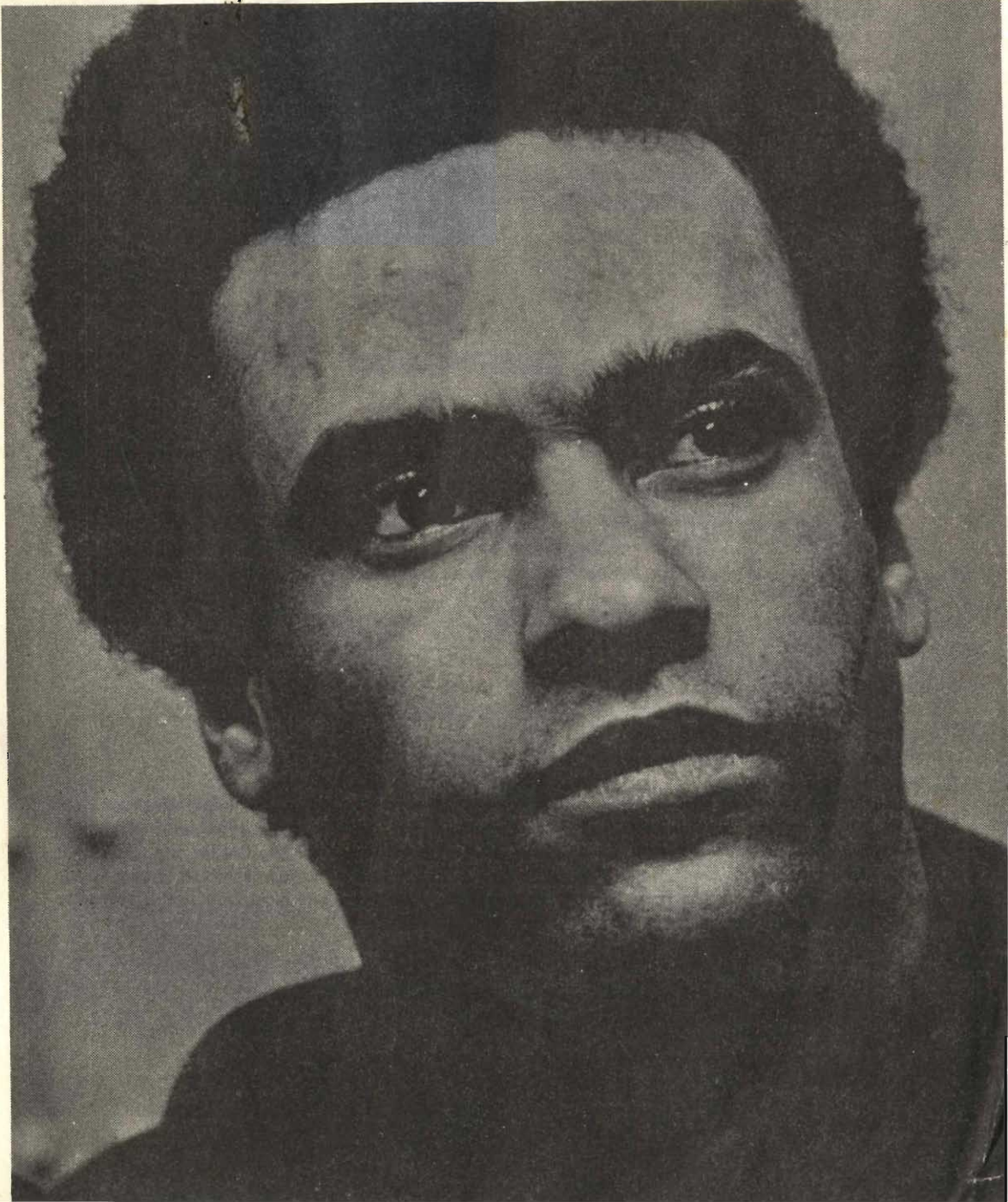


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BLACK LIBERATION ON TRIAL:

The case of Huey Newton



Black Liberation on trial: The Case of Huey Newton

By
CELIA ROSEBURY

*Celia Rosebury
8/1/2016*

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Cover photo of Huey Newton by Jeff Blankfort

REPORTER'S PREFACE:

The Basic Questions

OAKLAND, California — As I boarded an AC Transit bus outside the Alameda County courthouse in mid-August, 1968, the elderly, white driver looked up and said, "Did they get that bum yet?"

"Who's that?" I smiled innocently, forgetting I still had my press badge pinned to my trenchcoat.

"That sonofabitch they got on trial in there," said the driver as I dropped my fare in the box.

The bus was empty save for me and him. I held on as we pulled away from the curb, and calculated my answer.

"Well, I'm not so sure he's guilty. The prosecution's got a pretty weak case, and those of us who've been there every day are more and more sure he's innocent."

I took a seat by a curbside window 10 feet behind the driver. He called back to me:

"Innocent? You can't tell me. You don't see what I see from up here. They'll lie about their age, cheat, anything to save a dime."

Who's "they," buster, I thought to myself. But of the many answers I could give, I merely said, "That doesn't prove this guy killed somebody, does it? What's that got to do with the case?"

"They got all them witnesses. They got that bus driver . . . he ain't lying."

Sure. Bus drivers are all pure. Look at you, I thought.

Then several people got on the bus, and our discussion ended.

As we rolled on through Oakland, I thought of a comment made in the press box that morning by a young Britisher covering the trial of Huey P. Newton for the London Telegraph.

He said he had visited the neighborhood of Seventh and Willow where the Black Panther leader is said to have shot and killed police officer John Frey.

He commented that looking at the site had made him understand the whole trial.

Seventh and Willow is a squalid intersection where crumbling dwellings sag in the shadow of the elevated construction of Bay Area Rapid Transit.

The sidewalks of the area are cracked and strewn with rubble. The London reporter commented he'd never seen a white neighborhood in America where the city never cleans the streets.

On the south side of Seventh street, where Newton's car was stopped by Frey, a Post Office is being built — a huge, fortress-like building with "gun slit" windows. From dusk on, the street swarms with black prostitutes waiting for Johns.

This is the community of Huey Newton, and of millions of other blacks all over this country. It is because he fought to change conditions like these that Newton was on trial for his life, facing a jury of people whose lives are detached from such scenes of decay.

* * * *

When I began to cover the Newton trial, I was prepared to believe Huey shot that cop. I knew if he was guilty (and that was yet to be proven) it had been a matter of self-defense.

I knew Huey — like all other Panthers — had been hounded by the police, threatened, treated brutally and mercilessly. I knew the police were out to get Newton, just as they "got" Bobby Hutton — 17 and unarmed — last April.

But as I listened to the evidence, Newton's innocence seemed apparent. This feeling was shared by many in the press box who had accepted their assignments with preconceived notions of Newton as a "cop-killer."

The trial of Huey Newton is a historic event because it is more than a murder trial. It is a trial of the black liberation movement in the United States. Because

whether he is innocent or guilty, the charges against Huey raise these all-important questions:

- Do armed white racist police provoke hatred and violence in the black ghettos of America?
- Do black Americans have the right to arm themselves and, in extreme instances, to kill to keep from being killed?
- Do black Americans have the right to organize themselves into militant political parties, for self defense and for winning political power — black power — so the residents of the ghetto can control their own destinies?
- Do black Americans have a right to be tried by a jury of their economic and social peers?

These ideas were on trial in the Oakland courthouse during the summer of 1968. If Newton was guilty, he was guilty of saying "yes" to these questions.

But if he was innocent — if he did not kill Officer John Frey, and wound Officer Herbert Heanes, and kidnap Del Ross — the implications of this trial go even further. His innocence means that agencies and individuals within the officialdom of a major city, with the cooperation of the police, courts, mayor and news media, participated in a frame-up.

Under our law, a defendant is innocent until proven guilty. In the Newton case, close observers — among them legal experts — agree there is, at the very least, what the law calls "reasonable doubt" in the case against Newton as presented by the prosecution.

If Newton was framed, it was done consciously by certain people who knew the truth, but who wanted Newton off the streets of Oakland. But not all of those who aided the prosecution were knowingly conspiring to convict an innocent man. Doubtless many sincerely believed Huey guilty as charged. They believed it before it was proven in a court of law, and they did not give him his constitutional right of "presumption of innocence."

