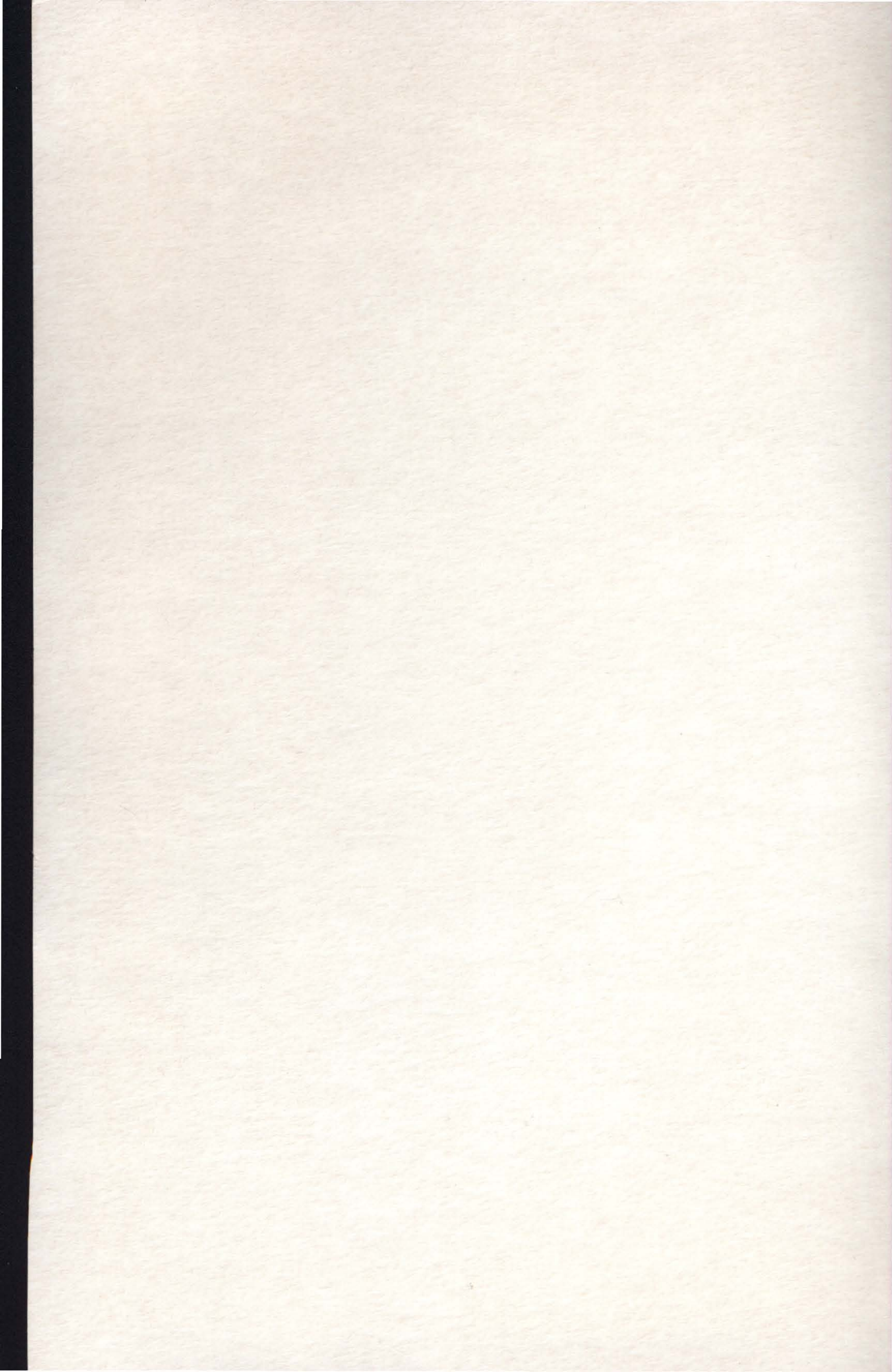


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Journal of Prisoners on Prisons





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The *Journal of Prisoners on Prisons* is published semi-annually. Its purpose is to encourage research on a wide range of issues related to crime, justice, and punishment by prisoners and former prisoners.

SUBMISSIONS: Prisoners and former prisoners are encouraged to submit papers, collaborative essays, discussions transcribed from tape, book reviews, and photo or graphic essays. The *Journal* does not publish fiction or poetry. The *Journal* will publish articles in either French or English. Articles should be no longer than 20 pages typed and double spaced or legibly handwritten. Writers may elect to write anonymously or under a pseudonym. For references cited in an article, the writer should attempt to provide the necessary bibliographic information. Refer to the references cited in this issue for examples. Submissions are reviewed by an editorial board. Selected articles are corrected for composition and returned to the authors for their approval before publication. Papers not selected are returned with editor's comments. Revised papers may be resubmitted.

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ABOUT THE COVER

The art on the cover is by Dennis Okanee. He was born on November 17, 1957, on the Thunderchild Band's territory near Red Deer, Alberta. In 1969, while he was staying with his foster parents, barking dogs drew him to a window where he saw a Native man going hunting, riding a horse pulling a travois. It was as if he had appeared out of the mists of the past, and this encounter led Dennis to develop an interest in traditional culture and art. However, it was not until he was serving a sentence in Fort Saskatchewan Provincial Gaol that he started to produce his own artwork.

This cover features a Cree shield, sixteen inches in circumference, made from hide, beads, bone, feathers and paint.

Editors' Introduction

Bob Gaucher

At our editorial board meeting last spring in Vancouver, Howard Davidson requested that someone else take over the general responsibilities of editor, while he would devote his efforts to distribution. We decided on a co-editorship of Bob Gaucher, John Lowman, and Brian MacLean. This is simply a reorganization of group responsibilities and will not essentially change the outlook and format of the Journal. We would like to thank Howard for his important contributions toward establishing the format, spirit, and, indeed, the *JPP* itself.

At ICOPA II in Amsterdam (1985) and ICOPA III in Montreal (1987), Howard and I noticed and discussed the absence of prisoners' and former prisoners' contributions to the prison abolition movement's discourse. Consequently we thought that a *JPP*, with an analytical focus and scholarly format, could help to create that presence within academic and activist discourse, or at least within ICOPA. The involvement of grassroots prisoners' support groups at Montreal, and prisoners at ICOPA V in Bloomington, Indiana (1991), may have produced a false impression, for there are still few prisoners' accounts, analyses, or proposals within the prison abolitionist literature.

However, some gains have been made and the signs tell us that the *JPP* is on the right path. The current conjunction of postmodern and feminist theory and analyses within the mainstream academy's production of knowledge has resulted in a new, heightened interest in the accounts of the oppressed. Furthermore, these accounts now have greater epistemological credibility and general legitimacy within scholarly discourses. In the UK, a 'writers in residence' program in some prisons has further increased the interest in prisoners' accounts in that country.¹ Furthermore, in Canada, Britain, and the United States, a new form of the penal press has developed outside the walls and beyond the censorship powers of the prison. These developments are all congruent with the goals of the *JPP*.

Our policy of publishing only prisoners' analyses and commentaries needs some clarification. While we do not generally publish fiction or poetry, we do consider manuscripts written in a stylized or lyrical form, such as Michael P. Smith's 'The Order of Things' in this issue. In Volume 4, Number 2, Little Rock Reed illustrates how poems can be used to forward or supplement analysis.

One of the understandings upon which the *JPP* is built is that by operating outside prisons and without state subsidies of any sort, we would achieve autonomy from the control and censorship of prison and

state officials. To guard against comebacks against our contributors, the *JPP* accepts the need to publish some articles anonymously or under a pseudonym. This year two instances of contributors being harassed, at least in part because of their articles in the *JPP*, have come to our attention.

Little Rock Reed's situation is fully aired in the *Response* section of this issue, by Deborah Garlin. Little Rock's narrow escape from the dangers of Lucasville are underlined in the first-hand account of 'Sunday Bloody Sunday.' We chose to publish this account essentially as it was written in mid-April. Rather than addressing some of his conjecture, the inclusion of this post-riot account captures the horror and fear that rages through a prison during a riot and siege, and the believability of the rumours serve to illustrate and emphasize this atmosphere. Can any reasonable person doubt Little Rock's wisdom in avoiding such a fate?

In Florida, Gerald Niles did not have long to wait before receiving his reward for contributing "Submission, Subservience, 'Model Inmates,' and the Fear Factor: Observations from a Sweet Kamp down Florida Way" to the last volume. He provides the following postscript:

Five days after Captain Leroy Benton confiscated and fumed over *JPP* Vol. 4, No. 2 (1993), reinforcing the truth and core of that essay, I was on the bus and out of the Sweet Kamp at Avon Park, doomed to Dungeon Hardee.

I was thrown into the hole upon arrival. They let me out for the month of May, long enough to be sunburned from overexposure, to be assaulted and robbed in plain view of the guards who turned their heads and denied that anything had happened, to preach the gospel of prisoners' rights, and then back to the hole for 'investigation.' I was charged and found guilty of posing a threat to security and order, held for 103 days, then released when they figured out they could not jail my spirit. Immediately, I commenced with full-scale resistance. The regime responded by allowing an attempted sexual assault which, I'm sad to report, I repelled with violence. I confronted staff conspirators; they deny it happened. Now I ponder whether there is a peaceable way to plough out of an assassination plot that may be planned.

In the previous essay we defined 'Sweet Kamps' as places where all manner of indecency (such as alcohol, drugs, sexual deviance, and violence) may be indulged in with minimal interference by prison officials. *Voilà* Dungeon Hardee. Next stop may be Hell.

Dungeon Hardee has the typical control unit layout, in every logistic phase of its classical mismanagement of operations as well as its architectural design. Any housing unit is easily converted into total lockdown, and these happen, to some extent, on a daily basis – dry runs. Disorganization is to the prisoners' detriment, but anything that goes wrong is classed as "the inmate's fault." It is a pass-the-buck cesspool when it comes to accountability. I have learned the first two Commandments of the Florida Chain Gang: 1). *Thou shalt not make sense*; 2). *Thou shalt take the blame for anything wrong*.

