

Ganged-Up

from page four

remorse for the young man's injuries, would pose no threat of violence to the community at large, and was not a member of a gang. Judge Attack shouted at Kenyatta, asking if he recommended a system with no one going to jail at all.

Claudia Gutierrez, speaking on her brother's behalf, was verbally berated by the judge. Attack demanded to know what sort of person would club a juvenile seven times and then go and get junk food. She countered that Michael had no criminal record or history of violence, and that he had not learned that anyone had been injured until October 31.

"He was expelled from school twice for violence!" Attack charged, which the family denied. Claudia reminded the judge that most of the people at the party were severely intoxicated, but that Michael had only had two or three beers earlier in the day. Judge Attack, completely misconstruing the facts, shouted, "Two beers? And he had three earlier, so now we have five beers that he drank that day."

Attack read selected excerpts from the 54 letters of support. He selected a few lines from a few letters which had minor, inconsequential errors and then denounced the entire batch of letters as

"written by people who don't know what they are talking about."

The judge claimed he had read Michael's file over the weekend before the sentencing hearing, and was familiar with it. But he exaggerated the injuries of the victim, made no comments regarding the extreme intoxication of the 15-year-old boy, was confused regarding Michael's alcohol consumption on the day of the incident, and supported police contentions that Michael was a gang member.

What evidence was there of Michael's involvement with gangs? According to police records, several items were seized from Michael's residence as "evidence" of gang activity. Michael had a baseball cap collection with 20 or more hats. Three of them were red. They were seized as gang colors. Two maroon T-shirts were seized for gang colors. Michael's younger brother had built a science project which would measure force and distance. Police seized it, calling it a spud gun despite a note from his brother's teacher verifying it was a school science project.

Under Michael's bed was a dusty box containing some nunchucks, left over from when Michael, as a 12-year-old child, had played Bruce Lee and Teenage Mutant Ninja Turtles in the backyard. They were seized. Gang weapons. His other brother had bought some throwing

knives a week before at the flea market. Gang weapons. Lastly, Michael had a large collection of photos displayed on the wall in his bedroom. They were photos of his mother, father, sisters, and brothers, his dog, and his friends. Of approximately 100 photos, two were seized. One depicted a friend of his in a senior prom photo giving a gang sign. In the other, Michael's friend was putting his hand in front of his face to prevent the photographer from getting a good shot of him. The police said he was flashing a gang sign.

In addition to this physical evidence, Michael admitted in interviews with the police that he knew that one of the people at the party where the fight occurred was a gang member. Judge Attack responded by sentencing Michael to eight years in state prison: three years each for the two charges of assault with a deadly weapon (reduced in the plea bargain from the earlier attempted murder charges in exchange for giving up his right to a jury trial) and two years for "gang affiliations."

Other allegations of misconduct in this case include a cozy relationship between the 15-year-old's mother and Rudy Escalante, the police officer who over a 45-day period gathered evidence and witness statements against Michael. Escalante has a reputation for being prejudiced against black or Latino youth.

The missing golf club should have had both Michael's fingerprints and the victim's blood. Its absence suggests it may not have contained the incriminating evidence. Many have suggested the prosecution may have been politically motivated as a huge redevelopment plan for Beach Flats was being proposed (see *Street Spirit*, October, 1998), and Maria Gutierrez was considered a power to be reckoned with. The legal case would distract her and exhaust her resources.

His first two attorneys urged Michael to make a "no contest" plea in order to avoid a possible 28 years in prison. One attorney advised Michael: "If you plead not guilty and go for a jury trial, you are going to get a bunch of middle-aged white people who have never even gotten a parking ticket in their life. They are going to see a big Latino man and they are going to be afraid and act on that fear."

Michael is currently an inmate at San Quentin State Prison.

Those wishing to help with Michael Gutierrez' legal appeal process, please call 831/479-4233. The family is requesting letters urging a reduced sentence be sent to Judge Robert Attack before November 30 at 701 Ocean St., Santa Cruz, CA 95062.

To obtain a 28-minute video interview with members of the Gutierrez family or to contact the author, Becky Johnson, e-mail at Wmnofstl@cruzio.com