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## American Nightmare: the Criminal, Justice System

By Stanley L. Cohen  
October 7, 2016



Several days ago a story appeared in Al Jazeera about Ramsey Orta the courageous citizen Samaritan who video recorded the final minutes of Eric Garner's life taken by New York City police officers in July of 2014. Mr. Garner, an asthmatic, held in a deadly choke hold and unable to breathe, repeatedly yelled out for help; his desperate pleas eventually ending as his last breath

of life was stolen, by cops, from his limp body. His crime... being a black man on the streets of New York City, or Chicago, or Ferguson or Tulsa or any other of a hundred cities that dot the United States from coast to coast.

The Al Jazeera story itself dealt largely with Mr. Orta who is on his way to prison having pleaded guilty to a number of criminal charges that arose after he had recorded the Garner killing. Not surprisingly, the arrests followed the onset of a pattern of police harassment that targeted him beginning soon after his explosive recording went public.

Though the article itself was relatively short, it was powerful and, not surprisingly, generated a lot of feedback. What was, however, unexpected was the significant number of reader observations that were far less concerned about the underlying events that took the life of Mr. Garner and their implications, than they were critical, indeed abusive, of Mr. Orta ... who in the view of many was just another “criminal” of color going to prison.

It would be far too easy to simply write off the comments as the product of racial animus or a transparent, almost juvenile, effort by those who focused solely on the “sins” of Mr. Orta in order to obfuscate the fundamental issue of systemic police brutality and racism in inner city America still raging on, completely unabated, in 2016. I’ll save that story for another day.

No, the replies to the Orta article reflect a more fundamental, perhaps hopelessly naive, disconnect among many in this country (mostly white women and men) that just don’t get it. Large numbers of people go to prison all over this country every year who are either not guilty of anything at all or, if culpable, imprisoned on the back of a system that wrongfully, but efficiently, builds an inflated criminal history as so much the price of being dark skinned and living in police occupied inner city communities across the United States.

Every day young women and men of color are confronted by cops on the streets of impoverished communities as almost a dark rite of passage; one wrought with the potential to go bad and, as recent events have shown, often do. The lucky ones make it home... the not so lucky to central booking. With increasing frequency, the least lucky of all end up in body bags at the morgue. Whether caught up in a community “sweep” or the target of a “stop and frisk” program or “tossed” during a chance encounter at a local bodega or in the stairwell of a housing project or on the corner just hanging out with friends or on their way home from school, young citizens of color just can’t avoid the abuse of cops on the prowl; brutes in blue who seek to enforce their control over streets that they see as very much enemy territory.

For the young black or brown teenager who has recalled their parent’s admonition not to question a cop, speak out or to move or otherwise “challenge” an officer’s overreach, the encounter likely becomes “only” an ugly emotional branding process which may take but a short time, yet in reality never fades away. It is a face-to-face meeting with arbitrary and abusive police power that by design is intended to send a lasting message that “these are our streets” and “we tell you what to do and when.”

While this description may seem surreal or overly harsh for those living in rural America, or to those whose skin tone does not equate probable cause in the mindset of most cops, I guarantee

you every reader of color knows exactly what I am talking about here whether they are 10 or 80 years of age, just starting out or already successful in business or in their career. After all, while Jim Crow may have died, “badges and incidents of slavery” just never go away... and won’t.

For the unfortunate black or brown youth, bold enough to venture out in public these days, and who refuses to be intimidated or is daring enough to question what cops are doing to them... and why... or with courage to express their rights, an arrest is sure to follow. As Legal Aid attorneys from coast to coast know all too well, it begins with fairly “innocuous” disorderly conduct and resisting arrest charges and quickly builds from there. For the first time “offender,” you get a Desk Appearance Ticket (DAT)... that is if the cop is getting ready to end her shift and doesn’t want overtime or is just in good spirits. After a few hours of being harassed and locked up in a local precinct, you’re released to return to court in a month or so.

