The Anatomy of Criminal Justice

JOHN W. POULOS

THE ANATOMY OF CRIMINAL JUSTICE

By

JOHN W. POULOS
Professor of Law
University of California, Davis

Mineola, New York
THE FOUNDATION PRESS, INC.
1976

Library of Congress Catalog Card Number: 76–11244

To

Joan

*

PREFACE

The principal purpose of this book is to illustrate the dynamics of criminal justice by following a homicide case from the moment the police are called through the rearrest of the parolee five years later. The case is real; neither fictitious persons nor fictitious events are portrayed. To preserve the privacy of the participants, all names, places, and dates have been changed, and the case has been set in a pseudo jurisdiction: the City of Northtown in the County of North, State of California.

The book has two secondary purposes: to give the reader visual familiarity with documents typically encountered in criminal cases, and insofar as it is possible, to place the reader in the same position as the various decision makers dispersed throughout the system. To accomplish these two goals, every document of significant legal importance has been reproduced. Although many documents have been gathered from the public files of the people and agencies involved in this book (*e. g.*, the trial transcripts and the briefs on appeal), the bulk of the documents are from the private or confidential files of the participants (*e. g.*, the entire investigation file of the police department, the notes of the lawyers and the defendant, the notes of the appellate court judge taken during the oral argument, the bench memoranda from both the Court of Appeal and the California Supreme Court, and the files of both the California Department of Corrections and the California Adult Authority).

Although it is relatively easy to give the reader the desired visual impact, it is virtually impossible to place the reader in *exactly* the same position as the real decision maker in the case. This is largely because of two factors: it is impossible to duplicate the factual environment in which the decision was actually made, and it is equally impossible to re-create the exact criteria used by the decision maker to make the particular decision.

As far as the factual environment is concerned, the reader will know many facts about the case which were not available to the decision maker, and conversely, the decision maker will have had information which could not be reproduced in this book. For example, the reader will know much more about the crime than did the jury, but the jury will have taken into account such things as the demeanor of the witnesses and the courtroom environment. As far as the criteria of judgment are concerned, the decision maker is frequently a professional who makes the decisions encountered in this book on a daily basis. The criteria these decision makers actually apply may be substantially different from the criteria they describe. Nevertheless, it should be fruitful for the reader to ask, "What would I have

done and why?" every time a major decision is made, for it is only by pondering those questions that the system of criminal justice portrayed by this book will come alive for the reader.

Lastly, the reader should recognize that this book obviously does not deal with every conceivable aspect of the system of criminal justice in the United States. This case was selected for study because it presents the paradigm: a homicide case involving a jury trial, an appeal which ultimately changed the course of the common law, and a sentence of imprisonment. Since the great majority of the criminal cases are disposed of by a plea of guilty, this book is not representative of all cases handled by the system. Nor does this book illustrate all of the possible procedural and substantive rules that may be applicable in homicide cases. Despite the shortcomings inherent in the study of a single case, the book attempts to give the reader the anatomy of criminal justice in the United States.[1]

1. The author's footnotes are numbered. Original footnotes have been given alphabetic designations.

JOHN W. POULOS

Davis, California
June, 1976

AUTHOR'S NOTE

First as a law student, later as a young practitioner and finally as a law teacher, I perceived the need for a book which would illustrate how a single person might move through the entire criminal justice "system." The value of such a book seemed obvious enough. Too often, laymen, students, and professionals are concerned with only a narrow segment of the system, ignorant of what has happened at earlier points and oblivious to the events that will later occur. A book tracing a single person throughout the system would provide a measure of perspective, and hopefully, the stimulus for further study.

As originally conceived, this book was to be a documentary history of a single case. After several years of passive searching, I stumbled onto the Marshall case. It seemed to be an acceptable vehicle for the project. It was short enough to be manageable and yet provided enough material to illustrate the system. I originally intended to reproduce every document in the case, but once I had collected them all, I found that I had a four-drawer legal-sized file cabinet overflowing with paper concerned only with Howard Marshall and his crime. Disillusioned, I quickly decided to select only the documents which would illustrate the mainstream of the system. I have eliminated repetition and most of the documentation relating to the internal bureaucracy. Thus, with few exceptions, I have not reproduced such things as the cell assignments, court assignments, and warden's check out orders.

