could be assumed that the knowledge by a juror of such investigation would work for the benefit of one party rather than another..." (Harriet Dow vs. Carnegie-Illinois Steel Corp., 224 F 2d 414.)

Nonetheless, "some of these investigating agencies were overstepping the bounds in some situations," the court added cautiously, without delineating the boundaries between "reasonable" and "overstepping".

In Deleware the overstepping apparently had gone pretty far by 1965, influencing the U.S. Court of Appeals to make a partial condemnation of the practice. (Kiernan vs. Van Schaik, 347 F 2d 775.)

> "The impartiality of the jurors should be tested under the control of the court rather than by unsupervised activity or investigators with all undesirable possibilities of intimidation and jury tampering which such surveillance inevitably presents."

Delaware attorneys had been subscribing to extensive investigative services, and knew everything they wanted to know about a juror before he came into court; the "supervised" interrogation had been almost eliminated. At the trial, the presiding judge barred some questions as time consuming because the attorneys had been supplied with the information. Melvin Belli learned in his defense of Jack Ruby that "The Dallas District Attorney's office knows, it is said, everything worthwhile that there is to be known about a prospective juror by the time he appears for questioning." (Dallas Justice, op. cit., p. 137.)

This eagerness to conduct both supervised and "unsupervised...non-judicial inquiries" has led to the development of a new "science" of "overstepping". Two of the foremost scholars of this "science" are the National Jury Project and the Meiklejohn Civil Liberties Library, Berkeley, California. Each has written a detailed guide.

Ann Fagan Ginger of Meiklejohn authored a looseleaf publication: Jury Selection in Criminal Trials (Lawpress, Tiburon, CA, 1975) which devotes more than 700 pages to the subject of getting "fair trials for people who have challenged the system".

To accomplish this she urges questioning "jurors individually and in depth" and "conscientious probing of 'the crevices' of the jurors' minds." (Ibid., pp. 370-371.) She lauds San Francisco attorney Charles Garry for often treating jurors with hostility "as if they were witnesses for the opposition". (Ibid., p. 369.) One wonders how much different these tactics are from police bullying or the hot boxing of Star Chamber. "Probing the crevices" of the minds of citizens other than jurors clearly violates the First Amendment,

and Ginger would probably be among the first to object to this - and she does when it is done to "people who have challenged the system".

She advises gathering a "cadre of friends" of the defendants; circulating the venire list among them and then - with references to the Angela Davis trial - by "operat(ing) boldly" they could discover "some kind of third party information on 70 to 80 percent of a venire list". (p. 335.) But it is "jury tampering" to speak directly to a juror or a member of his family. Not so to next door neighbors, employers, employees or other associates. Accuracy or truthfulness by the informers is not considered.

"It is the unwarranted invasion of individual privacy which is reprehended, and to be, so far as possible, prevented," wrote Brandeis.

The "network of friends" should use "Jury Data Sheets" to collect information about residence and cost or apartment house, its condition and description of the neighborhood; vehicles owned, including accessories and "bumper stickers". Ethnic data are desired, as well as education, employment and work history and the juror's income; juror's own litigation history, "brushes with the law" and service in the armed forces.

The next group of questions deals with reading habits: newspapers and periodical subscriptions, correspondence with newspapers; medical and health data; membership in organizations. The First Amendment guarantees to privacy in reading and personal association is set aside, as well as the Fourth's assurance of sanctity of the home. To some extent also the Third, as the snoopers come near to be quartered in the jurors' homes.

Ginger also wants to gather information on "Spouse and former spouse(s)" including income, "organizations and interests, personal appearance", and the same regarding children, parents, friends and relatives. (pp. 341-343.)

Her desires are rapacious. "...defense committees should check with local registrars of voters to discover all initiatives and referenda filed in the past 10 or 15 years that might be relevant to issues in the pending case" because "voters who fill in and return jury questionnaires are often people who do sign petitions" (or else are afraid of being cited for contempt). This "can provide significant insights into the views of many jurors".

"...the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of government..." (Boyd, op. cit., p. 630.)

Heedless, Ginger puts the juror under a microscope. "There is really no limit to the number of sources a defense team can turn to for additional information about specific, named prospective jurors." In one case the team "managed to get magazine and newspaper subscription lists from some publishers" and "various groups were asked to lend their membership and mailing lists, and hours were spent cross-checking these lists against potential jurors' names". (p. 359.)

"...the tort of invasion of privacy (extends) to instances of intrusions...the law protects citizens from other citizens..." (Pearson vs. Dodd, op. cit.) "One who gives publicity to...the private life of another...is subject to liability to the other..." (Atcheson, etc., op. cit.) "Is the annihilation of privacy the antecedent state of an emerging police state in America?" (Omar Garrison, Spy Government, op. cit.)

Ginger became upset when a juror tried to defend himself from invasion. He was "a liberated househusband (who) shaved off his beard and put on a suit as he did not want to be challenged by the prosecution". He wasn't. He was challenged by the defense, which lost "an individualist who would have listened and argued and voted according to his own lights, with a deep commitment to the presumption of innocense". An unprovable assumption, but if she is right, it demonstrates the futility of prying. Jury history also shows that most jurors vote according to their own lights, no matter who they are.

Ginger has also prepared an even lengthier data sheet for dehumanizing jurors during voir dire. The National Jury Project does much the same in its looseleaf book: Jurywork: Systematic Techniques, edited by Beth Bonora and Elissa Krauss (in cooperation with the National Lawyers Guild and National Conference of Black Lawyers, 1979).

The editors would have defense attorneys probe deeply into religious and political beliefs, race and "nationality" (all citizens are American nationals), attitudes toward women's roles, and sex prejudice, attitudes toward labor unions, law enforcement officers, and everything Ginger desires to know. (pp. 44-46.)

"The primary goal of voir dire is to elicit the background and attitudinal information" and "to be provocative and searching" so that jurors will "express their own beliefs and opinions". (pp. 151-152.)

"Liberty of speech and writing is secured by the Constitution, and incident thereto is the correlative liberty of silence." (Pavesich, op. cit.)

Each lawyer "can learn to climb over" jurors' natural reluctance to "bare their souls in the courtroom" by making candidates "feel that the attorney is truly interested in who they are". This will "create an atmosphere which will encourage honest, straightforward answers that reveal the prospective juror's personality, experiences and attitudes" whether jurors want to reveal them or not.

Because some of this questioning might make jurors uncomfortable, the National Jury Project does not suggest giving concern to constitutional rights; only to whether the discomfort creates a negative attitude toward the lawyer.

Even judges, presumably dedicated to protecting constitutional right of all persons, place jurors in a seemingly nonperson category. Robert A. Wenke, Los Angeles County Superior Court, published The Art of Selecting a Jury in 1979 (Parker & Son, Los Angeles). The title implies strategy and technique because "selecting a jury is educated guess work," he writes in his Foreword, as "there is no guarantee that mastery of the art will lead to victory", but at least will "increase the chances of success" (p. 5). But he does not say for which side.

Neither the Sixth nor Seventh Amendments make any reference to juries that will guarantee victory, but that "victory" should be awarded on merit, facts, and evidence. Wenke would have trial attorneys commence voir dire by explaining that they do not wish "to pry into personal affairs" (p. 21) and then start to pry into such very personal affairs as marital state, who lives with whom, occupation, residence, property ownership, special education, personal injuries, litigation history, personal health problems, relatives and their lives, drinking habits, and much more. (pp. 87-90, 118.)

To conceal their duplicity, the attorney should "create an impression of fairness" (only an impression) and "be 'the nicest guy in the courtroom'" without obvious fawning (p. 57). "Project confidence to the juror", develop "winning ways" (p. 27) and by all means "smile occasionally" (p. 28). Try "adroitly (to) dignify the work a juror performs; for example, say 'maintenance worker' rather than 'janitor', as if U.S. citizens are universally so insensitive as not to see through such deception.

The National College for Criminal Defense held a seminar in Denver on "Jury Selection Techniques" in February 1980, which was reported in the Summer, 1980 issue of Trial Diplomacy Journal (p. 42, et. seq.). "One of the most valuable" presentations was a lecture by Cathy E. Bennett, human relations consultant in Santa Barbara, California.

Bennett advised attorneys to request trial judges to inform jurors that "it is okay to have opinions and biases and to express them there in the courtroom". She does not appear to have suggested that judges inform jurors also that under the First Amendment, it is okay not to express opinions and biases if they do not choose to - and that no governmental official nor other person can force them to.

"Show honesty and openness during voir dire," she advised. "Show jurors you care about them as people. Show empathy and respect for their nervousness. Express to them that you are as nervous as well, if you are - a suggestion to be sincere even if you don't mean it.

Bennett would have trial attorneys ask: "What would you want to discuss with other jurors, if you could, about the publicity in this case?" This appears to be an attempt to enter the jury room for a precommitment about the verdict, proscribed by Justice Mosk in the Williams case. (Op. cit., 9 Cal 3rd 871.) Other questions: "What are your hobbies? What do you do in your spare time? What is your greatest strength? Your greatest weakness? What is the most important thing to teach your children?" As if the questions could be answered. But they are none of your business!

New York attorney Herald Price Fahringer would have attorneys make "a thorough examination of the jurors (to) include every relevant topic of inquiry..." (Trial Diplomacy Journal, Summer 1980, p. 48) such as family status, type of residence and past addresses; details of occupation and of education; relationships with law enforcement offocials, military service, memberships in organizations; leisure time activities, such as TV shows the juror watches, books he reads, drinking habits, and so on insatiably.

"Intrusion does not involve as one of its essential elements the publication of the information obtained. The tort is completed with the obtaining of the information by improperly intrusive means," according to Pearson vs. Dodd. (Op. cit., p. 704.)

"...the duty of Government to protect the domestic security, and the potential danger posed by unreasonable surveillance to individual privacy and free expression." (U.S. vs. U.S. Distrct Court, op. cit. 407 U.S. 297, 315, 1971.)

"The requirement that a search warrant describe with particularity the place to be searched and things to be seized is designed to prevent general exploratory searches which unreasonably interfere with a person's right to privacy." (Burrows vs. Superior Court of San Bernardino City, 529 P 2d 590; 13 CA 3rd 238, 1974.)

"...it is natural right of man to be free from unreasonable searches and seizures." (People vs. Holmes, 312 NE 2d 748, 1974, Ill. See also People vs. Moore, 31 CA 3rd 919; U.S. vs. Tranquillo, 330 F Supp. 871, 1971.) "Sanctity of private dwellings is ordinarily offered the most stringent Fourth Amendment protections." (U.S. vs. Martinez-Fuerte, 96 S Ct 3074, Calif., 1976.) "What a person seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected under the Fourth Amendment." (Katz vs. U.S., 88 S Ct. 507.) Have not Ginger, Bonora, Krauss, Bennett, Fahringer, and Wenke read these decisions or do they feel they are to be discounted? The juror is a man or woman with natural rights to be free. (See also Camara vs. Municipal Court of San Francisco, 387 U.S. 523.)

The Supreme Court has also written: "The rights of privacy and personal security by the Fourth Amendment are of the essence of constitutional liberty, and the guarantee of them is as important and as imperative as are the guarantees of other fundamental rights of the individual citizen" (Harris vs. U.S., 331 U.S. 145, 1946) and should be "liberally construed" (Felix vs. Gouled, 65 L Ed. 647, 1921).

Other applicable cases include People vs. Billingsley (326 P 2d 646, Calif., 1958); Oregon vs. Mathiason (429 U.S. 492, 1977); Olmstead vs. U.S. (277 U.S. 438, 1928); also Jacob Landynski: Search and Seizure and the Supreme Court, John Hopkins Press, Baltimore, 1946.

Edward Shils posed the rhetorical question: "Why should his freedom to express his thoughts receive protection if his thoughts could be extracted from him by the government? And why protect him in his home against arbitrary arrest and official searches if the government may use electronic or other scientific ways of observing and eavesdropping?" ("The Right to Privacy and American Law... Privacy: Its Constitution and Vicissitudes", 31 Law and Contemporary Problems 281.)

Miranda vs. Arizona is invoked to protect criminal defendants from making forced confessions, but the Supreme Court went far beyond: "Fifth Amendment privilege is available outside court proceedings and serves to protect persons in all court settings in which their freedom of action is curtailed..." (Miranda vs. Arizona, 384 U.S.

436, 1966.) The "privilege against self-incrimination applies to all individuals...protects individuals from being compelled to incriminate in any manner; it does not distinguish degrees of incrimination...and the privilege cannot be abridged".

A juror's freedom of action is surely "curtailed" and whether a response is "incriminating" or humiliating is a decision only the juror can make.

In Kastigary vs. U.S., the Supreme Court turned to the "Fifth Amendment (which) can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory", which covers voir dire, and entitles the juror not to respond without prejudice to him. (406 U.S. 441, 1972.) The juror, having read no law, does not know to invoke such decisions and is thus easily victimized by the court.

