

SAN QUENTIN

# MAKE-UP OF JURY BRINGS DISMISSAL

## Grand Panel Had Too Few Members of Minorities, Judge on Coast Rules

By EARL CALDWELL

Special to The New York Times

SAN RAFAEL, Calif., Jan. 18

Murder indictments against six convicts accused of killing three prison guards were dismissed here today by a judge who ruled that the indictments were invalid because they had come from a grand jury that had too few members of racial minorities, blue-collar workers and the young.

Superior Court Judge Vernon Stoll, who is retired, said that the Marin County grand jury that indicted the six "did not assure a fair representation of the group to which the defendants belonged."

More specifically, Judge Stoll said that the county's pool of prospective grand jurors excluded blacks, Latin Americans, the blue collar working class and the young.

"I'm astounded," Bruce Bales, the Marin County district attorney, said. "I believe he's wrong on the facts and the law."

The indictments had charged the six convicts with killing three guards and three other persons at San Quentin prison on Aug. 21, 1971 during an alleged escape attempt by George Jackson.

### Killed in Incident

Mr. Jackson, a black who was author of the best seller "Soledad Brother," was killed during the incident, which attracted national attention.

The indictments against the six were returned in October, 1971, by a grand jury after 20 hours of deliberation. After the indictments were handed up, three members of the panel left the jury room in protest.

Rick Beban, a freelance writer who was one of the grand jurors, told newsmen that the panel had sought "not justice but vengeance."

Mr. Bales said that he would

appeal the decision handed down by Judge Stoll, a 70-year-old retired jurist from Nevada County in Northern California.

"This is a very important legal issue," Mr. Bales said. He predicted that if upheld, it would "question all indictments not only here but for the other 57 grand juries in the state."

### 6 Counts Dismissed

Judge Stoll's ruling dismissed the indictments of six counts of murder against Larry Spain, 25 years old; Fleeta Drumgo, 28; Hugo Pinell, 29; Willie Tate, 29; David Johnson, 26, and Louis Talamantes, 31. Mr. Pinell and Mr. Talamantes are Chi-

canos. The others are blacks.

The decision by Judge Stoll drew praise from Charles Garry, a defense attorney who had criticized the grand jury system in a number of other controversial cases without success.

Mr. Garry said that Judge Stoll had rendered the decision in favor of the defendants because "he's a decent human being."

Judge Stoll was appointed to the bench in 1959 by Goodwin J. Knight, who became Governor when Earl Warren was appointed Chief Justice of the United States.

Reached at his home today, Judge Stoll refused any additional comment. He did say that it was a "quite difficult" decision for him.

### Method of Selection

The series of attacks on the grand jury system in California began in earnest in 1968 and was based in large part on the argument that the method of selecting juries worked against representation on them of the poor, the blacks and the undereducated.

Under the system followed, each Superior Court judge nominated persons he could vouch for, with the names to be circulated among judges sitting in that county, until the list stood at 30 names. Then, 19 names are drawn and these become the grand jury.

The argument against the system has been that judges usually come from a limited cross-section of the socio-economic scale and that as a result grand jurors tended to be well off, retired persons or successful business or professional men who could afford to take time away from work.

Mr. Bales pointed out today that recently in Marin County, judges had taken steps to insure a wider representation on grand juries. He said there were two blacks on the grand jury that indicted the six charged in this case, although blacks comprise less than 2 per cent of the population in Marin County, where San Quentin prison is located.

At the prison, when informed of the court's decision, Warden Louis Nelson said, "My blood pressure won't let me make a comment."