All of the included documents are reproduced as exactly as possible; only the dates, names and places have been changed. They have been reproduced on specially printed forms which are identical to the actual forms except for identifying marks.

When I finished the documentary history early in 1974, I was not satisfied. From my years of experience as a trial lawyer, I realized that the book created a false impression, for documents tell a highly selective story. To the consternation of my publisher, I decided to rewrite the book; this time I would try to re-create what actually happened by interviewing the participants and observing the system in action. I spent the remainder of my available time in 1974 interviewing and observing the system. With few exceptions, I spoke with every major participant in the case. I also observed such things as arrests, jail cells (as a visitor), prisons, Adult Authority hearings, screening committee meetings (at several institutions) until I had personally observed each segment of the system. Only then did I attempt to re-create what went on in the Marshall case. The reader will note that I have freely re-created conversations—and sometimes emotions. Although I cannot claim that these very words were used,

with few exceptions, I was able to identify that the conversation did take place and that the subject matter set forth in the book was discussed. The emotions that I have sought to portray are either those which have been described to me by the particular participant or are frequently reported as being experienced by others in similar circumstances.

Whenever possible, I have had a person familiar with the case read the relevant portions of this manuscript for accuracy.

Although I have consciously tried to refrain from interjecting my own views on criminal justice into this book, they no doubt appear from time to time.

ACKNOWLEDGMENTS

I am indebted to many people, who, in one way or another, made this book possible. Unfortunately, most of them must go unnamed, for if I were to disclose their identities, I would "blow my cover." Thus, I cannot publicly thank the police department, the county sheriff, the county district attorney, the county public defender, the county probation department, the deputy attorneys general of California, who handled the appeal for the state, Howard Marshall's lawyers, the judges and staff of the municipal court, the superior court, the court of appeal, and the numerous employees of both the California Department of Corrections and the California Adult Authority without whose cooperation and assistance this book would not have been possible. All of these people gave me unrestricted access to their public and private files, and in many instances, took hours of their time helping me to re-create what went on in this case.

Even though I must use his pseudonym, I would like to express my thanks to Howard Warren Marshall, who made this book possible by giving me permission to make the study.

The following people, though having nothing to do with the Marshall case specifically, gave me indispensable assistance by granting me permission to reprint documents and interview members of their staff: Ray Brown, Chairman, the California Adult Authority; Dr. Thomas L. Clanon, Superintendent, the California Medical Facility, Vacaville, California; Clarence M. Kelley, Director, the Federal Bureau of Investigation; Raymond Procunier, Director of Corrections, the State of California; Donald R. Wright, Chief Justice of California; Evelle J. Younger, Attorney General of California.

Nelson Kempsky, Deputy Director, made sure that I was given access to all of the needed information from the California Department of Corrections and he read Chapters Eleven, Thirteen and Fourteen for accuracy.

James W. L. Park provided me with valuable insights into the prison classification process.

Ann Kosh and Myra Rae Stanich helped me understand the record keeping system of the Department of Corrections.

A special note of thanks must go to Mary Van Schaik, Coordinator of Policy Documentation, California Department of Corrections. Ms. Van Schaik is a person of infinite patience, always willing to lend a helping hand. She became my principal resource person in the department; she was somehow always able to lead me to the right person or provide me with a copy of a needed document.

It is no exaggeration to say that Chapters Eleven, Thirteen, and Fourteen would not have been written in their current form without her assistance.

James Cates, a unit supervisor of one of the department's parole units, gave me indispensable insights into the parole process and read Chapter Fourteen for accuracy.

Mike McEwen, Chief of Police, University of California, Davis, gave me valuable technical assistance concerning several police procedures and a member of his staff read Chapter Fourteen for accuracy.

