

# Facts on Huey P. Newton's Legal Defense in Court

The Huey Newton Defense Fund is organized to raise funds for Huey P. Newton so that he has competent legal assistance when he stands trial. Huey Newton, the brilliant political leader of the Black Panther Party for Self Defense, was shot in Oakland, California, early Saturday morning, October 28, 1967. In the incident an Oakland policeman, John Frey (Jr.), was fatally wounded.

On November 13, 1967, the Alameda County Grand Jury, after hearing the evidence, went to lunch, reconvened at 1:43 p.m. and twenty-seven minutes later (at 2:10 p.m.), returned a three-count indictment accusing Huey Newton of murder, assault with a deadly weapon on a police officer, and kidnapping. This action was taken with no deliberation or questions asked by the Grand Jury.

Pressed into this brief twenty-seven minutes was movement of the fourteen (14) members of the Grand Jury from the Grand Jury room to the courtroom, roll call, two exits from the Grand Jury room by the District Attorney and his staff, and indictment. No questions were asked and no murder weapon was in evidence, nor was the absence of such weapon explained. (See attached xeroxed copy of the Supplementary Memo of Points and Authorities in Support of Motion under Penal Code Section 995 to set aside counts one and two of the indictment.)

We are seeking nation-wide support for this case because similar incidents have occurred in every Black ghetto across the country. The following position statement on Huey Newton and police brutality was read by Doctor Price Cobbs at a press conference called by the Defense Fund:

We feel that Huey P. Newton is the victim of a frame-up by the Oakland Police Department and that on several occasions members of that department threatened to kill him. They hate Huey because of the uncompromising stand he took against the abuse of power by the police in the Black ghettos of America. The Oakland Police Department has a well-deserved reputation for brutality and excessive use of force, particularly when it comes to Black people.

Huey P. Newton has long been at the top of the Oakland Police Department's WANTED LIST. He has been constantly dragged off to jail by them on phoney, made-up charges. This move against Huey fits neatly into the general pattern of harassment, frame-up, and intimidation which forces within the power structure have unleashed against militant young Black men and women who stand up and say No, loud and clear, to the conditions of Black people in America.

The Black Panther,  
Black Community News Service,  
November 23, 1967.

We are looking forward to your support and co-operation in helping to raise funds so that Huey P. Newton has competent legal defense.

Please send donations to:

Huey Newton Defense Fund  
P.O. Box 318  
Berkeley, California 94701

1 GARRY, DREYFUS, McTERNAN & BROTSKY  
341 Market Street  
2 San Francisco, California 94105  
3 EXbrook 2-1320

4 Attorneys for Defendant  
5  
6  
7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF ALAMEDA  
10

11 THE PEOPLE OF THE STATE OF )  
12 CALIFORNIA, )

13 Plaintiff, )

14 vs. )

NO. 41266

15 HUEY NEWTON, )

16 Defendant. )

17 SUPPLEMENTARY MEMORANDUM OF POINTS AND  
18 AUTHORITIES IN SUPPORT OF MOTION UNDER PENAL  
19 CODE SECTION 995 TO SET ASIDE COUNTS ONE AND  
20 TWO OF THE INDICTMENT

- 21 I. THERE WAS NO PROBABLE CAUSE TO INDICT DEFENDANT IN  
22 THAT THERE WAS NO EVIDENCE BEFORE THE GRAND JURY  
23 THAT DEFENDANT FIRED OR EVEN POSSESSED A WEAPON AT  
24 THE TIME THE SHOTS WERE HEARD.

25 Counts one and two of the indictment require the use by the accused  
26 of a deadly weapon as an element of the offense. The homicide count, count  
27 one, requires evidence that the accused did something to end the life of  
28 another human being. The evidence before the Grand Jury shows that Patrol-  
29 man Frey died of gunshot wounds. The second count, charging assault on  
30 Officer Heanes with a deadly weapon, depends on evidence before the Grand  
31 Jury the officer was wounded by gunshots.