Those who convicted Newton in their minds — the police, city officials, courts, commentators and citizens like the bus driver who asked, "Did they get that bum yet?" — prejudged the case because, to those all-important questions, they would answer "no."

The Newton defense attempted to bring those questions into a court of law. On the following pages is the story of the trial, as I saw it.

—Celia Rosebury

JULY 20*: THE TRIAL CONVENES

Huey P. Newton's attorney said it was like "a police state" around the Alameda county courthouse.

All who entered the official building on the shores of Lake Merritt had to get past armed, uniformed sheriff's deputies by showing appropriate identification. All entrances were locked, and armed guards patrolled the inner corridors.

Outside Department 8 (Superior Court Judge Monroe Friedman), two armed, helmeted police guarded the door and stopped all those who stepped off the elevators, requesting identification.

The reason for this extraordinary activity was, of course, the long awaited trial of Newton, charged with killing an Oakland policeman, wounding another, and kidnaping a third man on Oct. 28, 1967.

As the court convened the morning of July 15, 1968, the shouts of 3,000 demonstrators seven floors below could be heard, faintly but persistently. The Black Panther party, which Newton helped to found and of which he is Minister of Defense, had turned out in force to demand freedom for Huey, together with the Peace and Freedom party and a host of other groups and individuals. They circled the building all day, singing slogans: "Free Huey . . . Halt the Pigs!" The demonstration was loud enough to carry to the courtroom above, but not so loud as to disrupt proceedings.

Inside the courtroom sat 21 members of the press, to whom special passes had

*All headline dates refer to the issue of The People's World in which the article appeared.

been issued, 47 prospective jurors, out of which the final 12 were to be chosen, and Huey's family, fiance and pastor, who were all mugged and fingerprinted before they were allowed to attend the trial.

The trial, which has received international publicity, was held in a courtroom smaller than the one in which Newton's preliminary hearings took place. Newton's attorney, Charles Garry, had requested a larger courtroom be obtained. Some Newton supporters suggested it would not be unreasonable to hold the trial, which is supposed to be public, in the several thousand-seat Oakland auditorium. Such requests were denied.

Soon after the proceedings opened before their exclusive audience, Attorney Garry challenged the basis of selection of the jury, and all 47 panelists were sent home until the point should be decided. Their vacated seats were filled by members of the public.

Garry offered two objections to the jury selection procedure: that the voter registration lists from which prospective jurors are chosen are not truly representative of the community because there are fewer registered voters in the ranks of the poor and minority groups than among middle class whites, and that white jurors should be dismissed because they cannot understand the black community. For these reasons, Garry contended, Newton could not possibly receive a fair trial under the present jury system.

The first days of the trial were taken up with testimony from sociologists and population experts in Garry's attempt to prove his point and to establish the unique nature of the West Oakland community — Newton's community.

Key testimony was presented by Dr. Floyd Hunter of the Social Science Research and Development Corp. Hunter said research indicated that, in his opinion, East and West Oakland should by rights be divided into two cities, with separate governments representative of the population of each.

Garry commented to the press, "That's exactly what the Panthers have been saying: 'We should rule our own community'."

Dr. Jan E. Dizard, a sociologist-statistician from the University of California, testified voters' lists are "statistically biased in favor of whites, so jury selection is fundamentally biased."

THE SCENE OUTSIDE THE COURTHOUSE

Outside the courtroom on the first day, Newton's supporters kept up a loud, determined vigil under the hot sun. A crowded line moved around the courthouse block, waving banners and clapping. At all three entrances to the courthouse, a corps of Panthers, in black berets and black leather jackets, stood at attention.

Across the street from the main entrance, a line of nearly 100 Panther brothers stretched the length of the block, and they stood there, facing the courthouse, all day. At one point several hundred sisters behind them joined them in a pulsing chant: the sisters singing, "No more brothers in the pig pen!" and the brothers answering, "Halt the Pigs!" as they raised a clenched fist in rhythmic salute.

At one point, in a much publicized incident, a young white man tore down the American flag from its pole at one side of the courthouse entrance. Moments later, half a dozen helmeted deputies charged from the building into the crowd massed on the steps. The demonstrators fell back, some in panic. But the police merely stationed themselves defiantly around the barren flagpole.

Throughout the day the Panthers issued orders to "keep moving, and don't antagonize the pigs."

Can Huey Newton get a fair trial in Oakland? That question is more meaningful than ever, now that the trial is under way. Meanwhile, West Oakland knows it's not just Huey, but all Panthers, and black liberation itself, that's on trial in that closely guarded courthouse.

JULY 27: DURING THE JURY SELECTION . . .

A dozen people who have never read the Kerner Commission Report on Civil Disorders, who are unfamiliar with the platform of the Black Panther party, and who would have no scruples about prescribing the death penalty in extreme circum-

stances, were tentatively seated in the jury box as the Newton trial ended its second week. This roster changed daily as District Attorney Lowell Jensen and defense counsel Charles Garry exercised their right to peremptory challenges in the long jury selection procedure marking the second week in the trial of the Black Panther leader. But the ultimate jury will clearly follow the pattern already established by early elimination procedures.

In narrowing down the panel of prospective jurors, the most prevalent factors in excluding people were their preconceived opinions on the case — or inability to be impartial — based on mass media coverage, and a fixed attitude of conscientious opposition to the death penalty.

Some questions repeatedly asked of potential jurors by Garry were:

- Have you ever heard of the Black Panthers? Of black power? Of white racism? Of the Kerner report? (Many jurors had not; those who had said they were indifferent or unconcerned about each.)
- Are you in favor of fair housing legislation?
- Do you belong to any organization that advocates supporting your local police or impeaching Earl Warren?
- Assuming (since it has not yet been shown in the court) the Black Panther party opposes the Vietnam war as a "white man's war," and blames white racism for the problems of the ghetto — would that influence your attitude toward the defendant?
- Do you own a firearm? Do you believe in a citizen's right of self-defense?
- Have you ever had an unfortunate experience involving a person of the black race?
- Does the heavily guarded atmosphere around this courthouse convince you the defendant must be guilty?
- Do you believe Newton is innocent? (Since, under the law, he is so until proven guilty, a juror must be able to affirm this point.)

An elderly woman who admitted she recognizes racist feelings within herself but tries to guard against them was tentatively seated on Monday, July 22. Garry did not challenge her. Questioned later about his acceptance of a juror who admits to racist tendencies, Garry told the press, "She recognizes the feelings and tries to curb them. That's what we all should be trying to do, isn't it?"

But few of the prospective jurors questioned admitted to being aware of racism, in themselves or in American society. And all professed that none of the controversial elements involved in this trial would make it hard for them to render an impartial decision.

Garry contended, "what's on trial is the issue of white racism in the jury," and he presented expert testimony in the first days of the trial to show nearly every white person in this society harbors subjective racist feelings.

As part of the prosecution's initial screening interview, the prospective juror is asked by the D.A. if he or she has "any conscientious opinion" on the death penalty.

Out of the first 33 panelists questioned, 11 expressed blanket opposition to the death penalty, 10 of whom were dismissed for that reason. (The 11th had extenuating personal circumstances, but would inevitably have been challenged on the capital punishment question.) Of those who were not challenged for cause among these jurors, three expressed moral doubts about the death penalty, but stated they could consider it in extreme circumstances. All three were dismissed by peremptory challenge of the prosecution.

(Popular misunderstanding of the recent Supreme Court ruling in the Witherspoon case has confused some followers of these proceedings. The Witherspoon decision holds no juror may be automatically excluded because of conscientious scruples about the death penalty. However, a juror in a state in which capital punishment exists must assert willingness to consider the death penalty, in accordance with that state's laws, should the defendant be found guilty of first degree murder.)

Three black panelists and two Orientals were dismissed for cause because they stated they could under no circumstances vote for the death penalty. A fourth black man, an elderly aircraft washer, was thrown out by the D.A. on his second peremptory challenge. As of midweek, only one black, a young loan officer from the Bank of America, was in the jury box.

One black dismissed earlier surprised the entire court when he answered opening questions on his possible knowledge of anyone connected with the case. An elderly

boilermaker, the man said cheerfully, "Sure, I know Huey . . . my sons went to school with him," and added, "he's a nice fella."

Judge Monroe Friedman silenced the titters that greeted this announcement.