My colleagues, Edward L. Barrett, Jr., John Oakley and Wayne Thomas provided me with helpful suggestions on various parts of the manuscript.

Shellee Husman, Jere Hunter, Linda Cannell and Catherine C. Savaiano have all provided masterful secretarial assistance in the preparation of this book.

During the summer of 1972, Russelyn Carruth helped me gather a number of the files in this case, and Nelson Roth, my research assistant during the 1973–74 academic year, conducted a number of the interviews with various participants in the Marshall case. He also bore a large part of the responsibility for editing many of the documents reprinted in this book.

Betty Rudd not only expertly performed the bulk of the secretarial assistance for the manuscript, but she read and helped me edit the entire book. I owe her a debt of lasting gratitude.

Lastly, my lawyer wife, Joan Graham Poulos, to whom this book is dedicated, helped me immeasurably throughout the duration of this project.

TABLE OF CONTENTS

Chapter One

A CRIME IS COMMITTED

"Give me just nine more minutes without that damned telephone ringing. Come on baby, just nine more minutes . . ." But as Richard Herman's luck would have it, the telephone rang. With a look of utter disgust, he picked it up, "Northtown Police Department, Officer Herman speaking." The call was from Northtown General Hospital reporting that a man had just checked in with what appeared to be a gunshot wound.[1] "Okay, we'll send a unit as soon as one's available. Don't release him until after we've checked him out." He hung up, filled out a radio call card, slipped it into the time clock imprinting the time on the card, and sent the card to the radio dispatchers. The clock timed the call at 7:52 on the morning of March 2, 1970.

Moments later the telephone again rang. This time an excited citizen was calling from another part of town reporting what at first appeared to be an automobile accident. Suddenly, the nature of the call changed as the voice indicated that a man was dead—he had been shot. As Officer Herman questioned the caller, he filled out the usual radio call card, time stamped it—7:55 A.M.—and sent the card to the radio dispatchers.[2] As he continued to talk with the caller, the officer assigned to the next shift entered the radio room. Officer Herman asked the caller to hold on, handed the telephone to Officer Hector Johnson, giving him the details of the call, and as Officer Johnson began talking on the telephone, Herman left the room, his day's work done.

At 7:56 Officer Knowles, a rookie assigned to the traffic detail, was dispatched to the scene of the possible shooting—222 Ferndale Avenue in Northtown. As Officer Knowles proceeded Code 2[3] to the scene, additional information was relayed from Officer Johnson—still on the telephone—to the radio dispatcher and in turn by radio to Knowles. He was informed that a male with dark brown hair was

1. Every hospital in California must immediately report, both by telephone and in writing, to designated law enforcement authorities the arrival of any person "suffering from any wound or other injury inflicted by his own act or by the act of another by means of a knife, gun, pistol or other deadly weapon, or in cases where injuries have been inflicted upon any person in violation of any penal law of this state." West's Ann.Calif.Pen. Code § 11160.

2. The radio call card is reproduced at p. 256, *infra*. The card contains information relating to both the call for service and the police response.

3. Code 2 means without unnecessary delay. Neither the red light nor the siren are authorized. Code 3 means an emergency; the red light and siren are authorized, and the officer should respond as quickly as safely possible. Code 1 indicates that the officer should take care of the matter sometime before the close of the day's work.

seen fleeing the scene in a 1963 Chevrolet, blue with a black top. Meanwhile, no patrol unit had been assigned to investigate the reported gunshot wound at Northtown General Hospital, for a car was not available in the vicinity at that time.

Arriving at the scene at 8:01 A.M., Officer Knowles found the body of a white male adult lying in the street, his head covered with a white towel. The body was surrounded by four onlookers. He asked them to step back to the opposite side of the road. They complied. Approaching the body, he checked for breathing. None was apparent. Looking under the towel, it was obvious that the subject had suffered a gunshot wound to the head; there was nothing Officer Knowles could do to assist him. Turning to the four bystanders, Knowles asked them if they saw it happen.

"No."

"Are you the people that furnished the description of the '63 Chevy leaving the scene?"

