Chapter 5

James Johnson's
Workers' Compensation Case

The controversy over James Johnson did not end with the verdict in the criminal case. A bright young lawyer who specialized in worker disability cases had filed a workers’ compensation claim on behalf of Johnson. The lawyer, Ron Glotta, worked in the same law firm as Ken Cockrel and Justin Ravitz and was active in the movement to organize autoworkers. He was a cofounder of the Motor City Labor League, a group of white leftists whose purpose was to organize among white workers and to support the actions of the black radicals in the League of Revolutionary Black Workers, DRUM, ELDRUM, and other such alternative union groupings. The Motor City Labor League recognized that black workers who spoke out for radical change were isolated by the established union and were attacked by management. They felt it was necessary for whites to give ideological and concrete support to blacks who were leading the struggle for fundamental change. They believed that if the demands of the black workers were satisfied the result would benefit all workers. In this context of racial solidarity, Glotta became one of the attorneys for the League of Revolutionary Black Workers and offered his skills in the field of workers’ compensation and labor law.
Glotta pursued a claim for workers’ compensation on the grounds that Johnson had a nondisabling, preexisting psychiatric condition that was aggravated by racism and unsafe working conditions, and that this aggravation resulted in his breakdown. Chrysler’s attorneys could not believe the audacity of trying to make the corporation liable for benefits to someone who had killed two foremen and a coworker. Even some plaintiff’s attorneys doubted Glotta’s judgment and warned him that he would “make bad law.” But Glotta’s theory was soundly based in the philosophy of workers’ compensation and in previous rulings of law. He was just pushing the envelope—and pushing it hard.

The workers’ compensation insurance system is a no-fault system of remuneration. That means a worker does not have to prove that the employer was negligent in order to win benefits. This is different from the system known as personal injury law. Under that system, when one person injures another person the plaintiff must prove that the defendant did not exercise reasonable care and thereby caused the injury. For example, if John Doe’s restraining wall falls down during a normal storm and a ton of mud slides into Tom Smith’s house and injures him, John Doe may be liable for damages. But he is liable only if Tom Smith can prove that a reasonable person would have foreseen a storm and built a stronger restraining wall. This is called the rule of negligence. It was the law in all factories in America until the early 1900s. So in the 1800s if a worker had his finger cut off by a conveyer belt, the worker would have to prove that the belt was functioning improperly and that the employer was responsible for the malfunction.

The consequence of the unequal power relations between capital and labor was that millions of workers were maimed and killed in job-related accidents but did not have resources to mount effective lawsuits against companies. They therefore received no compensation for their injuries, unless the owner was a benevolent capitalist who offered some form of charity to the worker or, in cases of death, to the surviving spouse and children.

The personal injury system also barred a worker from recovering money if the accident was his own fault. The problem with that rule was that it did not take into account that industrial work, in its normal course, produces accidents. Whether it is mills, mining, steel, auto making, or construction, no product can be produced without injuries. An example
of this harsh reality is the building of the famous Golden Gate Bridge. Based on previous studies and construction projections, it was known that a number of workers would have accidents causing their deaths. Some of these accidents would be caused by employer negligence, some by worker negligence, but the bridge could not be built without accidental deaths. Even though strict safety precautions were taken, ten workers were killed.

The worker’s compensation system was based on the recognition that men, women, and children would be injured, at times by the negligence of the boss, at times by the carelessness of the worker, and at times by the mere fact of working in an imperfect world. Regardless of the cause of the accident, the owner was making profits based on the labor of the worker. The humanitarian approach was to accept that disability and death were part of the profit process and to compensate the worker whether the injury was caused by employer negligence or by the actions of the worker. However, for decades capitalists around the world refused to allow such a system of compensation.

As the industrial revolution progressed, Germany developed a strong, politically conscious working class. The Bismarck government, fearing that the workers would turn to socialism, instituted the first workers’ compensation system as part of a broad Social Insurance Plan. In 1897 England passed its workmens’ compensation act, which by 1910 covered every kind of occupational injury. By the early 1900s a number of factors combined to persuade employers in the United States that a limited workers’ compensation system would be in their own interest. Unions were beginning to exert organizational power, and it was necessary for the owners to make some compromises with labor to maintain industrial peace. Some workers had also been successful in bringing personal injury lawsuits. Since there was no cap on damages, potentially large jury verdicts became an unpredictable element in doing business.