"Mere knowledge of the defendant does not disqualify you as a juror, as long as you can be impartial," the judge explained. The man indicated his belief Newton is innocent, "but if they show me good evidence, beyond reasonable doubt," he stated, "if someone can prove to me he done it, well — he done it."

The man might have made it onto the jury, but when asked his feelings on capital punishment, he shook his head.

"No death penalty for no boy," he said staunchly.

He was then challenged by the D.A., and dismissed.

Garry's early peremptory challenges included a 30 year old ex-marine who had been seated though he stated he believed the Panthers "cause trouble," and a registered Republican who said he couldn't remember Prop. 14 (the anti-fair housing measure) though he voted in California that year.

The prosecutor used another of his 20 peremptory challenges to throw off the jury a retired sheet metal worker (white) who said he was friendly with his black neighbors, belonged to Local 216 for 25 years, and had "been debatin'" the death penalty within himself for a long time.

These proceedings occurred in the wake of the defense's three-day attempt, at the trial's opening, to discredit the entire jury selection procedure. But, despite expert testimony to support the defense contention that the jury system is weighted against black people, Judge Friedman overruled this challenge and ordered the start of the long process of empaneling the 12 jurors who will sit in judgment of Huey P. Newton.

AUGUST 10: THE COURTROOM AS CLASSROOM

At one point in the early days of the Huey Newton trial, Superior Court Judge Monroe Friedman said, "I feel like I've taken a course in sociology the last few days." No doubt about it, the judge, jury panel, press and spectators have all been getting an education from the proceedings in the seventh floor courtroom in Alameda County where Newton is on trial for his life.

Even before any evidence was presented, the courtroom had become a classroom. The first weeks of the trial, which began July 15, were absorbed with selection of the jury, a process that was delayed for several days with an attempt by the defense to establish the inherent unfairness of the jury selection procedure. In this attempt, and in his subsequent interrogation of prospective jurors, Defense Attorney Charles Garry established what will undoubtedly be a continuing theme in the trial: the concept of white racism and its permeation of the community and the judicial process.

In setting forth this theme, and related issues of possible prejudice on the part of jurors, Garry hammered away at his points. Sometimes forcefully, at other times gently, Garry strode about the court, alternately donning and removing his glasses, directing probing questions at jurors or terse challenges at the judge and the prosecution.

First, there was a parade of witnesses for the defense's contention that Alameda county juries are not randomly chosen and tend to over-represent whites, middle class people, and people with "authoritarian personalities."

A statistician talked about the table of random numbers, which is not used in the supposedly "random" selection of jurors from voter registration lists. A sociologist described the black community's "disillusion with our government to the extent that the vote means nothing to them." to indicate the voter lists do not represent a true cross section of the community. Then psychologist Nevitt Sanford described "the authoritarian personality," based on his famous study published under that name. His testimony indicated people who favor the death penalty tend to convict quickly on little evidence, and tend to feel threatened by violations of accepted norms of behavior.

"This is all very interesting," interrupted Judge Friedman at one point in Sanford's testimony, "but what does it have to do with Alameda county?"

A JURY OF HIS PEERS?

The 12 people below have been selected as jurors in the trial of Huey Newton. All information about them was obtained from their own responses to questioning by counsel for the defense and prosecution. Words in quotes are the juror's own.

JUROR 1: Middle aged, caucasian, cosmetics saleslady in a Berkeley drugstore. Not generally opposed to capital punishment: "sometimes it's necessary."

Heard spokesman from the Black Panther party in her church group on urban problems; she gathered he was saying all white Protestants are racists, and that made her angry, but got her thinking.

Never heard of Kerner Commission Report on Civil Disorders. "Most everybody has some racism, I guess, but I try to fight against it in myself." Has no objection to the term "black power," or to Panthers calling certain cops "pigs."

JUROR 2: 45 year old caucasian, electronics salesman and engineer, currently unemployed. No opinion on death penalty. Has heard of white racism: "I honestly believe I don't have any." Has heard of Panthers, but not familiar with their program. Believes in fair housing laws. Doesn't believe everything he reads in the papers.

JUROR 3: Mid 30's, black, lending officer in Bank of America, also teaches night school. Was an Air Force staff sergeant. Has reservations about the death penalty. ("If the victim was close to me, I'd probably be for it.")

His colleagues at the bank don't talk much about the news: "for example, when Martin Luther King was killed, they didn't discuss it with me." No objection to the Black Panthers. Doesn't belong to any organization with a position on the Newton case.

JUROR 4: Mid 30's, Oriental man (born in U.S., parents Japanese), lab assistant at Shell Development Corp. in Emeryville. Has thought about death penalty, generally doesn't favor it except in extreme cases.

No opinion on Black Panthers. Has heard of white racism: "I think it's deplorable in every phase."

JUROR 5: Middle aged caucasian woman, slicer in meat packing plant. Husband retired from Oakland Fire Department: "There are Negro firemen . . . we're all friends."

Panthers calling some police "pigs" doesn't bother her: "People used to call them 'the fuzz', that didn't bother me either."

JUROR 6: Aging caucasian Venezuelan, machinist. Has lived in U.S. since 1947, mainly in New York. Visited Cuba in 1957 and again in 1961. Doesn't believe Castro is doing a good job, but if Newton believes otherwise, that wouldn't prejudice him. Has some difficulty with English; reads Spanish language L.A. paper, which had articles on Newton, but he ignored them.

JUROR 7: Young caucasian housewife, Spanish surname. Husband a fork-lift driver. Believes in capital punishment in severe cases.

JUROR 8: Middle aged caucasian woman, secretary, mother of 3. Believes in death penalty in extreme cases. Doesn't like the term "pigs" just as she doesn't like the term "niggers." Believes she has some white racism in herself. Shocked by "gun element" in Panthers; believes civilians should not carry guns, but police should, "because they have a job to do." Doesn't know what black power means; "people should be equal."

JUROR 9: 30-ish caucasian man, works in trust department, Wells Fargo Bank. In the Coast Guard Reserves. Said questions asked of jurors had made him "think a lot."

JUROR 10: Elderly caucasian woman. No opinion on death penalty. Doesn't read the papers: "I have my own troubles." Owns property, rents to black tenants with whom she has no problems. Admitted she may have some subjective feelings of racism.

JUROR 11: Young caucasian woman, married, Spanish surname. Works for a pulp and paper company. No opinion about death penalty. Has heard of the Panthers, but not familiar with what they believe. Has no objection to black power, no feelings of white racism.

JUROR 12: Middle aged, caucasian woman. Works for an airline food catering service. Doesn't believe in death penalty except in extreme cases. Nothing she has heard about the Panthers or racism has made her doubt she can be impartial.

Garry pointed out the pertinence of the testimony, since people who refuse to consider capital punishment under any circumstances are excluded from juries. Sanford was allowed to continue, but finally the judge broke in again insisting wearily, "We cannot discuss all the problems of the world in this courtroom. Do you have any information on the authoritarian personality in Alameda county?"

Such exchanges made it clear Judge Friedman intends to deal with the Newton case along traditional legal lines, despite Garry's attempt to challenge, and hopefully to revolutionize, some of the injustices of American courts. Though Garry's challenge of jury procedures was overruled, he did succeed in dramatizing to those present the substance and relevance of his contentions.

The lengthy process of jury selection also proved revealing for many in the courtroom, including some of the prospective jurors, who admitted Garry's questions had "made them think." In examining the jury panel Garry attempted to bare the background and attitude of each individual, searching for preconceptions and biases that would prevent an objective hearing of the facts of the case.

Garry asked the jurors their feelings about the Black Panther party, fair housing, the Birch Society, the police, the right of self-defense. But his most probing questions, and the ones jurors seemed to find most difficult to answer directly, stemmed from the query, "Have you ever heard the term 'white racism?'" A few jurors said they never had. Most agreed they'd heard of it, but couldn't define it. Only a handful said they understood the concept of white racism, and fewer still admitted to any traces of racist feelings in themselves.

In his attempt to elicit frank answers, Garry repeatedly took the opportunity to define to successive panelists types of white racism he termed "objective" and "subjective." The "objective" sort of racism, the defense attorney explained, is the sort that can be seen and heard, in signs that say "No Negroes Wanted Here," in outspoken opinions about white superiority or black inferiority. "Subjective" racism, on the other hand, said Garry, exists only within the individual, and only he can be aware of it and watch for its signs — the inner attitudes that suggest one's daughter shouldn't marry a Negro, or that Negroes "should be able to help themselves as other people do."

