Black Rage Confronts the Law

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Chapter 12

White Rage—Do Prisons Cause Crime?

Alan Dershowitz's criticism of the black rage defense is not convincing. However, there is another criticism that does have some validity. In law school it is called the "slippery slope." This criticism speaks to the fear that once the legal system permits a black rage defense, we will slide headlong down a slippery slope and find ourselves allowing Latinos, Asians, Native Americans, and poor whites to use a comparable defense. This critique is supportable. The answer to it is that a person of any race should be allowed to try to persuade a jury that severe environmental factors contributed to a criminal act. This is what David Bazelon and Richard Delgado have argued—that the causal relationship between environment and crime should be recognized in various forms of legal defense. The black rage-type defense is no more limited to African Americans than are civil rights. Rather than worry about sliding down a slippery slope into disaster, we should embrace the possibilities created by the expansion of the black rage defense.¹

A case I tried in 1974 reveals the use of a white rage defense not based on race hatred. A few months earlier I had lost a black rage case. It had been a retrial on a charge of bank robbery, after a previous hung jury. I
was sitting in the law collective office reading a letter from the twenty-
four-year-old convicted bank robber. He wrote that the black rage defense
had opened his eyes to his destructive behavior. Sitting through the two
trials and listening to our presentation of his life had given him insight
into the unresolved problems of his youth. He now felt he could under-
stand why he had robbed the bank. Instead of lying on his prison cot
blaming society, he wanted to work on improving his life. From deep in
his heart he thanked the psychologist who had helped him understand his
life. I have always felt that a collateral benefit of the black rage defense is
the perspective it provides the defendants on their lives. Alan’s letter sup-
ported that belief of mine and eased the pain of losing his case and watch-
ing the judge sentence this decent young man to five years in prison.

A few hours after reading Alan’s letter, I received a call from the federal
public defenders. I had been appointed to represent a white ex-convict
charged with robbing six banks and savings and loan offices. I drove over
to San Francisco County Jail and met John Zimmerman. He was thirty-
two years old, of German and Italian extraction. He had a cracked front
tooth and long hair, stringy and dirty from days in jail. He had spent
almost all of the last fourteen years in various prisons. It was my first
contact with a long-term convict, and his first experience with a sixties
generation lawyer. Sitting in the claustrophobic interview room, we began
to interact and after half an hour each of us had let his guard down. He
admitted he had committed the robberies, and volunteered that he had
also done one in southern California. John’s story was engrossing, and I
began to consider an environmental defense. His focus was on “just get-
ting it over with.” His parole was sure to be revoked, and he would be put
back in San Quentin Prison on his original state court sentence of five to
life for drug-related robberies. “I’ll plead guilty if they’ll give me ten
years,” he said. I responded that I wanted to do some research on his case
because I had a psychiatric defense in mind. “Go ahead if you want, but
I’m not holding my breath,” he replied. “When will you see me again?” I
told him I’d see him in court in a few days and explain my ideas.

During the next two months I visited John as often as my schedule
permitted. I read the discovery materials I had received from the prosecu-
tion, talked to John’s drug rehabilitation counselor, spoke to his girlfriend
and father in southern California, consulted with a psychologist friend
who was an expert in drug abuse, obtained John’s artwork, and read his poetry. I began to understand John’s life as a poor white person (“white trash” to some people) who was shaped and misshaped by his environment. His poem about San Quentin reinforced my idea that his years in prison had substantially contributed to his abnormal mental state.

“Oh Quentin” The prison by the bay:
A relic of man’s past
A monument to man’s disgrace
Of man’s neglected task.
An old and dreary, filthy place,
Where men walk under guns.
Where pain and hate corrupt their minds,
and dampness rots their lungs.
“Oh Quentin” you’re a stinking place,
as foul as a sewage drain
and those of you who keep its gate,
Will never be clean of shame.