While atrocious acts may be committed, even condoned, those are misdemeanors, largely ignored, including mutilation, rape, maiming, rob-

bery, etc. Felonies are strictly policed; every button buttoned, every shirt tucked in, overdue library books, every individual degraded by petty harassment. Division of unity is encouraged by indifference, but any 'crime' against DOC carries the maximum penalty. Any dissent, of course, is a capital offence.

Control? Efforts to dehumanize totally are blatantly apparent. We are forced to wear the same clothing, in identical style; to have the same white middle-class haircuts and clean-shaven faces; to eat the same 'food' at the same time; to watch the same TV channel and to hear it, even if we don't want to; to sleep simultaneously, so long as it doesn't interfere with the sleep-deprivation aspect of the programming ... This joint is completely out of control.

The Assistant Superintendent recently admitted that idleness of the population was at 'unconstitutional proportions' (maybe he was referring to his own inaction). There is not enough work or educational opportunity, and there are no jobs that pay, since Florida capitalizes on the Slave Labour Clause of the Thirteenth Amendment. Peanuts for brains don't belong in the heads of prisoncrats. I wonder who performed the lobotomies, and I pray for Abolition.

The *JPP* can do little more than bring to attention the harassments contributors receive, as much as we might want to rescue someone. We salute those who write in the face of repression, and advise caution.

In this volume, prison writers also raise a number of other issues. Victor Hassine questions the fairness and equality of a criminal justice system that operates like an industry whose *raison d'être* is the profitable employment of its brotherhoods of police, courts, and prisoncrats. He illustrates how issues of innocence and responsibility are lost in the processes of this type of criminal just-us. Michael Ross, writing from death row in Connecticut, presents a moving argument against the degradation and unconscionable nature of state executions. In doing so, he adds emphasis to the importance of Hassine's questions. Joseph McCormick discusses the opportunities currently available to prisoners in federal penitentiaries in Canada as means of surviving the stultifying and destructive regime of prison life. Roy Glaremin's analysis highlights sections of the new Canadian Prison and Parole Act that open windows of opportunity for prisoners to regain some control over their living conditions and their lives.

We would like to welcome Robert Bryden and Gayle Horii to the editorial board. Gayle and Liz Elliott are working on a future issue on women in prison. I would like to thank Marian Crow for the hard work, effort and advice she contributed to the copy editing and production of this issue.

NOTES

- 1 So far, many of the publications resulting from this program have been representative mainly of the 'writers in residence,' their encounters with the dark solitude and brutality of the prison, and only secondarily those of prisoners.

The Man Who Didn't Do It

Victor Hassine

As we scurry through our high-tech lives, we seldom allow ourselves time enough to sit back and reflect upon the things we have done, or those we should have done, or even some we dreaded having done. It is almost as if our rush to stay busy is calculated to relieve us of our painful responsibility to self-reflect. But, despite our efforts to occupy every single waking moment of our lives with one crisis after another, every now and then an event occurs that forces us to stop dead in our tracks – to in fact consider what we have done and what kind of people we have become. In answering such questions, our lives become changed, and we are forever altered in the way we live our lives, or at minimum, the way we view our lives.

A few months ago, I was having a discussion with a friend. Both of us, being incarcerated at the time, were talking 'prison stuff' but with a twist. We wanted, in some dramatic way, to demonstrate to the world that the criminal justice system had abandoned its promise of fairness. We reasoned that the best and most convincing way to demonstrate this was to find the proverbial 'innocent man' in prison. After all, if the system were as unfair as we claimed, our jailhouse home of 2,000-plus inmates would certainly have to include at least one innocent man or else, how unfair could the system be?

So we searched for that innocent man, or even for someone who just might be innocent. But honestly, neither of us thought we would ever find that man, primarily, because we knew it would be almost impossible for us to determine anyone's actual innocence; but, also because we really did not believe one existed. After all, cynicism is as alive in prisons today as it is out in the real world.

One day, my friend came to my cell and excitedly announced that he had found someone who claimed to be an innocent man and who might in fact be innocent. He was speaking about William (Bill) Kelly, a young man my friend and I had played handball with in the prison yard.

William Kelly's story started like this. On Monday, January 8, 1990, there was a single white man in an all-black bar in Harrisburg, Pennsylvania. The man stood out like a sore thumb, as it was a Monday night and the bar did not have many patrons.

Since the white guy was sitting with a friend of hers, Angela Nicholson eased over toward her friend, hoping in fact to meet the white guy who was wearing the denim jacket and the baseball cap. Just as she expected, the man introduced himself and bought Angela a drink. He said his name was Keith.

At 8:30 PM, Jeanette Thomas and her friend Stephanie entered the quiet bar, and like Angela, they were met with the odd sight of Keith drinking at the bar. Like Angela, Jeanette eased over toward a friend while probably hoping Keith would buy her a drink. Keith didn't let her down.

By 9:30 PM, Angela wanted to go home to see a movie, so she asked a friend for a ride. Her friend said he had been driven to the bar by Keith. Angela then asked her new friend Keith for a ride.

Keith excused himself before answering, went to the phone and made two calls. When he returned, he said he was going to Steelton, Pennsylvania, and he would drive Angela home. Jeanette, who lived close to Angela, said she also wanted to go home. So the two black women and Keith all got into Keith's car. Angela got in the front seat, Jeanette got in the back seat, and Keith did the driving.

By the time Keith had pulled up in front of Angela's home, Jeanette had decided to go to Steelton with him. So Angela got out of the car, Jeanette got into the front seat, and Keith then drove away.

The next day, Jeanette didn't show up for work. By January 11, Jeanette's sister filed a missing persons report with the police.

On February 4, while walking through a landfill dump, three men stumbled upon the badly beaten body of a black woman. In life, Jeanette Thomas was young, black, and beautiful. But now, as she lay face down in the dump, she was just plain dead.

Detective Dean Foster and Detective James C. Baldwin were assigned to investigate the Jeanette Thomas murder. On February 8, Detectives Foster and Baldwin went to 2452 Duke Street in Harrisburg, Pennsylvania, to question William M. Kelly, Jr. about the murder of Jeanette Thomas.

It was about noon when William Kelly (Bill) was driven to the Swatara Township Police Station and it was only about four hours later that Bill confessed to the murder of Jeanette Thomas. The confession was detailed and managed to neatly coincide with all the physical evidence the police had at the time. It was an open and shut case.

The next day, Detectives Foster and Baldwin took Bill out of county lockup and brought him back to the Swatara Township Police Station. They took another confession from Bill, which they hoped would clear up some of the discrepancies found in the previous confession. This time the detectives tape-recorded Bill's confession, and as they expected, Bill did clear up the discrepancies in a detailed and convincing manner.

They began taping the confession at 12:45 PM and ended at 2:11 PM. The following outlines the facts the police had about the murder at the time, accompanied by excerpts from Bill's seven-page taped confession.

FACT: Angela Nicholson had stated that the white guy she met in the bar who said his name was Keith was the last person to see Jeanette Thomas alive.

- Q William, we are investigating the disappearance of one Jeanette Thomas, a black female, whose body was discovered in Swatara Township Landfill on 4 February '90. Do you know who we are talking about?
- A Yes.
- Q Did you know Jeanette Thomas?
- A Not until the 8 of January when I met her.
- Q Where did you meet her?
- A It was at Dinger's at 12 and Evergreen.
- Q What time did you get to Dinger's?
- A I got to Dinger's at 4 in the afternoon.
- Q What time did Jeanette get to Dinger's?
- A It was 8:30 going on 9:00 p.m.
- Q Who else was in Dinger's that you knew at that time?
- A There was a guy by the name of Jim, Angie, and there was three other girls I knew by seeing them, I didn't know their names.

FACT: Keith, the man who drove Angela home, had a car, but Bill didn't own a car.

- Q What time did you leave the bar?
- A Between midnight and 12:30.
- Q Did you leave alone?
- A Left with two girls, Jeanette and Angela.
- Q Where did you go with them?
- A Dropped Angie off at home and drove around with Jeanette.
- Q Were you driving a car?
- A Yes.
- Q Whose car was it?
- A Offhand, I don't know whose car it was, it was just one I got at the bar.
- Q Who did you get the car from?
- A It was one of the gentlemen in the bar.
- Q What kind of car was it?
- A It was a late model sedan, like a beige color, four-door, I'd say it was around a '72-'74.

FACT: Jeanette was murdered in a landfill dump outside Harrisburg, Pennsylvania.

- Q Where did you go after you started heading for the Mall?
- A Went up into that landfill area.

Q Where did you go in?

A The part off Harrisburg Street, I think it was across from Woodside.

Q How far in did you go?

A It was back in the area where they did some dumping at.

FACT: Jeanette had sex before she died, but there was no physical evidence to support that she was raped.

Q What did you do once you and Jeanette got back there?

A Got out of the car, went and laid down in the flat area and started having sex.

FACT: Jeanette was a prostitute.

Q When did you decide to have sex?

A When we were driving around in the car.

Q How did the conversation start?

A I was talking to her about what she liked to do. That's when it led to talking about making out. She kind of popped the question to me and I asked her the same thing back.

Q What did she ask you?

A If I wanted to have sex.

Q What did you say to that?

A I told her it was all right.

Q Was there ever any mention of money for sex?

A Not, not until it was over with.

FACT: There was snow and ice on the ground in the landfill area the day of the murder.

Q What was the weather like that night?

A A bunch of snow laying on the ground.

Q Was there ice on the road?

A In certain areas we were driving.

Q Was it icy back in the landfill?

A There was some snow and ice when you first went in. Then going back – the road – there was patches of ice laying around.

FACT: Jeanette's coat was found on the ground a short distance away from where her body was found.

Q Once you were inside the landfill, where did you have sex?

A It was up on a hill part, a flat area.

Q Were you outside the car?

A Yes.

