

## Notes

### Notes to Chapter 1

1. BENJAMIN HALL, *THE TRIAL OF WILLIAM FREEMAN IV* (1848). This book is a report of the case. It includes testimony, opening statements and closing arguments, the judge's sentencing, the appeals court opinion, the autopsy reports, and an introduction describing the facts surrounding the case. A few libraries have this rare book. Washington University in St. Louis was kind enough to send me their copy through an interlibrary loan. The entire closing argument of defense counsel, William Henry Seward, was also published separately as *ARGUMENT OF WILLIAM H. SEWARD IN DEFENSE OF WILLIAM FREEMAN ON HIS TRIAL FOR MURDER* (1846) and is available from some university libraries. Unless otherwise noted, all quotes in this chapter are from Hall's report of the case.
2. From the poem "Justice" by Langston Hughes. See the epigraph to chapter 3.
3. JOHN M. TAYLOR, *WILLIAM HENRY SEWARD: LINCOLN'S RIGHT HAND* 66 (1991).
4. GLYNDON VAN DEUSEN, *WILLIAM HENRY SEWARD* 94 (1967).
5. There is no indication in Hall's report of the proceeding or in Seward's closing argument that William Freeman testified in his trial. Van Deusen says that Freeman did testify and that he seemed greatly confused or mentally defective. But Van Deusen makes at least one factual error in describing Freeman's life, and he may have misinterpreted the trial reports. Freeman may have testified at his preliminary hearing, although there is no report of that in Hall's book. Even today, traditional strategy dictates that one does not have a defendant suffering from mental illness take the witness stand. It is a strategy I generally oppose.
6. EARL CONRAD, *THE GOVERNOR AND HIS LADY* 284 (1960).
7. Even with the help of excellent research librarians, I have been unable to find the Freeman opinion of the New York Supreme Court issued in 1847. However, it is printed in full in Hall's report of the case.

### Notes to Chapter 2

1. The names of the defendant and his wife and child have been changed to protect their privacy. The names of all of the other participants are real. All quotes are from my case file and from memory.
2. Transient situational disturbance is no longer categorized as a separate disorder in the American Psychiatric Association's *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS*, 4th ed. It has been folded into the general area of adjustment disorders and in some cases may be described as an acute stress disorder.
3. For a more complex interpretation of black manhood see, for example, the essays by various authors in *THELMA GOLDEN, BLACKMALE: REPRESENTATION OF MASCULINITY IN CONTEMPORARY AMERICAN ART* (1994).

### Notes to Chapter 3

1. Robert Cover, *Violence and the Word*, 95 *YALE L.J.* 1601 (1986).
2. Peter Gabel and Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 *N.Y.U. REV. OF L. & SOC. CHANGE* 369, 372 (1983).
3. David Kairys, *Freedom of Speech*, in *THE POLITICS OF LAW* (1982), edited by David Kairys.
4. *Commonwealth v. Davis*, 162 Mass. 510 (1895).
5. *Davis v. Massachusetts*, 167 U.S. 43 (1897).
6. *Employment Division of Human Resources v. Smith*, 494 U.S. 872, 907 (1990) (Blackmun, J., dissenting); *Teague v. Lane*, 489 U.S. 288, 326 (1989) (Brennan, J., dissenting); *Holland v. Illinois*, 493 U.S. 474, 503 (1990) (Marshall, J., dissenting); *Sandin v. Conner*, 115 Sup. Ct. 2293 (1995) (Breyer, J., dissenting); *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 115 Sup. Ct. 2510 (1995) (Souter, J., dissenting); *Adarand Constructors v. Pena*, 115 Sup. Ct. 2097 (1995) (Stevens, J., dissenting).
7. *Holland v. Illinois*, 493 U.S. 474, 503 (1990) (Marshall, J., dissenting).
8. See, e.g., *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 279 and n. 24: " 'Discriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decision maker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." Although this is a case involving gender discrimination, it accurately states the Court's test in all equal protection cases involving discrimination.