Faced with this searching presentation, a small number of jurors admitted they harbor some racist attitudes, and try to guard against them. The presence of such people on the jury was not challenged by the defense.

What seemed to be a diversion was used on several occasions by Garry to make a significant point to the jury. The attorney asked several panelists if they were aware of what he called "the Perry Mason Syndrome."

"At the end of the trial, you know," Garry would explain, "Perry Mason always comes up with the real killer, thereby making a fool of the D.A. and freeing his client. Now, you understand, don't you, that it is up to the prosecution to prove beyond a doubt the guilt of the defendant? And you do not expect me, or Huey Newton, to produce the person who actually killed officer John Frey?"

AUGUST 3: AFTER THE JURY SELECTION...

After 12 jurors were finally chosen, in the third week of the murder trial of Huey Newton, Defense Attorney Charles Garry promptly moved that they be dismissed because they were not the peers of the Black Panther party leader. The one black juror among the 12 — a Bank of America employe who does not reside in the ghetto — is only a "token," Garry said, and in any event is not Newton's true peer.

When his motion to start the jury selection process all over again was denied, Garry submitted two motions for a mistrial. One concerned the jury, and the other was based on press statements of Oakland's Mayor John H. Reading. These motions were also denied. And thus the trial proceeded toward the fateful decision as to whether Newton was to be sentenced to die in San Quentin's gas chamber.

Garry had challenged jury selection procedures in the opening days of the trial, contending that under present methods his militant young client could not receive a fair trial. Now, with 12 individuals chosen out of about 100 panelists questioned (see box), Garry said he was not satisfied with the jury as constituted.

"Not one single juror resides in the West Oakland ghetto, my client's community," charged Garry. "None are his peers — of his economic standing."

Judge Monroe Friedman demanded to know Garry's legal authority for his contentions. "Is there any law that requires jurors must come from West Oakland?" queried the judge.

Garry maintained his only authority was the constitutional birthright of a citizen to a jury trial by his peers, and he charged that each prospective juror who came close to being Newton's peer was challenged for cause or excused peremptorily by the prosecution. (Among those excluded from the jury by Assistant District Attorney Jensen by peremptory challenge — no explanation required — were an elderly black airplane washer, a young black mother who worked as a cook, and a middle aged black railway express supervisor. All had been seated when their response to questions by both sides did not lead to a challenge for cause).

Garry moved the entire jury panel be dismissed and a new panel embodied, using census tracts rather than voting lists, "so we can have a fair cross section of the community."

When the judge denied this motion, Garry moved for a mistrial on the grounds of systematic exclusion of blacks by the prosecution's peremptory challenges. He also protested the exclusion of all panelists who noted that they could under no circumstances consider the death penalty, though under questioning they asserted they could impartially reach a verdict upon the facts of the case. Judge Friedman ruled against each of these attempts to challenge the jury selection system. The judge noted "the law requires that jurors be selected on individual qualifications, not on the basis of race. What the law will be in the future I can't say, but the present panel is a cross section of the county, and the jury was selected fairly."

Garry's second motion for a mistrial was based upon "the publicity engendered by the mayor of this city." In a front page story in the July 28 San Francisco Examiner which Garry read into the record in full, Mayor Reading made these statements: "The Black Panthers have demanded that the police department be decentralized, with a police station in every neighborhood run by that neighborhood. With crime increasing, that would result in utter chaos." Reading alleged black militants have demanded what amounts to "control of the entire city, its development, its future, everything."

"I don't believe these militant extremists are truly representative of the decent, solid Negro citizens who have education, jobs, homes and a feeling for this community," the mayor went on. He also alleged that the polarization of races warned about in the Kerner report has already come to pass in Oakland, that this situation is causing whites to move away from that city, and that the election of a black mayor of Oakland may be imminent. The article was headlined: "Frustrations of Oakland Mayor."

The defense contended its motion claimed more than a "public atmosphere which precludes a fair trial. We're not talking about ordinary publicity," Garry emphasized. "We can take our licks on that. We're talking about the head of this city's government going out of his way on the eve of the trial to make threats" of dire consequences relating to the Newton trial, which Garry maintained is "a serious case involving the whole question of black liberation"

The judge chose to deny this motion, too, and at 11:15 a.m. on July 30 the Newton jury was sworn in, and the court resumed the now familiar question-and-answer routine to choose four alternate jurors to stand by during what will certainly be a long and intense trial.

AUGUST 10: THE ARGUMENTS

The defense will show, Attorney Charles Garry told the jury, that Huey Newton had no gun and fired no shots on Oct. 28, 1967.

Garry's statement, presented immediately after the prosecution outlined its theory of Newton's guilt, promised the defense would submit evidence to prove:

- That Newton was stopped by police on a West Oakland street in the pre-dawn hours of last Oct. 28 because the police were out to "Get Huey Newton."

- That Newton was unarmed that morning.

- That Newton did not kill Officer John Frey, or wound Officer Herbert Heanes, or kidnap Del Ross.

Garry's statement was all the more dramatic because he had the option of putting it off until after the prosecution had presented its case. Instead, he chose to take the offensive at the very outset of the trial proper.

The defense counsel's dramatic address provided a sharp contrast to the rather mechanical presentation in which prosecutor Jensen contended he will show Newton "fired the fatal bullet into the back of Officer Frey with Frey's own weapon," wounded Officer Heanes with the same police weapon, and afterward "commandeered" Del Ross at gunpoint to drive him from the scene.

The rival counsel made their opening statements to the 12 jurors and four alternates, who were chosen in three weeks of interrogation of 160 panelists.

Jensen said the prosecution will produce an eyewitness: an AC Transit bus driver whose route took him past the intersection of 7th and Willow in West Oakland before 5 a.m. According to Jensen, the bus driver "saw the whole thing, saw Newton go into his coat and come out with a gun." (The prosecution contends Newton was armed with a 9mm. automatic and says expended 9 mm. cartridge casings were found at the scene. The gun itself, however, has not been produced so far.)

THE DEFENSE STATES ITS CASE

Garry opened his unexpected prologue on a low key: "I want to tell you what we believe this case is all about." He related that Newton was born 26 years ago in Louisiana, and named after Huey Long, "something he's been trying to live down ever since." When he was a year old his family moved to California. When he graduated from high school, Garry revealed, Newton could neither read nor write. He became literate by "self determination" at the age of 17, attended Merritt College, and then went on to law school for six months.

Garry described Newton's increased involvement in the black liberation movement, and his founding of the Black Panther Party for Self Defense in 1966. Then the attorney read the entire program of the Black Panther Party — the "10 points" — "because," he said, "it is an integral part of this case. Without the 10 points you would not be able to understand why he is charged with this atrocious crime." In a voice charged with emotion, Garry outlined the 10-point Panther program, ending with the final affirmation, "We want land, bread, housing, education, clothing, justice and peace."

The attorney described the formation of Panther patrols to watch the police and advise people in the ghetto of their rights. This "enraged" the Oakland police, said Garry, and they made a list of all Panther automobiles, and circulated pictures of Panther leaders among all cops. "The cry of the police became 'Get Huey Newton — get rid of him!'" Garry said.

He then pointed out the deceased Officer Frey, with whom Newton is alleged to have tussled (in the process wrestling the officer's gun from its holster) stood 5'10½" and weighed 200 pounds, as opposed to Newton's 5'10", 155 pound frame. Furthermore Frey received a varsity letter in wrestling, football and track at Clayton high school in Concord (which, Garry added, was an all white school).

In Frey's 1½ years on the force, the defense asserted, he had "built a record of harassing and pushing around people in the black ghetto."

Garry also attempted to describe the treatment Newton received when, after the pre-dawn incident Oct. 28, he was hospitalized with a bullet that entered his stomach and exited through his back, leaving a perforated bowel. Garry said police were called before any treatment was given the defendant, that his hands were handcuffed above his head as he lay on a gurney, and he was harassed by police who kicked his bed and said, "We're gonna get you." When he complained, said Garry, he was told, "Nigger! Black bastard! You ought to die."

Garry was chastised on these points by Judge Monroe Friedman, who cautioned him to confine his remarks "to the state of mind of the defendant on or before Oct. 28."

During the prosecutor's opening statement Garry twice moved for a mistrial.

