIFORNIA*

By HENRY RAMSEY

THE FACE OF JUSTICE is a white face. About that there should be no question or disagreement. But to the Black man, woman or child accused or convicted, justice has many faces. It is a racist face. It is a face of financial exploitation. It is a hard, brutal, vicious face. It is an insensitive and cold face. It is a hypocritical face. It is the face of injustice. It is a face which, like the gates of hell in Dante's *Inferno*, seems to say, "all hope abandon, ye who enter here."¹ If you hold the position that this description of "justice" is too harsh, that it is unfair or inaccurate, then come walk with me through this house which the white man has labeled "Justice."

*This article was derived from a position paper delivered by the author at the California Black Leadership Conference on June 26, 1971. The Conference was held at the University of Southern California, Los Angeles and was jointly sponsored by the Black Press of California and the Center for Social Action of the School of Public Administration, University of Southern California.

1. Dante Alighieri, *The Divine Comedy*, Canto III, line 9, (Henry F. Cary transl. 1937).

2. See The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: *The Police* (Washington: U.S. Government Printing Office, 1967) at 125:

"it has often been stated that policing a community is a personal service of the highest order, requiring sterling qualities in the individual who performs it. . . . Few professions are so peculiarly charged with individual responsibility. Officers are compelled to make instantaneous decisions — often without clear-cut guidance from a legislature, the judiciary, or from departmental policy — and mistakes in judgment could cause irreparable harm to citizens, or even to the community. . . . While innumerable commissions and expert observers have long recognized and reported this need, communities have not yet demanded that officers possess these qualities, and personnel

THE POLICE

ON THE FIRST FLOOR we find the police. We find men whose educational level and quality of learning are seriously deficient in relationship to the authority and power of life and death which they exercise over Black people and the Black community on an almost hourly basis.²

Not only are the police inadequately trained technically to perform a service to the community, but they perceive — and the Black community perceives — their function as that of an army of occupation; not as civil servants employed to serve the needs of the neighborhood or community where they patrol, but rather as gunmen hired to keep Black

standards for the police service remain low."

Again on page 126:

"The need for highly educated personnel was recognized as early as 1931 in the report of the Wickersham Commission. But despite the admonition of that Commission to improve low entrance standards, educational requirements remain minimal in most departments. . . . Although minimal educational requirements have not prevented some persons with higher academic achievement from pursuing careers in law enforcement, these exceptions are few in number. In a survey conducted of 6,200 officers in 1964, only 30.3 percent had taken one or more college courses and only 7.3 percent possessed a college degree. A more recent survey of over 5,700 police officers employed by police agencies in the Metropolitan Detroit survey, it was further shown that nearly 13 percent of the officers had not received high school diplomas.

In discussing so-called educational or training programs for law enforcement officers, the Commission at page 127 declared:

"The Commission's examination of these programs disclosed that many of them are highly vocational in nature and are primarily intended to provide technical skills necessary in performing police work. College credit is given, for example, for such courses as traffic control, defensive tactics and patrol procedures."

people in their place.³ It is believed by many Blacks that in the police officer's mind: "everything has a place and everything in its place" has become "every nigger has a place and every nigger in his place." The most powerful and moving statement of this view is in James Baldwin's *Nobody Knows My Name* as quoted by Jerome Skolnik in his study of a California urban police department:

" . . . The only way to police a ghetto is to be oppressive. None of the Police Commissioner's men, even with the best will in the world, have any way of understanding the lives led by the people they swagger about in twos and threes controlling. Their very presence is an insult, and it would be, even if they spent their entire day feeding gumdrops to children. They represent the force of the white world, and that world's criminal profit and ease, to keep the Black man corralled up here, in his place. The badge, the gun in the holster, and the swinging club make vivid what will happen should his rebellion become overt . . .

It is hard on the other hand, to blame the policeman, blank, good-natured, thoughtless, and insuperably innocent, for being such a perfect representative of the people he serves. He, too, believes in good intentions and is astounded and offended when they are not taken for the deed. He has never, himself, done anything for which to be hated — which of us has? And yet he is facing, daily and nightly, people who would gladly see him dead, and he knows it. There is no way for him not to know it: there are few things under heaven more unnerving than the silent, accumulating contempt and hatred of a people. He moves through Harlem, therefore, like an occupying soldier in a bitterly hostile country; which is precisely what, and where he is, and is the reason he walks in twos and threes."⁴

It should be noted that the policeman on the beat sees his job to be one of maintaining tranquility and perpetuating the established routine. Any person out of the ordinary is suspicious; if he is reasonably deviant, then he is potentially criminal.⁵ A Black must never question the police officer's authority to stop him.⁶ He must also be somewhat cautious about questioning his right to search his person. The quickest route to jail, or in some cases, the hospital, is to challenge the

policeman's authority. As stated by Paul Chevigny in an excellent study of police abuses in New York City, "the challenge to police authority continues as a chief cause of the use of force in all urban police departments."⁷ To the California Black who shows defiance of asserted police authority, the verbal abuse or beating and the arrest are only the beginning of a special sort of hell here on earth. He quickly finds that he is charged with a violation of the holy trinity of California police work: California Penal Code sections 415, 148 and 243.⁸ Section 415 provides, in part, that "Every person who maliciously and wilfully disturbs the peace or quiet of any neighborhood or person, by loud or unusual noises, or by . . . offensive conduct, or threatening, . . . quarreling, challenging to fight, or fighting, or . . . use any vulgar, profane,

3. C. Werthman and I. Piliavin, "Gang Members and The Police"; in *The Police: Six Sociological Essays* (J. Bordua, ed. 1967) at 75-85.

4. Quoted in J. Skolnik, *Justice Without Trial*, (1966) at 49.

5. See P. Chevigny, *Police Power* (1969) at 114: "The police, in common with most other conventional citizens, feel an uncomprehending fear of the deviant, and find it difficult to think of him as an individual. They call deviants 'germs', as a policeman was once heard to say of the drifters in Times Square, or 'bedbugs' who 'should be exterminated', as an officer said of the hippies in one of our cases." See also note 7, *supra*.

6. See e.g., *People v. Curtis*, 70 Cal. 2d 347 74 Cal. Rptr. 713, 450 P.2d 33 (1969): "Defendant was arrested on the night of July 9, 1966 by Lt. Riley of the Stockton Police Department. Riley was investigating a report of a prowler and had received a cursory description of the suspect as a male Negro, about six feet tall, wearing a white shirt and tan trousers. While cruising the neighborhood in his patrol car, the officers observed defendant, who matched the foregoing general description, walking along the street. Riley pulled up next to defendant and called to him to stop; defendant complied. The officer then emerged from his patrol car in full uniform and told defendant he was under arrest and would have to come along with him. Riley reached for the arm of the defendant, and the latter attempted to back away. A violent struggle ensued, during which both men were injured, and the defendant was finally subdued and taken into custody by several officers." See also *People v. Jones*, 8 Cal. App. 3d 710; 87 Cal. Rptr. 625 (1970); J. Skolnik, *The Police and the Urban Ghetto*, Research Contributions of the American Bar Foundation, No. 3, at 67 (1968).