9. 451 U.S. 100 (1981). For an insightful discussion of how residential segregation fortifies the social construction of race, see Martha Mahoney, *Segregation, Whiteness and Transformation*, 143 UNIV. PA. L. REV. 1659 (1995).
10. MARI MATSUDA, CHARLES LAWRENCE III, RICHARD DELGADO, KIMBERLE WILLIAMS CRENSHAW, WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH AND THE FIRST AMENDMENT 6 (1993).
11. *People v. Taylor*, 5 Cal. App. 4th 1299, 1310 (1992).
12. See, e.g., *People v. Hall*, 4 Cal. 399 (1854). A white man's murder conviction was reversed because the court ruled the testimony of Chinese witnesses was not admissible, citing the law providing that "No Black or Mulatto person, or Indian shall be allowed to give evidence in favor of, or against a white man."
13. Charles Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 321–23 (1987).
14. *People v. Ortiz*, 150 NE 708 (1926). *State v. Russell*, 220 P. 552 (1923). Although jurors rarely make racist statements on voir dire, prejudice still infects the criminal trial process. In a 1996 case the California Court of Appeals had to reverse the murder conviction of immigrant Heriberto Marron because jurors made anti-immigrant and anti-Mexican statements during the actual deliberations. In another 1996 decision a court of appeals reversed the murder conviction of a convict who stabbed another inmate because a juror concealed a "clear racial bias and prejudice." The court also criticized the trial judge for his "cursory questioning" of the jurors regarding race. Unfortunately, the opinion, *People v. Davis*, A064550, is unpublished. SAN FRANCISCO DAILY JOURNAL, June 3, 1996, at 1.
15. *United States v. Clemons*, 941 F. 2d 321, 322 (5th Cir. 1991). *Goodman v. Lands End Homeowners Ass'n*, No. 91-2542, 1992 WL 918901 (4th Cir. May 6, 1992). *United States v. Daley*, 974 F. 2d 1215, 1219 (9th Cir. 1992).
16. Jeffrey Brand, *The Supreme Court, Equal Protection, and Jury Selection: Denying That Race Still Matters* 1994 WISC. L. REV. 511 (1995).

## Notes to Chapter 5

1. *Ives v. South Buffalo Railroad Company*, 201 N.Y. 271, 94 N.E. 431 (1911). In contrast to *Ives*, the California court came to the exact opposite result in holding that the California Workers Compensation Insurance and Safety Act of 1913 was constitutional. *Western Indemnity Company v. Pillsbury*, 170 CA. 686 (1915). By comparing these two judicial opinions we can see an excellent example of how the "Law" is not a fixed objective entity, but rather is shaped by the philosophies of judges and the political and economic forces at work in society.

2. Chrysler appealed the decision. The Workers' Compensation Appeal Board upheld the ruling that Johnson's disability was job related. However, it modified the portion of the decision regarding benefits. The board held that the temporary disability attributable to the *aggravation* of a preexisting condition had ended as of November 14, 1971, and therefore benefits were paid only from July 16, 1970, to November 14, 1971. *James Johnson v. Chrysler Corporation*, 1979 WCABO 1614.
3. DAN GEORGAKAS AND MARVIN SURKIN, DETROIT, I DO MIND DYING 212 (1975).
4. *Id.*, 220.
5. *San Francisco Examiner*, May 1, 1975.
6. *Detroit Free Press*, April 27, 1989, 6A.
7. *Id.*, 7A.
8. *Detroit Free Press*, July 8, 1979, 19A.
9. RACHEL SCOTT, MUSCLE AND BLOOD 137 (1974).