"Yes."

"Do you all live around here?"

"Yes, at 222 Ferndale."

"Please stay where you are. It's important that you don't move around in the area, as you may accidentally destroy evidence."

When they nodded their assent, Officer Knowles returned to the patrol car, picked up the microphone, and pressed the broadcast button. Striving to control his shaky voice, he reported: "9L43, I have a possible 187 p.c. at 222 Ferndale.[4] I need an ambulance,[5] a backup unit—the assailant may still be in the area—the Bureau of Identification,[6] the homicide detail,[7] and well . . . you'd better notify the Coroner's Office too." [8]

4. The code "9L43" indicates that the call is from patrol officer number 43 of the Northtown Police Department. Each police agency in North County has a number; the Northtown Police Department is police agency number 9. The *L* stands for Lincoln, which indicates that it is a patrol officer. Each officer also has a radio call number. Officer Knowles is patrol officer 43.

5. The manual of procedures of the Northtown Police Department requires the responding officer to immediately call for an ambulance if there is a serious human casualty involved.

6. The Northtown Police Department's Bureau of Identification is composed of civilian employees who are trained in investigative photography and the collection, preservation and analysis of physical evidence.

7. The homicide detail is a specialized unit within the detective division of the Northtown Police Department. Whenever there is a death or a serious human casualty under circumstances indicating that a crime has been committed, the procedural manual requires the responding patrol officer to request the homicide detail. The detectives from the homicide detail will take over the investigation of all homicides and cases of serious assaults.

8. The North County Coroner determines the cause of death of all persons believed to be killed by violence or criminal means. Since Officer Knowles believed that the victim was dead, he asked the radio dispatcher to send for the North County Coroner, also.

The radio dispatcher's voice cracked back, "10-4."

According to the procedures Knowles had so recently learned at the police academy, his immediate responsibility was to protect the scene, and protect it he did. When the ambulance arrived, Officer Knowles faced the vehicle and with a stern face, placed both of his hands on his hips. The gesture alone was sufficient to establish his authority; both the driver and the attendant jumped from the ambulance, but stopped short directly in front of the officer. The driver asked, "Can I go over and check him? If he's still alive . . . maybe there's a chance?"

Knowles looked at his watch. It was 8:08 A.M. "Okay. But just one of you. Be careful not to step into those tire tracks," gesturing toward what appeared to be black marks on the road. "I think he's dead. If you can check him without moving him, please do so."

The driver nodded, walked over to the body, kneeled down, placed the three middle fingers of his right hand under the victim's jaw and felt for a pulse. Feeling none, he gently picked up his right arm and tried at the wrist. Again there was no pulse. Carefully lifting the towel covering the head, he looked at the wound; it was not bleeding although the head was encircled in a pool of blood. "There's nothing we can do for this guy. He's dead."

"He's dead." The words echoed through the little gathering on Ferndale Avenue that chilly March morning. Without saying a word, the four edged closer to Officer Knowles; they looked at him expectantly.

"I thought he was dead when I first examined him, so I radioed for the detectives from the homicide detail. They'll take over the investigation as soon as they get here. They'll want to take your statements . . . It's cold out here. I think it'll be all right if you want to go back into your house, but don't leave the area until the detectives give you permission. If you decide to wait in the house, please circle this immediate area. I don't want anyone disturbing a thing."

In a group, the two men and the two women returned to their house. The officer watched their retreat ready to give them directions should they impinge upon the prohibited area. When they had disappeared into the house, Knowles turned and checked the ambulance men; they were sitting compliably in the ambulance, waiting.

Now Officer Knowles waited and worried: "What do I do after the detectives arrive? I was the first officer on the scene . . . is it my responsibility to prepare the reports? What reports are required in a homicide case? Damn! If I had had some warning, I could have prepared . . ." He shivered and thought about waiting in the patrol car, but somehow that idea seemed almost obscene. No, he would wait where he stood; he would busy himself trying to recall what he had so recently learned at the police academy.