In 1963 the Supreme Court extended the privilege against self-incrimination "to a witness...as well as to a defendant in a criminal prosecution", so why not to the juror? (Malloy vs. Hogan, 378 U.S. 1.) Under any condition, the "'privilege against self-incrimination' was designed to protect against testimonial compulsion" of any nature. (Rudgell vs. U.S., 54 A 2d 679, 683, 1947.)

In California, "The 'privilege against self-incrimination' protects the individual from any forced oral or written disclosures made by him, and is limited to protection against testimony on compulsion..." (People vs. One 1941 Mercury Sedan, 168 P 2d 443.) The basic character of voir dire, of "probing under the surface" is "forced oral disclosure...on compulsion". (For further support see State vs. Addington, 147 P 2d 367, Kansas; U.S. vs. La Monica, 472 F 2d 580.)

If there still remains a doubt about juror privacy, there is, once again the omnipowerful Fourteenth Amendment, discussed in Section II. The juror is "any person within (a state's) jurisdiction (entitled to) equal protection of the laws". There can be no conscientious dodging from this command, because "Any person within the U.S., citizen or alien, resident or nonresident, is protected by the guarantees of the Constitution." (Sam Andrews' Sons vs. Mitchell, 457 F 2d 745.) Or: "The equal protection clause...extends its veil of protections to all forms of state and federal action." (Meyer vs. Campbell, 152 NW 2d 617. See also: Bursey vs. U.S., 466 F 2d 1059; U.S. vs. Gordon, 236 F 2d 916.)

The California Supreme Court indirectly supported the juror's claim to privacy in 1978 when it wrote: "It demeans the Constitution to declare a fundamental personal right...and at the same time make it virtually impossible for an aggrieved citizen to exercise that right." (People vs. Wheeler, 22 Cal Rptr 258, 287.) Because

"Constitutional rights are among those that are most fundamental" and "court cannot engage in any action which deprives party before it of his constitutional rights". (U.S. ex rel Hetenyi vs. Wilkins, 348 F 2d 844, New York, 1965; and In re Baldinger, 356 F Supp 153, Calif., 1973.)

Nor can "Law and order...be preserved by...depriving individuals of constitutional rights decreed to be vested in them by the United States Supreme Court". (Armstrong vs. Board of Education of Birmingham, 323 F 2d 333, 1963. Also: Lucas vs. 44th General Assembly of Colorado, 84 S Ct 1459, 1964; Communist Party of U.S. vs. Subversive Activities Committee Control Board, 81 S Ct 1357, 1961: "Liberties...are not to be destroyed under pretext of preserving those institutions even from grave and external dangers" and "state cannot foreclose exercise of constitutional rights by mere labels". Noonan vs. Rousselot, 48 Cal Rptr 817, 1966; Troglin vs. Clanon, 378 F Supp. 273.)

The privacy of persons applying for insurance is rigidly protected by a California statute which became effective on October 1, 1981. Insurance companies or their agents are now required to inform applicants how the insurance firm collects its credit information and what information has been collected. In addition, the insured must have access to recorded personal information, and be able to correct, amend, or delete. He also has the right to know the identity of all persons to whom his insurance files have been disclosed. If he is denied insurance, he must be told the reasons. (Insurance Information and Privacy Protection Act of 1981, Ch. 106, Insurance Code, Laws 1981.)

The insurance applicant submits voluntarily; the investigation is limited to credit data. But the juror is not even aware, subjected involuntarily, and there are no limitations. At the very least, the protections of the new Insurance Act should apply equally to him.

Are there any voir dire questions sufficiently harmless as not to be invasive and how are these to be determined? To ask a woman if she has had an abortion or been raped seems clearly invasive. And perhaps 99 percent of the women would agree but to any one particular woman, it might be something to boast of for she may be active in an anti-rape organization.

Or to ask a man if he is a member of a gay rights group. To a given homophobe who shouts "I certainly am not" it might not be. To another, straight sympathizer or gay, it might be invasive, or another man could be president of "Let's Put a Gay in the White House" and exploit the opportunity for free publicity.

"Are you married" could humiliate the recently divorced, or the 50'ish spinster despairing after three decades that enduring love is just around the corner.

Consider the question about one's occupation. In the Angela Davis trial, a juror responded that she had been a "cotton picker". The entire courtroom burst out in laughter. There is certainly no constitutional authority permitting the court to make a juror an object of public derision. A "between jobs" response is also a cause for possible scorn. To go "in chambers" is no escape because the admissions are still forced and are public although the immediate audience is smaller.

There is only one individual who can determine what questions are invasive and from his decision there can be no appeal. That is the individual for himself, who retains the exclusive right to control. That is the essence of all privacy. Even to put the juror in a position of having to explain why a question is embarrassing or invasive is embarrassing or invasive of itself. The Supreme Court supports him: "...a response or an explanation why (the question) could not be answered might be dangerous because injurious disclosure would result." (Hoffman vs. U.S., 341 U.S. 479.)

Totally disregarding all of this were both sides and trial court in the Bobby Seale-Erica Huggins voir dire in New Haven. Jurors were savagely humiliated without conscience so severely that "jury selection had become a rout, a panic, a stampede. A man threw up, and two women broke down upon entering" the jury box. (Donald Fried: Agony in New Haven, Simon and Schuster, p. 74 et. seq., 1973.) It was "good defense strategy", author Fried declared, to disgrace several thousand citizens of the United States in a court of law. And he added to what should be a criminal invasion by identifying many of the denigrated jurors by name in his book.

Can it be "justice" to deprive citizens participating in the search for it of their individuality and by dehumanizing them? Should a "leading" trial attorney, as is Charles Garry, be licensed to scorn them by needling each with: "I am sorry to have to invade your sacred privacy"? (Ibid., p. 61.) He is obviously not sorry and since privacy is truly sacred, he should not be permitted to violate it.

The humiliation of jurors didn't do either side much good. The jury was hung, the majority for acquittal. One of the convicting jurors was selected by Garry "because she took yoga, because somehow that had seemed human to him". (Ibid., p. 316.) Apparently he defeated his own purpose.

Defense attorney Leonard Weinglass challenged the initial jury panel in the Daniel Ellsberg trial in Los Angeles because: "'This is not a cross section of the community,'" he was reported as saying by Peter Schrag, author of a book on the trial, Test of Loyalty (Simon and Schuster, New York, 1974, p. 195). Following which he began a "searching and probative" voir dire (Ibid., p. 226) aimed at building a noncross section "Third World" panel as one conforming to his own prejudices.

He extricated such information as how the juror candidate voted, defying the secrecy of the ballot; his reading or nonreading habits, personal opinions which, if unpopular, provoked laughter, and author Schrag extended the criminal invasion by naming the slaughtered jurors, often scornfully. Schrag deplored the practices of the government "to gather political information and personal data on individuals suspected of no crime other than dissent" (Ibid., p. 71) while approving the practice of the government to gather political information and personal data on individuals suspected of no crime other than being called for jury duty.

Despite all of this, there remains the question of the supreme importance of selecting the elusive "impartial jury". Is there a compelling interest sufficiently strong to override juror privacy rights? This is the subject of the fifth section. The weight given to the possibility of such an "overriding interest" should be measured in terms of the advice by the elder William Pitt in a speech before the British House of Commons: "Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves." (November 18, 1783, from Bartlett's Quotations, p. 412.)

V. Voir Dire and the Peremptory Challenge Violate the Sixth and Seventh Amendments Because the Objective Is to Destroy the Cross-Sectional Character in Order to Build Bias Into the Jury

> "When the commons is master of the juryman's ballot, it is master of the state." From the Constitution of Athens, quoted in Vol. IV, Cambridge Ancient History, Cambridge University Press, England, 1964, pp. 56-57.

Rita James Simon edited a book entitled The Jury System In America, published in 1975, and in her introduction to the second chapter, she explained that: "This chapter examines the often contradictory aims of plaintiff and defendant..." in selecting juries (Sage Publications, Beverly Hills, CA, p. 48). The authors of the

chapter itself identified their objectives as to "provide a much-needed theoretical framework within which to understand the conflicting aims of prosecution and defense during voir dire". (Chapter of "Juror Selection, an Analysis of Voir Dire", by Michael Fried, Kalman Kaplan, and Katherine W. Klein, p. 49.)

The command of the Sixth Amendment, as often repeated here, is explicit: an accused is entitled to a public trial "by an impartial jury..." Although this phrase is not in the Seventh Amendment, it is implied by extension.

To be "impartial" means to be impartial. Despite imprecise definitions, the intent is precise. It is not a relative term, as for example "north". The same spot on the globe may be "north" in relation to another, while "south" to a second, or "east" or "west" to others. But an impartial jury is, to the extent that that ideal is attainable, impartial no matter what position an observer may take. It holds a central position. It cannot be "impartial" to the defense and not impartial to the prosecution or plaintiff. If off center to any degree, it is off center from any viewpoint.

To find a definition, we can turn to the unabridged Webster's Dictionary of the English Language. "Impartial" is explained primarily by listing synonyms: "Not partial, not biased in favor of one party more than another; unprejudiced; disinterested; equitable; just; fair." Delving further, we find the definitions of these synonyms lead us back to "impartial". The important part is the "not biased in favor of one party over another".

Thus, to comply with the requirements of these two Amendments, both prosecution and defense must have identical, nonconflicting aims: to seek a jury not favoring either side and nothing else. If counsel believe there is a conflict, then they are not looking for an impartial jury. They are searching something else and whatever that may be is improper.

Therein lies the hypocrisy of voir dire, prevoir dire investigations, and the tool that implements them, the peremtory challenge. The conflict comes because each side wants a jury biased in its favor. Each tries to select precommitted jurors and the more they find, the more effectively can they master the juryman's ballot. The Athenians protected themselves by requiring juries (dikasteries) of scores, hundreds, even thousands; and further by not permitting any one, not even the jurors (dikasts) to know which cases they would hear until the start of the trials. (See generally: The Law of Athens, A. R. W. Harrison, Oxford at the Carendon Press, 1971; The Administration of Justice from Homer to Aristotle, by Robert Bonner and Gertrude Smith, Vol. I, Greenwood Press, New York, 1969, and others.)

The jury of only 12 must be guaranteed independence in other ways. Lysander Spooner, who lived in the 19th century, wrote a long-forgotten, outstanding insight: An Essay on the Trial by Jury, and understood what the Athenians knew - individual selection of the jurymen gives power of control to the selectors. He found that in Britian "the common law right of all free British subjects to eligibility as jurors has been abolished, and the qualifications of jurors has been made a subject of arbitrary legislation". (John P. Jewett and Co., Boston, 1852, p. 148.)

This is no longer true in Great Britian where selection is from the electoral role, voir dire does not exist and peremptories are restricted to seven by the defense only. Even these are rarely used - in only about one trial in seven. (John Baldwin and Michael McConviller: Jury Trials, Clarendon Press, Oxford, 1979, pp. 90-92; and David Fellman: The Defendant's Rights Under English Law, University of Wisconsin Press, Madison, 1966, p. 99.)

But Spooner's observations on the need for diversity remain valid today.

> "The government has usurped the authority of selecting the jurors that were to sit in judgment of its own acts. This is destroying the vital principle of the trial by jury itself, which is that the legislation of the government shall be subjected to the judgment of a tribunal, taken indiscriminately from the whole people, without any choice by the government, and over which the government can exercise no control. If the government can select the jurors, it will, of course, select those whom it supposes will be favorable to its enactments. And an exclusion of any of the freemen from eligibility is a selection of those not excluded." (Itals, in original, p. 148.)

Likewise the defense. It is no answer to attempt to balance government influence by giving equal power to the defense - even if equality could be attained. The government almost always has more money and resources. Whichever, if either side can select the jurors, it has the power to master the juryman's ballot.

Using Simon, Fried, Kaplan and Klein as examples, we find that they proceed to advise exactly what Spooner warns against. The prosecution, we are told, wants "jurors predisposed to side with authority" (p. 51); likely to succumb to "persuasive arguments" (p. 52). This ideal jury consists of 12 men, all Republicans, upper income in such occupations as banking, engineering and accounting, "and others with positions of petty responsibility". It should include "members of Teutonic ethnic groups, particularly Germans" (p. 52).

The defense should seek anti-authoritarians in "minority racial or ethnic groups such as Latins and Jews" as well as women, Democrats, middle and lower economic groups including butchers, social scientists and others.

Whether the stereotypes have meaning or not, the point is that the search is for predisposed jurors. The searchers do not stop here. Under certain conditions, the defense should "press for juror homogeneity". Under others, the goal is heterogeneity, not because this might be fair, but "to work on a small number of jurors to create a hung jury".