Responding to the changing power relations between capital and labor, and to the economic benefits of a predictable insurance system, Maryland in 1902, Montana in 1909, and New York in 1910 passed legislation creating workers’ compensation systems. However, not all employers were ready to accept the obligation to pay into an insurance system that would compensate their injured workers. State courts took a conservative view of the new laws and held them unconstitutional on various grounds, such as the
infringement of freedom of contract and the deprivation of an employer's property (money) without due process of law.

The New York case *Ives v. South Buffalo Railway Company* is a good example of the conflicting class forces present in workers' compensation law. The New York legislature had passed a law creating an insurance system limited to workers in the most dangerous jobs, such as building bridges, working on high scaffolds, using explosives, operating steam railroads, and constructing tunnels and subways. These jobs were determined to be "especially dangerous" in that the work itself contained "inherent, necessary, risks to the life and limb of the workmen." The legislature gave as its reasons for passing the law that the laissez-faire system was "economically unwise and unfair, and that in its operation it is wasteful, uncertain, and productive of antagonism between workmen and employers."

The New York Court of Appeals had no quarrel with the legislature's reasons. In its opinion the court accurately restated the theory of workers' compensation:

> It is based upon the proposition that the inherent risks of an employment should in justice be placed upon the shoulders of the employer, who can protect himself against loss by insurance and by such an addition to the price of his wares as to cast the burden ultimately upon the consumer; that indemnity to an injured employee should be as much a charge upon the business as the cost of replacing or repairing disabled or defective machinery, appliances, or tools; that, under our present system, the loss falls immediately upon the employee who is almost invariably unable to bear it, and ultimately upon the community which is taxed for the support of the indigent.

The court agreed that the law was supported by public sentiment and, although "plainly revolutionary," was based on sound principles. But it held that the law violated established laws protecting "the right of property." By holding the workmen's compensation law unconstitutional, the court's opinion suggested that if people wanted to institute such a system they would have to pass a constitutional amendment.

The struggle for fair and just treatment of working men, women, and children did not stop in face of this and other judicial decisions. The labor movement, social reformers, and enlightened capitalists combined to per-
suade other states to pass workers' compensation systems. As the tide grew stronger, courts found ways to interpret the law to hold such systems constitutional. California's plan was accepted as legal in 1913. It provided for specific, fixed benefits based on a formula that included a worker's age, job category, degree of disability, wages received in the months preceeding the injury, and other factors. The fact that the benefits were definite allowed an employer to estimate his costs for worker injuries, buy insurance, and thereby calculate that amount into his cost of doing business. All employers were compelled by law to have workers' compensation insurance.

The employers were able to win important concessions in this new program. The benefits were kept very low. There was no compensation for pain and suffering. Even if the injury was caused by the employer's negligence, the worker could not sue under the personal injury system. The worker was locked into the workers' compensation system. The difference in money received by the injured party in the two different systems was, and still is, enormous. If a thirty-year-old woman autoworker lost an eye due to the negligent driving of someone on the highway, she could recover hundreds of thousands of dollars. If the same woman, making an average wage in an auto plant, lost an eye due to the negligent maintenance of a fork lift in the plant, she would receive approximately $40,000. If she worked at a lower paying job, such as a file clerk, and in a state with less benefits than Michigan, she might only receive $10,000.

As unions became stronger, the interests of working people made their way into the law. One important new concept was the idea that the workplace should not make a person's health worse than it was before she began to work. Thus, if a healthy twenty-year-old woman begins work in the cotton mills and fifteen years later leaves with lung disease caused by her working conditions, she deserves to be compensated based on the fact that for fifteen years her labor power was producing profits for the owners. The next logical step was to protect people who were able to work with pre-existing health conditions, but because of job conditions became disabled. For example, a young man with a weak heart goes to work for General Motors, and twenty years later, due to the stress of the job, he dies of a heart attack. There are two reasons his family receives benefits: First, his weak heart had not kept him from being able to work (a nondisabling,
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pre-existing condition); second, conditions on the job aggravated that weak heart so that it finally gave out. In Michigan and other states, this rule of law was extended to cover pre-existing psychiatric conditions. In 1960 the Michigan Supreme Court ruled that a worker could recover benefits if the long-term pressures, requirements, and demands of the total work environment caused an injury or illness.

Glotta put all of these concepts together in Johnson's case. Many good lawyers could have done that. But Glotta's political insights and experience allowed him to take the black rage defense from the criminal trial and transform it into an offensive weapon in the civil case. Johnson's workers' compensation trial began in 1972. There is no jury in a workers' compensation case, so the hearing is held before a "referee." The rules of evidence apply, but the hearing is more informal than a criminal trial.