Once, Jensen referred to "two matchboxes of marijuana" allegedly found in Newton's car. The defense objected, pointing out there are no marijuana charges in the indictment, and asked for a mistrial. The second motion came after Jensen

referred to Newton as "an ex-convict with a gun." The prosecutor used this term while alleging evidence will show Newton feared being arrested because he was on probation for a prior felony conviction.

In a series of motions, the defense has attempted to have this prior conviction stricken from the record, or reduced to a misdemeanor. The conviction resulted from an incident in 1964 when Newton, in an altercation at a party, injured his antagonist with a knife he was using at the time to cut a steak. His law school experience behind him, Newton elected to defend himself against the charges. He was sentenced to six months in the county jail and a three-year probation period.

The defense contended Newton was not properly advised while representing himself, and further maintained a felony charge becomes a misdemeanor if it does not result in incarceration in a state prison. Judge Friedman denied all motions which would have, in effect, wiped Newton's record clean.

With these presentations as background, the parade of witnesses for the prosecution began: the pathologist who performed Frey's autopsy, whose testimony raised the question of just how many bullets actually struck the officer; the police dispatcher who received Frey's radio message of intent to stop "a known Panther vehicle"; and Officer Heanes who testified, as he did before the Grand Jury, that at no time did he see a firearm in Newton's hands during that fateful confrontation.

AUGUST 17: WITNESSES FOR THE PROSECUTION

The prosecution had presented its three star witnesses as the murder trial of Huey P. Newton ended its fifth week, and this, in capsule, is what emerged from their testimony (or lack of it):

- Del Ross, the man allegedly kidnaped by Newton, threw the courtroom into pandemonium last Monday (Aug. 12) when he refused to testify, invoking the Fifth Amendment privilege against self-incrimination.

- Herbert Heanes, the police officer allegedly shot by Newton after the Black Panther leader is supposed to have killed Officer John Frey, survived the encounter to testify he never saw a gun in Newton's hand. Moreover, his testimony suggested that he might have fired the fatal bullet that killed Frey.

- Henry Grier, a black bus driver, was the only witness actually to place a gun in Newton's hand. Under cross-examination, however, repeated contradictions emerged between what he said on the witness stand and what he had told police last Oct. 28, just two hours after the pre-dawn encounter.

At the outset, the prosecution established Newton was stopped by Frey at about 5 a.m. as he was driving with another man in a tan VW. A tape recording of police radio calls was played, and jurors heard — faintly and static-ridden — Frey's voice asking for a license check on the car, and saying he planned to stop it at Seventh and Willow. "It's a known Panther vehicle," Frey radioed.

TESTIMONY OF OFFICER HEANES

When Officer Heanes entered the 7th floor Alameda county courtroom, a ripple went through the gallery, packed with press, spectators, and Newton's relatives and friends. Heanes, 25, has chiseled features and slick, fair hair. Though other police officers who testified did so in plainclothes, Heanes wore his starched blue uniform, his gold star displayed above the left breastpocket.

Heanes testified he joined Frey in response to Frey's request for "cover." (On the tape Frey was heard to say, "You might send a unit by," after announcing his intent to stop the Panther car.)

When Heanes arrived on the scene, the driver had given Frey an auto registration in the name of LaVerne Williams (Newton's fiance). Heanes said he approached the driver, saying, "Do you have further identification, Mr. Williams?" At that point, Heanes testified, the driver said, "I am Huey Newton."

According to Heanes, Frey began to write out a citation for the VW before any information on the license check came over the police radio. (The check showed two outstanding parking tickets, nothing more.) Heanes said Newton was not frisked

when he was finally ordered from the car because "everything had gone so calmly up to now."

It was when Newton, followed by Frey, walked from the VW to the police cars parked behind it, that the shooting is alleged to have started. Heanes remembers being hit in the right arm and recalls drawing his own gun and firing with his left hand toward Newton and Frey, who were struggling some 10 feet ahead of him.

At this point in his story the defense attorney asked Heanes, "Isn't it a fact you shot Officer Frey?"

Heanes denied this. He remembers firing once. Evidence confirmed by police indicates he fired two shots; however, Heanes claims a "memory lapse" from this point to the time he crawled into Frey's front seat to radio a "940" — extreme emergency — call.

The officer told of receiving information about the Black Panther party in police "line-ups" (briefing sessions), and confirmed police are given lists of known Panther automobiles. (This is relevant to the defense contention that Newton was stopped in the pre-down hours of Oct. 28 because of a "police plot" to "get Newton" in retaliation for the Black Panther party's crusade against police malpractice in the ghetto.)

THE BUS DRIVER'S TESTIMONY

Bus driver Grier delivered his testimony smoothly and unhesitatingly in response to the matter-of-fact queries of Assistant District Attorney Lowell Jensen. The interchange had the slickness of a rehearsed presentation, and well it may have been, since for nearly a week before testifying Grier was kept incommunicado under "protective custody" in the Lake Merritt Hotel.

Cross examination revealed a variety of inconsistencies between Grier's current testimony and the lengthy statement he made to the police on Oct. 28, when — presumably — his memory was fresh.

Grier said he caught a figure in his headlights as he swerved to pass two patrol cars parked behind a tan VW on the south side of Seventh street at Willow. On the morning of Oct. 28 he described that figure as "under 5 feet" in height, weighing about 125 pounds, wearing a light tan jacket, a dark — probably black — shirt, and a hat. Now he says he doesn't remember the hat, and "couldn't say" about the height or weight of the person he saw.

"As a matter of fact," questioned Garry, "he was a 'peewee', wasn't he?"

"No, sir," Grier answered emphatically.

Upon which Garry read from Grier's Oct. 28 statement, "He was sort of a peewee." (Newton is 5'10", the same height as officer Frey, and weighs 155 pounds. Among items offered as exhibits in the case are a light shirt and black leather jacket he is said to have been wearing at the time.)

The bus driver, who has worked for AC Transit two years after spending 20 years in the navy, said he saw a civilian walking towards the bus with a policeman holding his arm, and another policeman several feet behind. All were facing him, and he saw the civilian draw a gun from inside his shirt and wheel around.

The bus driver pointed to Newton, identifying him as the man he saw in his headlights. Grier said from his perch in the driver's seat he saw Newton and Frey tussling against the bus door. He heard shots, saw Heanes get hit, and said he saw Newton firing at Frey after the officer had already fallen. He testified none of the three passengers in his bus would sign cards as witnesses to the event.

On the morning of Oct. 28, Grier was shown a series of photos by police. The bus driver picked out a photo of Newton saying, "I can't be sure but they do resemble." In court, however, Grier said he is positive it was Newton who killed Frey.

KIDNAP "VICTIM" WON'T TALK

If Grier was talkative, Ross was decidedly not. When he refused to testify Monday, Judge Monroe Friedman ordered an overnight recess. The next day the judge directed Ross to testify, granting him immunity "for everything except perjury and contempt." But Ross, a black man in cap and sunglasses, remained stubbornly silent. He was visibly nervous and confused, and at one point claimed "the Fifth Commandment." The judge warned him he could be jailed for contempt. Ross answered, "Well, send me to jail then."

Ross stated he could not remember Newton or anything else about events on

Oct. 28. Asked if he remembered going before the Grand Jury he answered, "I don't even know what a Grand Jury is."

In attempting to elicit testimony from his key witness, Jensen managed to read almost the entire transcript of Ross' Grand Jury testimony into the record, including Ross' allegations Newton was armed and had said, "I would have kept shooting if my gun hadn't jammed."

Garry finally leaped to his feet and demanded a mistrial, saying "the very reading of this before the jury is prejudicial." Like his many other mistrial motions, this was denied.

When Garry was allowed to cross-examine, he offered a new surprise, a tape made in his law office on July 28, in which Ross said of his Grand Jury testimony: "I was frightened, I had warrants against me." And the jury heard Ross' recorded agreement when Garry replied, "So you told them what they wanted to hear."

AUGUST 24: THE PROSECUTION'S CASE

By the time the prosecution finished its presentation Newton's innocence seemed apparent.