The chapter represents a series of contrived mathematical equations directed toward implementing the "conflicting" goals. It concludes awkwardly: the "prosecution should employ tactics designed to raise the utilities for conviction" while the defense "should use tactics to lower the utilities for conviction..." (p. 63).

More simply, they are saying what we knew in the beginning: the prosecution wants conviction-prone jurors, the defense acquittal-prone. Of course their goals conflict. Neither side is seeking constitutional impartiality. We are being instructed that facts and evidence carry no weight; the stacked jury will be swayed by extra-evidentiary predispositions.

If only one side has followed the rules, anything happening afterward presumably wastes time. The jury is already biased to that side and the verdict foregone. But if both have with equal skill, the jury is deadlocked six to six: six male, banker Teutons vs. five lower-income minority female social scientists and one Democratic Jewish butcher, sex not identified. Is this the proper application of the Sixth Amendment?

Professor Jon Van Dyke of the Law School at the University of Hawaii doesn't believe so. "When the stakes are high," he writes in his Jury Selection Procedures, "considerable amounts of time and money have been spent by both sides to shape the jury to their needs. A jury so 'shaped' is likely to be quite different from the jury wheel in its demographic characteristics" (p. 139).

"Challenges," he continued, may "make the jury still less representative, even to the point of removing all members of a certain race or social group from the jury." And later: "Although aimed at eliminating bias and impaneling an impartial jury," the peremptory challenge "may in fact - by excluding certain types of people from the jury panel - increase the jury's bias" (p. 152).

"Large numbers of peremptories...give the attorneys vast power to mold jury composition; this procedure is insulting to potential jurors." (p. 160.) The system "gives both sides more opportunity

to manipulate the jury," (p. 146) which means controlling the juryman's vote. He poses the question whether voir dire and the peremptory are "a sincere effort to obtain an impartial jury (or) one subject to the charge of jury-tampering?" (p. 163.) This is the same advice as given by Spooner.

The solution is that "if the jury is to represent the conscience of the community in all its diversity, then no shade of opinion should be excluded". Otherwise, the defendant is being judged not per pais, but "rather by those members of his community who are approved..." (p. 167).

> "If we are committed to a completely representative jury, it is anomalous to allow either side to eliminate a juror thought to be unfriendly to its position. The use of peremptory challenges inevitably makes the jury more homogenous than the population at large..." (p. 168).

Hence, skewed in one direction or the other.

Ann Fagan Ginger, though a strong advocate of voir dire, discovered the same thing. In a monograph she edited in 1969, she included a section by Dr. Robert Blauner, who confessed ungrammatically that: "Despite its theoretical function, the voir dire is in reality a contest between the two adversaries toward the goal of selecting the jury which is most favorable to his side." (Minimizing Racism in Jury Trials, p. 48.)

A bold observation, for it implies that jury selection procedures defy, demean and scorn the Sixth and Seventh Amendments. It is not the only one. There is indeed a superfluity. Some of it comes from the American Civil Liberties Union. The New York chapter prepared a monograph on jury selection in 1978. "More realistically, the parties are probably seeking those persons who will be 'most favorable' to their versions of the events...but it is assumed that since both sides act this way, neither side will get a 'more favorable' jury." (American Civil Liberties Union, New York, "Civil Liberties Issue Raised by Jury Selection Procedures", by Stephen Cunningham, p. 4.)

This argument is based on the thesis that two wrongs make a right, without consideration of the juror's right to privacy. But it also presumes that both sides are equal in budget, time and skill. If this should be so, we are back to the six-six unshakeable deadlock. The unconstitutionality of permitting either side to seek a "more favorable" jury should be self-evident. However, Cunningham would make the sides equal.

> "If jury lists are available to those who want them, investigations (before trial) inevitably follow. It is recommended that the findings of the parties be available to both sides through the discovery process..." (p. 17).

Another legal writer confesses that "the object of jury selection is to choose those individuals who will be most influenced by the emotional displays of the attorney in his presentation of the case..." (Bruce Rashkow, "Abolition of the Civil Jury", 15 DePaul L R 416, 419, 1966.) As opposed to influenced, properly, by evidence.

Attorneys Steffan Imhoff and Sheldon Otis attributed the acquittal of their client, Steven Soliah, in 1976 not to his innocence of robbery, but to "the systematic approach to jury selection" which was "the most important part of the trial". (Quoted in the San Francisco Examiner, May 10, 1976.)

Trial by jury is so valid that the Imhoff-Otis assessment is ridiculous but they they should make it is no joke. If the verdict depends entirely on jury selection, the trial itself becomes a farce. There would seem to be no reason for holding it at all. Candor would require announcing the verdict as soon as the jury is sworn.

Bruce Davis of the West Virginia bar makes the traditional obseisance to "an impartial jury" in a July 1961 article in Young Lawyer and follows by suggesting that the goal is to seek "jurors favorable to your side of the case". Impartial favoritism.

Ginger often acknowledges this duplicity. "The dynamics of the peremptory system results in a jury that is more middle of the road than representative of the diversity of a metrogenous populace. She lauds the techniques of Charless Garry who "often found it useful to treat jurors has it they were witnesses for the opposition, in effect the cross examine them..." and this has "a very beneficial effect" on the jurors (July Selection, p. 369.)

Yet the Connecticut Supreme Court has prohibited questions which are "irrelevant or vexatious" (State vs. Marsh, 352 A 2d 523, 525, 1975) and a Federal court in 1977 restricted disclosure of "potentially embarrassing or harmful..." information (Crain vs. Krehbiel, 443 F Supp. 202). Garry's "beneficial effect" was to defeat his own purpose. He lost the verdict for Huey Newton at his murder trial in Oakland in 1966. He then declared the jury biased because Alameda County prosecutors had demonstrated greater skill in jury control, having succeeded in challenging all black candidates exept one. On the first panel drawn, there were three black

candidates; from this reasoning, Garry might have done better accepting such a random selection without humiliating anybody. There is no constitutional authority for treating citizens as "witnesses for the opposition".

Ginger continues to attack the Sixth Amendment by suggesting voir dire questions which enable making "predictions concerning the prospective jurors' biases and prejudgments" (p. 372).

Prosecuting attorneys agree with her, except insofar as the direction of biases and prejudgments. The Dallas County District Attorney exposes his deception in a Prosecution Course to train deputies. In a chapter on "Jury Selection in a Criminal Case", assistant district attorney Jon Sparling anchors the Sixth Amendment and hurls it into the Gulf of Mexico. Without a blush nor attention to grammar, he instructs: "You are not looking for a fair juror, but rather a strong, biased and sometimes hypocritical individual who believes the defendants are different from them in kind rather than degree." (Quoted by Jon Van Dyke, op. cit., p. 152; also Texas Observer, May 11, 1973.)

Ginger also quotes "an experienced civil and criminal lawyer" who talked on jury selection before a meeting of the American Trial Lawyers Association. Theodore Koskoff of Connecticut defined the good trial lawyer as one who "starts sizing up each person who enters the jury box" (subjecting him to unwanted scrutiny?).

"What kind of a jury do you want? Men or women, bright or dull, young or old, black or white? What occupation, what ethnic composition? Well, that all depends on the kind of case you have... Each individual case requires a custom jury..." (p. 479).

> "The complexion of the jury you want varies with the type of case you have. By careful analysis, one can make an essentially unscientific process a little more scientific." (p. 480)

Looking again at the Sixth Amendment, we find no reference to a custom-built "jury you want", because if either side gets that kind of jury, the other side gets the jury it doesn't want. This is not impartiality.

Dr. Jay Schulman of the National Jury Project has often acted as an advisor to defense counsel during jury selection for what might be loosely described as "cause" cases. One of his reports on his experiences was published in Guild Notes in November 1973 and his position is clearly that the goal is to disregard the commandment in the Sixth Amendment.

> "People's lawyers should seek jurors that have the potential of voting an acquittal. The goal should not be a 'hung jury'" (ed.: advice in opposition to Simon et alia.) "A jury selection oriented to winning an acquittal is just as likely to produce defense-oriented holdouts as a jury selection that is geared to achieving a hung jury..." (From: "A Systematic Approach to Successful Jury Selection", Guild Notes, November 1973, p. 14.)

His advice has been followed by attorneys who apparently have not questioned how a jury oriented toward acquittal can be called "impartial" any more than Jon Sparling's juries in Dallas. Schulman would have jurors carefully "rated" on their voir dire responses "to isolate and measure personality traits...to increase the rationality of inferences concerning how members might respond to elements of the trial, the dynamics of deliberation, and the burden of deciding guilt or innocence" (p. 16).

It is almost as if Schulman would like to accompany the jurors into the jury room and direct the discussion.

San Francisco attorney Susan B. Jordan defended Inez Garcia for murder of the prison guard who had raped her and Jordan labeled voir dire as "the time when one begins to humanize the defendant for the jury". She described "biased" jurors to be eliminated as those unsympathetic toward rape victims. Sympathetic jurors, apparently, are unbiased. (Trial Diplomacy Journal, Spring 1980, p. 12.)

However, Los Angeles county prosecutor Vincent T. Bugliosi offers an opposing definition. To him a biased juror is one who says "Oh, I can't convict this person..." which leads to the question if impartiality is a juror "oriented to winning a conviction?". (Trial Diplomacy Journal, Spring 1979, p. 27.)

Trial Diplomacy Journal also published a commentary by trial attorney Herald Price Fahringer of Buffalo and New York City in its Summer 1980 issue. Fahringer begins by advising that: "In most cases the defendant's fate is fixed after the jury is chosen." ("In the Valley of the Blind - jury selection in a criminal case", p. 34.) Another reference to the possibility that the presentation of evidence in court is a farce. "Consequently," he adds, "counsel's ability to select a favorable jury in a criminal case is of paramount importance." But which counsel is entitled to a favorable jury?

The Sixth Amendment has not been altered to read: "...the accused shall enjoy the right to a speedy and public trial, by a favorable jury..." At this writing the wording remains as it has been since

1791: "...by an impartial jury..." Unless such revision is accomplished by established constitutional procedures, it would seem that the Amendment should be honored in its original and extant form.

Vincent Hallinan of San Francisco boldly confesses that he "manipulated the challenges so that (jurors with Scottish names) were in the box when the jury was sworn" because his client was Scottish. (Vincent Hallinan, A Lion in Court, G. P. Putnam's Sons, New York, 1963, p. 128.)

To select the jury for Julius and Ethel Rosenberg in 1951, both prosecution and defense put the panelists through screening so refined as to be embarrassing to the jurors for all time. Many are identified by name in books about the case - their intimate secrets widely broadcast. The result shows that the prosecution was more skillful at jury stacking than the defense, for the jury gave him verdicts of such dubious veracity as to weigh on the national conscience. Two lives were taken by the United States Government, two infant boys orphaned because the objective was to seek a jury oriented toward conviction.

Was this the intention of James Madison, who termed the Sixth Amendment "the most valuable in the whole list" of the Bill of Rights?* Was this what Frank Murphy meant only nine years earlier when he wrote the Glasser decision? Was he giving permission to the prosecution to form a panel where "almost each and every (juror) was a representative of the safe, dependable, corporation 'experienced' juror types...accountants, auditors or executives, but not one employed in the arts and professions? No school teachers, writers... manual workers, longshoremen, plumbers or welders." (The Judgment of Julius and Ethel Rosenberg, by John Wexley Cameron, Kahn Publishers, New York, 1955, p. 271.)

The prosecution successfully challenged every single Jewish candidate, making the panel totally unrepresentative of the demography of New York City. One black man and one woman were given the prosecution's seal of approval. How did the defense fail so miserably?

Had the defense not attempted to compete with the jury stacking techniques of the government, but instead had turned not only Glasser, but Smith vs. Texas (1941), Thiel vs. South Pacific (1946), or even challenged voir dire itself, the jury might have conformed

*Irving Brant: James Madison, Bobbs Merrill Co., New York, 1941, Vol. 3, Chap. 22.

more closely with 1948 Judicial Code requirements for "no discretion on the part of court clerk and jury commissioner". This broader, and constitutionally proper, mix would likely have had greater independence.

"It is no secret that lawyers exercise their voir dire challenges in a fashion calculated to secure juries biased in favor of their client's cause," suggests a commentator in the March 1976 Southern California Law Review. ("The Constitutional Need for Discovery of Prevoir Dire Juror Studies, p. ___. That being true, the article is mistitled. It should read: "The Unconstitutionality of Discovery...")

"As long as counsel can play a role, they will be rational and try to change the skew away from a representative cross-section to a nonrepresentative cross-section favorable to one side. It is folly to expect counsel to behave any other way." (Lewis LaRue, "A Jury of One's Peers, 33 Washington & Lee L R 841, 874, 1970.) "Nonrepresentative cross-section" seems to be a candidate for a self-cancelling expression award.