At the hearing James Johnson took the stand and testified. The referee found him to be a credible witness. The referee stated that "based on plaintiff's demeanor, manner of testifying, depth of feelings expressed, as though from the deepest recesses of his being at times,... [I find] his testimony to be worthy of... considerable credence and belief."

Fitzgerald had examined Johnson at the Ionia State Hospital four months after the not guilty verdict. At the compensation hearing, he testified to the same conclusions he had made at the criminal trial and added that Johnson was still suffering a disabling mental illness that was job related. At Chrysler's request, a Dr. Forrer examined Johnson once and testified that Johnson's breakdown could "in no conceivable way be attributable to his working condition." However, under cross-examination by Glotta, Forrer conceded that when Johnson was fired he lost his coping mechanisms.

The referee found that Fitzgerald's testimony was more convincing that Forrer's. He also pointed out that when Forrer had said that "it was incredible that someone had filed a Workmen's Compensation Petition on Plaintiff's behalf" he had indicated a negative predisposition, which probably explained why he had trouble eliciting information from Johnson.

Glotta's strategy was to show that Chrysler had created a "plant culture" that would lead inevitably to a worker exploding in violence—the only question was which worker would be the first to crack. He argued that "Chrysler had pulled the trigger," a phrase which would earn him criticism
in politically moderate circles, but which captured the heart of the legal argument and the spirit of the community support for Johnson.

As the hearing proceeded, it was clear that Chrysler's attorneys had been thrown off balance by Glotta's creative strategy and were unable to mount an effective defense. Referee Conley ruled in favor of Johnson and made the following findings of fact and law in favor of Johnson: (1) The plaintiff had a pre-existing mental tendency toward schizophrenia and paranoia, but this mental condition was "nondisabling"—that is, Johnson was able to perform his job adequately; (2) his condition was significantly aggravated by the long-term work environment, including being unfairly assigned undesirable work at the oven, being passed over for a better job for which he was qualified, being addressed by a foreman as "nigger" and "boy," being denied his medical benefits, being suspended improperly for taking a legal vacation, and being suspended under clouded circumstances; (3) these job-related actions caused his breakdown on July 15, 1970; (4) Johnson still suffered a disability resulting from the occupationally related injury and therefore was entitled to workers' compensation benefits of seventy-five dollars per week starting July 16, 1970, and continuing until he recovered from the job-related disability.²

The establishment media was outraged by the decision. The *Detroit News* editorialized that the concept of holding the employer responsible for the aggravation of personality problems caused by the "typical rat race of employment" would deluge the system with false claims. One columnist, writing for a suburban paper, blamed the whole incident on the fact that after the 1967 riots Johnson and "many others of his race" were hired because "industrial firms were prevailed upon to hired the jobless and disadvantaged to ease the inflammatory conditions of the city." The columnist alleged that the "expedited" hiring process meant that applicants were not asked the "usual inquiries about fitness for the job," allowing Johnson to hide his mental illness.

Under public pressure the director of the Bureau of Workers' Compensation said that his office had "agonized" over the decision, and he issued a formal statement: "What will probably seem appalling and shocking to most people is that it appears the state is giving cash to a criminal. We are not condoning his crimes, which are serious indeed. But we are saying that this man was mentally disabled, in part, due to his job."
The decision had legitimated the claims that the automobile corporations practiced racism and allowed unsafe environments in their plants. It also legitimated the cry that workers suffered mental illnesses and breakdowns because of the conditions under which they were forced to work. A liberal view of the Johnson cases, both criminal and civil, would say that they were examples of how law in a democratic nation can bring about social change. But radical lawyers such as Glotta, Cockrel, and Ravitz would have argued that though these cases were important victories, real social change would take place only when workers were politically conscious, had achieved racial unity, and were organized to force a change in capitalist work relations and its unjust distribution of income.

That legal victories cannot be relied on to ensure lasting social change was made apparent in the early 1980s when workers’ compensation law was rewritten by the Michigan legislature. Using the Johnson case as a stalking-horse, business interests successfully argued that worker abuse of the system was a major cause of their economic problems. The laws regarding emotional disability and cardiac illnesses were rewritten to exclude more workers from the compensation system.

Unlike many of their peers, Glotta, Ravitz, and Cockrel were not co-opted in the ensuing years. Glotta was listed in Who’s Who in American Law after winning a number of significant workers’ compensation trials. He broadened his expertise, litigating and lecturing in such areas as law and discrimination, polio and social security disability, and compensation for asbestos-related diseases. He maintains a progressive approach to legal strategy as he continues to advocate on behalf of workers.