7. Chevigny, *Police Power* (1969) at 60.

8. Not only is he charged with serious criminal charges, but when he states that he wishes to complain about the police misconduct, he is told to go to the police and tell them about it. He is told — and told with a straight face — that the police will investigate the complaint about the police, that the police will decide whether or not the police have in fact engaged in misconduct, the police will decide what penalty, if any, the police should suffer. He is also told that this is fair, just and reasonable.

or indecent language within the presence or hearing of women or children, in a loud and boisterous manner, is guilty of a misdemeanor."⁹ Section 148 provides: "Every person who wilfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duties of his office . . . is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment."¹⁰ Section 243 provides, in effect, that any battery, that is to say, any wilful and unlawful use of force or violence, upon a police officer is a felony and is punishable by "imprisonment in the county jail not exceeding one year or by imprisonment in the state prison for not less than one nor more than 10 years."¹¹ The situation giving rise to the 415-148-243 arrest is classic and is probably repeated a dozen times each day throughout the state of California. It usually starts with a Black man or woman exhibiting what the police call defiance to authority.¹² The person usually makes some inquiry of the police regarding the propriety or necessity of an arrest. Usually the person being arrested is a friend, neighbor or family member.¹³ The other situation is when one fails to respond to a police order or command quickly enough to satisfy the officer. For example, this latter situation might arise when an officer investigating a traffic accident tells a crowd to move back or where an officer might be clearing an area, telling everyone to move out. A young man doesn't run or appears to be somewhat slow in his response. In either of these situations the police officer usually responds with a hostile and aggressive attitude. The officer perceives this as asserting his authority and being in command.¹⁴ The Black perceives it as a denial of his right to make inquiry, of his right to question the assertion of authority or, in the latter example given, a denial of his right to dignity,¹⁵ and will therefore normally show verbal defiance in this situation. The policeman at this point escalates the confrontation by attempting to arrest the Black, and if

further defiance is shown, will beat him into submission if possible. However, as noted by Chevigny in discussing a case where a Black man took a police officer's billy club, the officer is not always successful: "This case, and others investigated by my office in which a policeman's weapon was taken, have one striking thing in common: in every one it was a Black man who took the weapon. Only ghetto people are experienced and daring enough in street fighting, or feel enough animosity toward the police, even to consider running the risk entailed."¹⁶ However, in most cases if resistance is shown to the arrest, and in other cases where no resistance is shown to the arrest but the police officer feels that the Black has been especially "uppity" in his demeanor and verbal defiance, a brutal beating will be administered. This pattern is well known to the poor and the Black and is rapidly being learned by the radicals and activists on university campuses. Chevigny knows the same phenomenon from his research. He states:

"In the paradigmatic street encounter there are three steps:

1. Police perception of a challenge to authority . . .

2. Police demand for submission. This is most commonly enshrined in the question, 'So you're a wise guy, eh?' In my office we sat through many lengthy and excited complaints listening only for the words "wise guy," knowing well that an arrest would have occurred shortly after they were uttered.

3. Response to the demand. The citizen in effect either admits that he is a wise guy, or denies it by complying with the police demand, if it involves an action like moving along, or by apologizing to the policeman if no action is demanded.

9. Cal. Penal Code § 415.

11. Cal. Penal Code §§ 242 and 243.

10. Cal. Penal Code § 148.

12. See e.g., *People v. Curtis*, note 6, *supra*.

13. See e.g., *People v. Jones*, 8 Cal. App. 3d 710, 87 Cal. Rptr. 625 (1970) [friend]; *People v. Cannedy*, 270 Cal. App 2d 669, 76 Cal. Rptr. 24 (1969) [relative].

14. Werthman and Piliavin, "Gang Members and The Police"; in *The Police: Six Sociological Essays* (1967), especially at 85-98; see also Chevigny, *Police Power* (1969) at 88-98.

15. *Id.*

16. Chevigny, *Police Power* (1969) at 72.

People in minority and outcast groups, who are the most likely to be subjected to a police demand for submission, at the same time find it hardest to comply with it. The middleclass man thinks nothing of saying, "Sorry, officer," but to the oppressed and downtrodden those words are galling. It is especially hard for a Negro, for whom such an act seems just one more of submission. The combination of being an outcast (step one) and refusing to comply in step three is explosive; thereby hangs the tale of many police brutality cases."¹⁸

However, as indicated, the beating and arrest is only the first step in the 415-148-243 situation, for a report must be written in order to obtain a formal complaint from the district attorney's office. 415-148-243 police reports are classic¹⁹ in their similarity and could really be mimeographed in advance. A police report describing any of the situations described above would normally read as follows:

R.O. [reporting officer] was investigating a traffic accident at 4th and Main Streets. A large crowd of NFA's [negro, female, adults], NMA's [negro, male, adults] and NMJ's [negro, male, juveniles] gathered. R.O. advised the crowd to step back onto the curb inasmuch as the crowd's being in the street was beginning to interfere with R.O.'s investigation. Defendant, NFA, stated in a loud voice, "Motherfucking pig, we don't have to move anywhere." R.O. advised defendant that she should move back onto the sidewalk and further advised defendant that if she continued to use profanity — there were children within 20 feet of defendant — in the presence of women and children, R.O. would have to place her under arrest for 415 P.C. Defendant again stated in a loud voice, "Is this far enough, motherfucker?" and moved backward to a position approximately two feet from the curb. R.O., noting the large crowd, called for assistance. While R.O. was waiting for assistance, defendant continued to use profanity and to act in a loud and boisterous manner. R.O. advised defendant that she was under arrest for 415 P.C. Defendant said, "Fuck you, pig," and attempted to resist arrest. Reasonable force was used to overcome the suspect's resistance and suspect was transported to general emergency and subsequently to the hall of justice. Defendant was booked on 415, 148 and 243. R.O. suffered a torn

shirt, laceration of the left shin and bruises of the right hand.²⁰

This particular report is known by thousands of Blacks from personal experience.

On the basis of the police report, the district attorney issues a criminal complaint charging a violation of Sections 415, 148 and 243 of the California Penal Code. When the case reaches court, the defendant observes the officer and his colleagues take the witness stand and swear under oath to testimony which is identical to what they have written in their report. Again, I must turn to *Police Power* for an excellent description and explanation:

Once an arrest is made, the police begin to consider what testimony is necessary for a conviction, and what charges are necessary to create pressure on the defendant for a plea of guilty . . . Once the police have arrested a man, particularly under circumstances when charges have been made against an officer, the only real objective is conviction, and the police feel that they have made a mistake if they fail to obtain the conviction, not if they lied to obtain it.²¹

And so it goes on the first floor of the house of justice. We have not even looked into the closet where selective enforcement, confidential informers, the fleeing felony rule, and stop-and-frisk are kept.

THE JUVENILE COURT

THE JUVENILE COURT is found on the second floor in the house of justice. This is a court where, until a few years ago, a person under the age of 18, and in some cases between 18 and 21, could be sent to prison in many states without even the barest requirements of due process being observed.²² There was no requirement that an accused minor have a lawyer or, where a lawyer was demanded but could

18. *Id.* at 137.

19. Classic is defined in Webster's Collegiate Dictionary (7th ed. 1971) as "characterized by simple tailored lines in fashion year after year."

20. See e.g., the summary of the testimony in the case of *People v. Jones*, 8 Cal. App. 3d 710, 87 Cal. Rptr 625 (1970) at 713-14.

21. Chevigny, *Police Power* (1969) at 142.

22. See *In Re: Gault*, 387 U.S. 1, 87 Sup. Ct. 1428, 18 L. Ed. 2d 527 (1967).

not be afforded, that one be provided.²³ There was no requirement that a family be told that they had a right to have a lawyer.²⁴ Prior to 1967, in most states, a juvenile's mother and father would never be told that a lawyer ought to be consulted. They would be told that the probation officer was there to help them; however, *only if they were cooperative*.