32 Therefore, before defendant may be held to answer either of the above  
two counts of the indictment, some competent evidence must have been intro-  
duced before the Grand Jury that defendant had used a gun.

1 No such evidence was introduced in the hearing.

2 Although there is evidence that several shots were heard (R. T. 23,  
3 24, 25, 45), no witness testified that he saw any individual in possession of  
4 a gun, or shoot a gun, except that Officer Heanes testified that he placed his  
5 own service revolver in his left hand "and I took aim at Mr. Newton's mid-  
6 section and I fired". At that time, the defendant "was facing me", and  
7 Officer Frey, who was with the defendant, "had his left side to me".  
8 (R. T. 26).

9 In summary, Officer Heanes testified that he watched the defendant,  
10 followed by Officer Frey, proceed westward along Seventh Street to the rear  
11 of the three parked vehicles, saw the defendant spin around, heard shots  
12 fired, saw the defendant and Officer Frey grappling, in the course of the  
13 melee was himself struck twice by bullets, and fired at least once himself.  
14 (R. T. 22-26).

15 The witness saw no weapon in the defendant's hand:

16 "Q. When Mr. Newton spun around, could you see anything in his  
17 hands? A. I am not sure whether I saw anything in his hand at  
18 that time or not." (R. T. 23).

19 [There is no testimony the witness saw anything in defendant's hand  
20 at any other time.]

21 The witness saw no gun in Officer Frey's hand:

22 "Q. Was it correct that Officer Frey did not have a revolver out  
23 at the time Mr. Newton spun around? A. To the best of my  
24 knowledge he did not." (R. T. 23).

25 Officer Heanes testified only that he heard shots coming from the  
26 "direction" of defendant at a time when defendant and Officer Frey were  
27 separated only by "between an arm length or two arm lengths" (R. T. 23).

28 The officer's testimony did not exclude the possibility of others, in  
29 addition to defendant and Officer Frey, being in the same area, the "direc-  
30 tion" from which he heard the shots. There was testimony that another  
31 unidentified individual, a passenger in the Volkswagen with defendant, was  
32 also present.

1 After Officer Heanes had been shot in the arm, he said he saw this  
2 individual standing on the curb, hands up, between the Volkswagen and the  
3 first police car (R. T. 26). If correct, this would not have placed the other  
4 individual in the immediate area of the defendant and Officer Frey, but  
5 unfortunately Officer Heanes was a little uncertain as to just what happened  
6 when he was struck in the arm:

7 "Q. What happened to you when you got hit in the arm?

8 "A. I -- this is a blank area. I'm not sure what happened to me  
9 right then. I --

10 "Q. Excuse me.

11 "A. I grabbed my arm and must have pondered it for a second.

12 "Q. Do you know whether you passed out?

13 "A. I don't believe so.

14 "Q. Do you know whether you went down?

15 "A. I'm not sure." (R. T. 25).

16 In Malleck v. Superior Court, 142 Cal. App. 2d 396 (1956) the court  
17 issued a peremptory writ of prohibition when there was no reasonable or  
18 probable cause to believe that the defendant had committed the crime charged.  
19 The court said, rejecting the proposition, that "speculation and conjecture  
20 would have to be indulged in to connect petitioner with the crime".

21 Thus, here, in the absence of any direct evidence that the defendant  
22 was in possession of a gun, or fired a gun, resort would have to be had to  
23 "speculation and conjecture" to connect defendant with the shooting. This  
24 may not be done.

25 It is true that the witness Ross testified that defendant, subsequent to  
26 the shooting, got into the back of his car and had a gun in his hand. (R. T. 46).  
27 Ross further testified that the defendant "said he would have kept shooting if  
28 his gun hadn't jammed", but the defendant "didn't say who he shoot",  
29 "didn't say who he shot or nothing". (R. T. 47).

30 At best this testimony offers further food for "speculation and conjecture"  
31 from which apparently the Grand Jury drew the inference that it was  
32 defendant who engaged in shooting at the time Officer Frey and Officer Heanes

1 were struck by gunshot bullets.