In addition to the acquittals Ravitz and Cockrel won in the New Bethel and Johnson cases, Ravitz had a string of victories in political cases. He successfully defended antiwar demonstrators and won a victory for welfare mothers arrested for demonstrating at the Bureau of Social Services. He was part of a team of lawyers that sued to improve conditions at the Wayne County Jail. He also brought suit against the STRESS unit of the Detroit police, a secret, elite assault section that was responsible for Detroit’s police killing more civilians per capita than any other American police department.

In 1972, a portion of Detroit’s political left decided to enter the arena of electoral politics. Justin Ravitz was put forth as a candidate for a posi-
tion as judge in the Recorder’s Court. One of the main coordinators of the campaign described its overview of the electoral process: “The Ravitz Campaign understood that we can neither litigate nor elect our way to liberation, but selective and serious entries into each arena can advance the building of a socialist society.”

The day of the primary election returns, the *Detroit News* ran a front-page story with a photo of Ravitz and Cockrel under the headline “Radical Tops Court Nominees.” With the help of more than four hundred volunteer poll workers and a grassroots campaign, Ravitz came in second among the seven judges elected.

Ravitz understood the psychologically oppressive role ritual and mystification play in the legal system. In small but symbolic ways he tried to diminish the authoritarianism of the courtroom. He did not wear a judicial robe, nor would he exhibit the American flag in his courtroom. Ravitz had taken the bench at the height of the Vietnam War, when for many the flag symbolized American imperialism in the third world and the use of military violence in the rice paddies of the Mekong Delta, as well as the use of police violence in the streets of Detroit. However, the legal system would not countenance this assault on its symbols of power and legitimacy. The Michigan Supreme Court issued a ruling that all judges had to wear robes and exhibit the flag in order to maintain a “proper” judicial atmosphere.

Ravitz complied with the ruling but continued his attempts to demystify the legal system. He and another progressive judge drafted a letter that was sent to defendants explaining the role of the preliminary hearing, emphasizing that they had a right to this important procedure, and warning them against waiving that right. He accepted numerous speaking engagements to explain the law in terms people understood, and he gave a series of seminars held in his courtroom on Saturdays to discuss how the legal system really functioned. He rejected the false concepts that the law was colorblind and that it treated rich and poor alike. The following words, written by Ravitz in 1974, are an example of critical legal theory, before that term was invented:

The rawness of white racism in this country is only a part of the real message. The law is not only not “color blind,” but it more than “tolerates
classes among citizens.” It is designed to tolerate and perpetuate class division. The law serves the dominant class in a class society.\(^4\)

In 1983, Judge Ravitz ran for reelection and won easily. When he retired from the bench in 1986, an article in the *Detroit Monthly* stated that “Ravitz has earned a reputation as one of the finest legal minds in the state.” Returning to private practice, he showed the breadth of his intellectual ability by developing a varied caseload in an era of specialization. Ravitz does trial and appellate work, and his practice includes civil rights, police and government misconduct, employment discrimination, and personal injury. He has maintained his passion for social justice and tries to practice in a manner consistent with his belief that all people are entitled as “birth-rights” to a dignified job, adequate housing, medical care, and equal educational opportunities.

From the civil rights movement of the early sixties through 1975, lawyers were constantly representing people who were organizing and demonstrating for social change. Some cases, such as the Chicago 8 trial, the prosecutions of Native Americans after the Wounded Knee shootout with FBI agents, and the prosecutions of prisoners after the Attica rebellion, garnered national attention. The National Lawyers Guild, considered the legal fist of the movement, quadrupled in size and was attacked by FBI Director J. Edgar Hoover as “more dangerous than the people throwing the bombs.” Kenny Cockrel was one of the better-known lawyers of this generation who were spied upon by the FBI. He exemplified the kind of lawyer who was described by the United States Attorney for the Northern District of California as “movement attorneys. They do more than just advise. They’re part of the revolution.”\(^5\)

Cockrel could have jumped into the role of super-lawyer, flying around the country handling one high-profile case after another, but he was somewhat critical of all the money and energy that go into big, national cases. He believed it was necessary to build power on a local level, and consequently he focused his attention on the Detroit area. One incident that did thrust him into the national spotlight took place during the New Bethel case. Although one of the defendants, Alfred Hibbit, had voluntarily surrendered when he appeared at the pretrial hearing, Judge Joseph Maher doubled his bail to an amount that was unattainable for Hibbit.
An outraged Cockrel was quoted by the media as calling the judge a "honkey dog fool" and a "lawless, racist, rogue, bandit, thief, pirate." Judge Maher called for Cockrel's disbarment and the State Bar instituted disciplinary proceedings. Distinguished lawyers, white and black, rallied to Cockrel's side. He would not back down and apologize. Instead, an offensive strategy was developed. The arguments were threefold. First, his choice of language had expressed the sentiments of the black community in colloquial terms used by that community. Second, the allegations were true: the raising of bail without just cause was "thievery and piracy." Third, lawyers had a First Amendment right and an obligation to inform the public about what was happening in court, particularly about issues of political importance. The first day of Cockrel's hearing, hundreds of people tried to get into the courtroom. A door was broken down, a court reporter fainted, and court was adjourned. After a week's continuance the proceedings against Cockrel were dismissed. Judge Maher reduced the bail from $50,000 to a more reasonable $10,000. Eventually Hibbit was found not guilty of the murder charge.