### Notes to Chapter 6

1. *United States v. Alexander*, 471 F. 2d 923 (D.C. Circuit 1973).
2. Richard Delgado, "Rotten Social Background": Should the Criminal Law Recognize a Defense of Severe Environmental Deprivation? 3 LAW AND INEQ. J. 9 (1985).
3. H. L. A. Hart, *Book Review*, 74 YALE L.J. 1325, 1328 (1965).
4. *Dallas Morning News*, April 21, 1994, 25A.
5. Osby was retried and convicted. In the second trial his lawyers raised a post-traumatic stress disorder defense along with the urban survival syndrome. The judge severely restricted those two defenses, and the case was appealed.
6. Judd Sneirson, *Black Rage and the Criminal Law: A Principled Approach to a Polarized Debate*, 143 UNIV. PA. L. REV. 2251 (1995).
7. *Minneapolis Star Tribune*, July 6, 1994, 10A.

### Notes to Chapter 7

1. *United States v. Robertson*, 507 F. 2d 1148 (D.C. Cir. 1974).
2. *United States v. Robertson*, 430 F. Supp. 444 (D.C. Dist. 1977).
3. *Vanity Fair*, Jan. 1995, 44-45.
4. *Tampa Tribune*, Dec. 4, 1994, Baylife section, 1.

## Notes to Chapter 8

1. All quotes from Clarence Darrow's closing arguments are taken from *ATTORNEY FOR THE DAMNED* (1957), edited by Arthur Weinberg. This book is a compilation of Darrow's lectures and court arguments, with brief descriptive notes by the editor.
2. IRVING STONE, *CLARENCE DARROW FOR THE DEFENSE* 470 (1941).
3. A well-researched discussion of the Sweet case and the racial context in which it arose is found in DAVID ALLAN LEVINE, *INTERNAL COMBUSTION: THE RACES IN DETROIT 1915–1926* (1976).
4. *Id.*, at 165–66. See also KENNETH WEINBERG, *A MAN'S HOME, A MAN'S CASTLE* (1971).
5. For an excellent history of African American lawyers, focusing primarily on Michigan, see Edward Littlejohn and Donald Hobson, *Black Lawyers, Law Practice and Bar Associations—1844 to 1970: A Michigan History*, 33 WAYNE L. REV. 1625 (1987).

## Notes to Chapter 9

1. *Los Angeles Daily News*, Oct. 19, 1993.
2. *Id.*
3. The name of the defendant has been changed to protect his privacy.
4. The appellate decision is *Commonwealth v. Gilchrist*, 413 Mass. 216 (1992).
5. Steven Lively was presented with a commendation for heroism by the Boston City Council. Ironically, five months after the shooting Lively filed a discrimination charge against Merrill Lynch with the Massachusetts Commission Against Discrimination.
6. Little was in jail for theft when a white jailer with a history of abusing women prisoners entered her cell and sexually attacked her, forcing her to perform oral sex. In the ensuing struggle Little managed to stab the jailer and escape. She was indicted for murder and surrendered a week later. A national defense movement was organized. Karen Galloway, a young African American attorney who was cocounsel with well-known anti-capital punishment attorney Jerry Paul, was frequently quoted as saying that Little's case was an example of "the racism and sexism prevalent in North Carolina." The anger of southern African American women, who had suffered hundreds of years of sexual abuse as victims of white supremacy, was expressed by members of the defense committee outside the courtroom. Inside the courtroom the issue of racial prejudice was also raised as the defense argued that a not guilty verdict "will show the

world that women—black women—deserve justice.” The prosecutor argued that the jury should not consider race and that “the submission of anything into this case but the facts is anarchy.”

This was a case of black rage, but it was not a case of a black rage defense. Since Little had stabbed the jailer *while he was attacking her*, the facts lent themselves to a conventional self-defense strategy. The jury of six blacks and six whites took only an hour and twenty-three minutes to return a verdict of not guilty. Little said that the verdict was “the first step as far as black women are concerned that they have the right to stand up for themselves.”

7. *San Francisco Daily Journal*, Feb. 10, 1993.