So eager was defense counsel in the trial of the 21 Black Panthers to build a skewed jury that he "was to harry and occasionally even to hector, to be reckless about perils of giving offense, and to worry to the bone" (p. 150) the juror candidates, with "insistent disregard for human dignity..." (p. 151). This is the observation of Murray Kempton, telling the story in The Briar Patch. (E. P. Dutton Co., Inc., New York, 1973.)

The attorneys, he wrote, "would not look again upon anyone so stubbornly determined upon combat as this first enemy they faced". Who is this enemy? Citizens of the United States summoned for jury duty!

There is no record that any governmental nor court officer objected to this degradation of citizens and the jurors were too unfamiliar with the philosophy of the Constitution, or too intimidated, to understand they are protected from harrassment and hectoring by officers of the court.

"It is not, after all, the prospective jurors who are on trial..." is the disregarded position of a Federal Court. (U.S. vs. Barnes, 604 F 2d 121, 140, 1979.)

Nonetheless, the defense "badgered unsympathetic jurors", from the view of Peter Zimroth, writing his report of the same trial. (Perversions of Justice, Viking Press, New York, 1974. See chapter "A Jury of Their Peers", pp. 132-141.)

Can jurors expect any judicial defense of their dignity when they might appear in the courtroom of a judge as James C. Adkins of the Eighth Judicial Circuit, Gainsville, Florida. Adkins gives verbal genuflection to the principle that: "The true administration of justice contemplates a trial of the issues by a fair and impartial jury", but permits attorneys before him to seek "a jury which is prejudiced, or at least leaning, in favor of his cause. The party, bluntly, wants to win, and anything else is not true justice." ("Jury Selection: An Art? A Science? Or Luck?", Trial Magazine, December 1968-January 1969, p. 37.) The judge finds this, again offending grammer, a "healthy situation" with no explanation how a jury can be both fair and impartial as well as prejudiced.

Voir dire for the Joan Little trial in Raleigh took two weeks in 1978 and when concluded, the defense team held a champagne party to celebrate. The "impartial" jury was a sure a priori acquittal! The fact that Little was acquitted was not the result of subjecting several hundred North Carolina citizens to the indignity of of exposing their private lives to the public. It was because Little deserved an acquittal.

Although it cannot be shown by test tube demonstration, the experience of other researchers is that this, more likely than not, would have been the verdict of the very first panel of 12. It cost the defense $50,000 to do all this jury research - a statement that if such expenditures are necessary, true justice can be purchased only by the well financed. (San Francisco Sunday Examiner and Chronicle, July 27, 1975, p. 13.)

The chief point, however, is that the objective of voir dire and the peremptory was to skew the jury to contain an acquittal bias.

Back to the Black Panthers, Kempton notes that the prosecution "would peremptorily challenge any Negro juror under 30". Again ignored is a caveat of the U.S. Supreme Court: "Jurymen should be selected as individuals, on the basis of individual qualifications, and not as members of a race." (Cassell vs. Texas, 339 U.S. 282, 1950.) Justice Frankfurter added a comment in his concurring opinion: "The basis of selection cannot consciously take color into account. Such is the command of the Constitution."

The Wheeler decision upholding this principle by the California Supreme Court was yet to come (1978), but another from the U.S. high court was extant though aging: "The very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds." (Strauder vs. West Virginia, 100 U.S. 303, 1880.)

San Francisco attorney Gregory Stout urges criminal defense attorneys to use "group manipulation" in selecting juries. He would do this by inducing a jury to become a "group" and then proceed to cause dissension by destroying its morale. A delicate skill, whatever its constitutional implications. ("Homicide", 7 AmJur Trials 477, 1964.)

Associate Justice William J. Brennan, Jr., observed in 1963 that "many of our most precious guarantees of liberty and human dignity are at hazard in criminal procedures". ("The Criminal Prosecution: Sporting Event of Quest for Truth?", 3 Washington University Quarterly 279, 281.) He may not have referred directly to voir dire, but the advice is applicable. He gave credit to his "Brother Douglas" for understanding that "however desirable the ends, long and bloody history taught us that there are some police tactics that are not safely tolerated in a free society" and to permit abuses of personal dignity "could only end up in making government the oppressor of each and every one of us" (p. 280).

Niccolo Machiavelli advised his Prince to disregard the substance while keeping the form of liberty. High priest of the "ends justify the means" thesis, he warned his Borgias and de Medici not to keep faith with the people and to foresake all high principle when necessary to promote their immediate interests. The Prince has no need to possess noble qualities, "but it is very necessary to seem to have them;...to appear merciful, faithful, religious, and upright..." (Quoted by Ettore Janni: Machiavelli, George G. Harrap & Co., Ltd., London, 1930; Chapters XII and XIII, pp. 251-289.)

Here we have a proliferation of suggestions how to appear to follow the precepts of the Sixth and Seventh Amendments, while breaking faith for the questionable gain of the "desired verdict". Try to be the nicest guy in the courtroom, advises Judge Wenke, by creating "an impression of fairness to both sides" even if false. (Op. cit., p. 57.)

The California Supreme Court attempted to keep faith in 1978 when it concluded that:

> "...in this state the right to a trial by jury drawn from a representative cross section of the community is guaranteed equally by the Sixth Amendment to the Federal Constitution and by Article I, Section 16 of the California Constitution. It therefore becomes the responsibility of the courts to insure that this guarantee not be reduced to a hollow form of words, but remains a vital and effective safeguard in the liberties of California citizens." (People vs. Wheeler, 22 Ca 3rd 258, 272.)

Two black defendants had appealed from a conviction by a jury from which every black candidate had been challenged by the prosecution. The peremptory, the court added, cannot be used to exclude qualified jurors "because they are members of an identifiable group distinguished on racial, religious, ethnic or similar grounds (because it) upsets the demographic balance (and) frustrates the primary purpose of the representative cross section requirements".

How, then, can there be so much written about the "strategy" of securing "favorable" juries which do upset demographic balances, and lead to LaRue's "nonrepresentative cross section"?

There are many more "identifiable groups" than racial, religious or ethnic, and how many of these are included within the nebulous "similar grounds"? Men and women form identifiable groups not to be excluded. So do young and old, and in-between; married persons, as opposed to singles or divorced are identifiable, for attorneys always press for knowledge of a juror's marital state, as they do regarding being either straight or gay. Or educational level; or membership in a profession or trade, many of whom stress these identities through professional and trade associations. Warehousemen, members of boards of directors, waitresses, astronauts, mechanical engineers, unemployed, pet owners, hospital administrators, outdoorsmen, women who have had abortions, or who have not. All of these contribute to the demography of the community from which drawn. The very fact that an inquiry is made is to establish group identification to exclude on grounds Wheeler would not allow.

Members of one identifiable group are members of other identifiable groups, to produce endless criss-crossing of 8, 10, 13 or maybe 46 different groups. In each instance, the stereotypical descriptions might conflict with each other in the same individual, so that any particular individual turns out to be a personality unique unto himself. He responds in his own way to innumerable past experiences and conditionings. And whose biases, if you will, may be, in finest definition, as are no one else's. Who is capable of determining all this? And who can determine how any one unique individual will interact with 11 colleagues, each coming from a widely diverse background. Most critically, who has the right to discover these details through unwanted scrutiny?

Carl Imlay, general counsel of the U.S. Courts in Washington, could see how this would lead to the destruction of the jury. In 1973 he wrote:

> "...although the peremptory challenge was originally intended to avoid prejudice, today...it is probably the single most significant means by which prejudice and bias are injected into the jury selection system." (p. 270)

> "The most forceful argument against the peremptory challenge, however, is not that it is a time-consuming procedure, but rather that it introduces into the jury selection system an opportunity for the very kind of prejudice the (Jury Selection and Service Act of 1968) proscribes" (p. 269) and "any sampling procedure involving human discretion almost inevitably leads to biased results." (p. 250) ("Saving a Democratic Institution", 6 Loyola University of Los Angeles Law Review, 1973.)

Robert Kuhn, at the time professor of law at the National Law Center at George Washington University in Washington, DC, agreed:

> "The peremptory challenge becomes increasingly significant in the arsenal of discriminatory devices...the basic reality... the rationale of the peremptory challenge is at war with the ideal of nondiscriminatory selection of jurors. The peremptory challenge system...is intended to allow each party to exclude members of groups which...may be predisposed to his opponents (and) permits the lawyer to eliminate heterogeneity in pursuit of the friendliest, i.e., most partial jury." ("Jury Discrimination", 41 So. Cal. LR 284.)

If the opposing counsel's interests to some extent cancel each other so that heterogeneity results, this is purely "by accident", Kuhn suggests.

Since there is a conflict between the right to a jury selected without discrimination and the right to a challenge peremptorily, Kuhn believes, the latter must give way since "the right to a fair jury is a constitutional right, while the right to challenge peremptorily is not". (pp. 287-288.)

Kuhn cites Stilson vs. U.S. (380 U.S. @ 219) which states that "there is nothing in the Constitution of the United States which requires the Congress or the states to grant peremptory challenges".

Many courts agree with Stilson. "There is no constitutional right to peremptory challenge" is from Washington State, 1963. (State vs. Persinger, 382 P 2d 497.) This advice was iterated 13 years later in State vs. Wilson. (555 P 2d 1375.)

Brams and Davis, cited above, also noted that "there is, after all, no constitutional justification or other legal basis of which we are aware for retaining jury selection procedures which encourage strategic calculations and choices that, even if optimal, may distort selecting an impartial jury". ("Game-Theory Approach to Jury Selection, Trial Magazine, December 1976, p. 49.)

It is too obvious for detailed documentation here that when there is a conflict between a statutory grant and a constitutional right, the former gives way.

The doctrine of the "compelling interest" is frequently raised to justify voir dire. For the interest to be compelling, it "must survive exacting scrutiny" in the words of Buckley vs. Valeo because "significant encroachment on First Amendment rights of the type imposed by compelled disclosure cannot be justified by a mere showing of legitimate interest" and the interest of the state is "subordinating". (96 SCt 612, 1976.)

Thus, if voir dire is to withstand "exacting scrutiny", the "government has the burden of establishing that its interests are legitimate and compelling and that the incidental infringement upon First Amendment rights is no greater than is essential to vindicate its subordinating interests". (Bursey vs. U.S., 466 F 2d 1059, Calif., 1972.)

Except voir dire is not an "incidental infringement" but wide ranging. Bursey continues: the trial

> "court must decide whether government has carried its burden almost question by question before it can compel answers to questions propounded to grand jury witnesses over First Amendment protests; adequate foundation for inquiry must be laid..."

If grand jury witnesses are protected, equal protection requires the same treatment of jury candidates.

The high court continues to lay the burden on voir dire advocates to demonstrate the compelling need: "Legitimate legislative goals cannot be pursued by means that broadly stifle fundamental personal liberties when end can be more narrowly achieved." (Elfbrandt vs. Russell, 384 U.S. 11; 16 L Ed 2d 321, 1966.) And from another California decision:

> "If a state action infringes upon a fundamental right of an individual, the state action can be upheld only if necessary to effect an overriding governmental interest; and as a corollary to this compelling state interest test, the government must show that its interest cannot be satisfied by alternative methods less restrictive of the right abridged." (Payne vs. Superior Court of Los Angeles County, 553 P 2d 565; see also Heilberg vs. Fixa, 236 F Supp 405, 1964.)

Thus, those who would conduct voir dire must demonstrate beyond any doubt whatsoever that the only way an impartial jury can be formed is to subject jurors not just to "incidental" inquiry, but must carry the burden question by question in each case. Considering the unrestricted probing of voir dire, its unreliability, and the fact that there is an alternative, the burden is insurmountable.

The only proper way to meet the "impartial jury" command is by random selection from the widest possible community base without refinement of any kind - but for a single exception to protect the juror from embarassment or hardship. This is when the juror is related to or acquainted with a litigant on a social or business basis; holds an interest in a litigant company, such as owning stock; or is a direct witness to events at trial. Hardship excusals would involve illness, or serious conflicts with a juror's schedule - in which events jury service might be postponed for a specified period of time.

Aside from this, voir dire and its accompaniments fail totally to meet any constitutional or moral test as the goal is to master the juryman's ballot, and destroy the independence of the jury.

When any outside power is able to gain control of the juryman's vote, as warned by the Athenians, the results are usually disastrous. This is demonstrated historically. Almost all the cases are government dominated, because not only did the government possess the power of appointing jurymen, but it also exercised authoritarian power over them, even to imprisonment and torture.

There is the tale of the 13th century English sheriff which, if not precisely accurate, can be considered composite. The sheriff reported to the mayor of the town that he was:

> "proud to say it will be an excellent jury for the Crown. I, myself, have picked and chosen every man on the panel. I have spoken to them all, and there is not one whom I have not examined carefully, not only as to his knowledge of the offense wherewith the Prisoner stands charged; but of all the circumstances from which his guilt can be collected, suspected, or inferred...My Lord, I should ill have performed my duty if I had allowed my bailiffs to summon the jury at haphazard, and without previously ascertaining the extent of their testimony...Never had any culprit a better chance of a fair trial." (Palgrave: Merchant and Priar, 2d Ed., London, 1844, pp. 127-128.)