At our first meeting, John described how he felt during the robberies. He said that he had developed two personalities in prison. One was Abd-errahman, a man of peace. The other was Aleman (Spanish for “German”), who was the strong, tough barbarian that would protect him against the violence of prison. When he committed the bank robberies he felt himself shifting to Aleman, and he experienced the robberies as an outsider, as though he were watching someone else. He described it as an out-of-body experience, like he was watching a television show of a robbery. I felt he was telling me the truth and the psychologist agreed, diagnosing John as a schizotypal personality. I was ready to go to trial, but John just wanted to plead guilty. The U.S. attorney handling the case agreed to recommend a ten-year sentence to run concurrent with John’s state sentence. The judge, a recent Reagan appointee to the federal bench, had a reputation as an extremely conservative man who gave harsh sentences. In chambers the prosecutor laid out the terms of the deal, but the judge said, “Hell no!” The prosecutor asked me if my client would accept a fifteen-year sentence. I said, “Yes.” But the judge would not be moved. “I am going to make an example of him. He gets the maximum of twenty-five years.” I implored the judge to reconsider; the client would not plead
guilty if all he would be getting in return was the maximum sentence. He would have nothing to lose by going to trial. The judge was adamant, and in order to pressure John to plead guilty he set the trial to begin in just three days. As we left chambers the prosecutor was furious. He could not believe that he had to prepare a trial in only three days when the defendant had been ready to accept a fifteen-year sentence. Fortunately, I had already prepared for trial in case plea negotiation failed. But even with a headstart on the prosecutor, my weekend would consist of fourteen-hour days of hectic, intense, and challenging work.

We selected a jury on Monday and began trial the next morning. John had given me a portrait of him drawn by a fellow inmate. It was stunning. John looked like Jesus, with long hair and a large teardrop falling from his eye. There were seven cobras coming out of his head. The borders were filled with ancient symbols such as the Star of David and the yin-yang circle. There was an alphabet John had created. And on the bottom were the following words:

WANTED DEAD
For Bank Robbery and Treason
ABDERRAHMAN, Warrior Priest of the
Seventh Tribe of Man is Guilty of
LOVE, COMPASSION and BELIEF in
UNIVERSAL BROTHERHOOD. To Be
Considered Armed and Dangerous,
Armed and Dangerous, Armed and Dangerous.

I had the drawing blown up to poster size. When the U.S. attorney finished his opening, I immediately walked over to the jury box to grab their attention and break the momentum the prosecutor had achieved. I began my opening. “Sometimes in order to understand a crime you must understand the man charged with that crime. In this case that man is John Zimmerman, who is Aleman the Gladiator and Abderrahman, Warrior Priest in the Seventh Tribe of Man.”

The judge was staring at me coldly. I reminded myself of that old English barrister Rumpole’s advice, “Fearlessness is the number one essential of an advocate,” and I walked over to the easel and uncovered the poster. “This picture was designed by the defendant and drawn by a cellmate. Its
relevance will be explained to you later during the presentation of testimony. For now, let me briefly discuss the evidence which will show how a small, sensitive, asthmatic twelve-year-old named John Zimmerman became Abderrahman, priest and witch in the Seventh Tribe of Man.”

I moved away from the easel and stood a few feet from the jury box, leaving the dramatic poster behind me for the jurors to look at. After telling the story of John’s life, I highlighted the psychological testimony and its legal relevance. As I concluded, I attempted to create an atmosphere of serious reflection and to pique the curiosity of the jurors.

At the end of the trial we hope that we have given you an insight into prison life, an insight into the plague of drug abuse sweeping our country, and an insight into John Zimmerman. For if you understand this man [I now stood directly behind John so that the jurors would have to look at him], then I believe you will find that the government has not proved beyond a reasonable doubt that he could control his conduct at the time he robbed those banks, and therefore he will be entitled, under the law, to a verdict of not guilty.

The prosecutor’s case was clear-cut. He showed photos from the surveillance cameras and brought witnesses to establish that John robbed all six financial institutions. The government psychiatrist testified that John did not suffer from any psychotic condition and was able to control his actions at the time of the crimes.

The next day we began to present our evidence. As John saw that, unlike all the previous authority figures in his life, I recognized the positive parts of his personality, he opened up and embraced our trial strategy.

John Zimmerman could have been described as a pitiful, weak heroin addict who had been a petty criminal since the age of fifteen and had finally flipped out. Or he could be described as a frightened, talented, sensitive person who was unable to cope with the violence of his environment. I chose the latter.

John grew up in a rough, white working-class neighborhood in which gangs predominated. He was a small, skinny kid with asthma. His German father, a short, tough man, and his Sicilian mother provided for him but could not protect him from his environment. His father insisted that John, his only son, take karate lessons so that he would not be a “chicken.”
On the borders of his neighborhood was a Mexican gang, “Los Pachucos,” and a black gang, “Little Watts.” Some of his schoolmates were in a gang called the “Dogpatch.” At thirteen, for protection, he joined one of the “rat-packs” called the “Quakers.” He took part in gang wars, always terrified he would be badly hurt, but unable to find a way out of the gang. He smoked pot and at fifteen began to use heroin to tranquilize his fears. At seventeen he was put in a reformatory for petty thefts.