Q Did you do any necking inside the car?

A No. We were walking up the hill, we were holding hands and petting and stuff. When we got to this one part of the hill, she put her coat out on this area.

Q Did you have sex on the coat?

A We were laying on top of the coat.

FACT: Jeanette's body had her dress pulled up with her panties on.

Q Did you remove all your clothing?

A She had her underwear off and her dress up. I had my pants unzipped and halfway down.

FACT: While semen was found in Jeanette's body, it was not Bill's.

Q Did you have a coat on?

A No, my coat was in the car.

Q Did you ejaculate while you were having sex?

A Off to the side, not in her.

Q Did that go on her coat or on the ground?

A On the ground.

Q Why didn't you ejaculate inside her?

A She asked me not to. I asked her why when she was the type of girl that done something like this, turning tricks and stuff. That's when she got up and started running and I started chasing after her.

FACT: Jeanette's body had one black shoe on it.

Q Did you catch up to her?

A After she had lost her one shoe.

Q How far did she run before she lost her shoe?

A It was about two-three yards down from me.

Q How much after that did you catch her?

A It was about two yards after that.

Q What did you do when you caught her?

A I hit her with a stick.

FACT: Jeanette's black pocketbook was found away from the body and it did not appear that theft was a factor in the crime.

Q How much money did she have?

A \$65.00.

Q Did you give her the money?

A Yes.

Q What did she do with it?

A She put it in her purse.

Q What kind of purse was that?

A Black one with a shoulder strap.

Q You said that you hit her with a stick, where did you get that stick?

A Picked up from a pile that was laying off to the right when I was running.

FACT: Jeanette's body had defensive blows on the arms and markings of about four blows to the front and four blows to the back of her head. The size of the marks left on her body indicated the weapon could have been a crowbar or two by four

Q How many times did you hit her?

A Four times in the front and four times in the back of the head.

Q Where did you hit her first?

A In the front part.

Q Was that in her head also?

A Front part of her face.

Q What did she do when you hit her?

A After the fourth time I hit her in the front, I caught her above her right eyebrow and she fell flat on her face.

Q When did you hit her in the back of her head?

A When she was falling forward.

Q How many times did you hit her in the back of the head?

A Four.

FACT: Jeanette was dragged to the area where she was found and buried under rubble and debris.

Q After you hit her in the back of the head, what did she do?

A She was laying unconscious.

Q What did you do then?

A That's when I started dragging her.

Q Where did you drag her to?

A To like a level ground down in the wooded area.

Q What did you do once you got her there?

A Covered her up with some leaves and branches.

FACT: Jeanette's body only had a little blood on the front of her face.

Q Did she bleed at all?

A Front part of her face was.

FACT: Concealing the crime is evidence to establish murder.

Q What were you thinking when you were hitting her with the stick?

A Why was I doing this.

Q What did you do with the stick when you were done hitting her?

A Pitched it off in some wooded area.

FACT: Jeanette's pocketbook was found with some money and valuables in it.

Q Did you do anything with her pocketbook?

A Got my money back out of it, took a little bit of what she had, then that's when I was starting the car and pulling out. Put the purse in my left hand, pitched it out over the car when I was driving out.

FACT: The night Jeanette disappeared, nobody in the bar remembered giving Bill their car to use.

Q How did you get the car when you were at the bar?

A The car keys were laying inside on the floorboard. Angie and one of the girls told me where the car was parked. That I could go and start it up and brush the snow off and get it warmed up.

FACT: Jeanette's panties were found where they suspected the two had sex and her coat was found a few feet away, down a hill.

Q You said that she had her underwear off. What happened to her underwear when she ran away?

A When she jumped up, they were laying on her coat. They dropped off on the ground and were right there where she had her coat laying.

Q What happened to her coat?

A She was running down a hill. That fell off the back of her. That fell to the ground.

Q Did you do anything with her coat and underwear?

A Nope.

FACT: The first confession contradicted some physical evidence they had uncovered.

Q Did you want to talk with us here today?

A Yes.

Q Why?

A To get more of it cleared up.

Q What was wrong with what you told us yesterday?

A There were a few things that Dean asked me about the situation that when I answered it they were wrong.

Q Do you remember what things they were?

A One's about the time when I left Dinger's, when Jeanette asked me for taxi money, the part about having sex with her, the part about snatching the money out of my hand and taking off, that's not true.

Bill had given me a transcribed copy of his taped confession and after reading it, I felt it was too detailed to be fabricated. My reasoning was simple. Since the confession was taped, the police could not have just inserted false written statements. All the facts and details must have come from Bill's mouth and it was unlikely that the police could prep anybody well enough to remember all those false and minute details. Besides, anyone who knew Bill, knew he was a bit slow and couldn't possibly remember anything with such detail, unless of course he was speaking from experience.

Bill also gave me copies of his Preliminary Court Hearing notes, which revealed how Angela Nicholson pointed to Bill in the courtroom and said: 'He is the man who introduced himself as Keith.' It seemed pretty clear to me, Bill was guilty and suffering from a bad case of denial, probably aggravated by the medication he was taking (daily doses of Lithium, which is a mind-altering drug). My friend and I both agreed that Bill was lucky he wasn't on death row.

Nevertheless, Bill asserted he was innocent, and that he was with his girlfriend C.J. on the night of Jeanette's disappearance. He said he had never met Angela or Jeanette. When asked why he pleaded guilty, he said because his lawyer, whom his parents and C.J. had hired and paid more than \$13,000, told him that, if he didn't plead guilty, he would probably be found guilty and given a life sentence without parole. He was scared, and at the time it seemed like the right thing to do.

In return for pleading guilty to the murder of Jeanette Thomas, Bill was sentenced to ten to twenty years in prison.

Then, as if affirming the long held belief that God protects fools and children, on August 6, 1992, police raided the home of Joseph D. Miller. Apparently Miller, who is white, had picked up a 39-year-old black woman in a bar and promised her money for sex. The woman went with Miller to a remote wooded area on railroad property. He then bound the woman with duct tape, raped her, beat her, and told her he was going to kill her - 'like the others.' A railroad security officer happened to be patrolling the area and Miller was forced to run away before he could kill the woman. So on August 6, Miller knew he was in deep trouble.

For six hours he held police at bay while he was on the roof of his house threatening to jump off. Miller finally surrendered to police and soon after confessed to raping, beating and killing:

- 1 Selina M. Franklin, age 18, who was discovered missing on May 15, 1987. Her body was dumped in the Swatara Township Landfill.
- 2 Stephanie McDuffy, age 23, eight months pregnant, who was discov-

ered missing on November 13, 1989. Her body was also dumped in the same Swatara Township Landfill.

3 Jeanette Thomas, age 25, whose body was dumped in the same Swatara Township Landfill.

4 Katy Novena Shenck (Phoenix Bell), found dead on February 27, 1990, in a roadside dump in Penn Township.

Miller also admitted to having picked up a 27-year-old woman on June 30, 1992, raping her and stabbing her 25 times with a screwdriver. Miraculously the woman survived and crawled one-half mile to safety. The police knew they had a serial killer in Mr. Miller and suspected him of more murders in another state. Police also knew that Bill Kelly did not kill Jeanette Thomas.

The police began reinvestigating the Jeanette Thomas murder. They tested Miller and discovered that the semen found in Jeanette Thomas's body (which did not match with Bill Kelly's) did in fact match with Joseph Miller.

Shortly after Miller's arrest, the police (1) had a confession from Miller that he raped and killed Jeanette Thomas; (2) knew Miller had killed many other black women the same way Jeanette Thomas was killed; (3) knew Miller's semen was found in Jeanette's body, and; (4) knew Angela Nicholson had changed her story and now identified Miller as the man who called himself Keith.

Four and one-half months later, on Christmas Eve of 1992, the Harrisburg Patriot Newspaper ran a picture of Bill on the front page with large captions above it reading: *Wrong Man Is in Jail, DA Says, Miller Admits 1990 Slaying.*

I was amazed. I got out of my cell and hollered Bill Kelly's name up the cell block tiers toward Cell C-17 of the East Wing of the Rockview State Prison. Soon Bill Kelly was staring down at me and asking what I wanted. A real innocent man who had been framed and knowingly placed in prison for a crime he didn't commit was soon to have Christmas dinner with me in the Rockview State Prison inmate dining hall.

We talked for several days after, about his childhood, about the days before and after his arrest, and about why he confessed to a crime he had not committed. But throughout those days with him, I kept asking myself, why am I still able to talk to this innocent man in a prison, meant to hold only the guilty?

On January 8, 1993, Bill was transferred to another state prison. Several days later, I read in the newspaper that a judge had released Bill on January 10, 1993 and dismissed all charges against him.

The lawyer which had convinced Bill to plead guilty, was quoted in the article as saying he was considering seeking 'retribution' for his

client. I wondered if he meant he would return the money he took from Bill's folks and girlfriend for convincing him to plead guilty to a murder he didn't commit.

The paper also announced that Bill's IQ was tested at 69, and that a court-appointed psychiatrist had determined Bill had pleaded guilty to the slaying because he wanted to please Detectives Baldwin and Foster, who were interrogating him. There was even a line in the article where the judge had commented that the conduct of the District Attorney and the police officers reflected the highest standards of prosecutorial ethics.

But nowhere in the article did the press, the judge, or even Bill's lawyer ask the obvious questions: Who gave Bill, a man with a 69 IQ, all the minute details to a crime he never committed? If Miller confessed on August 6, 1992, to Thomas' killing, why did it take until January 10, 1993 to release Bill? And why weren't the two detectives, Foster and Baldwin, fired and charged with coercing and fabricating a false confession? Think about it, every detail of the confession the police had taped was a fabricated lie. Bill had never even met Jeanette Thomas or Angela Nicholson.

So why is this event so disturbing to me? Because like the rest of the country, I have become willing to accept as true anything people in authority claim to be true.

Our system has evolved into one where guilt or innocence is so unimportant that the police have become experts at getting confessions out of simple-minded people who have committed no crime. And worse yet, our system has become unwilling to release people from prison even when it is clear they are innocent.

