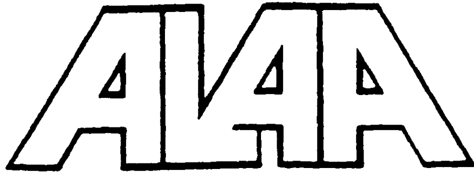

THE ASSOCIATION OF LEGAL AID ATTORNEYS
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Brooklyn Criminal Defense Division

M E M O R A N D U M

TO: Brooklyn Affirmative Action Committee Members

FROM: Michael Letwin

Re: Judicial Committee on Minorities

Date: 7/12/88

---

Attached are copies of testimony by members of the AAC at the recent Commission Hearings. Also enclosed is a useful statement by Russell Neufeld regarding bail, and several articles which discussed this and other testimony taken at the hearings.

I doubt that much will come of the testimony at the hearings, but the Commission chairperson did say that his staff would be contacting our Committee to set up a meeting with us regarding our experiences.

Note- This is prelim. draft
Final was expanded.

# TREATMENT OF MINORITY DEFENDANTS AND ATTORNEYS

# in the

# NEW YORK CRIMINAL JUSTICE SYSTEM

Testimony before the

New York State Judicial Commission on Minorities

Presented by Kimberly Detherage, Esq.

Treasurer, Association of Legal Aid Attorneys

June 29, 1988

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Views presented in this
testimony are those of
the author only.

The Criminal Justice System is a misnomer. It is anything but just. It is a system that is racist, indifferent and inhuman in its treatment of minority criminal defendants and minority attorneys. The racism is overt as well as subtle, but without a doubt it is pervasive throughout the entire process from arrest to trial. It occurs through the police, court personnel, prosecutors, judges, the Probation Department as well as many attorneys.

The criminal justice system treats the clients and the attorneys without respect. In fact, it treats Black and Hispanic clients like animals at times. The treatment is disparate between white and Third World defendants. It forgets that persons charged with crimes are still human beings. In fact, Black and Hispanic people accused of a crime, and their families, very often come to court and are scared and don't know what is happening to them. The attitude among the court personnel is to tell these defendants and their families to "sit down, shut up and wait." These court personnel generally don't answer questions or show any compassion for clients and their families. In contrast, white court officers will often approach white defendants or family members to ask them why they are in court and what they need. Minority people, however, may sit in court all day, only to be told at the close of court that their case was already called and that they have to return another day. These families leave feeling uncomfortable, angry and frustrated.

The judges often show a lack of sensitivity to the

problems of minority clients and their families. Everyone is presumed guilty. Judges are concerned more than anything with guilty pleas and "dispositions."

In part, judges act as they do because they usually come from a sheltered social background where they have never interacted with Black and Hispanic people. Then they are thrown into a situation where they decide the fate of thousands of minority people.

The police very often have discretion about who to arrest. Generally, officers come across many neighborhood fights as well as marital disputes. Often, white teenagers are taken home in these situations to their parents for discipline and police will attempt to mediate white marital disputes. With Black and Hispanic people in the same situation, police will often make arrests instead, one result of which is that minority defendants get arrest records and their fingerprints and photos end up in criminal justice system files.

Once police decide to make an arrest, they have wide discretion as to whether to issue a Desk Appearance Ticket (DAT) or to put a person through the system. If a person is arrested it make take two to four days to see the judge. A DAT, on the other hand allows person to voluntarily appear before the judge on a later date.

Often, Black and Hispanic defendants are arrested on charges of jumping subway turnstiles, driving with suspended

liscense, assault, unauthorized use of a vehicle. Where these are first arrests, police officers who may issue a DAT to a white defendant will often keep minority defendants in jail, where cells are unsanitary and overcrowded.

In addition, the volume of arrests is determined by overtime considerations, holidays and police promotional exams. For example, more arrests are made during certain times of the year because this results in more overtime pay which will be found in officer's holiday paychecks. Today, not many people are in the system because officers are studying for the sergeant's examination.

Judges play a role in coercing plea bargains, especially at arraignments. If a defendant maintains his innocence, judges will often set bail. However, if a defendant wishes to plead guilty, he or she will often be released to return for sentencing. Ironically, then, defendants who plead guilty may be released, while those who maintain their innocence can remain in custody.

Prosecutors are generally unreasonable in plea negotiations, particularly where defendants are in jail. Very often the ADA will offer a non-jail plea to a defendant. If the defendant refuses the plea at arraignments, the ADA will, out of spite, ask for bail on the defendant.

The Probation Department's pre-sentencing reports

consistently cast our clients in very negative light. The reports are always filled with comments that characterize the defendant as a recidivist; which mock the defendant's claims that he has no children; that focus on the allegation that a defendant lives with a woman to whom he is not married, that he is born out of wedlock and so forth.

The above are all subtle forms of racism. However, every day we are bombarded with more obvious racist comments and treatment. Judges will often make comments like:

1. "The defendant is not even normal for Black people."

2. "It is an abberation for an adult Black or Hispanic male not to have a criminal record."

3. "These people are all animals."

4. etc.

Black and Hispanic attorneys who represent minority clients have more sensitivity to the needs and problems of indigent defendants, by and large. Just as clients are treated with insensitivity by court personnel, so defense attorneys who are minorities are often treated in the same way.

Very often, judges cut off attorneys when they are making bail arguments or discussing some other legal point. Court officers often abuse minority attorneys who try to approach the well area of the court; it is not uncommon for white court officers to mistake a minority attorney for a defendant and for them to yell at minority attorneys to leave.

Other examples of different treatment of minority attorneys include:

1. When a Black attorney passes through the security scanners, a court officer will question that attorney about her identity, but will not question white attorneys similarly.