At nineteen he was released from the Preston School of Industry and began to use heroin regularly. Soon afterwards he was arrested for being a heroin addict and sent to an adult jail. The courts ruled that it was not a crime just to be a drug addict; they required that an arrest be made based on possession or sale of a drug. Therefore, John was released. He was out for eighteen months, during which time he developed a heavy drug habit, using a quarter of an ounce of pure heroin each day. He was arrested in Texas for smuggling one-half ounce of heroin and was sent to a federal prison for five years. There, the Aryan Brotherhood, a white supremacist prison gang, tried to recruit him, but he refused to join.

He was transferred to McNeil Island. On the way there, they stopped at the San Diego County Jail, where he had his first out-of-body experience. John was in pain and prayed for help. He heard a voice in his head that said he could stop the pain and have knowledge and happiness if he would serve “Him.”

Arriving at McNeil Island, he was put in a cell with a charismatic convict known as “Wizard.” John helped him organize the Seventh Tribe of Man, named after an ancient group of magicians that they believed had disappeared from the face of earth. They practiced communal LSD trips and then would have group therapy under the Wizard’s leadership. They smuggled methedrine (speed) and LSD (acid) into the prison. John used acid two to three times a week, often taking six times the normal dose. There were ten inmates in the cell. Someone stole some paint and they drew a zodiac on their cell floor and painted religious symbols on the bars. John read books, meditated, studied Eastern religions, painted, became a vegetarian, and vowed never to physically injure another person or animal, not even the big black bugs that crawled through his cell.

John was released in 1968. In his mid-twenties, with no skills for employment or social success, he began using heroin again. Within a few
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months he was hooked. He began to steal to support his habit of one hundred dollars a day. He was caught and charged with robbing two finance companies and a donut shop. He told his public defender that he felt strange doing the robberies, like he was “watching two movies at once,” one of the robbery and the other of him watching the crime being committed by someone else. The lawyer did not request that a psychological interview be done, and John pleaded guilty. He was given five years to life under California’s then-existing indeterminate sentencing law.

In prison, John’s nonviolent behavior and innate intelligence came to the attention of the authorities. He was sent to the California Rehabilitation Center (a prison), where he became a resident drug counselor. Because of his criticisms of the authorities and his testimony before a grand jury investigation into prison conditions the Warden excluded him from the program, and he was sent behind the walls of the forbidding and dangerous San Quentin Prison. At San Quentin he was again recruited by the Aryan Brotherhood. Because he was German, it was expected that he would join their prison gang. But John refused. He associated with different races, at one time having as his closest friend a black inmate. He communicated with prison revolutionary and author George Jackson about how drug use inside California’s prisons was being allowed in order to keep inmates away from the intense political organizing then taking place. John was in San Quentin when George Jackson was shot to death by a guard after inmates had taken over the Adjustment Center, a maximum security building within San Quentin where Jackson, Black Panther Johnny Spain, the Soledad Brothers, and other politically active prisoners were isolated and locked in their cells twenty-three hours a day. After Jackson was killed, tensions at the prison grew and John was unable to keep up his friendships with black inmates. He became a pariah, left alone by all sides and looked upon with suspicion by the prison officials.

At the trial, John testified about how guards manipulate the racism among prisoners in order to set one group against another and thereby keep control by the age-old practice of divide and conquer.

One day, fearing for his life, alone and in pain, he called out for “Aleman.” Aleman the Gladiator, Aleman the Barbarian, was a power that protected John. It (or he) had receded during John’s time at McNeil Island. But in the desperate isolation of San Quentin he called upon Aleman to
help him. On the stand, John described his meeting with his strange protector: “I asked for Aleman and all his ancestors of the past to help me bear the load. I signed a treaty with him to allow him to protect me from harm whenever he felt I was, or we were, in danger.”

After that vision John found that he was able to cope with San Quentin’s brutality. A friendly guard encouraged him in his poetry and would secretly mail John’s poems to his friends. John took as his identity the peaceful Abderrahman and had a symbol of the warrior-priest tattooed over his heart. But Aleman was always hovering nearby, ready to defend John against insults, beatings, or rape.