2 The case is closely analogous to Peo. v. McChristian, 245 Cal. App.  
3 2d 891 (1966), where the court affirmed an order dismissing an information  
4 under section 995 of the Penal Code. There the opinion evidence of two  
5 police officers that the substance they saw in defendant's possession was  
6 heroin was held inadequate and insufficient to establish reasonable and  
7 probable cause.

8 As in the instant case, where no gun was seen by witness Heanes,  
9 when no gun was offered or received in evidence, in McChristian, where no  
10 materials were taken from defendant or offered in evidence, the testimony  
11 of the officers was held "speculative and conjectural", and "not competent  
12 evidence that the balloons in the possession of defendant contained heroin."

13 In the absence of legal evidence that defendant did the shooting, with  
14 no more than conjecture that defendant committed either offense, he has been  
15 held to answer without reasonable or probable cause.

16 II. THE GRAND JURY FAILED TO WEIGH THE EVIDENCE AND TO  
17 DELIBERATE BEFORE RETURNING THE INDICTMENT.

18 Sections 939.7 and 939.8 of the Penal Code require a Grand Jury to  
19 "weigh all the evidence submitted to it", to order further evidence to be  
20 produced if it has reason to believe there is other evidence that "will explain  
21 away the charge", and only to find an indictment "when all the evidence before  
22 it, taken, together, if unexplained or uncontradicted, would, in its judgment,  
23 warrant a conviction by a trial jury".

24 These statutory requirements, inherent in the function of the Grand  
25 Jury to stand between the prosecuting authorities and an accused, plainly  
26 demand that the Grand Jury consider evidence submitted to it, deliberate  
27 upon it, weigh its strength and weaknesses, and reach a conclusion only after  
28 such consideration and deliberation.

29 These statutory and inherent duties were ruthlessly flouted and  
30 ignored in the instant case. The transcript of the proceedings had by the  
31 Grand Jury irrevocably shows that the Grand Jury gave but fleeting moments,  
32 if that, to deliberation.

1           After hearing the evidence, the Grand Jury went to lunch, then re-  
2 convened at 1:43 p. m. (R. T. 57).

3           Twenty-seven minutes later, at 2:10 p. m., the Grand Jury was  
4 excused by the court, after returning the three-count indictment to the court  
5 (R. T. 60, 61).

6           In that 27 minute period, the 14 members of the Grand Jury, Mr.  
7 Coakley, Mr. Jensen, Mrs. Collins and the reporter proceeded from their  
8 Grand Jury room to the courtroom of Honorable Leonard Dieden in Depart-  
9 ment One. A roll call of the Grand Jury was taken in the courtroom, the  
10 three-count indictment was presented by the foreman of the Grand Jury and  
11 its substance recited to the court. The court received the Grand Jury and  
12 the indictment, inquired on the question of bail, and made an order excusing  
13 the Grand Jury. In the normal course of things, the foregoing proceedings  
14 alone would occupy 27 minutes or more.

15           But that is not all that occurred in the same 27 minutes. Prior to all  
16 the foregoing, according to the transcript, Mr. Coakley, Mr. Jensen, Mrs.  
17 Collins and the reporter twice retired from the Grand Jury room, and twice  
18 re-entered the Grand Jury room. These processions necessarily took some  
19 time. Assuming they did not leave the corridor outside the Grand Jury room,  
20 not less than five minutes must have been consumed.

21           And in addition to that time, when the District Attorney and his  
22 representatives did return to the Grand Jury room, there were proceedings  
23 had with respect to the Grand Jury's consideration of a prior felony convic-  
24 tion, the third count in the indictment. Two pages of the transcript (R. T. 57,  
25 58) were recorded while the District Attorney explained to the foreman of the  
26 Grand Jury the facts and the significance of the prior conviction, and the fact  
27 that further "deliberation" would be required.

28           The court must judicially notice that these proceedings must have  
29 occupied 10 minutes at a minimum.

30           Thus, with no time whatever allotted for deliberation, proceedings  
31 normally requiring more than 40 minutes at a reasonable pace, were accom-  
32 plished in 27 minutes.