2. Court officers will often yell at a minority attorney to sit down before realizing that the person is an attorney, which is embarrassing in front of that attorney's colleagues and shows her client that the attorney does not have respect in the court. (e.g. incid. in API.)

All of this is evidence of the idea that all white people in a criminal court are attorneys, but that any Black person, no matter what they are wearing, is assumed to be a defendant. (e.g. Licitra, Levin and Detherage) Day of Outrage->Ask for I.D

The criminal justice system purports to be fair, just and equal in its treatment.

This pretention is an illusion. Unfortunately, the only thing that minorities can count on in the criminal justice system is being treated unjustly.

As a Black attorney, I took an oath to be fair, ethical and compassionate. However, my clients often perceive me to be just another part of this indifferent, inhuman and unjust system because of the way they are treated as minority people in the criminal justice system.

# INSTITUTIONAL RACISM IN THE CRIMINAL JUSTICE SYSTEM

Testimony before the

New York State Judicial Commission on Minorities

Presented by Michael Z. Letwin, Esq.

June 29, 1988

The Association of
Legal Aid Attorneys
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Views presented in this
testimony are those
of the author only.

You have heard many examples of the widespread and systematic racism in the New York criminal justice system experienced by minority attorneys, judges, court workers and defendants.

However, these experiences only reflect the fact that the entire relationship between the criminal justice system and the minority communities is based on institutional racism of the most profound sort.

We have to begin with the recognition that the minority communities of New York City are economically, socially and politically disenfranchised.

Although New York City is the financial capital of the world, and despite the development boom that feeds Manhattan's financial sector, the city's minority citizens remain plagued more than ever by sweeping unemployment, low-wage jobs, crumbling housing, a disgraceful education system, laughable mass transportation and grossly inadequate social services in every other area.

In addition, Blacks and Latinos in particular cannot venture into many parts of the city without fear of being assaulted by whites because of their race.

All of these conditions have been dramatically accentuated during seven years of Reaganism and a decade of Edward Koch's mayordom during which most of the limited gains made during the Civil Rights and Black Power movements of the 1960's have been reversed.

The result is that there is a deep-seated and fundamental

hopelessness about every day life among a whole generation of young minority people, particularly young Black and Latino men. Not surprisingly, these conditions breed crime.

It would seem obvious that the solution to these conditions and the crime that they breed lies in dramatically attacking the conditions under which the minority communities are forced to exist. Instead, the economic and political system is at best indifferent and just as often hostile to the plight of the city's minority citizens. Simply put, the city's rich and their political representatives who control the city government are unwilling to address the conditions in which those communities live, in part because of the huge cost, and in part because these conditions provide them with a low-wage labor pool of minority employees.

It is hard to envision a more sinister institutional racism than this approach to the city's minority communities.

Reflecting this approach, the criminal justice system serves as a club against minority people.

As a criminal defense attorney with the Legal Aid Society in Brooklyn, I can confirm that the system displays routine, institutional racism at every level.

Predominantly white police routinely assault and often kill unarmed Black and Latino people with impunity; Michael Stewart and Yvonne Smallwood are only two of the most well-known examples. Defense attorneys constantly see cases where our clients and their families have been assaulted,

and beaten by members of the police, corrections and other "law enforcement" agencies. The guilty and innocent alike are subject to arrest.

As you have heard, the treatment of minority defendants is marked by days of pre-arraignment detention in filthy, overcrowded cells, often without any contact with their families; by bail set beyond their means served in other unsanitary, overcrowded and otherwise inhumane city jails; by racist contempt on the part of many court personnel, prosecutors, judges and even by some defense attorneys; by long periods of pre-trial incarceration, threats of long sentences from prosecution-oriented judges, all of which serves to coerce guilty pleas from innocent and guilty non-white defendants; and then, by all-too-often up-state imprisonment for years at a time in facilities so terrible that white-collar defendants pay their lawyers many thousands of dollars to ensure that if they must be prosecuted, it will be in federal court where time, if any, will be served in "Club Fed."

The irony of all of this is that the criminal justice system's racist and inhumane treatment of minority defendants has absolutely no impact on crime. The drug crisis is the prime example.

Crack use in particular has spread at an incredible rate, and with it crime of all kinds has risen. In order to maintain the highly-addictive crack habit, users commit a whole range of other crimes, often against family members. Because of the

fantastic amounts of money to be made in selling drugs, growing numbers of people are engaged selling the drug. Crack-houses have proliferated thorughout the city's neighborhoods. Crack gangs with automatic weapons battle each other and the police in the streets. The minority communities are, perhaps more than ever before, the scene of drug-related crime and violence which has touched the lives of virtually everyone in these communities.

The New York City criminal justice system cannot begin to deal effectively with this situation, first of all because of the nature of the drug trade. On an international level, the federal government actively supports movements and governments which run entire national economies based on the illegal drug trade: the contras in Nicaragua, virtually every regime in South America, and, until recently, Noriega in Panama. As long as these terrorist governments and organizations suppress the indigenous peoples in their societies, and make life comfortable for American corporations, the U.S. government will back them. American banks, in turn, live in large part off foreign loan payments from the Third World, much of which depends in very large part on the drug trade.

New York City, then, is reduced to going after the small-time buyers and sellers of drugs, often through drug sweeps which round up the innocent as well as the guilty. But most importantly, arresting and imprisoning even the guilty has no impact on the drug situation because while thousands of people are arrested and

imprisoned for drug sale and possession, there are unlimited numbers of other people who are selling or using drugs because it is the only way they perceive to survive in, or escape from, the overwhelming hopelessness of their lives. New York's draconian drug laws, which often treat drug possession and sale much more harshly than violent crime, do result in guilty pleas from many defendants, guilty and innocent, who are simply scared to death of being convicted and of spending much of the rest of their lives in prison. These laws, however, have had absolutely no effect on the drug crisis, for the reasons discussed above. At the very least, the racist impact of the "war on crack" will continue until these drugs are legalized and there is a genuine assault on the drug crisis as the social issue that it is.