Until 1967 there was no due process requirement that an accused juvenile have an opportunity to face his accusers.²⁵ He need not be given an opportunity to cross-examine the person or persons who would give testimony or documentary evidence against him.²⁶ There was no due process requirement that the factual charges be proven beyond a reasonable doubt and to a moral certainty.²⁷ Since juvenile hearings are civil matters and not criminal actions, all state courts declared that procedural niceties required by the due process clause in criminal actions need not be afforded the juvenile defendant.²⁸ However, in the case of *In Re: Gault*, [387 U.S. 1, 87 Sup. Ct. 1428, 18 L. Ed. 2d 527 (1967)] the United States Supreme Court said:

"Juvenile court history has . . . demonstrated that unbridled discretion, however, benevolently motivated, is frequently a poor substitute for principle and procedure . . . The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individual treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness . . . "Due process is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the State may exercise. As Mr. Justice Frankfurter has said: 'The history of American freedom is, in no small measure, the history of procedure.' But, in addition, the procedural rules which have been fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts from the conflicting

welter of data that life and our adversary method present. It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data. "Procedure is to law what 'scientific method' is to science."

And so in 1967, we find that the juvenile is made procedurally almost whole. He still does not have a right to a jury trial because of the opinion of the United States Supreme Court in *McKeiver v. Pennsylvania* that "compelling a jury trial might remake the proceeding into a fully adversary process and effectively end the idealistic prospect of an intimate, informal protective proceeding"²⁹ and that a "jury trial would entail delay, formality and clamor of the adversary system and possibly a public trial."³⁰ There is nothing in the opinion, however, which prohibits a state from having a jury trial on the adjudicatory issue, it simply declares that the federal constitution does not require one.³¹ Nevertheless, an accused juvenile does now have the protection of a constitutional right to notice of the charges (that is to say, the right to know not only the name or title of the charge, but the specifications).³² Not only must he be given notice of the charges, but if he denies the charges, he must be given an adequate time to prepare his defense.³³ He must be told that he has the right to representation and that if he does not have funds with which to hire a lawyer, the state must provide him with a lawyer in a serious case.³⁴ What is a serious case? Probably any case where the child could be committed to a penal institution for any significant period of time.³⁵ He has

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *In Re Winship*, 397 U.C. 358, 90 Sup. Ct. 1068, 25 L. Ed. 2d 368 (1970).

28. *McKeiver v. Pennsylvania*, 403 U.S. 528, 91 Sup. Ct. . . . , 29 L. Ed. 2d 647 (1971); *In Re: Daedler*, 194 Cal. 320, 228 Pac. 647 (1924).

29. *Id.* at 545.

30. *Id.* at 550.

31. *Id.*

32. *In Re: Gault*, note 25, 387 U.S. 31-34, *supra*.

33. *Id.*

34. *Id.* at 34-42.

35. *Cf. In Re: Gault*, note 25, *supra*, and *In Re: Winship*, note 30, *supra*.

the right of confrontation of witnesses.³⁶ He has the right of cross-examination.³⁷ Through cross-examination he may elicit additional information which places his conduct in a different perspective. Cross-examination may reveal that the witness is guessing, has shaded the truth and, in rare instances, that the witness is lying. This is not to say that it is rare that witnesses lie, but that it is rare that lying is exposed by cross-examination. He has a right against self-incrimination.³⁸ Finally, due to the case of *In Re: Winship*, [397 U.S. 358 (1970)] the state must prove its case beyond a reasonable doubt and to a moral certainty in cases where the allegation of misconduct by the juvenile is in effect an allegation that he has committed a criminal act.

With the exception of the *Winship* doctrine and certain constitutional principles regarding questioning of suspects,³⁹ all of the procedural protections enumerated in the *Gault* case have existed — at least on paper — in California since 1961.⁴⁰ So, the wart perceived upon the face of justice by the California juvenile is not so much inadequate procedural protection but rather the existence of section 601 of the California Welfare and Institutions Code which provides:⁴¹

Any person under the age of 21 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of . . . school authorities . . . or any person who is a habitual truant from school within the meaning of any law of this State, or who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life, is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court.

California juveniles are starving for justice because under the authority of the Welfare and Institutions Code, Section 625, any peace officer, which means any police officer — sheriff, highway patrolman, city policeman — can arrest a minor and take him into custody if he has reasonable cause⁴² to believe that the minor is engaging in or has engaged in acts which fit the definition of a crime or falls

within the terms of "in danger of leading an idle, dissolute, lewd or immoral life." It is these two sections of the California Welfare and Institutions Code, Sections 625 and 601, which allow police to harass youth; which authorize police to lawfully challenge a young Black man's quest for dignity. It is the strut, the quick turn of the phrase, the "outta sight" dress which say to the young Black that he has value — that he is "saying something."⁴³ To the beat cop in his patrol car, however, these mannerisms are strong indicators that the minor is possibly in danger of leading an idle life and probably a dissolute one.⁴⁴ The officer must check the minor out.⁴⁵

The greatest deprivation in the juvenile court, however, lies in the complete bankruptcy of the so-called probation program. In the County of Los Angeles the average case load for each probation officer in the juvenile division is 75.⁴⁶

36. *In Re: Gault*, note 25, 387 U.S. 56, *supra*.

37. *Id.*

38. *In Re: Gault*, note 25, 387 U.S. 42-57, *supra*.

39. The rights against self-incrimination set forth in *Miranda v. Arizona*, 384 U.S. 436, 86 Sup. Ct. 1602, 16 L. Ed. 2d 694 (1966) were made applicable to juvenile proceedings during the adjudicatory stage of the juvenile process, where commitment to a state institution may follow. Prior to *Miranda v. Arizona*, California did not require that *Miranda* warnings be given before interrogation. See California Welfare and Institutions Code, Sections 625 and 627.5 which were adopted in 1967 and codify the principles of *Miranda*.

40. See California Welfare and Institutions Code, Sections 627 [notice to parent or guardian]; 633 [informing minor as to reasons for custody, nature of proceedings, right to counsel]; 634 [appointment of counsel for indigents]; 658 [notice of hearing] 664 [right to subpoena witnesses]; 679 [right to be present at the hearing]; 700 [right for continuance in order to prepare case].

41. The authority granted the police officer under Section 600 of the California Welfare and Institutions Code becomes all the more abusive—a greater wart on justice's face—when we consider the actions and attitude of the police in dealing with juveniles. See notes 3 and 17, *supra*.

42. Reasonable cause is defined as "such a state of facts as would lead a man of ordinary care and prudence to believe, or entertain an honest, strong, suspicion that the person in question is guilty of a crime." *People v. Scott*, 170 Cal. App. 2d 446, 452; 339 P.2d 162 (1959).

43. See Werthman and Piliavin, "Gang Members and The Police," in *The Police: Six Sociological Essays* (1967) at 75-98.

44. *Id.*

45. See Skolnik, *Justice Without Trial* (1966) at 45-48, especially 46. See also Werthman and Piliavin note 46, *supra*.

46. Conversation had with Pat Huasicker, Community Relations, Los Angeles County Juvenile Probation.

In San Francisco it is 60;⁴⁷ in Alameda County it is 55.⁴⁸ In San Diego County it is 80.⁴⁹ How much counseling can a probation officer give to each of his probationers in 26 minutes per month? What time does he have to get to know the special and individual needs of his probationers, considering the fact that a portion of his time is consumed in verifying facts and writing reports?