The prosecution's key witnesses offered at best a doubtful account of the events of last Oct. 28. One was contradictory: bus driver Henry Grier, whose testimony was opposite in many ways to the story he told police two hours after the incident. (The first witness for the defense was a passenger on the bus who testified it was too dark at the time to identify much more than a "commotion" outside the bus.) One seemed self-incriminating: Officer Herbert Heanes, who was with Frey and who confirmed Newton was stopped because he was driving a "known Panther vehicle"; who claimed Newton gave him "the run around," though his testimony also showed Newton responded truthfully and directly when questioned before the shooting started and who claims a convenient "memory lapse" during the most crucial moments of the incident. And one was totally discredited: Dell Ross, who could remember nothing of being kidnaped by Newton. The defense won an acquittal on that charge. On the final days of the prosecution's presentation, witnesses lectured the jury with an overabundance of technical data on ballistics, chemical tests and fingerprint analysis. They succeeded in proving little besides that Officer Frey is, indeed, dead, and that Heanes was, indeed, shot. And that ~~someone~~ did it. Perhaps the prosecution felt the mere weight of such "expert" testimony would prove Newton is guilty — would make up for the obvious weakness of their entire case.

But for all the zeal with which the authorities made their scientific investigations, they made one curious omission. The defense contends when Newton was asked to step out of his car and speak with Frey, he reached into the back seat and pulled out a book which he carried under his arm as he walked to the police cars parked along Seventh street.

The book has been accepted as evidence. It is a thick, green volume: "California Criminal Law," written by the late Superior Court Judge Charles Fricke. The book was picked up from a pool of blood next to Officer Heanes' car, where Huey was shot by a bullet that entered his belly and went out the back. The book has Huey's name written on the first page. Yet crime lab witnesses testified that it was not examined for fingerprints or blood identification.

Perhaps the police department is reluctant to reveal that Huey, at the moment of confrontation, held in his hands not a gun, but a book which outlined the rights of a citizen under the law.

AUGUST 31: NEWTON ON THE STAND

"There's never been a trial like this," exclaimed a grayhaired pro from one of the big Bay Area dailies. He had just finished delivering a frantic phone account to his city desk about Dell Ross' refusal to testify that he had been kidnaped by

Huey Newton — just one startling incident in a seven week courtroom drama that was to include many more electrifying moments before the final summations.

This newsman was reflecting the astonishment of many who thought they were covering just another sensational murder trial, and who were slowly discovering the implications of the Newton case go far beyond Oakland — as far, perhaps, as the hills of Vietnam.

In a trial filled with striking incidents, the most extraordinary testimony was Newton's own.

At 10:30 a.m. on Thursday, Aug. 22, Attorney Charles Garry quietly announced to the court, "At this time we call the defendant, Huey P. Newton."

Everyone, of course, had waited expectantly for the 26 year old Black Panther — who had listened in silence to six weeks of proceedings — to tell his side of the story and justify his plea of innocence. But the drama of Newton's testimony had little to do with his account of what happened in the pre-dawn encounter that left Frey dead, Heanes wounded, and Newton — himself critically shot through the stomach — imprisoned for the crime.

The drama of Newton's two-day appearance on the stand arose, for one thing, from his attempt to relate that fateful encounter in the context of the black liberation movement. (He tried to summarize black history from the 12th century, but didn't get far before the prosecution objected such testimony was "irrelevant.")

There was drama also in Newton's presentation of the Black Panther program, which begins: "We want freedom, and power to determine the destiny of our black community." As he read the Panther program, suddenly Newton was saying, "When in the course of human events..." That classic document of revolution, the American Declaration of Independence, is part of Panther doctrine, and Newton read it in full to a hushed and fascinated courtroom: "We hold these truths to be self evident, that all men are created equal..."

But the most striking thing about Newton's testimony was Newton himself.

Huey is bright, articulate and charming. His handsome face is frequently lit with a winning smile. He talks openly, as though he has nothing to hide. He was all this before the court — and more. Huey was a teacher... always looking at the jury as he spoke, talking about American society, writing words on the large chart at the front of the courtroom: ETHOS, ACCULTURATION, WASP.

He delivered his teachings in response to infrequent questioning by his attorney, Charles Garry. Garry was attempting to lay a foundation for Newton's account of the shooting; to outline as background the facts of historic oppression of black people, the why and what of the Panthers, and the realities of police behavior in the ghetto.

But Superior Judge Monroe Friedman was unable to approach this performance in anything but strict legal terms. Hadn't the defendant insisted on his innocence? Then what had all this stuff about slavery, racism and black power to do with the case?

"Get to the point," the 72 year old judge repeatedly admonished. "We don't even know yet if the defendant was at the scene of the crime."

The defense, of course, had throughout the trial never denied Newton was in the car stopped by Frey at 5 a.m. in West Oakland.

NEWTON'S VERSION OF THE SHOOTING

When Newton finally recounted his story of the critical events, he stated:

- Frey had asked for and received Newton's driver's license. This contradicts Heanes' testimony that Newton gave Frey "the run around" and did not identify himself.

- Frey frisked Newton, in a manner the defendant described as "indecently" thorough. This challenges the prosecution's contention Newton was armed with a 9mm Luger.

- According to Newton, Frey pushed him in the face, and he fell back, dropping to one knee. At that moment, he saw Heanes reach for his gun, and felt a sensation "like hot soup had been poured on my stomach." After that he remembers hearing several shots, but he blacked out. He recalls the feeling of being moved, and then being at the hospital "in excruciating pain."

Newton testified that until the shooting started this incident had been similar to some 50 others in which he had been stopped for no cause and harassed by police.

He had never seen Frey or Heanes before. He also said he knew nothing about marijuana in the car, and that Panthers are forbidden to have contraband on or around them, "because we are always getting stopped by police." The prosecution contends pot was found in Newton's car and pants pocket, but no such charge was filed against him.

On Monday, Aug. 26, Newton endured nearly five hours of cross examination and through it all, kept his cool. Under the methodical dissection of his testimony by Assistant District Attorney Jensen, Newton again told his version of the shooting last Oct. 28. It remained essentially the same story he related in direct testimony.

Unable to shake Newton's story of the pivotal events in the case, Jensen delved at some length into prior incidents of violence that involved Newton. One, an altercation at a party in which Newton used a steak knife on a man who threatened him, resulted in a felony conviction for which Newton was sentenced to three years probation. (The confrontation with police that resulted in his current murder trial occurred moments after Newton left a party at which he celebrated the end of that probation.)

While he candidly described the steak knife incident, the jurors listened with solemn faces. Each had maintained, in qualifying to sit on this trial, that a prior felony conviction would not prejudice him against the defendant. Now they were hearing the details of this conviction for the first time, and they looked grim.

Newton also detailed incidents of clashes with police which on two occasions resulted in his arrest. In each of these stories, he maintained he was provoked, or actually attacked, and responded in self-defense. Listeners familiar with police-community relations in the ghetto — like the twenty-odd black spectators in the gallery — accepted his remarks sympathetically. But how the predominantly white, middle class jury viewed the voluble testimony remains an open question.

Though his manner was restrained under cross-examination, Newton responded at times with a flash of pointed wit. When questioning him about an incident in March, 1966, in which Newton was accused of assaulting a Berkeley policeman, Jensen repeatedly ended his queries with, "That's a fact, isn't it?"

Finally, Newton commented one of the officers involved admitted later in court he had been drunk at the time, having consumed three quarts of beer. "That's a fact, isn't it?" said Newton.

There was a wave of laughter in the gallery. But Judge Friedman responded, as he did to all other infrequent moments of levity throughout the trial, with an angry bark: "There's nothing funny about this case!" He warned those who laughed would be ordered from the court, and then he turned to Newton and scolded him.

Garry jumped to his feet at this, demanding a mistrial because of "the tone of the court (judge)." Friedman said dryly he would "note the objection," and ordered Jensen to proceed.

During cross-examination Newton described the conduct of police while he lay in the hospital critically wounded by a police bullet that entered his stomach and came out his back. The police, he said, stood over his hospital bed and said, "You're going to die. You'll go to the gas chamber. Or if you're sent to prison, we'll see that you get killed. If you're acquitted, we'll get you in the streets."

OTHER TESTIMONY — HEARD AND UNHEARD

The day before Newton took the stand, the court received the most crucial jolt of the proceedings, when 25 year old Gene McKinney testified he was the "mystery man" with Newton that morning, and took the Fifth Amendment when asked if he, not Newton, shot and killed officer Frey. He was immediately jailed for contempt.

After Newton stepped down, the judge would not let the jury hear the testimony of a Santa Rita prisoner who, from a hospital bed on Oct. 29, saw police threatening and harassing Newton as he lay in critical condition.

