

## FOREWORD

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There was a time — and not too many years ago — when my mother and every Black mother cautioned her son to stay away from the Court House and the court house square. These were the locations for big trouble.

The only Blacks seen in and about the court rooms in those days were the defendants, their loved ones and the janitors. There were no Black court personnel; no Black sheriffs, clerks, reporters, prosecutors, defense attorneys and, of course, no Black judges.

The older members of the Black community who visit the courts today and see Black personnel in all positions think back to former days with a feeling, “We have overcome.” The younger members who did not experience the exclusions of the past, view the same scene and label it “tokenism.”

Both are right and both are wrong.

Numerically speaking, a minor revolutionary change has occurred in the racial complexion of those who operate the criminal justice system in our northern metropolitan centers. But tokenism persists in the southern portion of the Nation, where the bulk of the Black folk still live, as frequently revealed by the appointment of a single magistrate who is allowed to select a Black clerk and a Black bailiff to support.

Race or color head counts are important to insure against employment discrimination in the criminal justice system. What is more important, however, is the power and influence the position carries. Black chief probation officers, court administrators, district attorneys, public defenders or sheriffs are in key positions to end race and class discrimination throughout the judicial branch of government. More significant is the fact that their very presence insures a deeper awareness by the judges of the extent to which their court's discriminatory employment policies in the past colored the judges' interpretation of the law and the kind of “justice” they meted out to excluded groups.

We are constantly told that ours is a government of laws, not a government of men. This is a half-truth. *Laws are but a reflection of the thoughts and desires of those who write and interpret them.* The historical struggle waged by Chief Justice Marshall and others for judicial supremacy reflected the determination of the ruling class to narrow decisively, and to reduce to a manageable few, the real decision-makers in our American society. Their mission was to *exclude* as much as possible the Jeffersonian concept of the people as the ultimate interpreters of what is and what is not law.

Today, the crucial decisions in our society — economic and social as well as legal — are made by the men in the black robes. And no one is more aware of this than President Nixon and the governors in those states which have an appointed judiciary.

The most important lesson Black America has to learn, if we are to solve peacefully the social and economic problems that beset us, is that the laws and

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the power — State Power — already exist for the bringing into being of a truly egalitarian society where racism and classism no longer will exist and where the needs of the people, and not the size of the profit, will be the controlling consideration. What is needed now is a more equitable proportion of Black judges in position to exercise that State power.

**I**N DETROIT, where the fifty percent non-white population provides eighty percent of the criminal court's defendants (poor whites raise this figure to ninety-nine percent) and where exclusive responsibility for both the State's and city's criminal justice system is vested in the twenty-man Criminal Division and a three-man Traffic and Ordinance Division of Recorder's Court, a Black-Labor-Liberal alliance is demonstrating how judges themselves can utilize existing law to hasten the egalitarian society.

It began in 1966 when the people elected three Black judges to the Court. In the succeeding six years, three more Black judges were appointed, and in the 1972 elections the people elected three additional Black judges to Recorder's Court. To date, the black balance of power on the Bench has:

- a. Elected Black Presiding Judges, Chief Clerks, Deputy Chief Probation Officers, and Directors of the Psychiatric Clinic in each division of the Court;
- b. Increased Black court personnel from approximately 7 in 1967 (or 14%) to approximately 64 in 1973 (or 40%);
- c. Instituted pre-trial conferences in all felony cases with full evidentiary disclosure by the prosecution and mandatory attendance by the prosecutor, the detective, defense counsel *and the defendant*;
- d. Instituted a "blind-draw" system of assigning cases to individual judges so as to eliminate "judge-shopping";
- e. Ordered the Jury Commissioners to discontinue their practice of excluding from jury selection blue-collar workers, welfare recipients and those whose appearance was "questionable" with the result that juries now reflect a true race, age and socio-economic cross-section of the voter registration rolls;
- f. Instituted a Federally financed Release-on-Personal-Recognizance program and a Court supervised methadone-maintenance program;
- g. Provided by Court Rule for release on ten percent (10%) cash bail in all misdemeanor and most felony cases; for release on personal recognizance in all such cases where a defendant's inability to make bail has caused his detention for 90 days or more; and for dismissal in any case not brought to trial in six (6) months through no fault of the defendant. Additionally, some individual Black judges follow a policy of refusing to issue warrants where the complainant is not before the court for examination; reducing the charge where the prosecution is over charging; dismissing the case if the defendant is not arraigned "without unnecessary delay"; and dismissing or automatically granting probation in cases where the defendant was brutalized while in police custody.

These court innovations illustrate the possibilities for change ensuing from a change in the historical manning of our judicial offices. To the extent that our judiciary reflects a true representation of the population as a whole — to that extent we can expect the interpretation of the law to conform more accurately to the needs of all the people.