What hope is left when lawyers who are paid thousands of dollars to defend their clients are willing to let these clients plead guilty to a crime they did not commit, simply because it is easier to get a good deal from the DA than it is to prove their innocence.

So the William Kelly story tells us not to take rides from strangers, not to believe detailed confessions recorded by police, and that there really are innocent men in prison.

Now, Let's Talk about What's Right or Wrong about the Death Penalty!

Executions Are Degrading to Society

Michael Ross

When we abolished the punishment for treason that you should be hanged and then cut down while still alive, then disemboweled while still alive, and then quartered, we did not abolish that punishment because we sympathized with traitors, but because we took the view that this was a punishment no longer consistent with our self-respect.

These words, spoken by Lord Chancellor Gardiner during the 1965 death penalty abolition debates in the British Parliament, illustrate the feeling of most individuals opposed to capital punishment. It's not sympathy towards the murderer that we feel, indeed most of us feel a great deal of anger and revulsion towards him and his actions. Our objection is that it is a complete renunciation of all that is embodied in our concept of humanity. Or simply put, executions degrade us all.

In today's society, the execution process is far removed from most individual citizens. We may be aware of the criminal acts that put an individual on death row – usually through sensationalized press accounts – but very few of us know of the human being who society has condemned to death. And even fewer of us have ever witnessed, or ever will witness, an actual execution. This dehumanization of the whole process makes it easy for us to distance ourselves from capital punishment and accept it 'as something government does,' allowing us to deny responsibility for the consequences of such actions.

We need to be aware of the human side of executions. Therefore, I'd like to share with you an extract from an affidavit by David Bruck, an attorney who stayed with a condemned man, Terry Roach, during the last hours before his execution.

"I assisted with Terry Roach's defense during the last month before his execution, and I spent the last four hours with Terry Roach in his cell when he was electrocuted on January 10, 1986.

Although I have known Terry slightly for several years, meeting him in the course of visits to see other inmates on South Carolina's death row, my first long conversation with Terry occurred less than a month before his death. An execution date had already been set, and he seemed frightened and very nervous. I was struck at that time by how obviously mentally retarded Terry was ... I had known from following

This is a revised version of an earlier essay appearing under the same title in *The Critical Criminologist*, 4 (3/4), 1992:5-6, 10, and is reprinted here with the kind permission of the editors of that journal.

his case through the courts that he had been diagnosed as mildly mentally retarded, but I was still surprised at his slack-jawed and slow way of speaking, and at the evident lack of understanding of much of what we were telling him about the efforts that were underway to persuade Governor Riley to grant clemency.

The next time that I would see Terry was on the night of his execution. The lawyers who had worked on his case for the past eight years were at the Supreme Court in Washington, so I had decided to look in on Terry that night after his family had to leave for the last time, to see if I could help him with anything or just keep him company. When I arrived, he had decided to ask me to stay with him through the night and to accompany him when he was taken to the chair. So along with Marie Deans, a paralegal and counselor who works with condemned prisoners in Virginia, I stayed.

Although Terry was twenty-five years old by the time of his death, he seemed very childlike. In general, his demeanor and his reactions to the people around him appeared to me to comport with the finding, made at his last psychological evaluation, that his IQ was 70 – a score which placed his intellectual functioning at about the level of a twelve-year-old child. When his family minister showed him some prayers from the Bible that they would read together, Terry asked him which ones he thought would be especially likely to help him into heaven: his questions about this seemed based on the childish assumption that one prayer was likely to ‘work’ better than another, and that he just needed some advice about which ones would work best. Later in the night, he asked me to read him a long letter about reincarnation that a man from California had sent to him just that day: he listened to the letter with wonder, like a small child at bedtime, trusting and uncritical. Both Marie and I were struck by how calmed Terry seemed by the sound of a voice reading to him in the resonant cell, and we spent much of the remaining time reading to him while he listened, gazing at the reader with rapt attention.

He had a final statement which his girlfriend had helped him write. When I arrived that night, the statement was on three small scraps of paper, in his girlfriend’s handwriting. I copied it out for him, and got him to read it out loud a few times. No matter how many times he tried, the word ‘enemies’ came out ‘emenies.’ He kept practicing it, but pronouncing the written word just seemed beyond his capabilities. Still, he seemed to like the rehearsal: like everything we did that night, it filled the time and acknowledged that he was doing something very difficult.

Terry was a very passive young man, and that showed all through the night. Although he was obviously frightened, he was as cooperative as possible with the guards, and he tried to pretend that all the ritual preparation – the shaving of his head and right leg, the prolonged rubbing in of electrical conducting gel – was all a normal sort of thing

to have happen. He wanted the approval of those around him, and he seemed well aware that this night he could gain everyone's approval by being brave and keeping his fear at bay.

Still, when the warden appeared in the cell door at 5:00 AM and read the death warrant, while Terry stood, each wrist immobilized in a manacle known as the 'claw,' his left leg began to shake in large, involuntary movements. After that everything happened quickly. I walked to the chair with him, and talked to him as much as I could. He wanted me to read his statement, but I told him that he ought to try and I'd read it if he couldn't. His voice was only a little shaky, and he managed quite well, except for 'emenies.' After he had repeated the name of a friend of mine who had recently died, and whom he had offered to look up for me when he got to heaven, I left him and walked to the witness area, where I gave him a 'thumbs-up' sign. He signalled back with his fingers, as much as the straps permitted. We signalled to each other once more just before the mask was pulled down over his face.

A few seconds later the current hit. Terry's body snapped back and held frozen for the whole time that the current ran through his body. After a few seconds, steam began to rise from his body, and the skin on his thigh just above the electrode began to distend and blister. His fists were clenched and very white. His body slumped when the power was turned off, and jerked erect again when it was resumed. When he was declared dead, several guards wrestled his body out of the chair and onto a stretcher, while taking care to conceal his face (no longer covered by the mask) from the view of the witnesses and me by covering it with a sheet. I left the death house at about this time in the company of the warden. As we stepped out of the building, I heard the whoops of a crowd of about 150 or 200 demonstrators who had apparently come to celebrate the execution, and who were yelling and cheering outside the prison gates."

Executions degrade us all. They are held in the middle of the night, in the dark, away from us all, to hide what they really are. The men who are condemned to death are dehumanized by the state and by the press, to make it easier to carry-out their executions. And the public is kept as far away as possible from the whole process to keep them from seeing that human beings, real flesh and blood, real people, are being put to death. That is the only way that any state or government can continue executions without the public demanding its eradication.

It's time for us to acknowledge capital punishment for what it really is, and to abolish it nationwide. There are suitable alternatives. In my state, for example, those convicted of capital crimes, who are not sentenced to death, are sentenced to life imprisonment *without possibility of release*. This is clearly a suitable alternative to executions, and satisfies society's need to be protected from dangerous individuals. It

is not necessary to kill criminals, not even the most reprehensible ones, and to continue to do so truly lowers us to the level of the very ones that we wish to punish. And undoubtedly degrades us all.

AUTHOR'S NOTE

For more information on how you can help abolish the death penalty in America contact:

The National Coalition to Abolish the Death Penalty
1325 G Street, NW, Lower Level-B
Washington, DC 20005

For \$2.00 they will send you the latest edition of *The Abolitionist's Directory*, which lists all death penalty abolitionist groups nationwide, statewide and locally. Please write today, for we need your help and only with your help will we be able to rid America of capital punishment. Thank You.

The Order of Things

Michael P. Smith

It's 9:30 AM on a day that lasts forever. I'm sitting here watching Sesame Street, thinking about the children. I'm not sure what's expected of me.

A group of young people, a class of aspiring police visiting McNeil Island Correction Centre, just marched through here in what I'm sure was another smashing success, glazing brute reality with promises of protection and equanimity. I heard The Man tell them that where men had 42 square feet of their own (as opposed to being stacked ten high in a room 16 by 20 feet – like those *not* in Preferred Housing) they were less likely to fester, less likely to take with them back to their broken streets and misspent years the animosities so neatly stacked in glowing piles of indecency and in rows of degradation. Their wide, wet, blinking eyes sucked much into their brains; as I watched from a distance, the woman with the frosted hair, the young men, trim and well fed, hated with new passion, nodded resolutely, as if knowing the score. And I'm certain they did – for what such grades are worth.

There then came a loud, sudden, piercing wail from a gray cone on the wall, fresh and of significant pallor, of oppressive pitch and volume, ordering us to dine. "*Mainline!*" it called, smug and self-satisfied.

Single-filing down the hard, neat stairs, so finely stacked in their own proud fashion, my thoughts were awfully beautiful, the truth of all this. Where shall it lead? How shall it end?

For an instant I was angry. I could not penetrate the thick shell of semantics which so often separates the soul from the song.

We are all victims of child abuse, traces of it seeping into us every day. We hear of cannibal rapists; of power-drunk racist police; gangs of marauding teens anchored to philosophies of violence, drugs, and cults of death. Forces conspiring beyond reason or desire result in the death of a child. We are all to blame.

We have made bad decisions. More prisons are built – like idols – when wisdom is best served by building fewer. We are quick to judge. We substitute need for vengeance, cry 'no answers!' and seal our fate. Our focus is as misspent as our past is damaged; paradise is sacrificed in favour of headlines and commerce.

We deify death, mutate sorrow into obscenity, as a young woman, having never been offered the skills of nurturing, fries in the electric chair for drowning her baby – to the great joy, consternation, and last hope (?) of society – at the expense of every victim. What reality, what truth, what God does this serve?

When imposed upon others, we cannot emphasize enough the importance of knowing who is the target. We cannot imagine the process through which another has suffered, has endured, and has thus been enlightened by life. We all share in the passionate delusion that the profit of love is suffering and the profit of suffering is rapture, compelled beyond cost, safe in our reason, to guard, maintain, and above all vindicate our lives *even when we are wrong*.