### Notes to Chapter 10

1. The names of some of the people have been changed to protect their privacy. The names of Felicia Morgan and all participants in the trial are accurate.
2. *State v. Morgan*, 195 Wis.2d 388, 536 NW.2d 425 (1995).
3. Post-traumatic stress disorder is defined as the development of symptoms after exposure to “an extreme traumatic stressor” involving the personal experience of death, threatened death, or serious injury. A full discussion of PTSD symptoms and criteria can be found in the American Psychiatric Association’s *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS*, 4th ed.
4. *State v. Morgan*; even though Garbarino should have been allowed to testify in front of the jury, the court held that since two psychologists had testified to PTSD, the trial judge had not “abused his discretion” by ruling that Garbarino’s testimony would be cumulative.
5. In her efforts to educate the public as well as the legal community, Shellow has sometimes reached out to the media. One of her cases, involving a fifteen-year-old boy named Garland Hampton, was featured on the front page of *New York Times* (Dec. 12, 1994). Garland was charged with killing another fifteen-year-old in his gang during an argument. Shellow changed what looked like another ordinary gang killing into a story of America’s lost and abused teenagers surviving in virtual war zones. She brought Garland’s social history into court: his grandmother killed his grandfather; his grandmother threatened Garland with a gun; his mother killed his father in front of him; his mother beat and whipped Garland, threw him down the stairs and threatened to kill him on numerous occasions; his uncle killed two police officers; and his aunt sliced her boyfriend with a razor and tried to kill Garland with rat poison.

When interviewed by the *Times*, Garland said that in his neighborhood there was little time for childhood. “I feel like I’ve been grown my whole life,”

he told the reporter. But in fact Garland was still a child and, like so many tough kids, underneath he was scared. "I guess I been scared all my life. For me, living has been the same as running through hell with a gasoline suit on. I don't want people to feel sorry for me, but I really ain't had nothing good happen to me. The ax fell heavy on my head."

Garland Hampton was convicted of murder. In sentencing, Judge White was favorably impacted by the environmental hardship defense and rejected the prosecution's recommendation that the parole date be set in sixty-five years. Stating that she was giving "considerable weight to the background and circumstances of Garland Hampton," she imposed a life sentence with a parole date of twenty years.

6. Susan Rutberg, *Not Guilty by Reason of Victimization*, 20 FORUM, No. 4, 36 (1993). Published by California Attorneys for Criminal Justice, 4929 Wilshire Blvd., Suite 688, Los Angeles, California 90010.
7. One of the best articles about the use of PTSD to defend Vietnam veterans is Peter Erlinder, *Post-Traumatic Stress Disorder, Vietnam Veterans and the Law: A Challenge to Effective Representation* 1 BEHAVIORAL SCIENCES AND THE LAW, No. 3, 25 (1983). A lawyer attempting to use PTSD in any type of criminal defense will be educated and aided by this article.
8. From San Francisco Street Music, *Word of Mouth*, self-published 1995.

## Notes to Chapter 11

1. PETER VAN SLINGERLAND, SOMETHING TERRIBLE HAS HAPPENED 318 (1966).
2. THEON WRIGHT, RAPE IN PARADISE 198 (1966). All quotes in this chapter are from the books by Slingerland and Wright, and from CLARENCE DARROW, THE STORY OF MY LIFE (1932), IRVING STONE, CLARENCE DARROW FOR THE DEFENSE (1941).
3. Lawyers have to make political choices. An example of a law firm grappling with the issue of whether or not to represent a person involved in activity that has a negative impact on the community is Ken Cockrel and Justin Ravitz's decision not to defend heroin dealers. In a 1973 newspaper interview entitled "Revolutionary in a Legal Sheepskin," Cockrel said, "We don't represent dealers in heroin and other opium derivatives, although . . . there have been cases where we could have written our own ticket. But how could I go out in the community and speak out against heroin if I came out in a Mark IV that I got by defending dope traffickers."