On a broader scale, a solution to the institutionalized racism of the criminal justice system, lies in a transformation of the position of the city's minority communities; not only in its relationship to the criminal justice system, but in terms of the distribution of wealth and power in the city as a whole. If those in power remain unwilling to address this, the renewed movements, particularly in the city's Black community, undoubtedly will.

Finally, I want to make clear that the institutional racism of the criminal justice system does not stop at the door of my employer: The Legal Aid Society.

Despite the fact that Legal Aid's clients are overwhelmingly Black and Latino, employees of the Society also face serious institutional racism. There is a long and ongoing history of minority attorneys being held to different standards in evaluations and promotions than their white colleagues in evaluations and promotion. There are very few minority supervising attorneys, particularly in the Criminal Defense Division. The low salaries paid to all attorneys at Legal Aid, which are lower than many other public sector attorneys, let alone those in the private sector, impact particularly on minority attorneys. As a result, minority attorneys leave the Society at a rate even greater than white attorneys. The Society's treatment of its almost entirely non-white support staff is even more of a disgrace. The support staff is paid at so low a rate that even management admits it cannot retain a sufficient number of employees to adequately perform the everyday work of the organization. The working conditions under which all employees, particularly support staff, are forced to work, are pitiful: insufficient equipment, thoroughly unrealistic workload and other conditions, some of which are unhealthy.

These conditions not only betray a lack of concern for the position of minority employees in the Legal Aid Society. Rather, this situation prevents the Society from effectively carrying out the representation of its overwhelmingly minority clients.

The Legal Aid Society, like the rest of the criminal justice

system, must begin to recognize and correct its institutional racism, an effort that the Association of Legal Aid Attorneys has all-too-often found the Society's management unwilling to do.

# BAIL and RACIAL DISCRIMINATION

Testimony of The New York State Association of Criminal Defense Lawyers

before the

New York State Judicial Commission on Minorities

Presented by Russell T. Neufeld, Esq.

June 29, 1988

New York State Association of
Criminal Defense Lawyers
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The process of setting bail in our courts has a discriminatory impact upon members of minority groups and poor people, and this discrimination in bail results in further devestating inequities in convictions and sentencing.

Discrimination in the bail system is the result not only of the bias of individual judges but of the very functioning of the bail system. Since the essence of a bail system is that those who can afford to buy their freedom get out, while those who can't, stay in, discrimination in the bail system is structural. It is built into the system and can only be overcome when judges are conscious of the problem and affirmatively act to correct it. That is, since a thousand dollar bail may be reasonable for a middle class person, but unreasonable for a poor person, a court must take a defendant's means into account when setting bail.[1] And for those defendants who are so poor that any cash bail is excessive, the courts should either release them on their own recognizance or utilize pre-trial release, intensive supervision programs to help guarantee a defendant's return to court in appropriate cases.

Judges have enormous discretion in determining whether a defendant should be released on his own recognizance, whether bail should be set and, if so, how much.[2] Whether someone is in or out of jail prior to the disposition of their case is the single most important factor in determining whether they are convicted, and if convicted, the seriousness of the offense, and the length of the sentence.[3] Since defendants of means are both more likely to be released on their own recognizance, because of greater community ties and able to make bail if bail is set, a disproportionate number of those incarcerated prior to disposi-

tion are poor people. And since a disproportionate percentage of poor people are members of minority groups, a disproportionate number of minority defendants are in our jails. For instance, in New York City in 1987 the rate of white people in jail was 70% less than the rate of white people arrested.[4] Of course, these figures may also reflect actual bias among the judiciary in addition to the discriminatory functioning of the bail system.[5]

Not only, are minority defendants languishing in jail in disproportionate numbers, but, as a result, they are also suffering discrimination in disposition and sentencing. As the Columbia University Bureau of Applied Social Research study into the question found:

> Those people who must wait in jail for the disposition of the criminal charges against them because they do not have enough money to purchase their freedom are far more often convicted, far more often given a prison term, and far more often given a long prison term than those people who obtain their release during this time.
> This disparity in treatment between those detained and those released is not accounted for by any factor related to the merits of the cases, such as the seriousness and nature of the charges, the weight of the evidence and the presence or absence of aggravated circumstances, prior criminal record, family and community ties, or the amount of bail. For example, a first offender who is detained in lieu of bail is more than three times as likely to be convicted and almost twice as likely to get a prison sentence as a recidivist with more than ten prior arrests who is released ... The differences in outcome between the two groups of people, the detained and the released are accounted for only by the fact of pre-trial detention itself.[6]

There are several reasons for this shocking disparity. First, the bail system works to coerce guilty pleas from those who might otherwise have a valid defense to the charges against them. Most criminal cases are misdemeanors and approximately one third of those are disposed of at arraignment through plea bargaining. The plea-bargaining process uses a carrot and stick approach with reduced charges and sentences as the carrot; while the threat of staying in jail on bail is one of the sticks. Misdemeanor defendants are routinely offered pleas to reduced charges and non-jail sentences. These same defendants are told that if they do not plead guilty, bail will be set. The message to poor clients is that if you plead guilty you can go home, while if you assert your innocence, you stay in jail. So, a significant percentage of criminal defendants who might otherwise prevail in their cases decide to plead guilty to avoid jail. The starkest recent example of this is the scores of transit police arrests, <u>all</u> of minority group members for jostling and sexual misconduct which were shown to have been wholly fabricated, but, where, never-the-less, 71% of the defendants pleaded guilty.[7]

Legal Aid Lawyers are constantly telling their indigent clients that they have valid defenses or suppression motions and advising the client to litigate the case. Frequently, due to the threat of jail for failing to plead guilty, the client will plead, rather than litigate. Another client, with the same charges, defenses and suppression issues, but who has the economic wherewithal to post bail, is much more likely to litigate the case and prevail or, if not prevail totally, then use those defenses and suppression issues to obtain a better plea bargain. And

once someone has pled guilty and is arrested again they are, as a result of the prior conviction, less likely to be released, or to be offered as lenient a disposition as they would without the prior conviction.