The cosmetic of rhetoric cannot hide the inflammations which are caused on the face of justice by the hypocrisy of a system whereby a probationer who steals money to meet needs and wants shared by most of his peers — in fact defined by his peers as necessities — is sentenced to the California Youth Authority [prison] as recalcitrant while, at the same time, his history shows that his probation officer has had no time to aid him in finding a job. His history shows that, in most instances, there was not even a job to be found. As stated earlier, the probation officer has almost no time for counseling. The family model presented to the probationer is the same that existed before he was convicted. The educational environment that the probationer is either returned or released to is the same one that he had to confront on a daily basis before his arrest and conviction. The probationer and his physical and social environment are basically the same immediately after arrest and conviction as they were immediately before arrest and conviction. As a bare minimum, what is, or should be, different is the intervention or interposition of the probation department.

One can certainly reasonably argue that when the court places a "convicted" juvenile delinquent on probation, it is in effect saying: "we know that you must bear some of the responsibility for your behavior but we also recognize and acknowledge that there are substantial environmental and social barriers to your being able to effectively function — not as we would have you be, but as you are — within the present societal setting. Because of this, we have established a

probation department which will assist you to overcome the social and environmental barriers which make substantial contributions to your delinquent behavior. If you reject this assistance and continue your delinquent behavior, then we can only conclude that you are recalcitrant and incarcerate you in our prison system." There is an obvious implied promise in this "societal statement": "the probation department will aid and assist the juvenile in some meaningful way to cope with the social and environmental problems with which he was, and is, confronted immediately before and after conviction." If such a promise is not implied, then the entire process of placing a juvenile delinquent on probation is a sham and a lie. This promise of aid and assistance, of necessity, requires that adequate professional staff be retained and substantive programs be developed and implemented. These programs should, at a minimum, relate to employment and psychological, psychiatric, and educational counseling. They should also include efforts to aid the minor and his family to mutually relate to each other and to assist the minor and school personnel to relate to and cooperate with each other in developing a meaningful and realistic educational program for the youth. Possibly, where relevant, the probation department should attempt to bring about some appreciation on the part of the police of the delinquent's situation and some understanding of the policeman's role on the part of the delinquent. At present, however, such is rarely the case. By returning the juvenile to the same social and environmental situation that he came from before arrest and conviction without any significant supportive services from the probation department, the court almost insures that the delinquent will make a quick contribution to the rate of recidivism.

47. Conversation had with Miss Richmond, Assistant Chief Probation Officer, City and County of San Francisco.

48. Conversation had with Mr. Denning, Research Director, Alameda County Juvenile Probation.

49. Conversation had with Mr. Watson, Research Analyst, San Diego County Probation Office.

In a world where Tarzan movies reign on T.V., where there is an unemployment rate of approximately 45% among black youth,⁵⁰ where schools are turning children off at the elementary level,⁵¹ where preventive detention and no-knock warrants are put forward as progressive steps in law enforcement,⁵² where Blacks on welfare are made to feel that it's their fault that they are poor and not the economic policies of the government;⁵³ in this kind of world, do 26 minutes per month per "Black product of this kind of world" constitute "justice"? When one views the role of the juvenile court from this perspective, he should be able to clearly see that the juvenile system is nothing more than a process whereby alienated, deceived, abused, and mistreated youths are put through a sham procedure. The procedure is a sham because any fool can predict that the product of our ghettos will be persons "who persistently or habitually refuse to obey the . . . orders or directions . . . of school authorities;" who are "in danger of leading an idle, dissolute, lewd, or immoral life"; that this product of the ghetto will violate some "law of this state or of the United States or [some] ordinance of any city or county of this state defining crime." Knowing that the economic, political and social conditions in this country can do nothing else but drive our Black youth to this end, you would think that the juvenile court and probation department would be designed to aid the minor and his family to attack the inequities of the system, to aid them in discovering the various kinds of programs or opportunities that should be made available to make meaningful change in their life's condition within a reasonable time. Instead we find that the probation department offers little or no services to the probationer. When the juvenile is returned to court, the court does not mention the adequacy or inadequacy of the probation department but instead concentrates *exclusively* upon the youthful offender. The court makes no finding with regard to whether or not there were any programs established

within the department with regard to school, jobs, the child's family situation, or relationship to the police. The court makes no finding that the society — acting through the probation department — has failed! The court does not say that the County Board of Supervisors should be in jail for failing to meet their responsibilities in appropriating adequate funds to support such staff and programs! No, we say that the probationer — the victim of the State's failure to provide meaningful service — should be put in jail. The individual with no resources — save and except himself — and who has arrayed against him substantial economic and social barriers, has failed! The State with substantial financial and intellectual resources, with a substantial educational plant, with massive technical capabilities, the State — the criminal — is not mentioned at all! We simply say: the delinquent has failed on probation! Instead of being designed to help the victim, the juvenile court is designed to help the criminal. It is designed to watch, to keep tabs on, the victim. As soon as the victim shows any sign — even the slightest sign — of being aware that he is a victim and starts to act upon that awareness, no matter how minimal the activity, the probation department must bring it to the attention of the juvenile court. And the court must not nurture, encourage and develop this newly perceived awareness by the victim; no, when the court discovers that the victim is acting out this newly discovered awareness, the court must put the victim in jail so that he may not harm the criminal. Not only does he put him there, but he must keep him there so long as he

50. See New York Times, May 30, 1971 at 20. "Data published by the Labor Department's Bureau of Labor Statistics show that approximately 45% of all black teenagers in 'urban poverty neighborhoods' were unemployed in the first quarter of 1971."

51. W. Ryan, *Blaming the Victim* (1966) at 30-60.

52. John N. Mitchell, United States Attorney General, 1970 Congressional Quarterly Weekly Report 1497, ["This model anticrime program will point the way for the entire nation at a time when crime and fear of crime are forcing us, a free people, to alter the pattern of our lives."]

53. See Ryan, *Blaming the Victim* (1966).

appears to be even remotely aware that he is a victim.

While exploring this area of the house of justice we have not addressed ourselves to the question of the training and education of probation officers, the quality of foster homes, the quality of juvenile halls, or the policies of the California Youth Authority. One should not take this omission as an indication that all is well in these areas, but rather that it is a very large house and we must hurry if we are to get even a glimpse of the other rooms.

THE GRAND JURY

IN THE PARLOR we find the members of the grand jury. A grand jury in California normally consists of 19 persons from within the county where the grand jury sits.⁵⁴ A panel of not less than 25, nor more than 30, persons within the county is summoned to serve on the grand jury.⁵⁵ If more than 19 answer the summons, then all the names are placed in a box and the first nineteen names drawn become the grand jury for that year.⁵⁶ The prospective grand jurors are usually chosen from the business and professional classes.⁵⁷ Businessmen, ministers, wives of doctors, accountants, engineers, teachers — these are the people who populate our grand jury. Yes, some attention is given to race and religion. Since the advent of the civil rights movement you will usually find a Black minister or the wife of a Black professional on each grand jury. You will usually find one Oriental and several Jews. In Southern California you perhaps will find a Chicano or two. However, whether the grand juror is black, white, brown or yellow — he will be middle-class.