Human, spiritual and relational skills must again be valued, hands-on skills of interaction between sound and loving human beings, inclusion before vengeance, remonstrance, and guilt. As we approach compassion – for ourselves and for others – only then are answers found.

I find comfort in knowing, not 'believing,' we live in a random universe. The point is that there is no point. As a poet in prison for manslaughter, I would like to think I can save the world. But I can't. So I settle for my acre.

As I gaze out the soiled mess window at our departing class of future cops – the then, now, and future agonies of this world – at the high heels and flowing robes and the handsome years of ruin; at the boundless arrogance and condescension; at sensational globes of flesh and fire, the straight white teeth and brave new dreams; and finally across the Puget Sound beyond, I can assure you straight from experience that steeper sentences in larger prisons solve nothing. I can also assure you (no matter how heinous the crime or how much closer we get to solutions congruent to our culture) that incest, child abuse, murder, and the rest, will always be with us. I find this realization somehow liberating.

Speaking only for myself – having been a victim and a victimizer, and thus, perhaps, able to empathize more fully with those who suffer – having accepted for the grace that it is the liberation of knowing, I know that survivors need not suffer alone. This will change nothing for humanity, but it will make a difference to God – my God: The Absolute Order of Things.

Beating the System

Joseph E. McCormick

Very few of us do not think about beating the system. After all, whether we deserve it or not, the system deprives us of the freedom we cherish. It stands for all that we resent: lack of choice, restricted movement, denial of access to loved ones. We resent the walls, the bars, uniforms, being told what to do, what range we must live on, what programs we must take.

Moralists will argue that we get exactly what we deserve. In fact, many citizens believe that we are treated too well; the myth is steak every day, colour TV in every cell, pampering by high priced baby-sitters. Few of us can argue that we didn't know what we were getting into when we made the bad choices that landed us in prison. None of us arrived by accident, and if we are honest with ourselves, we'll acknowledge a whole series of destructive behaviours that preceded our committal to a 'monastery of the damned.'

To be blunt, we are considered by society to be 'turds in a cesspool.' We may assume that the public is concerned about the general welfare of prisoners or that the Constitution protects our civil liberties, but such illusions are shallow. We have merely become the currency for a professional class 'living off the avails' of crime. It is time to wake up to the reality that 'crime pays' only for those people who depend upon our folly: judges, police officers, attorneys, law clerks, guards, and psychologists.

Don't get hood-winked by 'do-gooders' for change. Those few crusaders who seek abolition and reform are zealots in a lost cause. The community is not in the mood to entertain liberal reform in corrections. Indeed, the average citizen would likely support the reintroduction of banishment to penal colonies. We are the rejects of a socio-economic system without compassion or pity. Neighbourhoods reject halfway houses; communities refuse individual parolees. As sick of "doin' time" as we may be, the real world may be even harsher.

No one is tough enough to survive the impact of negative labels and community prejudice, or we wouldn't be returning to prison in droves, as recidivists. No one is immune to the low self-esteem we bear because of shame, alienation, and inadequate skills for coping successfully in society.

In view our of status and chances of success upon release, the future doesn't look particularly bright. It's 'damn' depressing to have to accept our collective reality. We neither deserve nor can expect any public empathy. Hope exists but we must claim it for ourselves. Hope is found in beating the system, the smart way.

The smart way is not the path many of us have continually taken: defiance, conflict with the 'man,' doing time in the hole to prove something that nobody really understands or respects anyway. Investing energy in destructive behaviour only destroys the individual. The 'cystem' will survive unscathed long after we are faded memories and forgotten numbers. Destructive behaviours have not changed the reality of prisons. We are still prisoners. The system still controls the keys.

The smart way to beat the system, is to accept reality and devise a strategy for dealing with it. Such a commitment requires both an individual and collective decision. It's a decision that must be made, not only in our heads, but in our guts – behind our belly buttons where the 'demons' of our fears reside. The decision is simple, but the implications are profound. To beat the system, we need only to decide to treat ourselves with the respect and dignity that every human deserves. We need to decide individually that 'we are worth investing personal effort in!'

AA members are familiar with the slogan 'I can only change myself, not others.' It is a simple truth, but hard to accept. It is always easier to project blame for our inadequacies onto others. But until we come to terms with our individual reality, separate the crime from the man, and decide that the 'I am' is capable of much more than what the label implies – we're doomed to fail.

'So, how do I invest in myself in this hell-hole?' you ask. The first step is to consider a sentence as an 'opportunity,' instead of just a burden to be endured. Opportunities for education and training exist behind 'the wall,' but the greatest barrier to their effectiveness is our attitude, not the quality of resources. Education and training are the best and most enduring experiences we can extract from the system. Knowledge and skill are ours for life. No one can rob us of our ability to think, understand, and solve problems. Education and training provide the passports to genuine freedom. Education and training ensure that in a competitively tough market-place, we will have a niche where we can fit in. Education and training allow us to see ourselves as 'winners' instead of perpetual losers. Education and training build a self-esteem that says: 'I am worthwhile; I can contribute; I can do things well.'

You groan cynically. 'The school is a joke. I tried that bullshit and didn't learn a thing.' If that is the way you view it, undoubtedly you didn't. You are certainly entitled to continue enjoying the turd's delight of swimming in the cesspool. Without much effort, you'll have a guaranteed address and income for life. You'll never have to worry about being responsible for yourself, having a home of your own, finding your next meal, or having to cope in the real world. Don't be surprised, however, when Joe Public rejects and scorns you – not because you're an ex-con – but because you didn't have the wherewithal to treat yourself with respect, when you had the chance.

As a former employer and having had extensive experience with employers, I know that our past is not nearly as big a problem as our present. Every employer is looking for good help. The president of a major company used to say, 'I don't care if you're from Yale or jail, I just want to know you can do the job.' Doing the job requires that we are not only literate and skilled, but that we can think logically to solve problems. The modern workplace needs people who can adapt and change to meet the needs of new technology; people who are used to learning.

Individually and collectively we can create and demand a positive learning environment, and we can demand the most from the system. Administration uses education statistics to create the illusion of massive programming. It is up to us to demand the delivery. Enroll in courses. Develop the thirst to learn. Ask for help from peer tutors. Avail yourself of every possible opportunity, then demand more. You'll be amazed by what you can accomplish!

An education is the ultimate form of restorative justice. The entire population benefits when just one con becomes literate. Pride is contagious. Educated cons have reason to lift their heads in self-assurance. We are better able to articulate our needs, better able to negotiate collectively, better able to see a future for ourselves. Whether the 'man' wants to acknowledge it or not, educated prisoners demand his respect.

Adult education and training at every level, whether basic literacy, high school, college, or university are vital. The positive skills we learn in prison can't be taken away from us at the gate. Education is the ultimate way to beat the system.

Two Kinds of Prisons

Joseph E. McCormick

There are two kinds of prisons. One kind is built with concrete, steel, and razor wire. The other is built in the dungeons of our minds. It may be that none of us can escape from the 'solitary confinement' we've condemned ourselves to out of fear, pride, and social inertia. We construct actual prisons as bitterly as we construct our individual places of detention, building them on the ruins of other epochs, accepting as viable the failures of other societies, even other centuries. When everything else we have put our hands to fails to solve the problems of our individual and collective consciences, the limestone and steel cemented by our pitiless morality will remain as a monument to *compassion's* failure. The walls of Kingston Pen, the Maze, and Marion were built to keep in thieves, terrorists, rapists, and killers. But in our haste for *justice*, we have also jammed the cells with the lost, bewildered, and misfits whose major crime is not fitting in as a cog in our socio-economic wheel. We have condemned to prisons those whose speech, behaviour, and appearance have disturbed our sensibilities and those with whom we care not to deal.

How will history judge our society's fear of facing those who are odd, incompetent, or poor? How will God judge a nation that considers itself Christian but locks up the victims of sexual abuse, paternal abandonment, social neglect, human devaluation, and discrimination? How will we justify to our grandchildren that part of our population lives in destitution, disease, and detention so that others can indulge in conspicuous consumption? How do we rest with a conscience that rationalizes: "*He's only a native*" or, "*The homeless are the authors of their own misfortune.*" Perhaps, prisons have merely replaced 19th century work houses for the poor.

Symbolically, the barriers of prisons represent the impregnable security shields behind which much of society hides. We hire police, prosecutors, judges, prison guards, and parole boards to keep 'those people' out of our sight. We listened to the old Dylan ballad about the cutting down of George Jackson, but failed to understand the prophecy of his words: 'The whole world is one big prison yard, some of us are prisoners, the rest of us are guards.' We are too blind to see that social control of the under-class is an attitude emanating from the prisons of our minds. We secure ourselves in the counterfeit sanctuary of our own homes and careers, trusting that civil servants will guard us against our responsibility for living the spirit of the Gospels. The collective attitude perverts the beauty of Natural Justice to mean 'just-us.'

To ensure the privilege 'just-us' affords, we take counsel from accountants and tax lawyers, but shun the cry of a single mother being

evicted from a rat-infested slum. We sip coolers in posh vacation playgrounds and pretend we don't understand why someone would use or sell drugs. We place a dollar value on everything meaningful, then judge harshly anyone who seeks nefariously to buy security or respect. We continue systematically to ignore the long-term, cyclical effects of family violence, incest, and dysfunction—despite knowing the socially crippling consequences. As urgent as environmental issues are, we are blind to an equally dire problem of social ecology. Selfishness is decaying western culture.

Perhaps every school and university should have a required course in prison ethics. If we intend to continue needlessly locking up the non-violent nuisances in our society, we might as well teach young people how to do it right. We may want to officially sanction our own version of apartheid; bring it out of the closet and practise it openly instead of hiding behind the pretensions of middle-class hypocrisy.