Cockrel continued to represent political activists. A police officer admitted years later that some officers "might have wasted Kenny if they had had the chance." Cockrel at times carried a gun for self-protection, and Ravitz recalled that a bomb was thrown onto the balcony of their law office. By the late 1970s, however, the confrontations between the community and the state had taken less direct and less violent forms. The Vietnam War had ended with a defeat for American aggression, and the extreme abuses of prosecutorial power by the Nixon administration had terminated with Richard Nixon's resignation and Attorney General John Mitchell's criminal conviction. Police departments were integrating and were no longer seen as a white occupation army in minority neighborhoods. Blacks were exercising the right to vote and were entering the electoral field. In Detroit, Coleman Young, a liberal African American, had been elected mayor.

By this time, criminal lawyers were no longer in the forefront of the legal struggle to change the landscape of America. Most of the legal battles were taking place in the arena of civil law. Unfair employment practices, sex and race discrimination suits, corporate abuses, and environmental protection—these were the areas receiving the attention of public interest
attorneys. Immigration law and Central American solidarity groups had replaced criminal procedure and mass defense committees. In this changing context, Cockrel decided to run for public office, and in 1977 he was elected to the Detroit City Council. During his term he shook up the council and advocated for social reform. After four years he returned to private law practice, and in 1988 he joined the large firm where his old friend Justin Ravitz practiced. Just a year later, Cockrel died from a sudden heart attack. U.S. Congressman George Crockett, Jr., articulated the thoughts of many when he said, “I had sort of hoped that one day Ken would become mayor of Detroit. I think he had all it took to occupy that job. . . . I don’t think the City Council has been the same since Ken left.”

Ken Cockrel was only fifty years old when he died. When his wife, Sheila Murphy, a former community organizer and currently a city councilwoman, was asked how she would want him to be remembered, she answered for hundreds of his clients and friends: “I would like him to be remembered as a man with a passion for justice and an impeccable integrity. And that he believed in making things better for working people and poor people with his whole heart and soul.”

Dr. Clemens Fitzgerald, Jr., who had testified in behalf of James Johnson, was murdered seven or eight years after the case was over. His car was found abandoned at the airport, with his body stuffed in the trunk. The killers were never caught and still remain unknown.

In most cases involving noncelebrities, when the case is over the defendant fades into the background. James Johnson was sent to Ionia State Hospital for the Criminally Insane. Judge Robert Colombo wrote a letter to Ionia, which he released at a press conference, recommending that Johnson be kept in custody for the rest of his life, stating that if he were ever released he would kill again. The judge was wrong on both counts. Johnson was incarcerated for five years. Upon his release he lived quietly with his sister in Detroit. Three years later he was interviewed by a reporter for the Detroit Free Press. The forty-five-year-old Johnson recounted his feelings about what had happened: “I think your mind has something like a release valve, like a pressure cooker on a stove. If it doesn’t get released, it’ll explode, blow up the kitchen and you with it. I don’t know why mine didn’t get released, I just lost control completely.”

While James Johnson was in jail awaiting trial, he was shown literature
depicting him as a hero. He had responded with simple words that should sear the heart of corporate America: “I’m no hero. I never wanted to be a hero. All I wanted to do was to go to work, come home, and get my paycheck once a week. It was either that job or welfare.”

James Johnson has not killed again; Steven Robinson has not robbed another bank. Both men have receded into the background. These men were not political heroes like civil rights leader Medgar Evers who was assassinated by a white supremacist in Mississippi, or Black Panther leader Fred Hampton who was assassinated by police in Chicago. Johnson and Robinson represent the hundreds of thousands of men and women working in factories or standing in unemployment lines whose anguish, desperation, and rage are welling up inside them. The great majority of them will control that rage and lead productive lives free of criminal acts. But for the few, or the many, who lose control, lawyers have the obligation to consider the black rage defense, as well as a responsibility not to misuse it.