The only stated qualifications for grand jurors in California is that (1) the person be over 21, a citizen of the United States, a resident of the county and state for one year immediately before being selected; (2) he or she must be in possession of his natural faculties and of ordinary intelligence and not decrepit; and (3) be possessed of sufficient knowledge of the English language.⁵⁸ Section

199 of the California Code of Civil Procedure precludes one from being a grand juror during the year immediately following his discharge as a grand juror and no person who has been convicted of malfeasance in office or any felony or other high crime may serve as a grand juror.⁵⁹ So much for the written or statutory conditions. Like all else in white America, there are certain unwritten qualifications.⁶⁰ If you are poor, forget it. If you are a radical or activist, forget it. If you are a Black man, forget it. If you are a Negro and a professional or a man of the cloth, you may occupy the one — and in some rare instances two — seats reserved for the “nigger in residence.” No pretense is made to argue that the grand jury is representative of the *white* community without even considering the total community. The members of the grand jury are often the friends and associates of the judges or of friends of the judges.⁶¹ The judges personally select the names of the persons who will enjoy the status, prestige and responsibility of sitting on the grand jury and deciding the fate of thousands of Black and Chicano people.⁶²

From the preceding discussion one can easily see that the grand jury is not representative of the community it “masters” nor do its members constitute a peer group of most of the persons indicted by

54. Cal. Penal Code Section 888.2. This section also provides for a grand jury of 23 persons “in a county having a population exceeding four million.” Also see Cal. Penal Code, Section 904.5 which provides that in counties having a population in excess of four million, under certain specified circumstances, one additional grand jury may be impaneled.

55. Cal. Penal Code, Section 904. This section makes special provisions for counties having a population exceeding four million [Los Angeles County] for a grand jury panel of “not less than 29 nor more than 34.”

56. Cal. Penal Code, Section 908.

57. Comment, *The California Grand Jury — Two Current Problems*, 52 Calif. L. Rev. 116 (1964).

58. Cal. Penal Code § 893 and Cal. Code of Civil Procedure § 198.

59. Cal. Code of Civil Procedure § 199 (b) and (c).

60. See e.g., *People v. Angela Y. Davis*, Reporter’s Transcript of proceedings had Monday, August 2, 1971, pages 3-305, Superior Court of the State of California In and For the County of Marin, Action No. 3744.

61. Comment, *The California Grand Jury — Two Current Problems*, 52 Calif. L. Rev. 166 (1964).

62. Cal. Penal Code §§ 895-903.4; *People v. Newton*, 8 Cal. App. 3d 359, 388, 87 Cal. Rptr. 394 (1970); Comment, *The California Grand Jury — Two Current Problems*, 52 Calif. L. Rev. 116, (1964).

the grand jury. While this lack of representation or representativeness relative to Black people is extremely racist and extremely important, there is an even greater evil in the grand jury system as it fits into the criminal process. This is the almost total absence of *any substantive or procedural protection* for the accused.

Perhaps a moment should be spent explaining what a grand jury does and the potential impact of a grand jury indictment. Section 917 of the California Penal Code is fairly straightforward and simple. "The Grand Jury may inquire into all public offenses committed or triable within the county, and present them to the court by indictment."⁶⁴ Who could ask for a more plain and simple statement of duty and purpose? A grand jury meets to consider criminal matters — for all practical purposes — when requested by the district attorney.⁶⁵ It meets in secret and hears evidence presented by the district attorney. The grand jury is then expected to evaluate the evidence and decide whether or not there is reasonable cause to believe that a felony has been committed and that the accused committed it.⁶⁶ As stated before, "reasonable cause is such a state of facts as would lead a man of ordinary care and prudence to believe, or entertain an honest, strong, suspicion that the person in question is guilty of a crime."⁶⁷ The potential impact of being accused of a felony should be obvious. First, one is usually arrested and must post bail to regain his liberty. If one thinks that the question of bail is a trivial matter, then he should read page 6 of the report of the San Francisco Committee on Crime, dated February 10, 1971, dealing with the subject of bail. I have selected San Francisco because it is a county where a great number of felony cases are submitted to the grand jury rather than to a magistrate. The report of the Crime Committee indicates that the usual felony bail for a person accused of armed robbery is between \$2,500 and \$3,000;⁶⁸ forcible rape, \$5,000 to \$50,000;⁶⁹ burg-

lary, \$1,000 to \$1,500;⁷⁰ and, possession of narcotics for sale, \$2,500 to \$3,500.⁷¹ Where is a low income or even a middle income person to obtain this kind of money? The Committee also found that "[f]ew felony defendants can post the full amount of bail' and must therefore resort to a bail bondsman who will post a bond for a premium equal to 10% of the bail.⁷² Even if the charges are dropped the day after they are filed, one doesn't get his premium back. From whence comes the \$350 to pay the bondsman's premium? Even if poor Blacks are able to raise the premium, "the bondsman usually requires property as collateral, and it is common for a defendant's family or friends to give a bondsman a lien on automobiles or real property subject to foreclosure should the defendant fail to appear."⁷³ What happens to the Black wretch who cannot afford the premium or, even where the premium can be obtained, owns no real

64. Cal. Penal Code § 917; *see also* Cal. Penal Code § 911 which contains the grand jury oath: "I will . . . diligently inquire into, and true presentment make, of all public offenses against the people of this State, committed or triable within this county, of which the grand jury shall have or can obtain legal evidence."

65. Cal. Penal Code § 935. However, *see also* Cal. Penal Code § 923: "Whenever the Attorney General considers the public interest requires, he may, with or without the concurrence of the district attorney, direct the grand jury to convene for the investigation and consideration of such matters of a criminal nature as he desires to submit to it."

66. Cal. Penal Code § 939.8 provides: "The grand jury shall find an indictment when all the evidence before it, taken together, if unexplained or uncontradicted, would, in its judgment, warrant a conviction by a trial jury." An interesting question presents itself with regard to how the evidence can be explained or contradicted in the light of Cal. Penal Code § 939.7 which provides: "*The grand jury is not required to hear evidence for the defendant*, but it shall weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it shall order the evidence to be produced, and for that purpose may require the district attorney to issue process for the witness." [Emphasis added]

67. *People v. Scott*, 170 Cal. App. 2d 446, 452; 339 P. 2d 162 (1959).

68. San Francisco Committee on Crime, A Report On The Criminal Court of San Francisco, Part II, Bail and O.R. Release (1971) at 6.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 7.

property for collateral and the "wreck" he drives isn't paid for? He stays in jail! While he is in jail, convicted of nothing, he often loses his job.⁷⁴ Being in jail he is unable to aid his lawyer in obtaining witnesses or physical evidence which may be necessary to his defense.⁷⁵ Since his lawyer must make a special trip to the jail to see him instead of him coming to the office for consultation — the number, and I would submit, the quality, of consultation visits are greatly diminished. Since the accused person does not have any money and/or job, he cannot hire an investigator at ten dollars an hour, plus expenses, to find witnesses and evidence that he needs. His friends and neighbors read the paper, they talk, their children listen, his children get teased. His wife finds that she must be father and mother on far less money. Finally, he must hire a lawyer or accept the public defender. If he accepts a public defender, he accepts a system, not a person. A discussion of the implications of that relationship is far beyond the scope of this paper but at some point during any meaningful discussion of criminal justice, this question must be dealt with. However, to return to the point, if one hires a lawyer to handle a felony matter, he is normally talking of a sum from \$750 to \$5,000. While felony cases often require attorney's fees in excess of \$5,000, most matters can be handled within that price range. Obviously, for a low or middle income family, the legal fees associated with a criminal indictment can be devastating. A grand jury indictment never presents a question of whether you will win or lose, but only how much you will lose.