With all our boasted reforms, pretensions of social change, and far-reaching technological advancements, we still allow human beings to be the scapegoats for our guilt-ridden consciences. As long as a powerless and voiceless 'cannon fodder' is available, we will have backs to stand on to elevate our misguided sense of self-worth. Ten, fifteen, twenty-five year sentences are handed out in our courts like vitamins. We condemn the victims of our materialistic folly to hell-holes named Millhaven, Stony Mountain, and Archambault. In an effort to promote the modern advancements in penology, we have replaced hard labour and corporal punishment with warehousing, inordinate sentences, and psychological labeling. Degradation and cruelty have not ceased, they have just been disguised. So we lock up, pervert, and turn bitter our social blemishes so that society may be *protected* from the phantoms of its own making.

Junk-yard dogs that are chained and abused never get turned into household pets. Puppies, like human babies, are not born mean, they are made that way. Our obsession with punishment has perverted discipline and correction into 'cur' factories. Dietrich Bonhoeffer (April 26, 1944)¹ wrote:

This is my second spring in prison, but it's very different from last year's. Then all my impressions were fresh and vivid, and privations and pleasures were felt more keenly. Since then something has happened to me which I would never have thought possible – I've got used to things; and the only question is which has been greater, the growth of insensitivity or the clarification of experience?

Prison, a social protection? What deluded mind ever conceived such a notion? Just as well believe that Mother Earth can be restored by widespread pollution. We have institutionalized abuse to teach people that abuse is wrong. It is as naively ignorant as believing that more law enforcement and prison cells will win the war on drugs. The penal system is such a failure it can't even control drug abuse within its own walls.

There is a curious ambivalence of guilt feelings that most prisoners surely experience. It is easy to accept the notion that they are paying for some kind of grave misdeed, and in so doing will discharge an obligation to society. But as time progresses, we are awakened to an understanding that the government actually *believes* it has the right to examine and judge individual moral conscience and detain prisoners accordingly. Acts of commission land offenders in prison. Prison mindsets keep them there long after parole eligibility dates have passed. Imprisonment for punishment is one thing; imprisonment for values and beliefs is quite another. What indignation a prisoner may feel towards prison practices is usually not that of an innocent martyr, but rather that of the guilty who feels his or her punishment grossly exceeds just deserts and is being inflicted by those *who themselves are not blameless*.

Modern society has abdicated the duty of justice to bureaucratic machinery in the mistaken belief that the state can better and more appropriately carry out the mandate of Natural Justice. It metes out 'just-us' based on class hegemony, wealth, and power. The state punishes crimes against institutional property with particular vengeance, because we value money over human life and dignity. It exonerates corporate crime, while condemning powerless individuals to years of despair. It discriminates against women and Native Peoples, while granting male white-collar criminals virtual licences to exploit and profit from the distress of the voiceless. It punishes the addicted for having a recognized disease. We rely totally on the decisions of a professional class, whose vested interest in 'just-us' is building a self-perpetuating industry.

The 'majesty of the law' is a reasoning thing; it ought not to stoop to the primitive instinct of vengeance. Its mission is of a *higher* nature. True, it is still steeped in a theological muddle, which proclaims punishment as a means of purification or the virtuous atonement for sin. Perversion of Justice (as clearly defined in the Beatitudes), in favour of a prison mindset is a pernicious cancer that is the antithesis of a compassionate, just society.

Is prison abolition the answer? Reality dictates that it is not. There is a proportion of offenders from whom society must be protected. Prison is effective in its safeguard role. Beyond that limited mandate, prison is merely a school graduating embittered, dysfunctional misfits. It neither corrects nor appropriately punishes. It has little, if any, deterrent value. Less costly, more effective, pro-social alternatives for dealing with criminal behaviours exist, but until society collectively becomes accountable for its own problems, we are destined to remain in the dark ages. Legally and socially, prisons of both kinds inflict more than punishment on the offender. They have a profoundly damaging effect on all citizens.

NOTES

- 1 Bonhoeffer, a German theologian and teacher, was imprisoned and executed by the Nazis for participation in a conspiracy to assassinate Adolph Hitler.

A New Act for Prisons and Parole

Roy Glaremin

As of November 1, 1992, the *Corrections and Conditional Release Act* governs federal prisons and parole in Canada. The Act is practical and progressive. It relies heavily on the concept of reintegration in directing the Correctional Service of Canada (CSC) and the National Parole Board (NPB). Having spent the past 16 years in Canada's federal penitentiaries, I see the Act as a welcome milestone in the evolution of prison management in this country. What follows is commentary on the Act and related matters.

At the outset, I qualify my assessment of the Act as practical and progressive. The Act is better described as having the potential to bring forth positive change, than as having done so already. This qualification is important, because Canadians in federal detention generally expend little energy in pursuing collective interests, and because this may remain so, despite the opportunities the Act creates for them. Further, current prison managers developed their work habits in a more authoritarian work environment than the one prescribed by the Act, and one expects they will be slow to change those habits. The same can be said about many of the CSC's front-line staff members. A pessimist might think the apathy of prisoners and the authoritarian approach of current managers will combine to rob the Act of its potential. Being an optimist, I think otherwise.

An appreciation of the Act's potential begins with understanding the concept of reintegration and its embodiment in the Act. With very few exceptions, all Canadians in federal detention will be released at some point. Given this inevitability, the most practical purpose the CSC can have is to assist the people in its charge to prepare for a crime-free life outside. And, in fact, section 3 of the Act states:

The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by

- (a) Carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
- (b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

Before examining the key provision that relates reintegration specifically to the management of individuals under sentence, and in order to keep the progressive as well as the practical nature of the Act in mind, I point out that the Act directs both the CSC and the NPB to use the 'least restrictive' means available to them. In Part 1 of the Act, which deals with corrections, section 4 provides ten principles 'that shall guide the

Service [CSC] in achieving the purpose referred to in section 3 [above].'
Two of these are of interest here:

(d) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders; [and]

(e) that offenders retain the rights and privileges of all members of society, except those ... that are necessarily removed or restricted as a consequence of the sentence.

Part II of the Act, which deals with conditional release (i.e. parole), contains a guiding principle similar to (d) above.

Prisoners will have to rely on the courts, if they expect to benefit much from these provisions. I believe one ought to accept this as natural because one knows relations between keepers and those in their care and custody contains an inherent imbalance of power, and because one ought to know that this imbalance of power is improperly exploited, more often than not as a matter of convenience, sometimes out of malice. It follows that those who abuse their power as a matter of course will resist complying with provisions meant to curtail such abuse. If one accepts this idea at face value, one better understands why an apathetic prison population will realize only a portion of what the Act promises.

A look at Section 74 provides the opportunity to detail a recent exploration of the Act by the inmate committee of this prison. Section 74 reads:

The Service shall provide inmates with the opportunity to contribute to decisions of the Service affecting the inmate population as a whole, or affecting a group within the population, excepting decisions relating to security matters.

Since all CSC decisions relate, at least indirectly, to security matters, one assumes that, in complying with this section, the CSC should include only those decisions where doing otherwise would constitute a *breach* of security. To date the administration of the prison I am in has virtually ignored section 74. Our Inmate Committee recently asked for a copy of the 'Master Development Plan' for the prison, because the allocation of space within the prison had become a matter of concern to the population and because whenever the Committee broached the subject and made suggestions, it was told the allocation of space was being dictated by considerations arising from the Master Development Plan. When the Committee requested to see the Plan, the Warden responded by saying a copy would be provided when the plan was completed. The Committee rejoined that it would then be too late to contribute to decisions affecting the Plan, and since the Plan was already affecting the whole population, continuing to withhold the Plan from the Committee amounted to a violation of section 74. The Warden said he would have the Plan doctored so that providing it would not reveal ducts, tunnels, and security installations and would then give a copy of the doctored Plan to the Committee. It is clear the Warden would not have agreed to

produce a copy of the Plan upon request had the Committee not used section 74 to force the issue. It was also clear that the Warden was not pleased at being put in the position of having to choose between producing a copy of the Plan before he wanted to and possibly violating this section.

By itself, the matter of whether or not the Committee's request for a copy of the Plan is granted has little significance. In a greater sense, however, the matter represents a test of section 74 and thus in the context of these comments, a test of what I call the Act's progressive nature.

Assuming the Plan is shared with the Committee, what are the ramifications?

First, the possibility of better allocating space is created by giving interested prisoners the information they require to make useful suggestions. Second, awareness of the Act's potential is raised. On the downside, one would count the time and effort expended by the person who had to doctor the Plan. One might also have to include here the possibility that forcing the issue might have caused resentment and that this may yet have negative repercussions. The downside of this episode deserves additional comment, because it applies in similar situations.

As in the example above, providing the opportunity to contribute to a decision will often require that managers first make the context in which a decision is being made clear to the prisoners who might contribute to the decision. This process will always take some time and effort, and one can foresee instances in which managers would feel that time and effort so expended was wasted, because the prisoners involved did not reciprocate by taking the time and expending the effort that would have been required to make a meaningful contribution to whatever decision had been made. Further, if, for example, prisoners entered into this process in bad faith, perhaps looking only to cost managers time and effort, it is likely that future possibilities of benefiting from a cooperative effort would diminish in number and scope and with just cause. One should recognize that a manager can influence a prisoner's personal situation a great deal with minimal effort. The rule here is simple: those who oppose their keepers pay, and those who help their keepers get paid – payment being measured in how much time a person serves and under what conditions. Given the position a manager enjoys relative to an individual prisoner, and given the demands that compliance with this section would make on managers, it is likely that managers and national CSC planners have purposely avoided setting any policy regarding section 74.

The CSC does comply with provisions relating to reintegration. It began developing this idea years before the Act took effect. Section 102 of the Act's Regulations deals with reintegration directly. Section 102, subsection (1) obliges the CSC to develop a correctional plan for each inmate and to maintain the plan

to insure that the inmate receives the most effective programs ... to prepare the inmate for reintegration into the community ... as a law-abiding citizen.

Prisoners who work toward release according to their correctional plan seem to be afforded insurance that their efforts will not be in vain by way of subsection 107(2) of the Regulations, which states:

When considering program selection for, or the transfer or conditional release of, an inmate, the Service shall take into account the inmate's progress towards meeting the objectives set out in the inmate's correctional plan.