This early day expression is repeated in slightly altered language by both sides seven centuries later. And to the extent they succeed, they pronounce the jury, as in the 13th century, "fair".

Juries of this ilk gave the Crown its verdicts less often than might be expected. Two cases have been dramatized in recent motion pictures: the unwarranted jury convictions of Anne Boleyn and Sir Thomas More. Other British demonstration is the long series of sedition and freedom of expression trials in the 18th and 19th centuries. Most of these "special" elite juries were handpicked by representatives of the Crown, the best-known victim being Thomas Paine. One jury was "selected by the presiding judge, and the jury was so packed that every member of it belonged to an association hostile to parliamentary reform". (Donald Thomas: A Long Time Burning, The History of Literary Censorship in England, Frederick A. Praeger, Publishers, New York, pp. 138-139.)

Nonetheless, a surprisingly large number of "special" juries refused to be dominated and returned acquittals often enough so that "trial by jury was far from being a reliable method of censorship so far as the ministry was concerned and had to be reinforced by other methods..." (Ibid., p. 54.)

One of these "other methods" was to confine the rebellious jury to its unheated, dreary quarters without refreshment on the night of January 10, 1830. The jurymen held out until 1:45 a.m. Who can fault them for succumbing? (Ibid., p. 175.)

In this country, we have the Sedition Act cases of the John Adams administration. Sheriffs selected only members of the Federalist Party and the government won convictions. (See generally Freedom's Letters, the Alien and Sedition Laws and American Civil Liberties, by James Morton Smith, Cornell University Press, Ithaca, New York, 1966.)

The Haymarket trial in Chicago in 1874 is another instance where only "such men as would be sure to convict (were summoned) and that (the sheriff) made inquires before he summoned a man for this jury as to what his general feelings and sentiments were". If the candidate were conviction prone, in the manner of Sparling or Bugliosi, the juror would be called; but if not, or even "lukewarm", he was discharged. (The History of the Haymarket Affair, by Henry David, Russell & Russell, New York, 2d Ed., 1958, p. xiii.)

The Wobblies cases before World War I were another series, as were the two Scottsboro Boys trials, and the Mooney-Billings trials in San Francisco in 1916 and 1917. (Frame-Up, by Curt Gentry, W. W. Norton Co., Inc., New York, 1967, pp. 152-153 and 181.) And there are many others.

Transferring this dominance to the defense, or even attempting to balance it, is of course no answer. So many presumably dominated juries declared their independence so often in history as to demonstrate the validity of the totally unfettered panel. These juries were composed entirely of men, and with hardly an exception, all white who, it would be supposed, would lean toward "authority". How much more reliable today are panels drawn indiscriminately from the whole people, without choice or refinement by either side.

VI. Voir Dire at Best Is Bumbling, Unreliable, Wastes Time and Money, and Clogs the Courts to Delay or Prevent Other Trials. In Short, It Is Stupid!

The president of a moderate-sized insurance agency was summoned four times for voir dire when one of the litigants was black. He was compelled to reveal the details of his occupation, his family, that he lived in a fashionable suburban area, that he was a WASP of good traditional education. He appeared in court conservatively dressed as is his style.

On each occasion he was challenged peremptorily by attorneys representing the black litigants. Superficially he fitted the stereotype of being, if not prejudiced, at least of holding negative attitudes toward blacks.

The challenges were inane. In going "by the book", counsel lost a sensitive, compassionate juror who had himself suffered the stings of prejudice. Had voir dire pressed further, the court would have learned that he had, years before, established nondiscriminatory employment practices in his firm and that among his several score employees were members of many minorities, all with equal opportunities for advancement.

These frustrating rejections were suffered by a personal friend, who related them to me. They are not unique. The cases support extended academic research by Professor Dale Broeder, then of the University of Chicago. Broeder studied 23 civil juries in the mid-60's and learned from them that:

> "The message here is exceedingly clear: voir dire was grossly ineffective not only in weeding out 'undesirable' jurors, but even in eliciting data which would have shown particular jurors as very likely to prove 'unfavorable'." ("Voir Dire Examinations: An Empirical Study", 38 So. Cal L R 503, 505, 1965.)

Continuing:

> This is largely because the "personalities of jurors are too complex to enable attorneys to pick and choose...and prospective jurors often withheld the truth upon being questioned" and because "a lawyer simply cannot anticipate many of the factors in the jurors' backgrounds which will affect their thinking".

Broeder describes still another hypocrisy: "Voir dire is more effectively used as a form for indoctrination than as a screening mechanism" (p. 528) or for emotional appeals rather than evidentiary.

Jurors are quick to learn this themselves. When a venireman wishes to be excused, he will state that he has "strong prejudices about the case" whether he does or not, as juror Edward Kennebeck learned in the trial of 13 Black Panthers. (Juror No. 4; W. W. Norton & Co., Inc., New York, 1973, p. 67.) Mary Timothy learned this too from being a juror in the Angela Davis trial. Boredom during lengthy voir dire caused veniremen to find "all sorts of compelling reasons why it would be impossible for them to serve". (Jury Woman, op. cit., p. 19.)

Ann Fagan Ginger contradicts once again her pro-voir dire stand. Jurors who wished to remain on the panel could easily "learn to give 'the right answers'" and a "considerably large number of jurors actually lied", she wrote in her Jury Selection (op. cit., pp. 451-452). Thus, "the use of peremptory challenge in this manner raises questions about the representativeness of a jury".

In another work Ginger commented that "there are ways of answering the questions honestly that will keep good people on the jury so that the defendants can really get a cross-section of the community". ("The Relevant Lawyers", op. cit., p. 53, 1972.) There is a suggestion of duplicity here. If the procedure is refining to the point of including only "good people", the result is not a "cross-section"; further, one person's "good people" is another's "flakey wierdos".

There is an implication that "good people" should be coached regarding voir dire responses, assuming, of course, that we can arrive at a universally acceptable definition of "good people". Short of this, selections based on voir dire are highly unreliable.

Professors Brams and Davis in their Trial article noted that an attorney's "intuitive, instinctive judgments...have proved notoriously unreliable". (op. cit., p. 48.) They call voir dire a

"game" (p. 47). "We assume that the veniremen selected as jurors will independently reach a verdict according to their a priori probabilities of voting for conviction. This assumption, of course, ignores the effect of evidence presented in the trial and juryroom deliberations." They quote Edward Bennett Williams as dismissing voir dire with the most succinct expression possible: "Bunk!" (fn. p. 15.)

> "There is no way that the defense and prosecution can exercise their peremptories so as to ensure that one venireman selected as a juror has a less 'extreme' a priori probability than another one not selected to serve."

Michael Saks was also quoted as having decided that "trial evidence is and always has been a far more important determinant of the verdict than who would sit on the jury" (p. 48).

This is the conclusion also of Kalven and Zeisel who report in The American Jury that jurors for the most part do understand the evidence and bring in verdicts based primarily on evidence, regardless how the panel is chosen. (op cit., p. 149 et. seq.) They pose the question: "Can a correlation be established between jury backgrounds and decision making in criminal trials?" and then answer: "Given the necessary limitation of the materials in this study, the answer is a quick 'no'" (p. 465).

They add a footnote on the same page: "In sum, it would be a task of very great magnitude to establish for each of our probablistic findings about the jury the exact background correlates which would locate the kinds of juries that do act on a particular sentiment."

A study involving 326 juries and 3,912 jurors in Birmingham, England, arrived at very similar findings: jury composition had little effect on jury verdicts as long as the panels were "extremely mixed".

"...no single social factor (nor as far as we could detect, any group of factors operating in combination) produced any significant variation in the verdicts returned across the board" and the verdicts "reflect that unique social mix rather than the broad social characteristics of the individuals concerned". (John Baldwin and Michael McConville: Jury Trials, op. cit., pp. 104-105.)

And Rita James Simon, after discussing the "conflicting goals" of prosecution and defense, discovers a certain futility in the procedure. Each juror's behavior not only "is a function of who he is" but also of "the exigencies of the situation, how strongly he

feels about the problem, and a host of other factors". (op. cit., p. 118.) Too many to place much reliability on any hunches resulting from voir dire discoveries.

The pro-voir dire author of Agony in New Haven despaired of its value after one of the longest voir dires on record:

> "After 18 weeks and 31 panels of 50 talesmen (1,550 persons), the world's longest voir dire is over. The defense ran out of peremptory challenges when only ten jurors were chosen; the rest were forced on them. The state had spent well over two million dollars so far on the trials alone." (op. cit., p. 174.)

That the verdict went against the defense could not be blamed upon the two "forced" jurors. Yet, 1,550 New Haven citizens lost their privacy; taxpayers paid out $2,000,000; other litigants could not bring their cases to trial.

The Berrigan-Harrisburg Seven voir dire lasted one month and humiliated 465 prospective jurors. (Jack Nelson and Ronald Ostrow: The FBI and the Berrigans, Coward, McCann & Geohegan, Inc., New York, 1972, p. 217 et. seq.) When the trial was over, two "sure" defense jurors held out for conviction, to hang the jury. ("Jury Selection: Social Scientists Gamble in an Already Loaded Game", 185 Science 1033, September 20, 1974.)

Paul Cowan also analyzed the Berrigan trial in State Secrets, part of a series on Police Surveillance in America. He interviewed seven of the "Twelve Anguished Jurors" (chapter title) and found that all of them were "offended by the contempt that the government, the defense, and the press displayed" toward them during a lengthy voir dire. When they returned a hung verdict and were maligned for it, the jurors blamed the prosecution. The government's case was "so inconclusive" and lacked so much as "one or two credible witnesses". (Perhaps the attorneys had successfully demoralized the jury, per Gregory Stout. See Section V.)

Jurors whom the defense were "sure" acquitters actually voted for conviction on opening ballots and "government jurors" favored acquittal. There was considerable vote switching before the final equivocal verdict. Again, stereotypical observations proved valueless. (Holt, Rinehart & Winston, New York, 1974, pp. 303-333.)

The 1976 trial of the "San Quentin Six" consumed four months and so many others extend over several weeks, often ending only because of frustration, exhaustion or unsatisfactory compromise. In many

instances it is not possible to determine if there is any difference in composition from the first 12. Whatever, the losing side blames corruption in jury selection for failure. (See Garry, above, et alia.)

Trial lawyers in their memoirs often admit to the foolishness of voir dire. Melvin Belli in Ready for the Plaintiff recites that he learned about the unreliability "in my very first jury trial". He tells of "a fat woman", considered an easy acquitter, as the only juror to hold for a conviction and hang the jury 11-1. (Henry Holt and Co., New York, 1956, p. 243.)

In a later case, Belli dispaired over his inability to discharge another woman, hostile to him, in a medical malpractice suit. When he lost the verdict, he asked the jury foreman if this "Madame X" had not led the argument against him.

"'Why do you say that?'" the foreman asked.

"'Experience gives you a feeling about these things. I just felt she wasn't on my side.'"

"'Not on your side', exclaimed the foreman. 'She was the only juror for you.'" (op. cit., p. 244.)

Vincent Hallinan reports that a defense attorney in a civil case "had a complete report on the panel of prospective jurors and manipulated his challenges deftly so as to procure those with a defendant bias". His skill was so deft that the verdict went against him for $40,000. Hallinan had asked for $70,000 and the strongest supporters for the full amount were the defendant's most sure jurors. (A Lion in Court, G. P. Putnam's Sons, New York, 1963, p. 126.)

He tells of another case where the defense attorney actually bribed a juror in a murder trial to hold out for manslaughter. After two days of deliberation, the attorney got his verdict and congratulated the juror, who told him his task had been extremely difficult. Why was that, the attorney asked. The other 11 wanted a full acquittal!

The attorney got his proper "come uppance"; the tragedy is that the defendant, if truly innocent, should be the unfortunate victim of tactics so vile and so lightly winked at. (op. cit., p. 134.)

The guidelines set down by social scientists are often confusing and in direct conflict. Where Garry, for example, suggests getting as many blacks as possible when a litigant is a black, another avoids them because they are likely to be harsher on their errant

brothers. Some stereotype Jews as soft-hearted acquitters, while another believes they "tend to lean to the prosecution". (Dr. Martin Blinder, "Picking Juries", Trial Diplomacy Journal, Spring 1978, p. 10.) One attorney likes bankers on fraud cases or those involving money since they know too well the temptations and, thus, would incline to leniency; another feels they are too rigid on alleged offenders.

Public defender Gerald W. Getty likes elderly persons as defense jurors because they have learned how policemen and law enforcement agencies handle poor people and they know "more about the hardships of other people than does the young man or woman of 23..." (Public Defender, Grosset & Dunlap, New York, 1974, p. 28.) Except Garry and the National Jury Project take the opposite view. Older people are too set in their ways; younger are more liberal and forgiving. (See generally National Jury Project's Jurywork: Systematic Techniques, op. cit.)