Upon release from San Quentin on parole, John went to a drug rehabilitation center. He went regularly for a few months before the center was closed due to lack of federal funds. The man who ran the center also testified and corroborated John’s progress in rehabilitation. The director told the jury how the center was forced to close its doors, and how John and the others suddenly were left with no place to go and no one they trusted.

John had fallen in love with a young woman who was living in poverty with her seven siblings. He tried to take care of her, but he had no experience other than reformatory, jail, and prison. John and his girlfriend got a van and drove up the coast to the San Francisco Bay Area. Haunted by LSD flashbacks and cast adrift by the closing of the drug rehabilitation center, he started robbing banks, using the money to take care of his girlfriend and buy heroin. He testified that before and during the robberies “Aleman the Barbarian,” who had protected him in prison, took control of his being, and that he felt he was watching his body go into the banks, talk to the tellers, and walk out with the money.

After a series of bank robberies, John and his girlfriend drove along the picturesque Pacific Coast Highway. He parked the van and they went to sleep. It was late at night when suddenly John heard pounding on the side of the van. He opened the door and through the bright headlights lighting up his van, he saw eight men in uniforms pointing shotguns at him. Someone shouted, “Police, come out with your hands up!” John said to his terrified girlfriend, “God, it’s finally over.”

I had finished direct examination of John. As I took my seat I felt he had been able to tell his story and to communicate his character. The
prosecutor rose to begin cross-examination. He was in a somewhat difficult position. He had no evidence to contradict John's description of his life in prison, nor could he rebut the facts about the drug center closing. All he could do was hammer away at John's claim that "Aleman took control of his body and did the robberies." The prosecutor went through each of the six robberies, one by one, focusing on John's rational acts, such as writing a demand note or asking the teller for money. He considered the insanity claim ludicrous and treated John with sarcasm and disdain. The highlight of the cross-examination took place when the U.S. attorney attacked John head-on.

Q. "Mr. Zimmerman, why don't you change into Aleman right now and fly out of the courtroom to freedom?"
A. "I would if I could. But I'm not that crazy."

Most of the jurors laughed at the response. They were laughing with John and at that instant I knew they saw him as a man, not as a lying, dangerous convict.

The psychologist we presented was named James Daley. He was in his early thirties and had never testified in court. He was an expert in drug abuse, having had extensive clinical experience with heroin addicts and LSD users. Daley was excellent on the stand. He described, in terms a layman could understand, how LSD affects the brain. He explained how long-term use and large doses of LSD can cause flashbacks and bouts of extreme anxiety for years afterwards. The most telling points he made were that heroin acts as a "super-tranquilizer" and that John had used it to relieve the terrible anxiety and fear he felt. His diagnosis was that John was a schizotypal personality, and that as a result of that mental disease he lacked the substantial capacity to conform his conduct to law at the times of the bank robberies.

A lawyer should always humanize a client. One way I could do this was to enter some of John's paintings and poems into evidence. The legal basis of this tactic was that the psychologist had examined them and relied on them, as well as the life history and psychiatric reports, in forming his opinion as to insanity. Although this was a correct legal position, many judges would not have allowed them into evidence because of their desire to help the prosecutor obtain a conviction. However, this judge, even
though he was prosecution, allowed me to show the jurors three paintings and to recite two poems. He did this because he felt our defense was ridiculous, and that the jury was sure to convict regardless of any evidence I produced or arguments I made.

The paintings were quite good. The psychologist testified that based on his experience with LSD users, he believed John had done the paintings while on LSD. This was important because we had proved that the paintings had been done in prison, which gave credence to John’s testimony that he had access to LSD while inside prison.

I read two poems to the jury. One was entitled “The A-Bomb Generation,” which expressed his love of people and his deep-seated fear of death and the severe anxieties from which he suffered. The other poem was about drug addiction, in which he described the psychology of the addict. This poem was particularly important to our strategy because John did not describe himself as a victim or a helpless person with an “illness.” Rather, he took full responsibility for his addiction, and the poem conveyed his contempt and self-loathing when he used drugs.