Section 102, subsection (2) is of special importance to those targeted for detention until the end of their sentences, i.e., those who could be denied conditional release altogether. People serving definite sentences who have not been ordered detained until warrant expiry can be released before and, by law, must be released at the two-thirds mark of their sentences. Release at two-thirds of sentence is called statutory release. The Act expands the target group for detention beyond two-thirds of sentence from only those likely to commit further serious violent offenses to include those likely to commit further serious drug offenses. Each case for detention beyond two-thirds of sentence is decided by the NPB at a detention hearing. As with any other parole hearing, the prisoner has the right to have an assistant (legal or other) at a detention hearing. It is yet far from clear how many of those targeted for detention under the expanded provisions will actually be detained. Given the wording of Regulation 102 (2), one thing is clear: it will be harder to make a case for detention against those who follow their correctional plans, than against those who do not.

The programs that CSC offers prisoners in relation to correctional plans, rehabilitation, and reintegration vary between prisons and regions of the country, and range from a gem that qualifies prisoners as electronics technicians to intense, individualized treatment by psychiatrists and psychologists intended to modify violent criminal behaviour. However, the bulk of the programming offered falls into two broad categories: drug and alcohol rehabilitation, and living skills training. The rehab programs vary in quality and intensity, beginning with Narcotics Anonymous and Alcoholics Anonymous and ending with programs offered only at isolated facilities managed exclusively around the specific rehab program that the facility offers. Under the heading of 'living skills training' one finds programs like 'Street Readiness,' which prepares people for release by directing them to social assistance agencies, helping them to restore lost ID, and instructing them in how best to find and keep work; one also finds programs offering help in controlling anger. These programs are designed and delivered by professionals, i.e., teachers, social workers, and psychologists. Unfortunately, the CSC is moving from offering living skills training (l.c.) to offering Living Skills Training (u.c.). The latter consists of five short modules and seems to represent the barest minimum of what can be said to constitute a program under section 3. It was designed by the CSC

and is delivered exclusively by people who entered the CSC as guards and case workers. I see this move as unfortunate, because ex-guards and ex-case workers generally do not influence prisoners a great deal in a classroom type of setting. One reason the CSC relies on its own this way is that section 4 of the Act contains a guiding principle that obliges the CSC to provide 'appropriate career development opportunities' for staff members. Ironically, compliance with this provision reduces the effectiveness of some programs the CSC provides in compliance with section 3.

A thorough evaluation of programming within the CSC is beyond my purpose here, and given the CSC's reluctance to disclose specific information about its activities in this area, it is likely beyond my ability as well.

Section 81 is, perhaps, the most interesting and progressive section in the Act. It may also prove to be the most practical. Its subsection (1) reads:

[The Solicitor General of Canada] may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the [Solicitor General] ... in respect of the provision of those services.

Subsection 81(2) reads:

Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non aboriginal offender.

Subsection 81(3) reads;

In accordance with any agreement entered into under subsection (1), the Commissioner [of the CSC] may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and of the aboriginal community.

Section 81 is particularly interesting in light of the national referendum held in October, 1992 on whether to accept the Charlottetown Accord (a proposed package of constitutional amendments) because the accord had included making Native self-government a constitutional right. The Charlottetown Accord was not accepted by Canadians, though polls concerning the referendum showed a substantial majority of Canadians favoured granting Canada's First Nations the right to govern themselves. Since the parties who would negotiate Agreements under 81(1) spent energy considering self-government leading up to the referendum, they are now in a favourable position with regard to this section.

The progressive aspect of section 81 is self-evident. An understanding of the practical aspects of the section may benefit from further comment. The first thing to consider is that Native communities will not likely build jails and prisons that resemble those of the federal

government, and one cannot well imagine the Solicitor General expecting otherwise. Section 81 is obviously meant to make allowances for the cultural differences between Native societies and Canadian society at large. One therefore assumes that an agreement under 81(1) would see a prisoner in a Native community 'held' there by her or his honour. This would eliminate the cost of custody, leaving only the cost of care by the community. At present, it costs the federal government approximately \$50,000 per year to keep one person in federal detention. One assumes communities can care for a person for considerably less. If this proves to be the case, agreements may be reached quickly; if they are, and if they prove beneficial to all concerned, the door to innovation throughout the system could be thrown wide open.

The Act is not without an odious aspect: urinalysis has been reinstated. The previous provisions for testing federal prisoners for drug use by urinalysis had been ruled unconstitutional in *Jackson* 1990. This Federal Court decision left everyone expecting that the CSC would simply revise its provisions, because the Court ruled mandatory urinalysis for prisoners *per se* was not unconstitutional, only that the provisions in use at the time failed to provide sufficient safeguards against violations of a prisoner's right not to be deprived of the fundamental principles of justice and the right against unreasonable search and seizure. It is certain that the new provisions will be examined judicially as well. In the meantime, the CSC and the NPB are making full use of the Act's provisions in this area.

At the time of this writing, the Solicitor General is sponsoring two bills dealing with 'preventive detention' *beyond* the end of a person's sentence. As with detention until end of sentence, any laws that might allow detention beyond that point would have to be judged on their application. Public pressure to keep violent people in prison is real, influential, and understandable. It makes no sense to release someone from detention, being certain the person will commit serious harm to others. But who has to be certain? What makes the person certain, and how exactly will that and should that affect the person who is consequently detained?

There is no mention of preventive detention in the *Corrections and Conditional Release Act*. The possibility of preventive detention being legislated, however, relates to the Act here in as much as it serves to show that laws affecting prisons and parole are subject to relatively quick and substantial change. It is because of this quality that I see the Act, which by law will undergo a comprehensive review five years from the date it took effect, as a window of opportunity. This Act has a distinctly holistic spirit, as evidenced by its reliance on reintegration, in defining its purpose, and in directing its resources. This is good. It should be exploited.

In closing I say to my fellow prisoners, let us make good use of the practical and progressive nature of the Act. To the community at large I say, wish us luck, because you will benefit if we succeed.

Post Script

This Monday, October 4, two letters were posted for the population of this prison to read. One came from the Inmate Committee, William Head Institution (WHI), a minimum security prison on Vancouver Island in British Columbia. It is dated August 31, is addressed to our committee, and includes the Federal Court ruling of August 13 that quashed the CSC decision to terminate the university program at WHI.

The ruling concludes:

Because the respondent [Her Majesty the Queen (CSC)] did not comply with section 74 [above], the decision to terminate the Simon Fraser University program at William Head Institution is quashed. Any new decision with respect to the program shall be taken only in accordance with section 74 of the Act.

The decision to quash is based on the CSC's failure to consult with prisoners *before* terminating the program at WHI. As quoted from the ruling, the CSC argued that:

section 74 does not require consultation with inmates prior to decisions being made, but that discussion with inmates after such decisions are made is sufficient compliance with that section.

J. Rothstein disagreed, writing:

The necessary implication of the words in section 74 and the accompanying heading [Inmate Input into Decisions] is that the opportunity to contribute must be afforded to inmates before and not after a decision affecting them is made.

Based on this ruling, the CSC has initiated a consultation process concerning the fate of university programs in all federal prisons. This brings me to the second letter posted on Monday. It is from our warden to our inmate committee. It includes what university students here say is a fictional account of consultations with them about this year's termination of the Queen's University program in this prison. Also included in this letter is a deadline for submissions on the fate of university programs in all federal prisons: '*no later than noon on 8 October 1993*' (emphasis in the original). Given that those prisoners affected by the termination of university programs, at WHI, and here were not consulted before decisions to terminate those programs were made. And given that prisoners here have, according to our warden, but four days to prepare submissions on the fate of all such programs, one cannot help thinking the CSC will not willingly act in accordance with the spirit of section 74.

The court action of the Inmate Committee of WHI and the subsequent ruling hint at the Act's potential.

Sunday, Bloody Sunday

A Field Marshall

On Easter Sunday (April 11, 1993) at the Southern Ohio Correctional Facility (SOFC) located in Lucasville, Ohio, the years of oppression exploded into a full-blown riot. For all familiar with the treatment and conditions there, it was known to be long overdue. Brutality, racism, murder, and inhumane treatment have been documented with the state and federal courts as well as with Amnesty International and other human rights organizations – yet the prisoncrats just kept tightening the screws.

Years of whitewashing by the state legislative watchdog committee (Correctional Institution Inspection Committee, CIIC) didn't help. The CIIC in 1990 called for a full-scale investigation into conditions at Lucasville that they turned into a political fiasco by creating an 800 member Aryan Brotherhood (AB) and focusing on that aspect, saying the AB controlled gambling, drugs, and prostitution inside the prison. No mention was made of the other factions, and the fallacy about the AB just caused younger prisoners to want to start one or join. Governor Celeste called for a full-scale investigation by the State Highway Patrol after the FBI, SHP and CIIC had just investigated allegations of two black prisoners being killed by white guards for touching a white nurse. All the SHP did was twist and turn their investigation to cover for the guards' and prisoncrats' illegal activities. SHP also called for more security; the hiring of additional guards and putting the prison on semi-lockdown. This created the increase in tension and oppression that led to the events of the Bloody Easter Sunday riot. The failure of the courts and legislature to provide relief from the oppressive conditions, coupled with the constant harassment of prisoners who tried to use legal avenues to address the everyday constitutional violations left only one option – revolution. Judges, politicians, and even prisoncrats pay lip service to the public about how prisoners should and are encouraged to use the courts and grievance system to air complaints and violations. In reality, they bog down prisoner cases for years, dismissing 90% of them without a trial, then retaliate with long-term isolation in control units – cell and body searches for harassment purposes and the thousands of other ways they harass us.