When you get to DAT court everyone, from the prosecutor to defense counsel assigned you... to the judge overseeing the case, knows its crap. But it doesn’t matter. After all, it’s not about justice. Its little more than the start of a perverse game for the young black or brown victim who was wrongfully busted and for the bench and bar assigned to perform their mindless ministerial task in the court as they earn their stripes. They too are merely paying their dues before moving on to the next higher court where they will shuffle the same brand of shit but for defendants who differ only because they’ve gone through the same process before or because this time the vindictive cop has added an assault charge for a young kid unwilling to be quietly handcuffed for something they didn’t do.

For them, it’s no longer a DAT but now 18-24 hours of being shuffled from a precinct to central booking to a holding pen... and not because the concocted offenses are necessarily any more serious... they’re not... but merely because they’ve used up their one and only avoid jail card reserved for first timers who become obedient before the cuffs are placed on their wrists.

For now “second timers”, who routinely receive deferred prosecutions and/or community service on the DAT, the choice becomes relatively simple; once you appear in court you can accept a guilty plea to the violation (still not a crime) or perhaps to a reduced misdemeanor (a crime) and receive a sentence of time served plus more community service that the prosecutor will certainly offer. Or, you can come back to court to fight a case where you were guilty of nothing more than the audacity to stand-up and speak out. Most, already tired of the 18 hours they’ve spent in handcuffs or behind bars, will grab the deal and go home glad that the nightmare is over... unaware or concerned that they may have just pleaded guilty to a crime with implications that will likely haunt them time and time again.

For those who demand their full day in court and a trial, the nightmare has just begun. Once released... typically with no bail for their first trip through the system... they can expect to come back to court once a month, for at least 6 months, waiting from 6 to 8 hours in courtrooms packed with crying children and abusive guards for appointed counsel who are busy elsewhere on more serious cases and who often don’t arrive in court until late in the day. On occasion they don’t even arrive at all. Meanwhile, you sit and watch dozens of meaningless cases called before yours going through pointless steps wondering when your own turn will come up. The process repeats itself *ad nauseum* often in front of a different novice judge as largely irrelevant motions

are filed, with identical plea offers repeated by rookie prosecutors, without discretion, who know nothing of the case but are simply reading rote notes from a file that instructs them how to proceed.

Like the winter snow sure to come, sooner or later the defendant who seeks justice is eventually worn down and simply gives up, whether guilty or not, just to put an end to the charade or to stay out of jail.

Whether it's the many meaningless appearances, the cost of travel to and from court, personal health issues, child care or family or school difficulties, eventually a missed court appearance or two will happen and that means a bench warrant. And a bench warrant means bail after the police come to arrest you and bring you back before the court, once again in cuffs. The dynamics now change. The scale of Lady Justice is no longer blind.

Standing before the same judge who issued the warrant and took it personally when you failed to show, she now smells the blood of one less case clogging up her calendar. The choice is simple: take the plea offer and go home or find someone to post a couple of thousand dollars in bail to get you out. You know you can't.

Meanwhile, shaking and terrified when the court announces "officer take charge" as the cuffs go on, you tell your court appointed attorney "I'll take the plea." That you were not guilty doesn't matter. That you had a good excuse for missing court was irrelevant. All that mattered was one less case in a system over crowded with largely empty prosecutions based on little more than race, class or politics.

Like the DAT process before it, the criminal court system is also singed with indifference by most of its public participants who are driven by little more than a desire to handle and dispose of enough cases and move enough "bodies" through the system to crawl their way up the feeding chain to a bigger courtroom with more serious charges and the appearance of greater power and prestige... whether real or not. And while an accused may be silly enough to return to court time and time again to chase justice, to everyone else he is simply a foolish statistic with a file waiting to be closed with a plea to something, anything, that everyone knows is coming sooner or later... whether guilty or not. Trials just don't happen on the small cases; the ones that build criminal records and always come back to haunt.