A second reason for the disparity between the disposition of "in" and "out" cases is the greater leverage prosecutors have over "in" defendants to exact guilty pleas. Once someone is incarcerated, prosecutors frequently begin to stall. They don't answer motions in a timely fashion or provide discovery. They are unable to proceed to hearings because of the unavailablity of police witnesses who are invariably said to be on their regular day off. The longer the defendant stays in jail without a disposition, the closer he approaches the sentence offered by the prosecutor in the plea bargain, and the less sensible it seems to go to trial and risk the much longer prison term that would result with a conviction. Conversely, Judges and prosecutors, who are also under pressure to dispose of cases through plea bargaining rather than by trial, know that an "out" defendant is much less likely to voluntarily agree to serve a prison term, than someone who is already imprisoned. Consequently, the plea offers made to "out" defendants are generally less onerous than those made to "in" defendants.

Another reason "out" defendants fair better is that they are better able to help themselves, their lawyers and their case, than are "in" defendants. A defendant who is out can track down witnesses, and generally better aid his attorney in preparing for trial. An "out" defendant can demonstrate to the court that he is dealing with any underlying problems by entering a drug or

alcohol rehabilitation program, getting a job, or entering a school program and, thereby, better convince a judge to give a non-jail sentence rather than prison.

Not only do defense attorneys have a more difficult job preparing for trial on an "in" case, but they also have less time to do it because "in" cases are pushed to trial before "out" cases.[8] Defendants who are incarcerated during trial are awakened at 4:30 in the morning to be in court and generally look poorly in addition to being less alert and helpful to counsel than "out" defendants. Finally, the "tired" look is frequently compounded by the difficulty of getting suitable clothes for trial to jailed clients, thereby resulting in defendants looking even less presentable to juries.

As judges have tremendous discretion in releasing defendants or setting bail, the individual biases and predilictions of each judge have a tremendous impact on bail decisions. Studies have shown that all other factors being equal, there is tremendous disparity between judges both in determining whether to release defendants and in the amount of bail set.[9]

In New York City the judges are greatly influenced by the Criminal Justice Agency's defendant interview report.[10] The purpose of the report is to recommend release or bail. One of the primary factors C.J.A. takes into account is commuity ties. If a defendant is employed, that is a strong basis for a recommendation for release. Since unemployment rates are substantially higher in minority communities, this factor works to discriminate against minority defendants. Additionally, C.J.A. only confirms community ties, including a defendant's residence, through tele-

phone calls. Therefore, if a defendant doesn't have a phone at home, as the majority of poor defendants don't, the report will be marked "unverified community ties." This will frequently dissuade a judge from releasing a defendant.

## RECOMMENDATIONS

Bail reform has long been an issue in New York and there are some important options the courts already have in this area.[11] These include a ten percent cash bail alternative as well as pre-trial release, intensive supervision programs. Use of these could lead to a more equitable bail system. Clearly there is nothing in our present law to prevent judges from eliminating racial disparity in their bail and pre-trial release decisions. What is needed is on going monitoring of judicial bail decisions to insure reasonableness and non-excessive bail, and the absence of racial discrimination. The judiciary should know that the results of their bail decisions are being followed and that racial disparity in the impact of those decisions will not be tolerated. We also recommend that judges be trained and sensitized to the discriminatory effects of bail decisions and to the available alternatives to incarcerating poor people.

## FOOTNOTES

1. C.P.L.R. §7010(6) Ex rel. Mordkofsky v. Stancari, 93 AD 2d 826 2nd Dept. (1983).

2. C.P.L. Art. 510

3. Bellamy v. Judges, A.D. 2d Dept. 1972, Plaintiffs' Memorandum, Columbia University, Bureau of Applied Social Research Study, (cited below as Bellamy).

4. According to the N.Y.C. Department of Correction, Inmate Information System in 1987, 9% of those incarcerated by the Department were white. According to the N.Y.S. Department of Criminal Justice Services, in 1987 there were 273,090 adult arrests in New York City, of which 42, 175, or 15.4% were of whites.

5. Nagel, The Legal/Extra-Legal Controversay: Judicial Decisions in Pretrial Release, 17 Law and Society Review 3 at 508. Nagel only finds discrimination in the fact that "[w]hites had somewhat lower bail than blacks or Hispanics, and they were slightly more likely to be afforded a case alternatives." She failed to also realize that a $500 bail set on a poor person keeps that defendant incarcerated while the same bail set on a middle class defendant means that that person is released.

6. Bellamy at 2-3.

7. N.Y.C. Transit Police Report of Lt. Dargan, 7/3/84, p.2.

8. Uniform Rules for N.Y.S. Trial Courts §125(1)(c).

9. Nagel at 506-508.

10. Nagel at 502.

11. See, Steelman, New York City Jail Crisis: Causes, Costs and Solutions, The Correctional Association of New York, 1984 and Swirdoff, Bail Bonds and Cash Alternatives: The Influence of Discounts on Bail-Making in New York City, Vera Institute of Justice, 1986.