Cockrel and Ravitz are not the only lawyers who have faced hard choices.

The San Francisco Community Law Collective underwent a similar struggle in deciding whom and whom not to represent. In the early 1970s the Nixon administration began to put law enforcement pressure on the smuggling and sale of marijuana. The result in some cities was that marijuana became difficult to obtain and heroin sales grew rapidly. In San Francisco's Mission District, in which the Community Law Collective was located, heroin flooded the streets. One of the collective's lawyers was asked to defend a heroin dealer involved in large-scale sales, and the firm was offered the highest fee it had ever seen. The collective had been involved in representing community groups who were organizing against drug use. Those groups took the position that persons selling heroin were businessmen sucking the lifeblood of the people and street capitalists whose free-market practices were ripping apart the fiber of the Mission community. The collective's lawyers, legal workers (paralegals), and law students discussed and debated whether they should defend the dope dealer. They believed that everyone deserved a defense, and the firm certainly needed the money. Also, it was a relatively high-profile federal case, which would help build the attorney's reputation as a criminal defense lawyer. Legal worker Otilia Parra persuasively argued that for a law firm that was known in the Mission to be aligned with progressive groups trying to rid the community of drugs to defend a high-level dope dealer would send the wrong message. One of the law students argued vociferously that they should take up the defense. He put forth the position, still prevalent today, that drug dealing was one of the few avenues open to people in ghettos throughout America. Ambitious, organizationally talented young people involved in the drug trade were not unlike successful businessmen in the white establishment world. The only significant difference, he contended, was the lack of legal opportunities for young blacks and Latinos. A legal worker who had a brother addicted to drugs said she understood the economic pressures that drove people to sell drugs, but that there had to be a distinction between those who sold small amounts of drugs to support their habits and those who sold strictly for profit. The addicts were victims of life in the Mission, but the profiteers were exploiting hopelessness and misery. The large dope dealers had to be criticized, shamed, and isolated. She suggested they adopt a policy of representing only addicts who make small sales. After two lengthy debates, the collective agreed by a split vote to adopt this policy and to turn down the large fee it had been offered. The collective's difficult choice had positive consequences. It volunteered its services to a new community antidrug group and allowed a legal worker to spend almost all her time organizing against controversial methadone maintenance programs. The decision also had long-term consequences. None of the lawyers developed skills or built reputations in the area of drug law. Therefore, they rarely were



asked to represent people in large marijuana cases, a lucrative field and one in which significant criminal procedure issues in the area of search and seizure and entrapment were litigated. In retrospect, however, they all agreed with the decision because it resulted in their self-education and forced them to take a stand against the death and destruction wrought by the heroin business.

## Notes to Chapter 12

1. For the story of one of the most dramatic white rage cases in American history, see FRED GARDNER, *THE UNLAWFUL CONCERT* (1970). As protest against the war in Vietnam grew, so did dissent within the Armed Services. In 1968 there were more than 53,000 desertions and 155,000 AWOLs. At the Presidio Army Base in San Francisco the stockade was bursting with double the number of prisoners it had been built to hold. Conditions were awful, including beatings, overcrowding, terrible food, and arbitrary harsh discipline. In October a sick prisoner began to jog away from a work detail and was shot and killed. Three days later, twenty-seven white prisoners staged a peaceful sit-down to protest the killing and awful conditions in the stockade. They were charged with the capital crime of mutiny.

Fourteen of the soldier/prisoners were defended by leftist lawyer Terence Hallinan. His defense was that the men suffered a collective psychological disturbance brought on by oppressive environmental conditions. The young men were a cross-section of working-class and poor white America: only five of them had graduated from high school; only one had even attempted college; their civilian jobs had been as a gas station attendant, fry cook, miner, mill-worker, seasonal fieldworkers, and as various unskilled laborers.