It is useful in a trial to inject some drama. Unlike trials on television, most cases have long periods of boredom. The rules of evidence often result in an antiseptic presentation of testimony. Lawyers are not allowed to turn to the jury and explain why a piece of evidence that has just been admitted is important. Witnesses do not necessarily testify in logical order, and the one or two statements they make that are crucial to the overall theory of the case can go unnoticed. Around three o’clock in the afternoon, in a warm courtroom, a lawyer will look at the jury and one person will have his eyes closed while others will be watching the sparse audience, looking at their wristwatches, or counting the lights on the ceiling. To break the monotony, lawyers sometimes become inappropriately theatrical. Overemotional, exaggerated actions by a lawyer do not ring true with a jury. In John Zimmerman’s case, the display of the paintings and recitation of the poems allowed me to grasp their attention without theatrics. The paintings and poems made the trial more interesting and genuinely dramatic. This was different from the evidence they had seen in other criminal trials. It individualized the case. It helped them to see John as a unique person, not just one of a thousand ex-cons having trouble adjusting to society.
The night before the closing arguments I began my usual routine. I helped put my kids to bed, put on the taped music, sat at the dining room table, and finished constructing my argument. I listened to Bob Dylan's song “Chimes of Freedom.” It expressed perfectly the emotional essence of the defense:

Tolling for the aching whose wounds can not be nursed.
For the countless confused, accused, misused, strung out ones and worse.
And for every hung up person in the whole wide universe.
And we gazed upon the Chimes of Freedom flashing.

I wished I could intersperse music with my rational arguments. Art expresses truth better than logical discourse.

I began to draw the landscape of John's life. His teenage years had been difficult but not abnormally harsh. His parents had loved and provided for him. The gang fights terrified John, but the neighborhood had not yet degenerated into the urban war zones of the nineties. When he entered the penal system he was a nonviolent drug addict. After spending half his life in prison he had become a crazed bank robber. I wanted the jury to make a moral choice. Was society's disregard of John Zimmerman so substantial that it had lost the right to further criminalize and punish him? Although I would not use those words in my closing argument, it was the subtext of the defense.

As usual, I finished writing about midnight. I stood up and practiced delivering the closing out loud. It was one hour long. I practiced it twice, so I would not have to look at my writing tablet more than a few times when I was speaking to the jury. I was satisfied with my presentation. I was filled with a deep contentment. As I laid down to sleep, I felt I had touched another man's soul and looked forward to passing on that understanding to twelve people who had never known the terrible pain of years in prison.

The next morning's closing argument was an emotional experience for both John and me. I hoped the logic and reason of my argument had been as effective as the emotion. A juror may bond emotionally with your presentation, but without reasonable arguments she will not be able to persuade other jurors.

After two days of deliberation the bailiff informed us the jury had
reached its verdict. We were called back into the large, imposing federal courtroom. We all sat in nerve-racking silence: John, myself, John’s father and girlfriend, the prosecutor, and the FBI case-agent. The jury walked in and took their seats. They avoided my eyes, but that meant nothing. Jurors rarely give away their verdict. The bailiff took the verdict from the foreperson and handed it to the judge. The judge read it silently to himself. Was that a grimace I saw fleetingly cross his face? The judge handed the verdict form back to the bailiff and directed the defendant to stand. I stood up next to John. The bailiff began reading the verdict—not guilty on all six counts. John broke into a wide smile. A few of the jurors smiled at us. The judge turned to the jury, attempting to control the anger in his voice. “I have been a state court and federal court judge for over ten years. I believe in the jury system, but in this case you have been sold a bill of goods!” He abruptly stood up and strode from the courtroom. There was total silence. Then an older juror began to cry as she put her hand up to her forehead and said, “I knew I shouldn’t have voted not guilty.” But it was too late to change her vote. Because of the judge’s rigidity and vindictive philosophy, John had avoided a guilty plea and a fifteen-year sentence. His life story had been told and the acquittal was a measure of compassion and respect for his humanity. Standing next to me, in the county jail orange jumpsuit, he was a man, not a convict.

The U.S. attorney in southern California indicted John Zimmerman for the one bank robbery he committed in his jurisdiction. A public defender in Los Angeles named Tom Pollack consulted with John and me. He used a similar environmental insanity defense and did an outstanding job. Once again John was acquitted.

A few months later I received a letter from John. He was back in prison. His state parole had been revoked, as we had expected. The letter reinforced some of the reasons I continue to represent people who commit crimes.

There is Life, there is Love, there is Beauty, there is Peace! You are a Beautiful, Bad and deserving Warrior.... I love you, My Brother, I will always remember you! There is no darkness where there is a little light.

We need not recoil from a white rage defense. As the gap between rich and poor continues to grow wider, and as prisons are embraced as the
political solution to crime, more and more white people are going to find themselves casualties of a dysfunctional social system. An environmental defense focuses attention on the harsh economic inequality of capitalism. It will allow judges and juries to factor society's responsibility into the equation of the individual and the crime.