"Let's see . . ." He could almost hear the voice of his instructor . . . "an offense report will be prepared for all non-traffic cases when the officer believes that a crime has been committed. This report opens the police file on the incident and acts as the face sheet in the file. All subsequent reports are made on the supplementary investigation report form and are appended to the back of the offense report. If a human casualty is involved, a casualty report will also be completed.[9] Using a homicide case as an example, if a patrol officer responds to a call for service involving the death of a human being, the patrol officer will complete an offense report and a casualty report. Except for reports covering arrests and the impounding of vehicles and a few other specialized situations, all other reports will be completed on the supplementary investigation report form."

"Hmmmm . . . that wasn't so bad Ralph, boy." His concentration was broken by the sound of an approaching vehicle. Looking over his left shoulder, Officer Knowles saw the flashing red lights of the backup unit. It was now 8:12 A.M.

Officer Walter Laufer knew the subject was dead by the time he pulled up and parked alongside the other police unit. That much he had gleaned from the radio traffic, the sight of the men sitting in the ambulance and the lone figure of the patrolman standing vigil in the street. As he was calling in his arrival, he caught sight of the body at the side of the road, and shifting his gaze to the patrolman approaching his car, he recognized him; it was one of the rookies, Ralph Knowles.

"Morning, Ralph. Dead, huh?"

"Yeah."

When Officer Laufer started for the body, Knowles said, "Be careful of . . ."

Laufer stopped in his tracks, turned and looked at Knowles over the rim of his glasses. Knowles shrugged, but did not speak. Smiling to himself, Laufer carefully picked his way over to the body, leaned down and picked up the edge of the towel. "Jesus," he exclaimed, "somebody really wasted this guy. Looks like an execution." Replacing the towel, Officer Laufer rejoined Knowles, who was leaning against the front of his police car.

"This your first 187?"

Knowles nodded slightly and added, "Yes, it is."

9. Casualty reports involve the sick, injured or dead. If a crime is not believed to have been committed, the casualty report becomes the file's face sheet in that particular incident, to which supplementary investigation reports are appended. As a precaution against labeling an event non-criminal when, in fact, a crime is involved, a copy of the casualty report is routinely routed to the homicide detail for their perusal. When both casualty and offense reports are made, the offense report becomes the face sheet of the file. The file number is taken from the face sheet and carried forward on each subsequent report. This report, like the offense report, is usually made by the patrol officer assigned to the case.

"You ever do reports in a serious felony case before?"

"No."

"Look . . . I don't mean to butt in, but if you'd like me to do them I will. You can give me a hand with the measurements. That way you'll get the experience without worrying about it. I've done a lot of them."

"Yeah. I really would appreciate that."

Tapping Knowles on the shoulder with the back of his right hand, he smiled and said, "No sweat. You'll owe me a beer."

At that point, two more police vehicles arrived at the scene. The first car carried Detective Sergeants Janson and Iverson of the Homicide Detail of the Detective Division, Northtown Police Department. The second was driven by Richard Thomas, a civilian technician employed by the Northtown Police Department's Bureau of Identification. Within seconds of Thomas's arrival, two deputies from the North County Coroner's Office drove up and parked in back of the ambulance. Their arrival raised the total number of official vehicles at 222 Ferndale to six: two patrol units, two unmarked police cars, one ambulance and a vehicle from the North County Coroner's Office. These six vehicles symbolized the division of labor which would take place at the scene:

Richard Thomas, from the Bureau of Identification, was responsible for taking photographs before anything was moved. He would also be in charge of preserving all other physical evidence at the scene.

Officer Knowles was responsible for preparing an offense report and a casualty report before the body was moved. These reports should fully and accurately describe all of the important details of the incident from the moment the patrolman arrived at the scene.

The body was the responsibility of the coroner's deputies, for it is the coroner's job to determine the cause of death in each case where there is a reasonable suspicion that death was caused by the criminal act of another.

The ambulance would take the body from the scene to the coroner's office where an autopsy would be performed by a coroner's autopsy surgeon.