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$2 ■ VOL 1, NO 41 ■ THE WEEKLY NEWSPAPER FOR THE NEW YORK LEGAL COMMUNITY ■ JULY 5 – JULY 11, 1988

## INSIDE


**NYU Leads in Placement:** In a survey of city law schools, NYU ranks first in finding jobs for graduates. **See page 3.**

**Kidder Taps Latham:** Latham & Watkins is one of a handful of firms Kidder Peabody will turn to for its M&A work. **See page 3.**

**Wright Censured:** The Judicial Conduct Commission censured Justice Bruce Wright but four dissenting members said the penalty was too harsh. **See page 4.**

**Lipsig Show:** Harry Lipsig drew lots of media to the Chernow wrongful-death trial. **See page 5.**

**Opinion Service:** On grounds that exclusions are to be narrowly construed, the Southern District orders a medical malpractice insurance carrier to defend a doctor after he was convicted of first-degree sexual abuse. **See page 24.**


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Partners **PETER STANDISH** (left) and **STEPHEN DANNHAUSER**, members of Weil, Gotshal's associate compensation committee, wanted to be the first to set starting salaries for 1988.

# Weil, Gotshal Sets $76,000 Going Rate

BY BARBARA LYNE

Weil, Gotshal & Manges has touched off the annual starting salary debate by announcing it will pay members of the class of 1988 $76,000. The figure tops last year's $71,000 going rate by 7 percent. Weil, Gotshal also announced a restructuring of compensation for all other classes, with boosts ranging from $15,000 to more than $20,000.

The increases, which took effect July 1, have catapulted the 430-lawyer firm into the role historically played by Cravath, Swaine & Moore, which has been the bellwether for big-firm salaries in New York. Three years ago, Cravath jumped starting salaries by $11,000 to $65,000. For the past two years, however, Cravath's increases for new graduates have been more moderate, causing relief at many competing firms.

"Our objective is to be at the top — to get out in front," said antitrust partner Peter Standish, a member of Weil, Gotshal's associates compensation committee. Added committee chair Stephen Dannhauser:

SEE WEIL, GOTSHAL, PAGE 13

# U.S. v. Teamsters Steered to Edelstein

## Pro-government Judge Said to Have Related Case

BY EDWARD FROST

The U.S. Attorney's office last week took advantage of Southern District rules to bypass the lottery normally used to assign judges and filed its massive civil racketeering case against the Teamsters before a judge widely viewed as pro-government.

Using a local rule guiding case assignments, prosecutors said the suit alleging Mafia domination of the International Brotherhood of Teamsters should be heard by U.S. District Judge David Edelstein because it is related to a comparatively minor civil racketeering case already pending in his court.

The prior case, naming two officials of Teamsters locals — neither of whom is a defendant in the new suit — is mentioned only three times in 290 pages of documents filed with the new Teamsters suit. One of the mentions is in a footnote.

The seemingly slim connection between the two cases has

The U.S. Attorney's office asked that its suit against the Teamsters be assigned to Judge **DAVID EDELSTEIN.**

raised the question of whether prosecutors maneuvered to place a major case in the hands of a judge perceived as friendly to their cause.

Both Assistant U.S. Attorney Randy Mastro, the lead prosecutor on the new Teamsters suit, and a clerk for Edelstein denied that judge shopping by prosecutors is possible, in this case or any other.

According to the local rule, it is up to a judge to decide whether the link suggested by a

SEE TEAMSTERS, PAGE 31

# *Judges Fear Testifying About Racism*

BY SHAUN ASSAEL

The chairman of a panel probing the treatment of minorities in the courts said last week he has been forced to hold clandestine meetings with judges who fear retaliation if they testify about racism in the state judicial system.

Franklin Williams, who chairs the New York State Judicial Commission on Minorities, said judges have told him they are afraid they might not be reappointed or promoted if they go public with stories of prejudice. Concern about being ostracized by their brethren also prevented some judges from testifying, he added.

"This has floored me and shocked me," Williams said in an interview on June 30 as the commission held a second day of public hearings in Manhattan.

Because the commission's offices are located in the same building as the Office of Court Administration's headquarters, Williams said many potential witnesses refuse to visit him out of fear of being seen by OCA personnel. He has been forced to meet judges in restaurants and install a private phone line in his office at 270 Broadway to handle calls from judges afraid of openly cooperating, he said. Matters have grown so serious, "Friends of two decades say they won't even testify in the presence of my staff," the chairman added.

Milton Williams, the deputy chief administrative judge for New York City Courts, insisted that no judge would face retaliation for testifying before the commission. "I would hope that any member of the judiciary, by the very nature of their position, with the masses relying on them for relief, would always

SEE JUDGES FEAR, PAGE 31

Minorities commission chairman **FRANKLIN WILLIAMS:** "This has floored me and shocked me."

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# Teamsters Case Steered by Government to Edelstein

CONTINUED FROM FRONT PAGE

plaintiff is strong enough for him to keep both suits. Edelstein accepted the new Teamsters case on June 28, the day it was filed.

"It's not something that we could have done anything about," Mastro said. Edelstein's clerk, Michael Isby, agreed. "It's the judge's say-so, not the U.S. Attorney's," he said.

But one white collar criminal defense lawyer, who requested anonymity, was less certain.

"It is obviously of concern to the U.S. Attorney's office what judge gets a really big case," the attorney said. "If there's a way to do it within the rules, I don't think that the U.S. Attorney's office is going to ignore it."

### EDELSTEIN A TOUGH JUDGE

Defense lawyers describe Edelstein as one of the tougher and more pro-government judges in Foley Square. He was appointed to the bench in 1951 after working seven years for the Department of Justice in jobs ranging from assistant U.S. attorney in the Southern District to assistant U.S. attorney general.

In the 1970s he presided over the government's marathon but ultimately abandoned attempt to break up IBM in a civil antitrust action. *The American Lawyer* reported in 1982 that throughout the 13-year life of the case Edelstein ruled for the government in 74 of 79 contested motions and sustained 60 percent of the government's objections as opposed to fewer than 3 percent of IBM's.