Hallinan's primary expert witness was Dr. Price Cobbs, coauthor of *Black Rage*. His testimony was an application of the black rage defense to white men:

I was struck by their similar background. They were all white. They have low self-esteem. Very few had ever felt themselves the object of concern and care. They have always fled when anxiety threatens. But on October fourteenth the killing of Richard Bunch, another AWOL with whom they identified very strongly, meant that this course of escape was no longer open to them. They defined themselves as oppressed and began to feel some identity with the black soldiers, with black people. . . . They became "niggerized." They responded as black people, and sang "We Shall Overcome," a song they hardly knew.

The other side of grief is rage, and they stopped one step short of rage. They weren't thinking about the consequences. It was unpremeditated, and they didn't have the ability to form an intent.

Reporters called Cobbs the most impressive witness they had ever seen in a courtroom.

In a powerful closing argument, Hallinan tied the stockade conditions to the psychological defense:

When Richard Bunch was shot and killed escaping from a shotgun work detail, the prisoners no longer had the alternative of running away. All of a sudden they had to look around them. What are they doing to us? What kind of a place are we living in? How can they treat us like this? We're human beings. We're nothing but AWOL GIs. Our only difficulty is we can't adjust to the military. We want to go home and see our families. We haven't committed any crime. How can they put us in places where we have to sleep so close together? Where we don't have enough food? Where our toilets are overflowing? Where we are mistreated; where we don't understand what's happening; where we are lost?

Suddenly they saw themselves as people who had something in common—not losers, but people who were being mistreated, who were being abused. And suddenly they became gripped with this idea of “We must get the word out. We must tell somebody else. This is not fair. Human beings cannot be treated this way. Americans cannot be treated this way. We are American citizens. They can't kill us, that's not right.”

And somewhere in the middle of their terror, of their confusion, of the anxiety, somebody grabbed on the idea, “We have to petition our grievances.” . . . They had no choice. They *had* to do that. They had lost entirely the ability to distinguish right from wrong. They were convinced that what they were doing was right, *even in military terms*.

The “Presidio 27” were convicted but given extremely light sentences. Their case was an impetus for the growing GI dissent movement. It also showed the potential of a defense grounded in environmental conditions.

2. The name of the defendant has been changed to protect his privacy.

### Notes to Chapter 13

1. Holly Maguigan, *Cultural Evidence and Male Violence: Are Feminist and Multiculturalist Reformers on a Collision Course in Criminal Courts?* 70 N.Y.U. L. REV. 36 (1995).
2. One legally *incorrect* appellate decision disallowing evidence of black culture is *People v. Rhines*, 182 Cal. Rptr. 478 (Cal. Ct. App. 1982). In that case the defendant, who represented himself, offered to produce testimony that black people

speak loudly to each other, and that therefore his rape victim was not intimidated into having sex by his loud and demanding tone of voice. The proposed testimony was totally irrelevant to the rape charge because the defendant had *physically* forced the victim to have sex. But the court was so offended by the defendant's proposed testimony and his demeaning statements about black women that instead of limiting their ruling to the legal issue of irrelevance, they went on a tirade against race-based evidence. For a fuller discussion and criticism of *Rhines* see Maguigan, *id.* at 89–90.

3. *People v. Wu*, 286 Cal. Rptr. 868 (Cal. Ct. App. 1991).
4. *Yreka, California, Community Economic Profile*, 1995, 6. Prepared by the Yreka Chamber of Commerce.
5. Norma Jean Croy's case is currently on appeal. She is now represented by Diana Samuelson, cocounsel in Patrick Hooty Croy's retrial, and Jim Thomson.
6. Tony Serra was assisted in court by cocounsels Diana Samuelson and Jasper Monti. Attorney Denise Anton wrote the brief, which was printed in full by the California Public Defenders' Association. See 5 CALIFORNIA DEFENDER No. 4 (1993).
7. *California Lawyer*, July 1995.

