

## Cherry Picking

I cannot be impartial. My bias about the criminal justice system as it affects homeless people in Sacramento is insurmountable; so much so, it prevents me from serving on a jury. I do not oppose law enforcement, the jury system, or the criminal courts, but I do oppose the crushing injustice inflicted on the poor and the homeless by these institutions through the criminal justice system.

Rest assured, I harbor no romanticized views about the innate morality of homeless people. They are people after all, just like us – some good, some bad, some tall, some short. The problem is that the criminal justice system does not treat the homeless fairly. Justice is not blind.

My bias undoubtedly took root 40 years ago when I worked with Cesar Chavez and his farmworker movement. Agribusiness had stacked the cards against these Mexican workers trying to organize their union, and it counted on local law enforcement and the courts to protect the growers and preserve the status quo. And they did, or at least they made every effort to do so. Striking farmworkers were arrested for picketing and/or violating injunctions designed to make lawful picketing impossible. The workers were subjected to constant intimidation, courtesy of the sworn, armed, uniformed, and riot-helmeted police officers. Arrest wagons and police cars were always at the ready, camera surveillance was ongoing, and car license plate numbers were read into police cruiser radios for further investigation.

What, you ask, was new, unusual, and unexpected about using law enforcement to preserve the status quo? Not much, I suppose, except that its blatant unfairness made a lasting impression on me.

I do not believe my farmworker movement experience justifies my present-day refusal to sit on a jury in a criminal case, because farmworkers fought back against this injustice. They recruited their own civil rights attorneys, they sued the system, they tried their cases in the courts of public opinion, and they took their fight to the supreme courts of states and the nation. Over a period of years, the farmworker movement began to tilt the playing field of justice toward a semblance of equality, a sharing of power with agribusiness.

This is not the case with the homeless and the indigent poor in Sacramento. They are unorganized and powerless to fight back against a criminal justice system designed to criminalize and prosecute them because of their homelessness.

(If there were a meaningful way to exempt certain police officers from the balance of this essay, I would certainly do so. They did not agree with the treatment accorded to the homeless, nor did they willingly participate, but the institutional reality in which they operated was not much different from that of being in the military: follow orders.)

Cherry picking is a learn-by-doing chapter in training programs used by law enforcement agencies in the Sacramento area. Young officers in training are assigned to patrol areas frequented by homeless people in order to practice such policing techniques as interrogation, investigation, arrest, and transport. Homeless people are selected as the cherries in this picking exercise because there is minimal risk to the officers and a high probability of finding so-called lawful grounds to interrogate, investigate, and make an arrest.

Officers in training do not feel threatened or personally at risk in confronting homeless people for several reasons: they are not armed, they are passive, they are tied to their possessions, they do not travel in groups, they are not gang members, and they have no effective means of escape. Better yet, there is the probability that a high percentage of those stopped and interrogated will have had a bench warrant issued for their arrest. In short, cherry picking is a low-risk, high-arrest-probability training exercise.

Law enforcement personnel tell me that 40,000 bench warrants have been issued in the county of Sacramento for light rail fare violations. Imagine, 40,000 warrants in the criminal justice computer file system patiently waiting for the opportunity to ensnare an indigent citizen for the nonpayment of a \$1.50 fare. Imagine the cost of such fiscal insanity: a light rail user is cited for nonpayment (1st cost); the citation is sent to the criminal justice system to be processed (2nd cost); the presiding judge schedules a hearing date (3rd cost); the judge assigned to the case calls the name of the defendant, who is a no-show for a variety of reasons, but primarily because he/she does not have any money to pay the fine and does not want to serve jail time (4th cost); the judge orders a bench warrant to be issued for the no-show defendant (5th

cost); the bench warrant is issued and awaits accidental implementation by an arresting officer during cherry picking time or through periodic police sweeps to enforce anti-camping ordinances or other “low life” city cleanup campaigns (6th cost); the arrest, the transportation, and the booking at the jail take place (7th cost); the defendant is incarcerated for several days (8th cost); the presiding judge schedules the hearing date (9th cost); the judge assigned to the case calls for the defendant’s appearance, which requires police transport from jail (10th cost); the judge conducts the hearing, imposes sentence for time already served (11th cost); the defendant is transported back to jail and processed for release (12th cost).

What is the cost, then, of prosecuting a homeless person for the inability to afford a light rail ticket? \$6,000? \$12,000? If the institutional overhead associated with the criminal prosecution of this homeless person is factored into the cost equation, I place the cost at more than \$15,000. Imagine the cost if all 40,000 bench warrants were to be processed. Incredible! If Sacramento gave each homeless person an unlimited free transit pass, millions of dollars would be saved, and many thousands of hours of human suffering and humiliation would be avoided.

But my refusal to participate in the criminal justice system as a juror is not based on the fiscal insanity of the bench warrant system as it applies to homeless people; rather, it is based on the rationale of the system itself, which is designed to criminalize and prosecute people who are so poor they have to come to Loaves & Fishes for something to eat, so poor that regardless of age, physical condition, or infirmity, they are forever condemned to walk alongside the public transit light rail tracks.

The criminal justice system is not simply misguided or corrupt in its treatment of homeless people; it is a highly evolved, complex, and sophisticated form of legalized cherry picking.

It is unjust, and I resent it.