Lastly, the detectives would assume command of the investigation, for the ultimate responsibility of solving the crime and apprehending the culprit was theirs.

The two detectives, Sergeants Barry Iverson and Frank Janson, immediately called a conference. Huddled together in front of Officer Knowles' patrol unit, the men exchanged information. The conference took less than three minutes. When it was over, Thomas began photographing the body,[10] and Laufer and Knowles started tak-

10. Eight of the photographs taken by Thomas at the scene are reproduced at pp. 467 through 470, *infra*.

ing the necessary measurements for the offense report. When Thomas was through with the body, the coroner's deputies began their field examination.[11] And while these men worked on the physical evidence, the two detectives sought out the witnesses at 222 Ferndale and began taking their statements.

P.D. FORM 15a

POLICE DEPARTMENT, CITY OF NORTHTOWN

OFFENSE REPORT

INDEXED

INDEX PULLED

187 PC (TYPE OF CRIME) — 70-6733 (REPORT SERIAL NUMBER)

Name of victim: RIDEAU, Micnael Earl
Residence address: 197 Cottage
Phone Res.: Unk Phone Bus.: Unk

Date Committed: Mar 2 70
Time Committed: Prior to 0750 Day of Week: Mon

Person attacked: MWA Age: 22
Property attacked: Shoulder of road, suburban or rural res dist
How attacked: Shot in head

Means of attack—weapons, tools or receptacle used: Hands/feet/unk type gun

Object of attack: Homicide

Trade mark or peculiarity:

What did suspect say?:

Vehicle used:

Firm name:
Where committed: Unk.
Reported by: HALL, Frank
Address & Phone: 222 Ferndale Ave
Time reported: 0750 Date: Mar 2 70
Reported to: Laufer 174 U29
Transcribed by: Keene 1200 Mar 2 70
Suspect:
Sex: Descent: Age:
Height: Weight: Build:
Hair color: Eye color:
Complexion: Occupation:
Marks/scars:
Disguise or dress:

Suspect:
Sex: Descent: Age:
Height: Weight: Build:
Hair color: Eye color:
Complexion: Occupation:
Marks/scars:
Disguise or dress:

Warrant charging: Issued, Date:
Connect-ups. Report Nos.: 70-6871

PERSONS ARRESTED	DATE	DEPARTMENT NUMBER
GARRETT, DENNIS (ARR)	3/23/70	Janson #51 Det.
MARSHALL, HOWARD (ARR)	"	"

DESCRIPTION OF PROPERTY

DETAILS OF CRIME — INCLUDING NUMBERS AND ENGRAVING — FACSIMILE OF CHECK

At 0750 hrs Mar 2 70 U50, Officer Ralph KNOWLES, received a call to 222 Ferndale regarding a shooting and ambulance follow-up. Upon arriving officer checked the victim and could find no signs of life. At 0804 hrs Mar 2 70 U29 received a call to cover U50 at 222 Ferndale on a Homicide. Upon arrival officer observed a MWA lying on the S shoulder of the road. The victim was lifeless, having been shot in the head. Victim was lying with his head facing E, 22" from the pavement and 30' E of the mailbox at 222 Ferndale. At this point the pavement of the road is 12'3" wide and dead-ends into a field on the W side of the residence at 222 Ferndale. Two black tire marks were observed on the road, starting approx 1' W of victim's foot, and extending E for over 30' and fading out, indicating the vehicle left E-bound on Ferndale from this location, spinning the tires. The victim's right foot was lying partially across one of the tire marks. Tire tracks heading S just E of where the victim was lying were observed on the S shoulder of the road, in the dirt, where a vehicle had apparently turned around. From physical evidence observed, it appears that a vehicle traveled W on Ferndale with the victim inside. Just prior to reaching the 222 Ferndale address the victim turned onto the S shoulder of the road and turned around. The vehicle was then

B. of I. Notified: Yes XXXX No ____ Value of Property ____

Approved ____ Rank ____ Time ____ Date ____

11. Their field examination is described in the coroner's record reproduced at pp. 104 and 105, *infra*.