## Notes to Chapter 14

1. RICHARD DELGADO, *THE RODRIGO CHRONICLES* 164–189 (1995).
2. Crime has not been visited on my entire family. Although I have worked and lived for many years in high-crime neighborhoods, I've never been a victim of a crime other than my car being broken into. My sister grew up in the heart of Chicago and lives in New York and has never been assaulted or robbed, nor (knock on wood) has my daughter.
3. See, e.g., the excellent discussion of prisons, law, and policy by Luke Hiken and Marti Hiken, *Imprisonment—America's Drug of Choice*, 52 NATIONAL LAWYERS GUILD PRACTITIONER, No. 3 (1995).
4. Enlightening articles by numerous contributors on the information economy and its consequences for all of us can be found in *cy. Rev: A Journal of Cybernetic Revolution, Sustainable Socialism and Radical Democracy*, 3411 W. Diversey, Suite 1, Chicago, Illinois 60647. World wide Web Home Page is [http://www.eff.org/pub/Publications E-journals/CyRev/cyrev.html](http://www.eff.org/pub/Publications/E-journals/CyRev/cyrev.html)
5. Since the assassination of Martin Luther King in 1968, the African American middle class has become four times as large, but one-third of African Americans are worse off. Although American scholars and commentators are reluc-

tant to discuss “class” divisions, more and more recognize the increasing inequality of the distribution of wealth. Cynthia Tucker of the *Atlanta Constitution* has twice taken on the issue in editorials, in which she contrasts the success of the “black upper-middle-class” with the failure of the “black underclass” and rails against the lack of a governmental response to growing poverty. One illuminating example of government action that is likely to increase rather than decrease crime is the 1995 Republican “recession” bill signed into law by President Clinton, which eliminated a summer jobs program that had employed 615,000 low-income students.

According to a prominent group of sociologists, the United States is now more unequal than at any point in the last seventy-five years. FISHER, HOUT, JANKOWSKI, LUCAS, SWIDLER, and VOSS, *INEQUALITY BY DESIGN: CRACKING THE BELL CURVE MYTH* (1996).

6. *Mak v. Blodgett*, 970 F.2d 614, 619 (9th Cir. 1992).
7. *Siripongs v. Calderon*, 35 F.3d 1308, 1315 (9th Cir. 1994).
8. One of the foremost experts in death penalty litigation is Bryan Stevenson at the Equal Justice Initiative, 114 N. Hull, Montgomery, Alabama. Stevenson cautions lawyers against trying to convert jurors to a single world view. Rather, it is necessary to explain how racism and poverty have shaped the *individual* defendant’s history.
9. Letter to the author from Rick Wagner explaining the legal strategy in the Noble Drew Ali housing project case.
10. Mercedes Marquez and other attorneys such as Chris Brancart of Pescadero, California, have used various legal remedies such as suing under state warranty of habitability statutes and federal civil rights laws. Marquez, who has settled numerous cases on favorable terms, says that slumlords often target immigrants to be their tenants because immigrants are unaware of their rights and have less access to lawyers to enforce them. A black rage-type defense could be expanded to include immigrants, confronting head-on the stereotypes and prejudices other people hold against those who emigrate to America legally or illegally.
11. From 1981 to 1996 HUD has had to list more than three thousand projects as “distressed” housing. The overwhelming number of projects on this “distressed” list are, in turn, overwhelmingly occupied by racial minorities. This is true despite the fact that there are hundreds of thousands of whites who also live in subsidized, albeit de facto segregated, housing.

Wagner once asked a high-ranking HUD official in Washington, D.C., to identify a single privately owned, HUD-subsidized project on the “distressed list” that had a majority *white* occupancy. Her answer was, “I’m sure there

must be one or two, but I can't think of any." He told her to let him know if she ever did think of one. He did not hear from her.

A Noble Drew tenant told Wagner that "if 383 white families were subjected to these conditions in a government-subsidized project, the authorities would not have waited seven weeks, much less seven years, to fulfill their legal duty and stop it."