Dr. Blinder of San Francisco finds young people tending "to see things in black and white" and are "more susceptible to new information" having had "less time to 'fix' their ideas". (op cit., p. 9.) These contrived scientific conclusions arise probably because there are some older people who do know more about hardships, and some younger people also. Some older people have "fixed" their ideas and so have some younger. Some older people are liberal and so are some younger and some of each are rigid. There are too many influences involved to make any valid generalization.

Blinder concludes his six-page, double-columned guide to jury stacking by declaring voir dire useless. "It may still be impossible to predict how (a juror) will react when thrust into a group, (and) the dynamics of a group of 12 jurors are 12 times moreso." (p. 13.)

The social scientists' writing in Rita James Simon's book have found all Teutons, particularly Germans, anathema to the defense in criminal trials. They are "authoritarian". But, "Teutons" include English, Dutch, and Scandinavians who took such divergent views of life that they fought two wars against each other.

Some English Teutons allied themselves with "defense"-type Jews and Latins, while German Teutons chose "warm-blooded" defense ethnic types, the Italians. (op. cit., p. 49 et. seq.) And how does an attorney face the dilemma of a Teuton butcher, a woman banker, a Jewish engineer, or members of defense-minded minorities holding positions of prosecution-minded petty respectability. By this kind of reasoning, it is difficult to understand how any defendant before a British jury is ever acquitted.

Even when juries are successfully stacked, they still cannot be relied upon to go the intended way. Hundreds of years of experience with countless thousands of juries personally selected by sheriffs demonstrate this. So often did these handpicked juries go against the Crown that the court had to supplement the pressure through torture. Although many juries succumbed, a surprisingly large number withstood to bring in verdicts acceptable to their consciences.

Two handpicked juries freed John Lilburne from charges of treason in 1649 and 1653 despite being threatened by the judges. (4 Howells State Trials 1270.) Another in 1670 freed William Penn on a charge of violating an act establishing the Church of England as the only legal form of worship. Eleven of the jurors were Anglicans themselves, and one a Puritan. Not one a Quaker. By holding out, these "bumbleheads" as they were maligned, toppled the law and created freedom of religion. (6 Howells State Trials 986.) This jury resisted two days of starvation and other tortures, including the possibility of death, until they forced the court to accept the only verdict their consciences would permit them to give.

While Salem, Massachusetts, was still reeling from the passions of the witchcraft trials a few years before, a jury in 1696 acquitted Thomas Maule of slander and blasphemy for writing that there were "great mistakes in the scriptures". The sheriff-picked jury also had to submit to the disdain and disapproval of the presiding judge. ("The Trial of Thomas Maule", 5 American State Trials 85.)

Nor could the oppression of the Czar persuade juries of Russian peasants to convict against their consciences, even acquitting a woman who shot the governor of St. Petersburg for ordering the flogging of a student revolutionary in 1878. The only way the Czar could protect himself was to abolish in the following year trial by jury entirely as regarding political crimes and "crimes of the press". (Maurice Baring, Mainsprings of Russia, Thomas Nelson and Sons, Edinburgh, 1914; Harold J. Berman, Justice in Russia, Harvard University Press, Cambridge, 1950.)

In New York in 1735, a jury freed John Peter Zenger from sedition in the publication of his newspaper, thereby establishing freedom of the press. ("The Trial of John Peter Zenger for Libel, New York City, 1735", 16 American State Trials 1.) Other resistant "special" juries refused to convict defendants on charges of forgery or petty theft in England in the 1810's when the punishment was hanging. Juries of white men over a period of 17 years from 1766 to 1783 voted to free slaves who had appealed to them for liberty. Thus, by 1783, Massachusetts became the first state to abolish slavery, decades before its neighbors of Connecticut, New York and Pennsylvania, where blacks could not appeal to juries.

(Legal Papers of John Adams, Vol. 2, The Belknap Press, Harvard University, Cambridge, 1965; The Cushing Court and the Abolition of Slavery in Massachusetts, by John D. Cushing, 5 Am Jl of Legal History 118, 1961, et alia.)

This tradition was continued by a later generation of white male juries freeing slaves fleeing from southern masters in the 1850's and 1860's. (The Journal of Richard Henry Dana, Jr., ed. Robert Lucid, The Belknap Press, Harvard University, Cambridge, 1968. Also, Judicial Cases Concerning American Slavery and the Negro, ed. Helen Tunnicliff Catterall, Negro Universities Press, New York, 1968.)

Two sheriff-selected white male juries wanted to give women the franchise in 1873 by acquitting Susan B. Anthony, her colleagues and election officials of the "crime" of voting in the 1872 presidential elections. But a tyrannical judge usurped the jury power and delivered verdicts of conviction himself over juror protests. (An Account of the Proceedings of the Trial of Susan B. Anthony on the Crime of Illegal Voting, Daily Democrat and Chronicle Book Print, Rochester, New York, 1874.)

Freedom of the press was protected again in 1893 by a Baltimore jury which acquitted three editors of the Baltimore News of a charge of libel when the paper exposed corruptive lottery and gambling schemes involving the chief of police and other city officials. The presiding judge attempted to lead the jury to a conviction by silencing key defense witnesses. ("The Trial of Charles H. Grasty, Thomas K. Worthington and John M. Carter, Jr. for Libel, Baltimore, Maryland, 1893", 5 American State Trials 216.)

From such examples as these, selected at random from a great many, it should be clear that the defense almost always would hurt its own position by attempting to compete with the far greater power of government in voir dire. And, government will find that, short of torture and often not then, it cannot guarantee convictions.

The objectives of both the 1948 and 1968 Jury Selection Codes in closing the front door from discrimination basic venires need to be applied, to close the back, to procedures inside the courtroom.

Aside from the constitutional issues involved, voir dire and its accompaniments including peremptory challenges are, at very best, time and money squandering and, in being so, deprive other litigants of their rights to trials by jury. Pure "bunk"!

At worst, they would reduce the jury to puppets controlled by the court or counsel: Machiavellian form without substance. We should consider the advice given to the court by John Erskine in his defense of Thomas Paine from seditious libel:

> "Let us consider, my lords, that arbitrary power has seldom or never been introduced into any country at once. It must be introduced by slow degrees and as it were step by step, lest the people should see it approach. The barriers and fences of the people's liberty must be plucked up one by one and some plausible pretences must be found for removing or hoodwinking, one after another, those sentries who are posted by the constitution of a free country, for warning the people of their danger. When these preparatory steps are once made, the people may then, indeed, with regret see slavery and arbitrary power making long strides over their land; but it will be too late to think of preventing or avoiding impending ruin." (33 Geo III 380, 444, 1792.)

The "pretence" of building an impartial jury as an excuse for stripping jurors of their privacy has not the remotest plausibility. Analysis proves it to be "hoodwinking", with constitutional, moral, nor rational support.

PRW:B-0107/1-74

REPORT OF THE COMMITTEE ON CORRECTIONS

Ted Fertig, Chairperson
Frankie Jacobs Gillette
Paul Lorch
Dr. Les Pincu

Between November 6th and December 3d, 1981, State Privacy Commissioners from the subcommittees on corrections and criminal justice along with staff visited the California Youth Authority's institutions of Preston, DeWitt and Karl Holton and the Department of Corrections' California Institution for Women in Frontera, the California Medical Facility at Vacaville, Deuel Vocational Institution in Tracy and San Quentin State Prison. During these visits we had the opportunity of touring and meeting with the administrators of each institution. We were also afforded the opportunity of discussing matters of concern to this Commission with inmates and wards. As a result, the following issues came to our attention.

COMMUNICATION OF INMATES AND WARDS WITH PERSONS OUTSIDE THE INSTITUTION (MAIL AND PHONE CALLS):

California Administrative Code Title 15, Division III, Chapter 1, Sections 3132 through 3165, outline the regulations for items of mail sent in and out of adult institutions. Secions 3018 and 3282 outline the regulations regarding phone calls.

California Administrative Code, Title 15, Division IV, Section 4695, outlines the regulations regarding correspondence for Youth Authority wards, and Section 4699 contains the regulations regarding ward telephone calls.

Mail

Although Section 3133(a) states that in adult institutions, "All regular nonconfidential inmate mail is subject to being read by designated employees of the institution...", this Section continues with the statement that, "This reading of regular inmate mail will normally be on an intermittent basis only. Exceptions may be made for the reading of all regular mail sent or received for individual inmates where there is reason to believe such mail will pose an immediate and present danger to the safety of persons or a serious threat to institution security." The Youth Authority regulations (Section 4695, 2) allows mail to be opened when there is reason to believe it contains contraband or advocates certain criminal acts.

It was our experience that the regular reading of inmate mail is the rule rather than the exception. It is our recommendation that California correctional institutions comply with both the letter

and the spirit of the law, and that the regular reading of inmate mail in both Youth Authority and adult institutions be done only when there is an immediate or present danger.

Confidential Correspondence

Sections 3134 through 3143 outline the rights of adult inmates to correspond in confidence with persons such as State and Federal officials, judges, attorneys, the news media and Chief Administrators of the Department of Corrections. Although all institutions had procedures for outgoing and incoming confidential mail, we found evidence of serious abuse in some of the institutions visited.

The main source of abuse seems to stem from an interpretation of Section 3137(b) which provides for the opening (but not reading) of incoming confidential mail by a staff member in the presence of the inmate prior to it being handed to the inmate. One of the practices that disturbed the Commissioners was that once a confidential letter was opened and given to an inmate it was considered, by some staff members, to no longer be considered confidential correspondence. Therefore, subsequent searches of the inmate or the inmate's room could lead to the confidential material being available to be read by any staff member so inclined to do so.

It is therefore recommended that all institutions be required to institute procedural safeguards for the handling and distribution of confidential correspondence. It is also recommended that severe disciplinary procedures be instituted against any staff members who violate either the letter or the spirit of the handling of confidential correspondence by inmates.

Phone Calls

Section 3282(c) and (e) authorize Adult Authority inmates to make personal phone calls to persons outside the institution at designated times and allow for the monitoring of these phone calls. It is our understanding that there are interdepartmental directives which require, "A conspicuous notice in the English and Spanish languages [2B] posted at each telephone institution from which inmates are normally permitted to make outside calls..." (San Quentin Institution Procedure No. 219, VI.B.1(e). Section 4699 provides the same safeguards for Youth Authority wards and in (e) requires that phones be posted. The Commissioners observed numerous telephones which were normally used for allowing inmates and wards to make outside calls which did not contain the designated warning notice. No such postings were observed in any of the Youth Authority institutions.

It is recommended that a Departmental Directive to all institutions requiring that all telephones normally used by inmates be posted with the fact that telephone calls are regularly monitored.

Monitoring of Conversations Between Visitors and Inmates

The Commission is concerned about the routine monitoring by electronic devices of private conversations between an inmate and his or her visitors, and the use of these conversations as evidence against the inmate. Although we understand the need for institutional security, we are also concerned that there is often an assumption of privacy during an inmate's visit with family and friends. In a recent case, Delancie vs. Supreme Court SF 24095, reported in the Daily Journal July 9, 1982, page one, regarding the Patti Hearst case, the court held that the routine electronic snooping was permissible only as it regards security of the institution but may not be used as a means of collecting evidence.

We recommend that all inmates, wards and visitors be given written notice if their visits are to be electronically monitored for security reasons.

Family Visitation

Section 3174 provides for family visiting in Adult Authority institutions. This Section provides that each institution will have a family visiting plan, "to permit extended and overnight visitation between eligible inmates and members of the inmates immediate family members..." The Section then defines immediate family as the inmate's natural legal spouse, natural parents, adoptive parents, if the adoption occurred and a family relationship existed prior to the inmate's incarceration. It also includes step or foster parents, grandparents, brothers and sisters and adoptive children as well as step children or grandchildren. Aunts, uncles and cousins are not normally considered immediate family. Common-law relationships are not recognized as "immediate family" for the purpose of family visitation.

The Commission had several concerns as a result of these regulations and their application. Although, "The family visiting plan will extend such visits to as many inmates as possible commensurate with institution security...", we found evidence that the denial of family visitation was used by some institutions as a disciplinary tool. We identified one institution where family visits were routinely denied to many inmates. In the same institution we were informed of, and verified the fact that inmates in certain units had all visiting rights suspended and the institution seemed to be in no hurry whatever to establish any program for family visitation for this entire group.