Friedman also forbade testimony by three men who swore the DA's staff had offered to pay them for information on the Newton case. With the jury out, the judge listened to the men, and then said angrily, "Where is the relevance?"

"Your honor," stormed Garry, "These men were charged with having a disorderly house. The DA's representative tried to bribe them."

"Mr. Garry," thundered the judge. "There is a point at which even you must stop." He ruled the testimony irrelevant.

SEPTEMBER 7: SUMMATIONS: TWO VIEWS OF REALITY

"Sentence first! verdict afterwards!"

Those remarks by the Queen of Hearts in "Alice in Wonderland" were recalled by attorney Charles Garry as he addressed the jury in the closing days of the trial of Huey Newton. Sentence first, verdict afterward appears to be the attitude of the prosecution, Garry said in his summation to the seven women and five men who will decide whether the 26 year old Black Panther party leader murdered Patrolman John Frey. Garry maintained the "Alice in Wonderland" atmosphere applies not merely to the courtroom, but in many ways to American society itself.

In a four hour speech in which he promised not to "argue," but rather "to think out loud with you," Garry spoke at length of racism, war, the black liberation movement, and the problems of "our beloved America," and urged the jurors not to leave common sense outside when they enter the closed jury room to deliberate.

"White America, listen!" pleaded Garry in the final moments of his address. "The answer is not to put Huey Newton in the gas chamber. The answer is to listen to him so that black brothers and sisters can walk down the street with dignity."

Garry's presentation was preceded and followed by the summation of the prosecutor, Assistant District Attorney Lowell Jensen. His statement opened with some general remarks about the nature of man . . . as seen by the prosecutor. In his view, "It is the instinct of man to kill . . . unfortunately, man's worst enemy is himself." Society is organized, said Jensen, to curb these base instincts.

The prosecutor then went over the jigsaw puzzle of evidence presented in the past weeks, in testimony that fills several thousands of pages of transcript. He endeavored to fit the pieces together. Garry later compared this attempt by the prosecution to "make the shoe fit" to the futile efforts of Cinderella's stepsisters.

WHY WAS THE VW STOPPED?

When Officer Frey stopped Newton's vehicle at 4:50 a.m. last Oct. 28, Jensen argued, he did so "because there were warrants on the car" — and police have a responsibility, he said, to watch out for troublemakers, "whether they be Black Panthers, Hell's Angels, or whatever." But to make his point, Jensen quoted from a recording of police radio calls heard earlier in court, in which Frey was clearly heard to announce his intent to stop the "known Panther vehicle" before the radio dispatcher traced the license number and found some unpaid parking violations.

Garry, in his turn, emphasized the stopping of Newton's car, which led to the shooting incident in which Frey was killed and both Newton and Officer Heanes wounded. Garry expressed puzzlement over the stopping of the car, saying, "There's something about it that's not part of my understanding of justice. It's not the sort of police action I personally have witnessed. But, then, I'm not a black man."

He reminded the jury Newton said he was stopped 50 or 60 times over a 10 month period prior to Oct. 28. "Imagine," said the defense attorney to the jury, "if you were stopped that many times."

The prosecutor reviewed the testimony of bus driver Henry Grier, the prosecution's key witness. He reminded the jury Grier said he saw Newton draw a gun and fire at Frey. He did not mention the statement made by Grier to police on Oct. 28.

'SOMEBODY'S LYING'

Jensen went over the story told by Heanes, the patrolman who survived the confrontation to give an eyewitness account in which he identified Newton as the man who killed Frey. Then Jensen admitted Newton's story conflicted with those of Heanes and Grier, and concluded "somebody was lying."

The prosecutor considered what he chose to term "what makes Newton tick." He described Newton as an "egotist," who "talks of love in the language of hate, talks of weapons in terms of politics, a man who carries within him a special set of notions and ideas."

When Garry addressed the jury, he proceeded to demolish the testimonies of Grier and Heanes, using a series of huge charts showing excerpts from their court statements.

Grier's charts compared his courtroom account to the statement he made to police less than two hours after the October event he witnessed. The contradictions were numerous and evident, so much so that Garry said what he first thought were "honest mistakes" now point to a deliberate liar or a psychopath.

The charts showed Grier positively identified Newton as the killer in the courtroom in August, though the morning of the incident he said, "He had his head down, I couldn't get a good look." In October Grier gave a totally different description of the stature and clothing of the man he saw than he did in August.

There were a number of additional contradictions of varying importance: the distance Grier stated he was from the scene, the manner in which the killer is said to have drawn a gun, the direction in which the officer fell. On each point Grier was adamant in August about details he described differently in October.

As for Heanes' story, Garry pointed out the central contradiction. In direct testimony Heanes told how "Newton turned around and started shooting." But under cross-examination the officer stated, "I never at any time saw a gun in the hands of Huey Newton."

The defense repeated its contention, stated at the start of the trial, that the stopping of Newton's car on Oct. 28 was part of a concerted effort by police to "Get the Black Panther party, and Huey Newton above all."

Garry declared, "It bothers me that a 23 year old man (Frey) is dead. It bothers Huey Newton that he's dead. How many more people will die before we wake up and recognize our responsibilities? Before we recognize the brotherhood of man? Officer Frey's death bothers me, and the things that caused his death bother me. But Huey Newton is not responsible for his death."

The final speeches of Jensen and Garry — culminating a turbulent trial that began July 15 — did not merely define differing views of Newton's guilt or innocence. What emerged from these presentations were two opposing social philosophies, as the chief counsels summed up a trial which, for many, symbolizes the new order at odds with the old.

SEPTEMBER 14: THE JURY IS OUT

The sixth floor corridor of the Alameda County courthouse is noisy and crowded. Several dozen men and women slouch in chairs or sit on the floor, or walk aimlessly about. Camera equipment, tape recorders, cigaret butts and paper coffee cups clutter the floor. For four days, we've been waiting for the Huey Newton jury to come in.

Most of those in the press room area are reporters and photographers, keeping the tedious vigil to catch the first dramatic moments after the verdict is announced. Newton's family is here, too, and from time to time so are members of the legal defense team.

Those who have been in the courtroom each day of the trial are intense about this waiting period. "It looks bad," says a local radio reporter, when word comes the jury has requested to hear again the definitions of degrees of murder, on the third day of their deliberation. The reporter believes Newton is innocent, though he didn't think so when he began to cover the trial.

Then there are the newsmen who are here for the first time, to cover only the verdict. For them, this is just another assignment, a boring stakeout. They play cards, or dominoes. Some sleep.

Fay Stender, assistant defense counsel, plays chess with sociologist Robert Blauner, who testified during the early hours of the trial — when the defense was challenging the jury selection system — and who remained to watch the entire drama.

Members of the underground press argue with a reporter from a local daily; they insist his coverage has been unfairly selective.

Newsmen chat with Rev. Earl Neal, Newton's pastor. Neal says the white church

has played no constructive role in contemporary society — only a reactionary one. The hope for organized religion, he maintains, lies with the black church.

Neal sat in the courtroom every day next to LaVerne Williams, Newton's fiance, whose enormous sparkling eyes and vivid smile mask her anxiety. LaVerne sits in the sixth floor corridor, waiting with Newton's two sisters, three brothers and an aunt. The family is tired, subdued, but they talk aimably with the many reporters they have come to know during the two month ordeal in the courthouse. For them, this vigil began 10 months ago when Newton was handcuffed to a gurney in Kaiser Hospital and charged with the murder of Patrolman John Frey.

Outside the building, spectators have been in line for hours, in case the court convenes for a verdict. Many of them have been here each day of the trial. There's a middle-aged black nurse who always arrives at 5 a.m. and waits, seated on the sidewalk covered with a blanket. (The armed sheriff's deputies, who guard the locked doors and have checked each entrant since the trial began July 15, won't let anyone sit on the steps.) There's a 14 year old black kid who sat through the whole trial, and who remarked toward the end: "If Huey's found innocent, next day the papers would say: 'Huey Newton was almost convicted yesterday...'"

Also on the spectator line are young Panthers, white members of the Peace and Freedom party, elderly Women for Peace, an occasional out-of-towner who wants to see what's happening. Diverse students, activists, churchwomen, and perennial trial followers.

Many will be disappointed; less than a score from the front of the line are let in each day to fill the seats left after the small courtroom accommodates Newton's family, a limited number of press, and several plainclothesmen. (The latter sometimes stood in the spectator line, but when they began to slip up and be seen chatting with the D.A.'s staff they skipped the pretense. Their presence is resented mainly because they take up valued, scarce seats.)