So what is there that turns the relative insignificance of the first two police encounters into the nightmare of prison and forevermore changes the courtroom calculus for a young black or brown victim from one of liberty into one of "bull-pen therapy"? It's that third arrest. In the projects, it always follows. You know, the next time that same cop sees the poor kid in the street and doesn't like how he looks, his "attitude"... or just wants to make an example out of him. Or, it's the end of the month and arrest stats are critical to precinct commanders and their career.

Perhaps this time you're busted for a fare beat that didn't happen that turned into a "paper" assault of a cop and a resisting arrest charge, an illegal search that uncovered an ounce or two of pot and some pills or an ugly fight with an older guy that had hassled your girl-friend.

“Step up”, says the bench officer to the young black or brown kid from the projects who’s just emerged from the bull-pen behind the court and is appearing before a judge for the third time... but now with a “record” that includes a prior deferred prosecution, an unrelated conviction and a bench warrant history. This time, bail is set. This time, there’ll be no plea as the court announces “officer take charge” because, this time, the sentence is anywhere from six to 12 months in jail.

Unable to post bail, the next three to four months of court appearances are very different than those that passed with boredom while “fighting” a case seated on the outside from beyond “the rail.” Awakened early in the morning of each court day, in a high security jail far from family or friends, the entire time is spent either in transit shackled on a bus in close quarters to others... many older and accused of far more serious charges... or locked in a small over crowded holding cell behind the courtroom with but one toilet and no privacy to speak of. The only time you see your appointed attorney over these many months is for a few brief seconds when your case is called and then quickly adjourned.

It’s very much a game of wait and see as the judge and counsel go through the motions quietly wondering to themselves, at times to each other, how long it will take for bull-pen therapy to break the defendant’s spirit and to once again coerce a guilty plea to go home... whether guilty or not. In month 5 of pre-trial detention, that day comes when the court offers probation of three years and the kid from the projects grabs it.

For many, in overcrowded and under staffed probation systems throughout the US, supervision is just little more than a dead end street; one that simply buys some time till a meaningless violation for missed appointments or dirty urines for pot sends you back to jail. There are no jobs, meaningful skill training or counseling services of any consequence. You’re now 23, unemployed, a school dropout and on your way back to prison for another 7 months to finish up a sentence for a crime you didn’t commit in the first stead.

Two years later, homeless, strung out and perhaps armed on streets that can be tough for those stung by poverty, you get entrapped in an undercover “buy and bust” operation on the same block where it all began for you with a DAT six years earlier... not for a crime but because you were black or Latino and dared to challenge a cop.

The notion of bail has of course long since been swallowed up by the misdemeanors of your youth. So, too, diversion programs are for success stories in waiting... of which, the project kid is not. For the next 8 months, bull pen therapy is the defendant’s constant and only companion, but now the court is talking serious time... six, seven or eight years. After all, standing before a jaded Superior Court judge stands a 26 year old with a record of a multiple arrests, a number of coerced convictions, a history of bench warrants, a “violation” of probation and a total of a couple of years in and out of local prison.

So what do you do? You take the deal. The judge says four years and off you go to state prison. A sentence triggered not by the nature of your charges but a criminal history built on nothing more than a system that feeds upon people of color, the poor or the young who dare to question the authority of cops who run roughshod over communities that they view as war zones.

To the reader who can't... or refuses to... see behind the empty rhetoric of a headline, don't assume the worst when it comes to the criminal justice system or the young, poor and black or brown people it victimizes. There is always a story. A reason for what happened and why. It's far too convenient to simply write off a young man or woman as an unrepentant criminal who put their own self interests ahead of that of societies as they were swept up by cops that see them as numbers and little else.

Ramsey Orta may be on his way to prison but to millions he's a hero. He could have walked away in silence... but he didn't. And without his courage, the murder of Eric Garner would not have been memorialized for all to see... instead, just another dead black man who died of natural causes on the mean streets of inner city America.