The Commission was also concerned about the Department's definition of immediate family members. Although only blood relatives and legal spouses were allowed to visit the inmate on the family visiting program, there seemed to be some hypocracy in permitting

the inmate marriage procedure to be used as a means for an inmate to ligitimately have an overnight visit. We identified persons who went through the procedure of marriage in order to be able to have legitimate sexual contact while they were incarcerated. We raised the issue of possible sexual orientation discrimination in that persons in common-law relationships and persons in same-sex relationships are not afforded this same opportunity for legitimate overnight sexual contact. We believe that there needs to be a redefinition of the concept of family, and immediate family for the purposes of family visitation within institutions in California.

INFORMATION SYSTEMS AND DISSEMINATION OF FILES:

We are pleased to note that the adult institutions we visited had uniform systems of information and record keeping and had clear-cut guidelines as to the dissemination of information on inmates.

We were, however, greatly concerned about a possible weakness in the California Youth Authority's computerized file system. We obtained a copy of a memorandum, 190.16, dated 3/15/79 showing access to ward records - disclosure log requirements. This document shows which files are open and which are restricted and who has access to them. It includes the master field file, the living unit file, medical file, dental file, education file, psychiatric and psychological files and orbit files on the wards of the California Youth Authority. It is clear from the chart that Youth Authority employees and volunteers have access to files only if they are needed in the course of a job assignment and the ward and his or her parent have access to file information unless the file information could be dangerous or should be otherwise classified as confidential. What alarmed the Commission was that there seems to be standard authorized agencies which can access all of the files including the psychiatric and psychological files without logging requirements and by virtue of their being an authorized agency the need to know is assumed. These standard authorized agencies are as follows: U.S. Border Patrol, U.S. Department of Justice, Immigration, Naturalization, California Department of Justice, California Department of Motor Vehicles, California State Police, California Department of Corrections, County Sheriffs' Offices, County District Attorneys, County Probation, County Superintendents of Schools and School Districts, County Welfare Departments, Local Police Departments, Local School Districts and Rehabilitative School Contractor Public/Private. It seems to us that such unrestricted access of juvenile CYA information is unnecessary and unwarranted. The potential for abuse and invasion of privacy of a CYA ward seems to us to be alarming.

The Commission therefore recommends that the Office of Information Practices investigate the California Youth Authority's collection, maintenance and disclosure of information and that the Office make recommendations for corrective legislation to protect the privacy rights of CYA wards.

Detailed summaries on two of the institutional visits are attached and included as a part of this report.

Attach.

LP:V1221/1-5

Corrections, Probation and Parole Committee
California Institution for Women - Visit Report
Date Visited: November 30, 1981
Commissioners and Staff Present: Lester Pincu, Commissioner; Ellen McCord, Staff

I. ADMINISTRATION

The committee representatives met with Sylvia Johnson, Superintendent, and Dennis Martel, Assistant Superintendent.

Ms. Johnson provided an orientation for committee representatives present

Mr. Martel provided a tour of the institution and answered questions while on the tour.

Committee members provided a summary of issues discussed with inmates to Ms. Johnson and Mr. Martel at the conclusion of the visit.

II. FACILITIES TOURED

Committee representatives visited the administration building for an orientation.

A general tour of the facility followed, and committee representatives ate lunch with the inmates in the cafeteria.

The tour proceeded through a living unit and work area in the main "campus". Also, the psychiatric treatment unit (where women under protective custody are held) and management control unit were visited.

Throughout the tour, committee members spoke to inmates at random as well as to two inmates who had requested to speak to the committee.

III. PROBLEMS RAISED BY INMATES AND ADMINISTRATORS

A. ADMINISTRATION

Sylvia Johnson's primary concern had to do with family visits, primarily children being allowed and encouraged to visit their incarcerated mothers.

The women in the institution have established a child center where family visits take place. Ms. Johnson, however, felt that the major problem in having visits rests with the location and reluctance of persons having custody of the children.

According to Ms. Johnson, children who are in foster homes are discouraged by the foster parents from visiting the natural mother in prison. Also, fathers who have custody are often divorced from the mother and would prefer to keep the child away from the mother.

Since CIW is located in the southern desert and is the only facility for women convicted of criminal activity in the State of California, it is not easily accessible to families who would visit.

B. INMATES

1. Family Visits

The most frequently expressed concern of the inmates was the problem of being isolated from their children and not able to see them, either on a regular basis or at all. Many women were concerned about being reunited with their children upon parole since they have difficulty maintaining relationships because of the visiting problems. It was also not unusual that a women in the institution was facing problems with having custody of her children at all upon release. This is a serious problem since from all indications the inmates' major concern during their incarceration seems to be their relationships with their families.

Inmates also complained of poor training of institutional staff in processing their children into the institutions for visits. Committee members heard complaints about children waiting outside at a gate sometimes for more than an hour before being allowed inside the facility. Mothers also complained that their children were sometimes verbally abused by staff while the mothers, since they are inmates, could not prevent the negative treatment of their children. The women attributed this problem to poor training of new staff.

2. Confidential Communications

As with all institutions visited, all communications going out of or coming into the institution are monitored by staff. All outgoing and incoming telephone calls are monitored by someone on the living unit.

All incoming mail is opened and searched for contraband. According to the administration, outgoing mail is only read if there is a probable cause to suspect an inmate of carrying on illegal activity via the mail. However, staff on the living units readily admit that they read all outgoing correspondence before it is posted.

This lack of confidential communications compounds the problem of maintaining close relationships with persons on the outside since inmates are aware that there is no privacy in their communication with loved ones.

The rationale for this practice is one of security. Reading all mail and listening to all phone calls make the staff aware of potentital illegal activity that might be communicated in that fashion.

3. Film Making Inside the Institution

The day of the committee's visit, a Japanese film company was making a documentary inside the institution. Since CIW is the only institution of its kind in California, many groups are interested in it, and it is not uncommon for women to be filmed for various and different purposes as they are serving their time.

The inmates do not wish to be filmed without their consent. Several inmates were quite angered by the presence of the cameras and not being asked if they minded being filmed.

The major concern of these women is to be permanently present in any documentary or film as an convicted inmate in a women's prison. They do not wish to have their families see such things and are also concerned about protecting themselves and their privacy so they may live as normal a life as possible once released.

4. Double Cells and Homosexual Activity

Due to the isolation these women experience, they tend to develop very close emotional and in some cases physical relationships. From all appearances, these relationships are a part of what can be expected by an incarcerated women regardless of her sexual or emotional preferences outside of the institution.

In some cases, some women are aggressively homosexual and some women aggressively refuse to engage in homosexual activity.

This has become a problem because of the overcrowdedness of the institution and the fact that two women often share the same cell. Although only one inmate expressed concern about this issue, it does appear that housing an aggressively homosexual woman with a woman who does not desire that type of relationship did cause a problem for several days. The institution administration did separate these women, but it was not done immediately which very much upset the woman who was not homosexual.

IV. RECOMMENDATIONS (These need to be substantiated with futher research and footnotes.)

A. The overwhelmingly most important problem to these women and to the administration was the lack of ability to maintain their family relationships.

Since women do not pose the same types of security problems as incarcerated men, the Department of Corrections should consider the development of more small, community-based facilities for women. This would allow the women to maintain relationships with their families and children. In light of the high number of children from foster homes who themselves become offenders, this may also allow for the children to become reunited with their mothers more easily upon release and may prevent a child from being kept in an institutional system at State expense.

B. There appears to be a valid reason for institutions to open incoming mail to determine if it contains contraband. However, reading outgoing mail serves the purpose only of knowing what to anticipate from a given inmate and results often in reprisal if the inmate's communication challenges or questions institutional practices.

It is recommended that inmates be allowed to seal and send outgoing correspondence confidentially. It is also recommended that incoming correspondence be opened and searched, not read, by a staff member in the presence of the inmate.

Note: Even with these practices as currently exercised, inmates admit that drugs, alcohol and other contraband are readily available inside the institution. While the rationale for the practice makes sense, it is not working for that particular purpose since alternate methods of bringing in contraband are obviously used.

C. It is recommended that women in the institution be allowed to refuse to be filmed for any purpose. A signed release could be required, but it would suffice to allow any woman who did not wish to be filmed to be excluded from the filming.

D. Double celling is a problem for many reasons. It is recommended that compatibility of women who are to share cells be determined prior to housing them together.

From all appearances, merely segregating persons who form homosexual relationships from other women would be highly impractical, but determining compatibility before double-celling would appease the concern expressed to the committee.

Corrections, Probation and Parole Committee
Deuel Vocational Institute - Visit Report
Date Visited: December 3, 1981
Commissioners and Staff Present: Ted Fertig, Lester Pincu, Commissioners; and Ellen McCord, Staff

I. ADMINISTRATION

The committee representatives were given a brief orientation by Cliff Reed, Assistant to the Superintendent. Mr. Reed had publicized the visit well by running an announcement on the television station in the facility. Therefore, many inmates had requested to talk to the committee representatives in advance.

Mr. Reed escorted the committee representatives to all of the various housing units for visits with the inmates.

The committee representatives concluded this visit by meeting with Robert Reese, Superintendent, and discussing some of the information shared by inmates.

II. FACILITIES TOURED

Since inmates from virtually every housing unit requested to speak to committee representatives, most of the facility was toured in the course of the interviews with inmates. These housing units included the Protective Housing Unit, Management Control Unit and Special Segregation units that housed persons suspected of being Nuestra Familia members as well as the unit that housed virtually all Latino inmates.

III. ISSUES RAISED BY INMATES

All inmates interviewed in this facility had requested to speak to committee representatives by sending a letter to the Commission prior to the visit.

A. SEGREGATION AND HOUSING

The inmates housed in the unit identified as Nuestra Familia as well as Latino inmates expressed concern over their segregation from the mainline on their lock-down status. Since this committee was not aware of the security rationale for the segregation and lock-down status, no comment is made on that per se.

There was obvious disparity, however, in allowing family visits to persons in these particular units because of their segregation. (See below for discussion of family visits.)

B. CONFIDENTIAL COMMUNICATIONS

As with all facilities visited, all incoming and outgoing mail is read by staff. All inmate telephone calls are monitored.

There appears to be a very serious violation of the director's rule allowing confidential mail (called legal mail) between inmates and their attorneys or government officials. At least four inmates had evidence that their legal mail had been opened by staff. In two cases the inmates saw the letters in their master files.

The committee was given an envelope that had contained confidential mail. It had been taped on the back and could possibly have been opened prior to delivery to the inmate.

A further concern that was raised by a number of inmates was the problem of these letters being read and/or confiscated by staff doing cell searches. While these letters should by their nature be confidential, once they are opened and in the inmates' cell, they are no longer confidential since staff frequently search cells.

Also, one inmate had saved envelopes of legal mail he felt had been opened and had planned to show them to committee repesentatives during our visit. These envelopes had disappeared from his cell the day before the visit.

C. FAMILY VISITS

Family visitation is typically a 72-hour contact visit in privacy with the inmate and persons related by marriage, blood or adoption.

The intent of allowing such visits is to allow the inmate to associate intimately with his family in a private setting.

Several problems with family visits were discussed by inmates at this institution. It appears, from the combination of these problems, that the possibility of family visits is used as leverage and control over inmates rather than as a means by which they can maintain relationships with significant persons outside the institution.

Committee representatives found that family visits were arbitrarily denied in a number of circumstances. Certain segregated populations are denied these visits. Convicted rapists are denied these visits. Visits are denied as punishment when inmates make infractions of the institutional rules.

The persons segregated as suspected Nuestra Familia members are not allowed family visits at D.V.I. While facilities for these visits are being constructed, the administration admits it is in no hurry to complete the facilities and is apparently unconcerned about disparity in the treatment of this segregated population.

Two convicted rapists related to the committee that they are denied family visits completely due strictly to their offenses. Both of these individuals are in protective custody since rapists are targets for stabbing when on the "mainline". One inmate who is not allowed to have family visits has requested to transfer to the "mainline" and expresssed despondency in his lack of ability to spend time with his wife and family.

Another problem with family visits is the searches to which visitors are subjected. Skin searches of wives and children are required prior to their being allowed to visit an inmate. Very young children, pre-teenagers, teenagers and wives of the inmates are required to strip and spread body cavities to be examined by correctional officers. Inmates complained that by the time they were able to see their families, their families were so upset by this treatment that it took at least one full 24-hour period before the emotions settled enough to enjoy the visit.

The administration feels these searches are necessary to prevent the transportation of contraband. However, according to inmates, contraband is readily available inside the institution despite these practices.

IV. RECOMMENDATIONS (These need to be substantiated by further research.)

A. SEGREGATION AND HOUSING

Some of the problems expressed by inmates with respect to segregation and housing are beyond the scope of this commission's study. As segregation impacts upon family visits, see below.

B. CONFIDENTIAL COMMUNICATIONS

It is recommended that this institution immediately cease opening legal mail. The Department should consider punitive action against those persons who participated in or condoned this practice.

