

## Editorial Note: The Continuances Project

In the following pages, the *Review* publishes a detailed study of the role of continuances in the administration of the Cook County Criminal Courts. It would be unfortunate if the narrow confines of the "continuance" label or the complicated appearance of a large group of tables were to obscure some of the broader implications of the data. In the hope that our readers will be moved to study further the data presented in the Continuances Project, we would like to suggest some of these broader implications.

The data clearly reveal that defendants of different racial and economic groups are processed by the Cook County Criminal Courts in very different ways. Defendants who are white or who are represented by retained counsel obtain release on bail more often than other defendants, change not guilty pleas to guilty pleas less often, obtain more continuances, and are found guilty less often. If race and economic status are considered together, we find that white defendants with retained counsel obtain release on bail, continuances, and acquittals at considerably higher rates than other groups of defendants.

These disparities in the treatment of different groups of defendants raise serious doubts that the present system affords various racial and economic groups comparable levels of justice. Although non-whites are charged with serious offenses more often than whites, they are found guilty more often regardless of the type of offense. Non-whites, however, seem to be treated more leniently at the sentencing level; though accused of more serious crimes, guilty non-whites are incarcerated for similar periods of time and given probation with similar frequency as white defendants. One could argue that the higher guilty rate among non-whites is "balanced" by favorable treatment in plea bargaining and sentencing. Such a judgment is crude at best, for there is not adequate data breaking down plea bargaining and sentencing by offense charged. But despite the crude nature of the data such a rationalization of the system seems patently unjust. It overlooks the fact that the non-guilty disposition rate for whites is three times higher than for non-whites. The proportion of whites acquitted is so large (28%) that it nearly equals the combined proportion of non-white acquitted and convicted on reduced charges.

Similar indications of injustice appear when one examines the data

on representation of indigents. The non-guilty disposition rate for defendants with retained counsel is more than twice as large as the rate for defendants with public defenders. Plea reductions occur less often among public defender cases than among retained cases. Finally, while clients of the public defender are accused of somewhat more serious offenses, the sentences imposed on public defender clients seem more harsh than the differences in crime type would warrant. Unfortunately, data on sentencing by crime was not tabulated, so no definitive judgments can be made about the level of justice obtained by various types of lawyers. But the possibilities of unfairness are, to say the least, disturbing.

Suspicion of unwarranted differences in treatment is reinforced when both race and economic status are considered. Non-guilty disposition rates for defendant classes are as follows: white defendant-retained counsel—42%; non-white defendant-retained counsel—12%; white defendant-public defender—17%; non-white defendant-public defender—8%. While only future research will reveal whether these figures truly “speak for themselves,” it seems clear that they whisper loudly.

Even if the level of justice granted to the poor non-white were comparable to that given the non-poor white, should such vast differences in processing defendants through the system of criminal justice be tolerated? Simply as a matter of public relations, there must be concern not only with the delaying tactics of some retained counsel, but also with the speedy and perhaps unjust way in which the poor non-white is shuffled through the courts. Though the processing differences may be explainable to some observers, the impression left to the average non-white defendant, and perhaps the whole non-white community, must certainly be unfavorable. In fact, the recently issued Report of the National Advisory Commission on Civil Disorders found that unequal treatment has caused the courts to become a focus of ghetto distrust.

The nature of the needed reforms presents the problem. At a minimum, additional resources must be provided for the defense of the poor. The Chicago Public Defender's Office has only twenty-seven attorneys; they simply cannot adequately handle the caseload. But a simple recommendation of increased spending overlooks more basic questions. Are there feasible alternatives to the present system of dual representation, such as adequately paying private counsel from public funds to represent the poor? Do plea bargaining practices allow equally forceful assertion of the rights of members of minority groups and of the poor? Should the burdens of the adversary process be eased by providing the poor investigative and other services? These and other fundamental issues should be the subject of serious consideration.

When the *Review* undertook to study continuances in the Cook County Criminal Courts, the focus of our attention was not centered on problems of discrimination in the treatment of different racial and economic groups. Nevertheless, the indications of discrimination that the findings suggest are so clear that, at the very least, there should be prompt investigation and movement toward reform.