In a more recent criminal case, Edelstein sided with the government when prosecutors balked at having to notify lawyers representing unindicted suspects that informants were being used to investigate their clients.

In 1985, Edelstein ruled that a defense lawyer whose client had been indicted could be subpoenaed for questioning about the source of his fees. That decision was reversed on appeal.

### RULE 15: TRANSFER OF RELATED CASES

Southern District Rule 15 requires a plaintiff to note any related civil cases pending within the district when filing a civil suit. The newer case is referred to the judge overseeing the older action, and that judge decides whether to keep the new case or send it to the lottery, informally known as "the wheel."

When federal prosecutors filed suit June 28 against the International Brotherhood of Teamsters, the Commission of La Cosa Nostra and 15 individual defendants, they noted that the case was related to *U.S. v. Long and Mahoney*, a civil racketeering case against two officials of Teamsters locals in New York.

*Long* had been transferred to Edelstein's court just four weeks earlier under a stipulation approved by defense lawyers and Mastro, who supervises the assistant U.S. attorney handling the Long case. The defendants — John Mahoney Jr., secretary-treasurer of Local 808, which represents United Parcel Service workers, and John Long, secretary-treasurer of Teamsters Local 804, which represents Long Island Rail Road workers — are accused of taking kickbacks in return for steering union funds to particular investment companies.

An indictment returned in April charged the two men with conspiring to violate the Racketeer Influenced and Corrupt Organizations Act. The case went into the wheel and was randomly assigned to Edelstein.

A related civil suit was filed by the government on May 11. That case also went through the lottery and was assigned to Judge Richard Daronco. After Daronco was murdered May 21, the civil case was reassigned to Judge Vincent Broderick. On June 1, the suit was transferred to Edelstein with his consent.

Solo attorney Jo Ann Harris, who represents Mahoney, said the transfer to Edelstein, requested by the gov[illegible]ment, did not seem unusual at the time.

"It makes a lot of sense for [illegible] action like that to go to the same judge, and they do that routinely there, as long as the civil action is word-for-word related to the criminal action," Harris said.

The civil case against Long and Mahoney, which has been stayed pending their criminal trial this fall, seeks a permanent injunction prohibiting them from participating in the affairs of the locals and disgorgement of their illegal profits.

Mastro said their case and the Teamsters suit overlapped on legal questions and factual issues, and because both involved the union, fell within the bounds of Rule 15. The rule defines related cas as those that, among other thing "present common questions of law a fact, or arise from the same source or su stantially similar transactions."

> *Southern District Rule 15 defines related cases as those that, among other things, 'present common questions of law and fact, or arise from the same source or substantially similar transactions.'*

### THE TEAMSTERS ARE SUED

Last week's suit against the Teamste filed by U.S. Attorney Rudolph Giulian seeks to oust any union board membe convicted of racketeering and appoint trustee to oversee the union's operation and clean up its elections.

In a 113-page complaint, a 105-pa memorandum of law and a 72-page decl ration by Mastro, prosecutors outline more than a dozen civil and criminal pro ecutions involving the union. Chi among them were the Commission cas in which the ranking bosses of New York five Mafia families were convicted, an the Genovese Family case, which pr sented evidence of mob influence Teamsters elections.

In announcing the suit, Giuliani sa the current Teamsters leaders "have do virtually nothing to take their union ba from the Mafia."

The papers in the Teamsters case cite only four instances since 1977 when t international union reported corrupti as a basis for imposing a trusteeship on local. One of the four instances involve Local 808, the UPS local where John M honey Jr. is secretary-treasurer.

"In that case, immediately after th temporary trusteeship, the son of the pr trusteeship union head assumed powe and has since been indicted for labor rack eteering," Mastro's declaration said.

In an interview, Mastro argued that th Long and Mahoney case was strongly re lated to the larger Teamsters suit becaus it shows an "important example of th failure to remedy local corruption."

# *Judges Fear Testifying About Racism in the Courts*

CONTINUED FROM FRONT PAGE

have the backbone to speak out," Judge Williams said in an interview.

### BIAS ALLEGED AT SEVERAL LEVELS

The commission was chartered by Chief Judge Sol Wachtler of the Court of Appeals in January to recommend ways to eliminate racial bias in the courts. More than 150 witnesses statewide have testified before the commission, which is not expected to release a final report until 1990.

Among the allegations made during last week's hearings were these:

- James Morton, a clerk in the Civil Branch of state Supreme Court in the Bronx, testified that court officers have "voluntarily segregated themselves," establishing separate locker areas for blacks, Hispanics and whites. In an interview, Louis Fusco Jr., the court's administrative judge, said the allegation was "totally untrue."
- A black female court officer claimed she was demoted after being elevated to captain partly because white officers launched a petition drive seeking an investigation of how she got promoted. The officer, Vivian Singleton, told the panel, "The majority of white court officers are from Long Island. There's a fear they feel [about the city and the people who live here] which becomes anger."
- Some judges and attorneys routinely discount the testimony of blacks and Hispanics. Jeanne Thelwell, deputy counsel for the state's Office of Mental Health and a member of the Women's Bar Association of New York State, told the panel: "When I used to be asked if I had good witnesses for my cases, I began to understand I was being asked if I had white witnesses."

### CONCERNS ABOUT RETALIATION VOICED

During the hearings, clerks and court officers who recounted stories of discrimination routinely expressed concern that their testimony might hurt their chances of promotion.

But Chairman Williams appeared most troubled by the judges who chose to keep their concerns private. Joseph Williams, an elected state Supreme Court justice from Brooklyn, testified that appointed justices who do not have the security of 10-year elective terms "think they're in jeopardy and there will be retaliation if they testify."

"Is that the atmosphere of our courts?" Chairman Williams asked.

Replied Judge Williams: "They probably don't believe the chief judge is encouraging them."