In order to fully comprehend the evil of the grand jury system of criminal indictment, however, one must first understand the process of a preliminary hearing. The theoretical ultimate function of both processes is identical: the determination of whether or not evidence presented gives rise to reasonable cause to believe that a crime has been committed.⁷⁶ In California we have a judge, a man trained in the law — himself a

lawyer — deciding this question at the preliminary hearing. We have a lawyer present for the accused.⁷⁷ The accused is given notice of the charges and a reasonable time to prepare to deal with them.⁷⁸ The accused has a right to a public hearing where the press, members of his family, his friends and the general public may attend. He, the accused, even has the right to exclude the public.⁷⁹ He has a right to challenge the judge — to peremptorily disqualify him — because he thinks that he is prejudiced or will not give him a fair hearing.⁸⁰ The accused has a right to be present, to confront the witnesses against him and require of them that they look him in the eye and tell their story.⁸¹ The accused has the right of cross-examination of witnesses presented by the prosecution in order that lies, shading of truth, or omissions of relevant matters may be revealed;⁸² the right to examine any exhibits or physical evidence prior to its presentation by the prosecution;⁸³ and the right to find out the names and addresses of the witnesses that the prosecution intends to call.⁸⁴ The accused has an absolute right to present evidence in his own defense.⁸⁵ The accused has the right — through his lawyer — to object to the form of questions asked by the prosecution: for example, to object that questions asked by the prosecution suggest the answer desired by the prosecution.⁸⁶ He has the right to make substantive objections to questions propounded by the prosecution: for ex-

74. See The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts (1967) at 38.

75. *Id.*

76. See Cal. Penal Code §§ 871 and 872.

77. See Cal. Penal Code § 866.5; see also Cal. Penal Code § 859.

78. See Cal. Penal Code § 859b.

79. See Cal. Penal Code § 868.

80. Cal. Code of Civil Procedure § 170.6.

81. Cal. Penal Code § 865: "The witnesses must be examined in the presence of the defendant."

82. *Id.*

83. See e.g., *Schindler v. Superior Court*, 161 Cal. App. 2d 513, 327 P. 2d 68 (1958); see also *People v. Washington*, 163 Cal. App. 2d 833, 30 P. 2d 67 (1958).

84. *Norton v. Superior Court*, 173 Cal. App. 2d 133, 343 P. 2d 139 (1959).

85. Cal. Penal Code § 866: "When the examination of witnesses on the part of the people is closed, any witnesses the defendant may produce must be sworn and examined."

86. Cal. Evidence Code § 767.

ample, that the questions call for hearsay evidence.⁸⁷ Finally, defense counsel has the opportunity to argue to the judge that insufficient evidence has been presented to "hold his client to answer"; that is to say, to justify ordering his client to stand trial with all the attendant hardships — economic, psychological, and social — that such a decision imposes upon an individual. By now it should be obvious that a preliminary hearing is very much like a trial. While there is no jury and the issue is not guilt or innocence but "reasonable cause," both parties have substantial rights which they are allowed to assert, including the right to participate fully and completely in the hearing.

By contrasting the grand jury with the preliminary hearing, the evils of the former should be illuminated. First, grand jury hearings are secret.⁸⁸ Neither the public nor the accused, nor his attorney, has a right to be present.⁸⁹ The accused has no right to present evidence which may exonerate him or explain evidence presented by the prosecutor.⁹⁰ Section 939.7 of the California Penal Code provides, "The Grand Jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it shall order the evidence to be produced, and for that purpose may require the District Attorney to issue process for the witnesses." The basic provisions of Section 939.7 (formerly Section 920) were adopted in 1872. That is important to note because it should explain the efficacy — 100 years ago — of the clause: "and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced . . ." In 1872 the average substantial citizen in any community in California knew practically everyone else within a hundred miles. He would also know the "scuttle-but" about any crime of a felonious nature within the county. Therefore, he might very well have rea-

son to believe that other evidence within [his] reach will explain away the charge. When the District Attorney presented his case to the grand jury, any given grand juror might very well be in a position to say, "Wait a minute, I heard old John Doe knows something about this robbery and you haven't called him as a witness. I want you to get old John in here and let us hear what he has to say." One must remember that in 1872 the prosecutor was just another one of the boys to the men of substance who were on the grand juries at that time. Today we have another story. The men who sit on grand juries today have very little in common with the persons whose names appear as the accused in their deliberations. There is nothing in their everyday lives which will bring the name of "Cornbread" Jones or "Skinny" Williams to their attention. Oh, they may read about the crime in the newspaper, but when it comes to an in-depth consideration of the case by the community, with points both negative and positive appearing, the chances of such points coming to the attention of our contemporary grand juror are extremely remote. They rely almost exclusively upon what is presented by the district attorney, supplemented, perhaps to a certain degree, with what they read in the newspapers or see on T.V.

Section 934 of the California Penal Code makes it crystal clear that the grand jury is not to be confused by having contact with judges, lawyers or private citizens.⁹¹ It provides: "The grand jury may, at all times, ask the advise of the court, or the judge thereof, or of the district attorney or of the county counsel. *Unless such advise is asked, the judge of the court, or county counsel as to civil matters, shall not be present during the sessions of the grand jury.*" [emphasis added]. Section 935 of the California Penal Code then provides that, "The

87. Cal. Evidence Code § 1200.

88. See Cal. Penal Code §§ 915, 924.1, 924.2, 924.3, 934, 939.1, and especially 939.

89. See Cal. Penal Code § 939.

90. See Cal. Penal Code § 939.7.

91. Cal. Penal Code, §§ 939, 934 and 935.

District Attorney of the county may at all times appear before the grand jury for the purpose of giving information or advise relative to any matter cognizable by the grand jury, and may interrogate witnesses before the grand jury *whenever he thinks it necessary.*" [emphasis added] The picture should be becoming a lot clearer at this point! Not only is the District Attorney the only one allowed in the room with the grand jury; not only is the District Attorney the only one allowed to present evidence or information to the grand jury; but, there is also no one present to object to improper questions from the prosecution; no cross-examination of witnesses; no presentation of a counter argument or characterization of the evidence that is presented; and no meaningful challenge for prejudice or bias. At the beginning of the consideration of each case, the prosecutor briefly outlines who the defendant is and what he is accused of doing. Then the foreman of the grand jury asks the grand jury members if anyone wishes to disqualify himself because of bias, prejudice or interest in the matter to be considered.⁹² Basically, each grand juror is left to his own conscience. Consider the rigorous examination of trial jurors on the question of whether they are biased or prejudiced against the accused. I direct your attention to the trial of Bobby Seale in New Haven,⁹³ the trial of Huey Newton in Oakland,⁹⁴ the trial of the Chicago 7 in Chicago,⁹⁵ and the trial of Los Siete in San Francisco.⁹⁶ Is the result of an indictment so inconsequential that we can handle the matter of bias in such a cavalier fashion? Can anyone think for one moment that the grand jury of Marin County was an unbiased, unprejudiced, neutral body of people when they decided that Angela Davis should be hunted down, arrested, brought to California almost in chains, and locked up in the Hall of Justice in Marin County. What white klansman would be willing to have it printed in the daily newspapers of Detroit for several days in succession that he was apparently involved in the shooting death of Judge George W. Crockett, Jr. of Records Court and

was being sought by a black District Attorney of Wayne County, Michigan for questioning. What if a black member of the Attorney General's staff should appear on national T.V. and announce that the state was in possession of information and evidence which, in his opinion, strongly indicated that this klansman was involved in the shooting. Later the klansman's picture is circulated nationwide as being a fugitive from justice, the black District Attorney of Wayne County having issued a complaint against him for murder. The klansman is aware that almost every black cop in the nation would give his "eye tooth" and six months wages to get him in his gun sights. The wanted poster declares: *consider possibly armed and dangerous.* The national media carry the story daily: radio, T.V. and the press. National magazines cover the story: *Time, Newsweek, Life.* Every paper in the Detroit area carries a major story concerning the shooting and the surrounding circumstances — as told by the police and state officials — daily. Finally, the klansman is arrested in Dallas, Texas and returned to Michigan. A grand jury, consisting of 19 blacks who were suggested for grand jury duty by the judges of the Records Court of Detroit, who are from the economic elite of Detroit — as was the slain Judge Crockett — and who consider klansmen probably one-half step below regular "crackers," meet in secret and have evidence presented to them exclusively by the black District Attorney of Wayne County (a friend, associate, and colleague).