On each morning throughout the trial, around the other side of the building on 13th street, a press line forms. Two or three regulars are there at midnight, with blankets and thermos. By 7 a.m. they have been joined by a half dozen others.

These are the "non priority" press, reporters from movement and underground papers who do not have reserved seats in the court. Twenty-five of the 28 press passes are reserved for major papers and stations. Others must compete, on a first-come basis, for the three remaining seats and all others not claimed by 9:30 a.m. Each day, several members of the press are turned away.

For eight weeks, press and spectators have maintained this routine. It has generated a unique sense of comradeship. The major dailies fraternize now with the New Left monthlies; radio reporters smile hello as they pass familiar faces on the spectator line.

Solidarity has been cemented by daily subjugation to the infuriating and arbitrary actions of courthouse officials. Helmeted deputies have, since the trial began, made of the courthouse an armed fortress, engendering an atmosphere of tension and suspicion. Passes are checked, papers must be in order. Taxpayers are not allowed in the building unless they can prove they have "legitimate business."

We are all frisked before entering the court, a precaution we submit to grudgingly because, given the hysterics surrounding this case, it is not inconceivable some nut might actually try to kill Huey or his attorney, Charles Garry. (The officials probably believe it is the Panthers who are likely to "try something." But it is the defense who have received the threats, the psychotic hate mail.)

The trial has been an education: for the seasoned reporters who at first didn't understand why this was no ordinary murder trial; for the spectators, who came believing in Newton's innocence and in his cause; for those who didn't believe frame-up and bribery or an angry and impatient judge could railroad a man to jail.

The testimony — over 4,000 pages of it — covers demographics, urban sociology, black history and the Declaration of Independence. The transcript reads like a textbook on the old society, and a handbook of revolution for the new. The trial has been a daily drama more gripping than any theatrical event, and strangely unreal because beneath the repetitive legal ritual the fate of a remarkable man is at stake. Those of us who wait anxiously as the hours drag on wonder how deeply the jury has been touched by all this. Can the lives of those 12 ever be the same again?

Sunday evening (Sept. 8), I start to write my story on an ancient typewriter in one corner of the press room. Phones are ringing, the hum of talk is loud, tension and exhaustion are on every face. I try out various leads:

"Why Newton Was Acquitted" (or, You'd never understand if all you've read is the daily papers).

"Hung Jury for Newton" (or, They couldn't acquit because of the times, they couldn't convict because of the evidence).

"Is Newton Really Guilty?" (or, There is certainly more than "reasonable" doubt).

Or maybe, I think to myself, "Newton Jury Still out" (or, How I learned to live in the county courthouse).

A phone rings. Photographer Jeff Blankfort is nearest, and picks it up. He repeats the words of the clerk of the court: "They have reached a verdict." It is 9:55 p.m. The jury has deliberated — not counting meals and overnight breaks — for 28 hours and 50 minutes.

I join the silent, expectant crush of reporters, spectators and family into the familiar courtroom.

SEPTEMBER 14: WHAT THE VERDICT MEANS

"What does it mean? Either he's innocent, or else he's guilty. That verdict don't make no sense to me."

The speaker was an elderly black lady on a radio phone-in show, shortly after midnight Monday, Sept. 9. Along with thousands of others she had heard on the 11 p.m. news that the jury found Huey Newton guilty of "voluntary manslaughter" in the death of patrolman John Frey, and innocent of shooting patrolman Herbert Heanes. The confusion she expressed was echoed wherever the news was heard.

Defense attorney Charles Garry himself had a similar response. "We are keenly and absolutely disappointed in the verdict," he said moments after the judgment was announced. "It makes no sense on legal or evidentiary grounds . . . He either had a gun or he didn't."

Newton called the verdict a "sellout," and blamed the jury for not having "the guts to decide the case on its merits." But counsel and client agreed the jury worked hard and tried to be conscientious. After arguing nearly 29 hours, over a period of four days, the verdict they reached was obviously an attempt at compromise.

By Sunday afternoon, experienced observers began to predict a hung jury. Newton supporters and the defense staff held out in their belief of eventual acquittal. No one who had heard the evidence believed the first degree murder charge would stick — except perhaps Assistant District Attorney Lowell Jensen, some Oakland police and other officials, and those members of the public who maintained their preconceived judgment of Newton as a "cop-killer."

"The prosecution has no case," was the comment heard repeatedly in the trial's final weeks. The corollary was voiced with equal frequency as the trial drew to a close: "There is certainly reasonable doubt."

The "reasonable doubt" in the minds of most observers was based upon the following points of evidence — points which undoubtedly occupied much of the jurors' debate:

- The many contradictions in the testimony of bus driver Henry Grier.
- Heanes' statement he never saw a gun in Newton's hands.
- The refusal of Gene McKinney to testify, leaving many crucial questions unanswered.
- A change in the transcript of a statement by bus driver Henry Grier, key prosecution witness. In a taped statement made one and a half hours after the shooting, Grier was alleged to have said, "I did get a clear view of his (the killer's) face." However, while the jury was deliberating, the judge reheard the tape and agreed with the defense Grier's words were "I didn't get a clear view." A changed version of the transcript was sent to the jury, without comment. (Jurors later stated they paid no attention to the statement, being unaware of the change.)

So what does the verdict mean?

The verdict says Newton killed Frey, but did not shoot Heanes. It acquits him of one charge, "assault with a deadly weapon" — and on the other charge, it confers a minimal homicide conviction. "Manslaughter" is defined as a killing in the heat of passion, involving provocation, but not premeditation.

The prosecution tried hard to show Newton to be a man who believes in violence, who lies awake nights plotting to kill police. The defense, on the other hand, contended Newton believes in weapons only for self defense. Garry compared Newton to Jesus, who believed in beating swords into plowshares but who told his disciples, "He that hath no sword, let him sell his garments and buy one."

The prosecution tried to show the Oakland police were only performing their duty by stopping Newton's car prior to the fatal shooting. The defense, however, contended harassment, and built a case showing Frey was a racist bully, hated by the black community he patrolled.

Obviously, the jurors were not convinced of malice on Newton's part, and were convinced the defendant was provoked by police harassment. The jury didn't buy Newton as a "cop killer." Doubtless there were those among the 12 who didn't see Newton as a killer at all.

The public, expecting a quick first degree murder conviction, was surprised at the long hours of deliberation that preceded the contradictory verdict. The time spent deliberating, and the compromise nature of the ultimate decision, indicates profound turmoil on the part of 12 "ordinary" citizens suddenly thrown face to face with the complexities of a society in change.

It is a schizophrenic verdict. It suggests the jury, reluctant to find the defendant innocent, yet equally reluctant to find him guilty, elected to do a bit of both.

(The third charge, kidnaping, fell apart when the alleged victim, Del Ross, refused to testify. Garry won an acquittal — rather than a mere dismissal — on that count.)

The verdict represents a dual victory. First, outright acquittal on the charge of assault against Heanes. Second, the minimal murder conviction. Newton can never again be tried for the first degree murder of Officer Frey. Though a hung jury might have more honestly represented the divisions existing on the panel, it would have paved the way for a retrial on the same charges.

But this victory is not yet justice. To convict on such seemingly impeachable, contradictory testimony is to deny the defendant the presumption of innocence until guilt is proven beyond reasonable doubt. And if this conviction stands, Newton may serve from two to 15 years behind bars.

Justice is not yet done. Too many questions are still unanswered, evidence of attempts to bribe witnesses was deemed "inadmissible" by the court, key witnesses took the Fifth Amendment, and the jurors were not Newton's peers.

"They want guns and butter," was the way one reporter privately summed up the verdict. To convict, yet not convict. To give a black militant the benefit of the doubt, yet to deny him true liberty. The Newton verdict, like the Newton trial, reveals the conflicts in our society.

Meanwhile, Newton is still in jail, pending appeal — to the highest court, if necessary. The Newton case is not yet closed.

FREE HUEY!

THE DEFENSE OF HUEY NEWTON GOES ON.

Funds are urgently needed to publicize facts of his trial and mobilize concerned citizens on his behalf. The fight to free Huey is a fight to free all people, a fight to bring justice to our American land.

SEND TO: Huey Newton Defense Fund
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