QUESTIONS ASKED BY THE COMMISSION ON PERSONAL PRIVACY AND ADDRESSED BY THE CALIFORNIA DEPARTMENT OF CORRECTIONS

1. How many correctional facilities does the California Department of Corrections (hereinafter, CDC) operate for:

   A. Female inmates?
   B. Male inmates?

   One institution for female inmates. Also, one section of the California Rehabilitation Center is utilized to house females.

   Eleven institutions and 27 conservation camps for male inmates.

2. What are the names and locations of these facilities and how many inmates reside in each facility?

   California Correctional Center - 1,372
   P.O. Box 790
   Susanville, CA 96130

   Sierra Conservation Center - 1,316
   P.O. Box 497
   Jamestown, CA 95327

   Sierra Conservation Center Camps - 1,577

   California Correctional Institution - 1,573
   P.O. Box 1031
   Tehachapi, CA 93561

   Correctional Training Facility - 3,754
   P.O. Box 686
   Soledad, CA 93960

   Deuel Vocational Institution - 1,978
   P.O. Box 400
   Tracy, CA 95376

   Folsom State Prison - 2,499
   P.O. Box W
   Represa, CA 95671

   California Institution for Men - 3,342
   P.O. Box 128
   Chino, CA 91710

   California Medical Facility - 2,650
   P.O. Box 2000
   Vacaville, CA 95696

California Men's Colony - 2,662
P.O. Box AE
San Luis Obispo, CA 93409

San Quentin State Prison - 3,196
Tamal, CA 94964

California Rehabilitation Center - 2,035
P.O. Box 1841
Norco, CA 91760

California Institution for Women - 912
R.F.D. #1
Frontera, CA 91720

California Rehabilitation Center, Women's Section - 382

Intermountain Camp - 80
P.O. Box 615
Bieber, CA 96009
(916) 294-5361

Deadwood Camp - 80
Rt. 1, Box 119
Fort Jones, CA 96032
(916) 468-2633

Ishi Camp - 80
Star Rt. 3
P.O. Box 50
Paynes Creek, CA 96075
(916) 597-2846

Eel River Camp - 100
P.O. Box 617
Redway, CA 95560
(707) 923-2755

Parlin Fork Camp - 100
23000 Highway 20
Fort Bragg, CA 95437
(707) 964-3766

Chamberlain Creek Camp - 100
Fort Bragg, CA 95437
(707) 964-3518

Black Mountain Camp - 80
23131 Fort Ross Road
Cazadero, CA 95421
(707) 632-5236

Konocti Camp - 100
13044 State Highway 29
Lower Lake, California
(707) 994-2437

Growlersburg Camp - 100
P.O. Box 126
Georgetown, CA 95634
(916) 333-4244

Miramonte Camp - 80
Miramonte, CA 93641
(209) 336-2312

Green Valley Camp - 65
P.O. Box 1037
Folsom, CA 95630-1337
(916) 985-3299

Mountain Home Camp - 80
P.O. Box 645
Springville, CA 03265
(209) 539-2334

Owens Valley Camp - 100
Rt. 2, P.O. Box 22L
Bishop, CA 93514
(714) 387-2591

Pilot Rock Camp - 80
P.O. Box 10
Crestline, CA 02325
(714) 389-2233

Prado Camp - 80
14667 Central Avenue
Chino, CA 91710
(714) 597-3917

Rainbow Camp - 80
Rt. 2, P.O. Box 200
Fallbrook, CA 92028
(714) 728-2554

Puerta La Cruz Camp - 80
Star Route #2
Warner Springs, CA 92086
(714) 782-3547

Malibu Camp - 78
1250 South Encinal Canyon Road
Malibu, CA 90265
(213) 457-2253

Francisquito Camp - 80
35100 North San Francisquito Canyon Road
Saugus, CA 91350
(805) 255-1476

Acton Camp - 80
8800 Soledad Canyon Road
Acton, CA 93510
(805) 268-1121 (Temporary)

Mt. Gleason Camp - 100
26650 North Angeles
Forest Highway
Palmdale, CA 93550
(213) 792-9602

Sierra Conservation Center - 60
Baseline
P.O. Box 497
Jamestown, CA 95327
(209) 984-5291

California Men's Colony
Cuesta
P.O. Box A
San Luis Obispo, CA 93401
(805) 543-2700 Ext. 49

California Correctional Center - 50
Antelope
P.O. Box 790
Susanville, CA 96130
(916) 257-2183

California Rehabilitation Center - 60
Norco
P.O. Box 841
Norco, CA 91720
(714) 737-5911

California Correctional Institution - 20
Cummings Valley
P.O. Box 1031
Tehachapi, CA 93561
(805) 822-4402 Ext. 439

Folsom State Prison - 130
Camp Represa
P.O. Box W
Represa, CA 95671
(916) 985-2561

3. Which facilities have a "Family Visiting" Program?

All institutions have Family Visiting Programs. The conservation camps either have facilities for visiting or transport inmates to the nearest institution where facilities are available.

4. What is the criteria for a facility to have such a program?

The California Department of Corrections' Administrative Manual requires all 12 institutions to establish and operate a family visiting program.

5. How many inmates in each facility are eligible for participation in the Family Visiting Program? (Please list inmates participation eligibility per facility, regardless of whether the facility has or does not have an operating Family Visiting Program.)

All inmates are eligible (to apply for) and receive family visits. However, procedures are in the process of being revised to exclude those inmates that are housed on condemned row at San Quentin, and inmates assigned to security housing units at other institutions.

6. What number of percentage of those persons eligible for the program actually participate? (Please list inmate participation per facility, if possible.)

The total number of inmates that participated in the Family Visiting Program during 1981 were as follows. Percentages are listed by institution and total departmental population.

California Correctional Center - 605 (44%)

Sierra Conservation Center - 760 (58%)

Conservation Camps - 1,502 (95%)

California Correctional Institution - 1,819 (116%)

Correctional Training Facility - 3,129 (83%)

Deuel Vocational Institution - 984 (50%)

Folsom State Prison - 628 (25%)

California Institution for Men - 1,175 (35%)

California Medical Facility - 1,543 (58%)

California Men's Colony - 1,693 (64%)

San Quentin State Prison - 2,488 (78%)

California Rehabilitation Center - 1,035 (51%)

California Institution for Women - 578 (63%)

California Rehabilitation Center, Women's Unit - 115 (30%)

Total number of male inmates - 17,361 (62%)

Total number of female inmates - 693 (54%)

7. What is the approximate total CDC cost, and per facility cost, per annum, for the administration and operation of the Family Visiting Program?

The approximate total CDC cost for operation and maintenance of the Family Visiting Program is $432,000. The cost per institution is approximately $36,000. This cost represents one staff person at each institution to coordinate the program, supplies and maintenance of furnishings, and the repair of the units themselves.

8. Please describe how the Family Visiting Program is administered, particularly with regard to the following:

A. What is the evaluation criteria for an inmate's eligibility?
B. What is the basis for and who determines these criteria?

All inmates are eligible (to apply for) a family visit so long as they restrict participation to immediate family members. Eligibility criteria is a departmental policy and is applied equally at all institutions.

9. What is the nature of a typical family visit, particularly with regard to the following:

A. Length of visit?
B. Type of facility (trailer, apartment, etc.)?
C. Relationship to inmate of family members who visit?

The average length of each visit is 48 hours. Most institutions utilize a combination of mobile homes and one or two bedroom duplexes.

Visiting is restricted to immediate family members only, consisting of legal spouse, natural parents, adoptive parents, if the adoption occurred and a family relationship existed prior to the inmate's incarceration, stepparents or fosterparents, grandparents, brothers and sisters, the inmate's natural and adoptive children, step-children or grandchildren. Aunts, uncles and cousins are not considered as immediate family members unless a bona fide foster relationship exists.

10. How frequently may an inmate have a family visit and does frequency correspond with the inmate's classification?

The frequency of visits tends to vary between all the institutions; however, the average time between visits will usually vary from 30 to 60 days.

Due to the different custody levels of inmates, the locations of the family visiting units are also different. The higher the escape risk presented by a particular group, the more secure the location. Depending on the number of inmates participating in the program from the same custody level, the inmate's individual classification could be a factor in determining the frequency of their visits.

The natural progression is for inmates to go from a high to a lower custody level and consequently the greatest number of inmates would tend to be in a lower custody status, and this is where the largest number of family visiting units are located.

11. What is the actual frequency of visits and the average length of time between visits? (Please distinguish where classification is a relevant variable.)

As previously stated, the frequency of visits is not constant as it tends to change depending on the number of inmates participating in the program. This variable is constantly changing as married inmates parole, increased intake of non-married inmates, and inmates lose their family visiting privileges through disciplinary action.

12. Is visiting frequency based on departmental regulations or do the policies of the individual facilities determine visiting frequency? (Please explain.)

Frequency, again, is established by the local (demand at each) institution and the number of units that are available for a particular custody level group.

13. What is the CDC's purpose in operating a Family Visiting Program?

The purpose of the Family Visiting Program is to promote and maintain family ties which might help to sustain them upon their release to the community.

14. Although the CDC is not constitutionally required to broaden, nor prohibited from broadening the family visiting criteria to include persons who are members of alternate families, (i.e., Families where members are not necessarily related by blood, marriage or adoption) what changes in circumstances would, in your opinion, necessitate such a broadening of the participation criteria?

We do not anticipate making any changes in the program to include other than designated immediate family members. To allow visitors other than immediate family members would be totally contrary to the original purpose of establishing the Family Visiting Program.

15. Has the CDC considered opening the Family Visiting Program to inmates who are members of alternate families?

For the same reasons previously given, we do not intend to open the Family Visiting Program to allow alternate families to participate in the program.

16. What is the CDC's position, if any, on broadening the Family Visiting Program? (Please explain.)

For the reasons previously stated, the purpose of the Family Visiting Program is to maintain family ties as an aid to the inmates success on parole when they are released from the institution.

A recent California Supreme Court decision, In Re Cummings, held that the department's regulations governing family visiting were legitimate and that the department did not have to provide family visits to unmarried acquaintances.

17. What restrictions, if any, might prohibit an inmate from either adopting or being adopted by a non-inmate adult of the same or opposite sex?

The Department of Corrections has no particular restrictions on inmates being adopted as long as the criteria outlined in the Penal Code is complied with, and the adoption is granted by the appropriate court.

However, if an inmate were to be adopted, they would not meet the criteria for participating in the Family Visiting Program.

18. Would the CDC allow an inmate with a homosexual relationship to participate in the Family Visiting Program if she/he adopted or was adopted by her/his lover?

No - homosexual relationships do not meet the criteria for "family" as determined by Department of Corrections policy. Also, according to policy, in the case of adopted parents, a family relationship must have existed prior to the inmate's incarceration.

19. What is the projected increase in the CDC inmate population for the years:

A. 1983-84
B. 1984-85
C. 1985-86
D. 1986-87
E. 1987-88
F. 1988-89
G. 1989-90
H. 1990-2000?

Population projections are only available through the year ending June 30, 1986.

1983-84 - 4,350

1984-85 - 2,100

1985-86 - 2,105

20. What expansion and/or construction of correctional facilities is planned for this increased population.

The most immediate new prison construction will consist of a 1,000-bed unit to be located on the grounds of the California Correctional Institution at Tehachapi, and a 1,500-bed unit on the grounds at Folsom. Additionally, a 1,500-bed facility is planned for a yet to be determined site in the San Diego area.

We are also planning on installing 108-bed satellite units on the grounds at CCC, SCC, CMF, DVI, SQ and Folsom. 500-bed capacity relocatable prisons will be set up at CMF, DVI and a yet to be determined location in Southern California.

21. What increase in Family Visiting facilities, if any, is planned to accommodate the growing number of inmates in California?

Family visiting units are included in the construction plans for the new facilities. Additionally, those institutions receiving the 500-bed relocatable prisons will install additional family visiting units. It is felt that the existing facilities will be able to accommodate the addition of the 108-bed satellites.

22. What is the assessed and projected benefit of the Family Visiting Program as it is currently administered, particularly with regard to:

A. The inmate?
B. The inmate's family?
C. The correctional facility?
D. Society in general?

A. The benefit to the inmate is that they can maintain close family ties while they are incarcerated. They are able to take an active role in making family decisions and, to a limited degree, exert parental control and influence over children. This is designed to aid the inmate's changes of successfully completing parole and becoming a productive member of society.

B. The family receives many of the same benefits as does the inmate. One significant factor is that when the inmate is paroled, they return to their family as a functioning member of the family and not as a stranger, which greatly improves the transition from incarceration to freedom.

C. Statistics have demonstrated that inmates that participate in the Family Visiting Program present fewer disciplinary problems and generally are less troublesome. Their energies are expended towards rehabilitation through self-improvement and preparation for return to the community.

D. Benefits to society are that parolees are returning to the community to a stable home environment and a society to which they feel they are a part of. In this type of situation, the inmate's chances of completing a successful parole and not returning to a life of crime are greatly enhanced.