92. See Cal. Penal Code § 939.5: "[The foreman] shall direct any member of the grand jury who has a state of mind in reference to the case or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party to retire." However, see *People v. Tennant*, 32 Cal. App. 2d 1, 9; 88 P. 2d 937 (1939): "neither the indictment nor record of the grand jury need affirmatively show that biased members of the grand jury were asked to retire . . ."

93. *N.Y. Times*, March 12, 1971, at 43, col. 1 [four months].

94. See *Minimizing Racism in Jury Trials, the Voir Dire Conducted by Charles R. Garry in People of California v. Huey P. Newton* (A. Ginger ed. 1969), [two weeks].

95. *N.Y. Times*, September 26, 1969, at 28, col. 1 [one-half day].

96. *S.F. Chronicle*, July 3, 1970, at 2, col. 5 [four and one-half days].

gue of the slain judge) along with the assistance of the black Deputy Attorney General from the State Attorney General's office. Not only is the session in secret, not only is there no cross-examination of witnesses, not only is there no opportunity to examine the black grand jurors with regard to the question of bias and prejudice, but the black District Attorney has the opportunity to personally explain to the grand jury — all laymen — what the law is that is applicable to the case. He then presents his evidence. He then has an opportunity to explain to the 19 black grand jurors why and how the evidence presented by him conforms to the requirements of law with regard to a charge of murder. He then graciously leaves the room for the grand jury to deliberate privately and decide whether or not to return an indictment. To everyone's surprise, the black grand jury returns an indictment against the klansman. What white man would — in a moment of his wildest psychosis — dream of thinking that the klansman had had a fair hearing, that he had somehow had a day in court, that he had been dealt with justly. Not only is this example applicable to Angela Davis, but nothing less can be said for Ruchell McGee. Ruchell contends that no grand jury with the characteristics set out in our hypothetical grand jury can honestly, fairly and dispassionately decide any question relating to the death of a judge. Ruchell says that the indictment is a fraud and a sham! Can any sane man disagree! It must always be remembered that the practice in the Davis-McGee case is only a slightly exaggerated example of what each ghetto black is subjected to when his case is submitted to a grand jury. If you would permit me to present only that evidence that I decide should be presented; to present it in secret; to present it without contradiction, interruption or objection; to lead my witnesses; to elicit hearsay information; to state what the law is; and to explain how the law and the information presented is related; to present all this under these circumstances to 19 laymen, only 12 of

whom must vote for me in order to get an indictment; I assert that you could select 19 of my worst enemies and I would get them to indict their mothers.

One legitimate voice may be raised in objection to what has been said here about the grand jury. It is true that the grand jury is subject to review by the Superior Court and the appellate courts.⁹⁷ However, that review is sharply limited to very precise questions.⁹⁸ For example, one may object that the transcript shows that leading questions were asked, that hearsay evidence was elicited. Yet, if there is *any* evidence independent of the tainted evidence to support the conclusion of the grand jury, the indictment will be allowed to stand.⁹⁹ Further, the credibility of witnesses and the weight to be given to evidence will not be reviewed by the higher court.¹⁰⁰ The court will only look to see if unconstitutional evidence was received and whether or not there was *any* competent evidence to support the finding of the grand jury.¹⁰¹ Finally, the reviewing court is bound to give every benefit of the doubt to the support of the indictment and to draw every reasonable inference possible to support its validity.¹⁰² This kind of review, in most instances, obviously constitutes no review at all.

THE TRIAL COURTS

IN THE ATTIC we find the trial courts. An in-depth analysis of this institution is far beyond the scope of this review. However, we can point out some of the more serious questions concerning justice in

97. Cal. Penal Code § 955; *Kohn v. Superior Court*, 239 Cal. App. 2d 428; 48 Cal. Rptr. 832 (1966); *People v. Flanders*, 140 Cal. App. 2d 765, 768; 296 P. 2d 13 (1956); see *Bompensiero v. Superior Court*, 44 Cal. 2d 178; 281 P. 2d 250 (1955).

98. *Kohn v. Superior Court*, 239 Cal. App. 2d 428, 430; 48 Cal. Rptr. 832 (1966); *People v. Flanders*, 140 Cal. App. 2d 765; 296 P. 2d 13 (1956).

99. *People v. Miller*, 245 Cal. App. 112, 156; 53 Cal. Rptr. 720 (1966).

100. See *People v. Crosby*, 58 Cal. App. 2d 713, 730; 25 Cal. Rptr. 847; 375 P. 2d 839 (1962); and *People v. Flanders*, 140 Cal. App. 2d 765, 768; 296 P. 2d 13 (1966).

101. See *People v. Van Randall*, 140 Cal. App. 771; 296 P. 2d 68 (1956).

102. See *People v. Crosby*, 58 Cal. 2d 713, 719; 25 Cal. Rptr. 847; 375 P. 2d 839 (1962); and *People v. Van Randall*, 140 Cal. App. 2d 771; 296 P. 2d 68 (1956).

the trial courts of California. Why do courts set such high bail when bail studies throughout the country have shown that such is normally not needed to insure the appearance of the accused? In a study released by the San Francisco Committee on Crime in February of this year, the following was declared: "Given the fact that the appearance rate for [persons released on their promise to appear] has been far better than the rate for defendants out on bail, we believe that, save for exceptional and rare case, a defendant ought to be released if he qualifies by the O.R. point schedule."¹⁰³ As early as 1967, the President's Commission on Law Enforcement and Administration of Justice, in their task force report entitled *The Courts*, stated: "The shortcomings of the traditional bail system are now widely known and well documented. The National Conference on Bail and Criminal Justice, held in 1964, focused attention on the wastefulness and unfairness of the system. Numerous studies all over the country have documented its deficiencies."¹⁰⁴ Nevertheless, even in the face of these findings, the trial courts continue to set excessive bail while yielding to police pressure to resist any meaningful reform of the overall bail setting system. The President's Commission had the following to say in this regard:

Although the foundations of bail reform are now firmly laid, much remains to be done. In many jurisdictions there has been no bail reform, and heavy reliance on money bail continues to be the rule. Even in those jurisdictions that have reformed their bail practices, including the Federal System, an excessive rate of pretrial detention frequently prevails . . . Improved fact finding procedures have been instituted in some jurisdictions, but old habits persist, and high money bail continues to be set primarily on the basis of the offense charged.¹⁰⁵

Any meaningful reform of the bail system (including the Federal System) must take into account the life situation of non-middle class and non-white people. Present bail standards are strongly biased in favor of the Protestant, white middle-class life style. For example, the

San Francisco Bail Project rates defendants on a 5-point scale with regard to whether or not they will make a good risk for release on recognizance. One of the categories considered is *employment*. Points are allocated in this category as follows:

- 3 Present job one year or more.
- 2 Present job 3 months, *OR* present and prior job 6 months.
- 1 Current job, *OR* intermittent work for 1 year.
- 1 Receiving unemployment compensation, or welfare.
- 1 Supported by family savings.