Chief Judge Wachtler said in an interview that the fear of retribution among judges is "most unfortunate and regrettable. . . . I don't know who would exact that kind of retribution. It certainly wouldn't come from anyone in the hierarchial judicial structure because we are the ones who are most anxious and interested in determining where this bias exists, if indeed it does. If we didn't want people to come forward, we wouldn't have formed [the panel] and urged the public hearings."

Civil Court Judge Margaret Taylor, who sits in Housing Court in Manhattan, also discussed the pressure on judges to conform. Calling the Civil Court system a "dictatorship," she said: "It is made clear that the atmosphere and perception is, if you are critical [of the system], you won't be [elevated to an] acting Supreme Court justice, which is the goal of most people in my court. If you don't evict or convict, you won't be looked on favorably."

State Supreme Court Justice Israel Rubin, the administrator of the Civil Court, said in an interview, "I think Judge Taylor is doing a disservice to all her colleagues in service now in the Supreme Court."

The majority of witnesses at the hearings, which were advertised in subways office buildings and courthouses, seemed to be attorneys and court employees. Their testimony revealed a perception that racism in the courts is systemic — from the court officer who mistakes a Hispanic lawyer for a defendant to a judge who tells a defendant at a bail hearing, "You shouldn't have committed the crime if you didn't want to be in jail."

Chairman Williams said, "Based on the testimony to date, I can't say the bias level is critical . . . but it is clear to us there is a problem in the courts and it is much more than perception. It is reality."

Milton Williams said he was invited to attend the hearings but declined. "I've made my views known," said the city's top judge, referring to past acknowledgments of the perception of bias in the courts. "I want to let the people who usually aren't heard be heard."

The panel heard a wide array of suggestions for addressing the problem, including: creating inexpensive eating and parking facilities for poor people who often spend entire days in court buildings; opening day-care centers in the courts; and increasing the number of bilingual employees.

# A New York Panel Hears Charges Of Racial Bias in Judicial System

7/3/88 26:4

New York City judges, lawyers and court officers portrayed a judicial system permeated by bigotry and racism at hearings last week before a state commission investigating racial bias in the courts.

Testimony before the New York State Judicial Commission on Minorities ranged from accounts of black and Hispanic lawyers being mistaken for defendants and subsequently harassed by court officers, to harsher bail and sentencing decisions being imposed on minority-group members.

"The criminal justice system is still rolling along as if it were in the 18th century," said Justice Kenneth N. Browne of State Supreme Court in Queens, who spoke with quiet anger of the injustices he said he had witnessed as one of 77 blacks among New York State's 1,161 judges.

**Commission Created in January**

Finding ways to increase the numbers of minority judges, lawyers and court officers is one of the mandates of the commission, which was created last January by Chief Judge Sol Wachtler of the State Court of Appeals at the request of the New York Coalition of Blacks in the Courts.

The commission, which has already held hearings in Albany and Buffalo, is also studying the extent to which minorities fail to use the courts in seeking redress for grievances because of a lack of confidence in the fairness of the courts. The commission will issue its findings and recommendations in January 1990.

The commission held hearings Wednesday at the State Office Building in Harlem and Thursday at the World Trade Center.

Blacks and Hispanics make up about 20 percent of New York State's population, but account for less than three percent of the state's 50,000 judges and lawyers, the Metropolitan Black Bar Association said. The number of Asian and native American judges and lawyers is statistically insignificant, the association said.

"We have made it to the door but not beyond the reception area," said Ilene Milett, testifying on behalf of the Association of Black Women Attorneys.

A poll conducted earlier this year by The New York Times and WCBS-TV News found that almost half of all blacks and a fifth of all whites believed that the judges and courts in New York City favored whites.

"Our court system has not convinced minorities that they will get their day in court," said Judge Yvonne Lewis of Brooklyn Civil Court.

**A Lack of Minorities**

Minorities are poorly represented among non-judicial personnel, a clerk in Brooklyn Supreme Court, David Correa, testified. In Brooklyn, where approximately 20 percent of the population is Hispanic, three out of 280 court officers are Hispanic, Mr. Correa said. The situation is the same with court-appointed lawyers, Mr. Correa said, adding that in Brooklyn 12 out of almost 500 such lawyers are Hispanic.

> 'We have made it to the door but not beyond the reception area.'

Archibald Murray, the executive director of the Legal Aid Society, said that judges often address black and Hispanic Legal Aid lawyers by their first names, and their black clients are often called "boy" or "girl."

Also testifying was Justice Bruce Wright of State Supreme Court in Manhattan, who said that blacks are largely excluded from "the mighty law firms" that serve as breeding grounds for judges.

"In order to be appointed, apparently you have to know somebody, and we're not the kind of people who frolic in the Governor's Mansion, and Gracie Mansion," he said.

GIVE HAPPY SUMMER MEMORIES: GIVE TO THE FRESH AIR FUND

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. . . bespectacled rotund log-control officer. He ed to have been a police . . ., but he could not pass

. . . ot be trained to arrest a . . . Cormier told the group. . . . re disappointed about . . . y you older people who . . . much to do and want to . . . uspects. I hate to be the . . ., but we're going to dis-

. . . borhood Crime Watch logo . . . eye, to the volunteers. He told them that for $75 they could get together with their neighbors and buy a personalized neighborhood Crime Watch street sign from a company in California.

**'McGruff Is a Business'**

"We would have liked to have gone with McGruff," he said, referring to a cartoon dog in a trenchcoat and . . .

"But it's an awfully expensive program to get into," Mr. Cormier said.

"McGruff is a business," Chief DeGrace added with disdain.

At the end of the meeting, 16 people, most of them older women, signed up to participate. Before they did, a man in the audience raised a question. "If you . . . got a quiet neighborhood," he asked, ". . . can you go to the next street over?"

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. . . needs at bottom constitute taxes, which are not levied evenhandedly on the basis of neutral principals but are required from developers on a case by case basis."

The definition of a related amenity was "one which addresses a need directly arising from the project, i.e., which has a nexus to the project, and which is identified during the environmental review process; or is otherwise specified by law."

**'Disincentives to Development'**

Although the study was prompted by a concern that community boards were abusing the process of bargaining with developers, the committee found that no one was blameless.

"Arguments have been made to us that elected officials can properly be given responsibility to require unrelated amenities, though unelected community boards should be kept out," the report said. "The reason given is that elected officials are accountable to the voters and can be controlled at the polls.

"We believe, however, that deals made by elected officials show all the infirmities" — that is, "distortion of decision making, ad hoc and unevenhanded taxes or fees, distortion of spending priorities and capital budgets, creating disincentives to development.

"Elected officials, moreover, who could point out to the voters their role in obtaining the unrelated amenities, if anything may be under greater pressure to make such deals."

**For Earlier Involvement**

As for the community boards, the report said, they "should be given the opportunity to redirect some of their energies" by participating in the initial phase, when the scope of an environmental-impact statement is being determined.

"Early involvement of community boards," the report said, "will generally reduce any mystery surrounding the plans of developers and central city authorities and reduce the likelihood of confrontations and consequent delay."

Asked about the prospect of increasing the boards' role, Mr. Koch said, "I don't have any negative responses, but I don't have sufficient information to accept it."

Instead, he said, he "would have to be guided" by the chairwoman of the Planning Commission, Sylvia Deutsch.

Speaking generally about the report after it was delivered to him last Wednesday at City Hall, the Mayor said, "Its contents will be given the most thorough consideration." But, he added, it was too early to say when any guidelines might be advanced.

The committee was headed by Sheldon H. Elsen. Its members were Merrell E. Clark Jr., David C. Condliffe, Kathleen Imholz, Mark A. Levine, Jerome Lipper and Hector Willems.

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The New York Times/Peter Freed

. . . Keyser, W. Va., talking . . . ight, at the Port Author-

. . . ar in a row. "She discovers . . . bugs, and we learn about the . . .

. . . uncommon, officials of the . . . for strong attachments to be . . . tween the children and their . . . ut 60 percent of the visitors . . . d back by the families.

. . . Yoder, a host from Hartly, . . . ed a touching anecdote about . . . ngster. Last summer, she . . . hat one of her former Fresh . . . ren, Jemel Cottingham, was . . . about dropping out of school. . . . aded him, with the coopera- . . . parents, to spend this school . . . r house and attend the local . . . h school. Jemel returned last . . . is home in the Flatbush area . . . n, Ms. Yoder said, "more at . . . himself and ready to return . . . school."

. . . st the good old golden rule," . . . d. "I hope that somebody . . . the same for my kids if they . . ."

## . . . ts Schoolwork to Music

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LEGAL

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: FLORENCO FOLIAGE SYSTEMS CORPORATION, d/b/a DISPLAY ARTS, "DEBTOR."

CASE NO. 88B-11010(CB)

NOTICE OF PRIVATE SALE

TO: ALL CREDITORS, SECURITY HOLDERS, PARTIES IN INTEREST AND INTERESTED PURCHASERS

. . . filed against the DEBTOR unde . . .

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6/30/88 ND 34:1

# Courts Biased, State Panel Told

Blacks and other minorities are not receiving fair treatment in the courts of New York because of racist attitudes and structural flaws in the system, witnesses yesterday told a special judicial panel.

The witnesses, appearing at a public hearing of the New York State Judicial Commission on Minorities at the Harlem State Building, expressed a variety of concerns, ranging from unfair sentencing practices by judges to racist attitudes among those working in the courts.

"There is a subconscious racist attitude among some of the officers," said Veronica Singleton, a court officer in Manhattan. "They make racist remarks, and call people derogatory names without realizing what they just said."

Russell T. Neufeld of the New York State Association of Criminal Defense Lawyers called for a reform of the bail system, including 10 percent cash bail alternatives and supervised pre-trial release.

"Discrimination in the bail system is the result not only of the bias of individual judges but of the very functioning of the bail system," Neufeld said. "Since the essence of the bail system is that those who can afford to buy their freedom get out, while those who can't stay in, discrimination in the bail system is structural."

The 16-member commission was appointed last January by Chief Judge Sol Wachtler to determine if minorities are receiving fair representation in the judicial system.

The commission's mandate includes determining the extent to which minorities under-utilize the court system, reviewing current hiring practices to determine if minorities are fairly represented in the court system and evaluting methods used to select judges.

Herb Jones, assistant supervisor court reporter in a Manhattan court, saw the public hearings as a step in the right direction and said he hoped it would encourage young blacks to pursue their educations with the aim of getting jobs in the courts.

The commission has set a second hearing from 9 a.m. to 9 p.m. today at Two World Trade Center.

— Curtis L. Taylor

# Man Pleads Guilty In Death of Guard

A Harlem man pleaded guilty to second-degree murder yesterday stemming from the fatal stabbing of a security guard in a downtown department store last December.

Joseph Gooden, 38, of 1825 Madison Ave., agreed to plead guilty if prosecutors recommended the minimum prison term of 15 years to life.

On Dec. 1, Gooden argued with Bobby Jenkins, 44, of 305 W. 143rd St., after Jenkins, the unarmed security guard at Modell's at 280 Broadway, accused him of attempting to shoplift. Police said Gooden pulled a knife and warned Jenkins that he would return.

The next day, Gooden came back to the store and stabbed Jenkins in the chest, neck, back and head during a struggle between two racks of shirts.

During the attack, a bystander ran from the store and called over two mounted police officers from City Hall Park. Gooden fled, but the officers