Another category is *prior records*:

- 2 No convictions.
- 1 One misdemeanor conviction.
- 0 Two misdemeanor convictions, *OR* one felony conviction.
- 1 Three or more misdemeanor convictions, *OR* two or more felony convictions.
- 2 Four or more misdemeanor convictions, *OR* three or more felony convictions.¹⁰⁶

What do these standards say with regard to the chances of present day urban black youth's obtaining a release on bail while awaiting trial?

The greatest failure of the courts, however, probably lies in their almost complete abandonment of their responsibilities to evaluate the credibility of witnesses when police officers testify. Police officers can give the most preposterous testimony and the court will accept it as gospel. Let a host of witnesses contradict him, let his demeanor betray him, and the court will *still* sustain him. In the area of 415-148-243 cases, we find the greatest abuse. Black men active in community affairs, respected in the community, occupying responsible jobs have had to sit in court and listen to a police officer

103. The San Francisco Committee on Crime, A Report on The Court of San Francisco, Part II, Bail and O.R. Release, 1971 at 28.

104. The President's Commission On Law Enforcement And Administration of Justice, Task Force Report: *The Courts* (Washington: U.S. Government Printing Office), at 37.

105. *Id.* at 39.

106. The San Francisco Committee On Crime, A Report on The Court of San Francisco, Part II, Bail and O.R. Release, 1971 at 17.

deceitfully and falsely attribute the speaking of "white motherfucker" or "mother-fucking pig" to them, falsely attribute unjustifiable violence to them. They have taken the witness stand and denied the language, denied any cause for arrest, denied any resistance to arrest. Their neighbors have taken the stand and testified to the abusive conduct of the police and the total absence of any factual justification for the arrest and subsequent charge against the accused. Although judges sit in the court of this state and hear obviously manufactured testimony from racist and vicious police officers, they never, never, never exercise their authority to dismiss the case because justice demands it. Rather they will allow the case to proceed to the jury with the pompous remark that they have no opinion, one way or another, concerning the quality of the evidence or the testimony of the witnesses. If it is a court trial, they will almost always find the accused guilty of every charge that the police and the District Attorney have placed against him. When it comes to protecting citizens against known vicious, dirty and dissolute practices of the police, most judges have about as much backbone as a jelly fish. If you doubt this statement, select 100 criminal lawyers at random from among the Sacramento, Oakland, San Francisco, Los Angeles and San Diego bars and ask them if they would ever take a court trial on a 415-148-243 case, no matter how strong the case for the defense.

We could spend considerable time discussing the practices of the trial courts with regard to how they conduct their trials and their demeanor when dealing with persons accused of crime. As stated by Herman Schwartz in an article entitled *Judges as Tyrants*, printed in the March, 1971 volume of the Criminal Law Bulletin:

Every trial lawyer knows from personal and often bitter experiences that there are few more tyrannical figures than an autocratic trial judge, of which, sadly, there are more than a few . . . Glaring down from their elevated perches, insult-

ing, abrupt, rude, sarcastic, patronizing, intimidating, vindictive, insisting on not merely respect but almost abject servility — such judges are frequently encountered in American trial courts, particularly in the lowest criminal and juvenile courts which account for most of our criminal business. Indeed, the lower the court, the worse the behavior.¹⁰⁷

CONCLUSION

TIME REQUIRES that we push on to a conclusion. We have missed the cellar of this house, where shielded from the light, we find the Department of Corrections, the California Adult Authority, and the office of the District Attorney scurrying around in the dark like rodents, feeding off the life blood of the poor Black souls who have been thrust into their clutches. Hopefully, in the future, you will be able to review this world of the adjustment center, the big yard, the parole board, the release date, the conspiracy charge, and death row. However, if you will only begin to deal with what we have referred to currently, you will have taken a significant step towards the liberation of Black people from the yoke of "justice."

Black leaders should demand and support legislation either eliminating or severely restricting the application of California Penal Code Sections 415, 148 and 243.

Black leaders should demand and support legislation either completely eliminating the grand jury or, at the very least, as an alternative, eliminating its power to bring criminal indictments and requiring that the poor, the blacks, the Chicanos, and other oppressed people have substantial representation on the grand jury.

Black leaders should demand and support legislation providing for meaningful bail reforms. The thrust of such legislation should be that most people arrested

107. Schwartz, *Judges as Tyrants*, 7 Crim. L. Bull. 129 (1971). For a general discussion of appellate review of trial court discretion see Rosenberg, *Judicial Discretion of the Trial Court, Viewed From Above*, 22 Syracuse L. Rev. 635 (1971).

should be released on their own recognition.

Black leaders should demand and support the appointment of Black judges on all trial levels in our urban centers. Not judges who are merely Black in color, but judges who are Black in heart. Black lawyers who have shown that they are strong of character and sensitive to the needs and circumstances of our people should be appointed. If appointments cannot be obtained, then we must support and elect such men. Whether by appointment or election, we need Black judges who will not be afraid to use their judicial power to effectuate justice regardless of whether or not it makes the police look good or bad and regardless of whether or not the police like the result.

Resolution and action is needed in the areas of prisoners' rights, rights for parolees, preventive detention, search and seizure, wire tapping, county jails, juvenile halls — a complete overhaul of the entire juvenile court structure — the death penalty, the need is almost endless; and because of this, resolve and commitment must also be endless.

Finally, however, let me state that, as Black people, we must acknowledge and deal with the postulate asserted by George Jackson in *Soledad Brother* to the effect that something is wrong with a system wherein all of the failures of its institutions result in fault and guilt being attributed to the persons these institutions were purportedly designed to help.¹⁰⁸ Why is it that if over fifty percent of the people released on parole return to prison, we say that the parolee failed and not the prison? Why is it that when a substantial percentage of persons placed on probation persist in a life of crime, we blame the probationer and not the proba-

tion department. Is there no societal responsibility? There are other areas where the same phenomenon is revealed. Unemployment is the fault of the unemployed, not of the economic policies of the employers. People are on welfare because they are unworthy, not because of a bankrupt educational and economic structure.

When will we as Black people remove the scales from our eyes and see this society for what it is? When will we come to realize that in a very real sense Ruchell McGee is a political prisoner, that George Jackson was a political prisoner, that George Jackson was a victim; but more importantly, that Ruchell McGee is a victim; that they are only the visible few who have managed to make their screams heard; that also down in the pit are thousands of young black men in like and similar circumstances? When will it be realized that the judicial system of this state is merely an instrument whereby white society carries out a substantial portion of its crimes against Black humanity; that those who resist and those who are driven to "sanity" are victims, not criminals?

But whether the desperation of Black America is grasped or not, the more the judicial machinery grinds on in ceaseless oppression, the more Blacks will speak of their people in the same language that the people of Sitting Bull, the Teuton Sioux, used in describing their commitment to the Black Hills:

The Black Hills is my land and I love it
And whoever interferes
Will hear this gun.¹⁰⁹

108. G. Jackson, *Soledad Brother: The Prison Letters of George Jackson*, 29-30 (1970).

109. Quoted in D. Brown, *Bury My Heart at Wounded Knee*, 283 (1970).

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