The years of frustration came to a head when forced/mandatory TB testing was done after the state had put active TB carriers in areas of the prisons where it could spread – refusing to isolate them properly. When gorilla tactics were used by prisoncrats to enforce this mandatory testing, prisoners rebelled. What started as a spontaneous event turned into a takeover of all of L Side, the taking of eight guards hostage, and the killing of nine prisoners and one guard before the takeover was

over. The prisoners were liberated and some of those who refused to participate were beaten and some were killed. The takeover/riot began at approximately 2:45 PM on Easter Sunday and didn't end until the last hostages were released unharmed and the prisoners surrendered on National TV eleven days later. The negotiated surrender was made possible when Niki Schwartz, a civil rights attorney from Cleveland, Ohio, was called in to assist and advise the prisoners involved. It is still rumoured, and unofficially confirmed by some prisoners involved, that there is a much larger body count of prisoners killed, but the state is covering it up. Right now the Ohio Department of Justice is calling the shots at the prison.

Approximately 330 to 340 prisoners, who were on the recreation yard when the riot began, remained there until approximately 3:30 AM when over 200 guards, dressed in riot gear, entered the yard. They herded the prisoners into the gym, stripped them naked, and threw all their belongings into a community pile (this property hasn't been recovered to this day). Handcuffed behind their backs, prisoners then marched naked down K Corridor while female and male guards made comments about their nudity and manhood. They were then locked up, five to ten prisoners in a cell. It took more than four hours before the handcuffs were removed. Prisoners remained in these conditions for four days: five to ten in a cell, no medical attention, no anything except for a couple of cold-cut sandwiches a day until they were moved to one-man cells. One prisoner, Dennis Weaver, who had a history of litigations but who was a non-participant, was killed while on K side. The way he died has not been confirmed to this writer.

During the riot and negotiations, the Department of Corrections spokesperson repeatedly treated the incident as a joke. This was the same tactic used when the four Brothers took control of JL supermax back in 1985, and it is a common tactic used by the state. It backfired this time, leading to the execution of a guard, Robert Villandinghams.

The prisoners hung sheets out the windows telling the media that the state wasn't playing fair. The state's response was to move the media away from L Block so they could neither see nor hear the prisoners. After Villandinghams' body was dumped from a window, the state started taking the prisoners seriously. During all this, rumours abounded: it was reported from unnamed sources that there were seventeen to fifty bodies stacked in the L Side gym and to this day there are confirmed reports of more prisoners killed at the beginning of the riot than the DRC is reporting. I'm told that the Justice Department is calling the shots now and a cover-up (at least to the media) is being done *vis-à-vis* body counts.

Demands were issued to the DRC at the start; the different factions inside the prison worked together after the initial takeover. While the media reported there was dissension amongst prisoners, it was, in fact, at a minimum. One of the problems is forced integration. The reason the state is able to maintain the fallacy about an Aryan Brotherhood is

because those prisoners who don't want to be forced into integrated celling have to say that they're racists in order to obtain a 'Green Card.' Such a card is a tag in a prisoner's file saying it is against his religion or philosophy to cell with another race. Those who have done time know that a lot of Black/White cells are homosexuals and their Man, and this has been a stigma against integrated cells (see *White v. Morris* consent decree). It is even recognized by leading jurists that integration by court order is no longer effective. Integration in prison should be by choice due to the volatile environment.

Demands that the state agreed to consider were:

- 1 Follow all administrative rules and regulations.
- 2 Administrative discipline and criminal proceedings will be fairly and impartially administered without bias against any specific individuals or groups.
- 3 All injured parties will receive prompt medical care and follow-up.
- 4 The surrender will be witnessed by religious leaders and news media.
- 5 The unit management system will be reviewed with attempts to improve in areas requiring change.
- 6 SOCF will contact the federal court to review the *White v. Morris* consent decree that requires integrated celling.
- 7 All close-security inmates have already been transferred from K side, and L side close-security inmates will be immediately evaluated for transfer.
- 8 Procedures will be implemented to thoroughly review prisoners' files pertaining to early release matters and changes will be made where warranted.
- 9 600 inmates transferred to relieve overcrowding.
- 10 Current policies regarding inappropriate supervision will be rigidly enforced.
- 11 Medical staffing levels will be reviewed to ensure compliance with ACA standards for medical care.
- 12 Attempts will be made to expedite and improve work and program opportunities.
- 13 The DRC will work to evaluate and improve work and program opportunities.
- 14 There will be no retaliatory actions taken toward any prisoner or group of prisoners or their property.
- 15 A complete review of all correctional facility mail and visit policies will be undertaken.
- 16 Transfers from the correctional facility are coordinated through the Bureau of Classification. Efforts will be increased to ensure prompt transfers of those prisoners who meet eligibility requirements.
- 17 Efforts will be undertaken to upgrade the channels of communication between employees and prisoners involving quality of life issues.
- 18 The complete commissary pricing system will be reviewed.
- 19 The DRC will consult the Department of Health regarding any further TB testing.

- 20 The FBI will monitor processing and ensure that civil rights will be upheld.
- 21 The DRC will consider case by case the interstate transfer of any prisoner if the DRC feels that there is a reasonable basis to believe that they would be unable to provide a secure environment for that prisoner. Any prisoner denied transfer will be reviewed by the Federal Bureau of Prisons.

On Monday April 12, 1993, the bodies of six prisoners were placed on the yard for the DRC to pick up. They had been beaten and hanged. All were older prisoners, some who refused to participate in the riot, some who were snitches. On Tuesday, prisoners had dismantled windows and went from L Side to K side and got prisoners in K-8 to destroy their cells. Back in the AC Blocks, prisoners tore out their cell lights and wiring, beat on their cell doors, and started fires with all state-issue property. This was not shown on TV. On Wednesday the 13th, a helicopter manned by the Ohio National Guard and Northern Assistant Regional Director Joe McNeil had engine failure and crashed outside the prison, injuring those inside, while another officer broke his leg trying to rescue those inside the helicopter. Governor Voinavitch ordered 500 National Guard to surround the prison, replacing the Ohio State Highway Patrol. Water, food, and prescription medication were delivered to the prisoners. All water, electricity, and food had been cut off since the beginning of the takeover. In exchange for the release of a hostage, the prisoners were given airtime on TV. A prisoner identified as 'Inmate George' (later a private investigator called the media telling them that 'Inmate George' was George Skaizes, a former client who she believed to be innocent of the murder for which he was imprisoned) told the public that all prisoners of all races joined together in unity during the takeover to show the public the oppressive conditions they were living under and that they were all willing to die if their demands were not met. They called for the firing of Warden 'King Arthur' Tate. Guard, Darrold R. Clark, was released as a result of the broadcast. George also apologized to Villandinghams' family for his death, saying it was sad but necessary. He also told the family of another hostage, Bobby Ratcliffe, that he was all right and would be home soon. The hostages were well treated and guarded by the Muslims and White Brothers.

On Friday the 16th, prisoner, Abdul Samad Mulin, and guard, James Demons, were permitted out on the yard where an impromptu press table was erected and two state negotiators sat allowing media coverage of the event. Abdul Samad called upon the Muslims of the world to monitor the situation and to retaliate if any of the Brothers were killed by the state. He then went on to voice the complaints of the Muslims regarding the SOCF refusal to allow their prayer garb and other issues pertaining to the customs of Islam. It was obvious that they were given a limited time to voice these issues. He also stated that the mandatory TB testing violated their religious tenets and had sparked the incident, and told how the Security Point Classification system and transfers

were unfair. Guard, James Demons, was garbed in a Muslim robe and stated that he felt the incident could have been prevented and that shutting the water and power off jeopardized the hostages lives. He also said that the prisoners killed were not killed by the Muslims and were killed for being snitches. He was then led off the yard and none of his fellow pigs clapped or cheered for his release. He would later tell the media that he acted like he embraced Islam merely to save his own life and that he resented the way the situation was handled as Villandinghams' life could have been saved if the state would have taken matters seriously.

When Niki Schwartz was brought in, things got going more smoothly. On April 21, 1993, eleven days after the riot started, the negotiated settlement of the 21 points (listed above) were accepted and the surrender of the prisoners on national television began. Prisoners were shipped to MANCI, Trumbull, Lebanon, Lorain, and Chilicothe.

The fact remains that Ohio's prisons are operating at 200% over-capacity and the conditions are so bad that the same situation is liable to happen at any of these prisons. The public attitude that supports stiff sentences and more prisons does not deal with the root problems of crime. As long as there is racism, unemployment, sexism, poverty, drug use, and inadequate community resources for children and young adults, the crime rate will continue to escalate. President Clinton's plans for the criminal injustice system involve more funding to hire more police which will lead to more arrests and imprisonments, all of which translates into more overcrowding. One issue that the Brothers at Lucasville didn't touch on, or the state wouldn't let out, is the fact that the Adult Parole Authority isn't paroling enough prisoners who merit parole and the Governor refuses to exercise his authority of emergency releases of prisoners in overcrowding situations. The parole board members have ultimate power over prisoners and often exercise it arbitrarily and capriciously, though there is an Ohio Criminal Sentencing Commission ready to issue a report to require mandatory sentences, but also more community alternatives to prison. The sentencing structure in Ohio is ridiculous. Some prisoners are serving sentences in excess of 100 years for offenses that in other states would get two or three years flat. It has been proven that the longer the incarceration the more detrimental the effect. But prisons are industries nowadays, employing people in rural areas and creating an enormous job pool, so penalties get increased to maintain the business.

What is the answer? Obviously, rioting isn't the best way to bring about change due to the violence that goes with it. However, when men are treated like animals with no alternative means of getting justice, rioting is the only avenue left to focus the public eye on what is happening in our prisons. Now, hopefully, committees will be formed to bring about positive change. It's up to those in the progressive community to make this happen. I would urge those attorneys, legislators, and civil rights groups to join together and try to organize

committees to make the state address all these prisoners' issues so there's not another blood bath. Those involved need your support more than ever to fend off the multitude of forthcoming criminal charges as well as retaliation by the state. Remember we are in here for you and you are out there for us. Solidarity

Response

A Political Fugitive: The Case of Little Rock Reed (A Story of Due Process the American Way)

Deborah Garlin¹

Many of the readers of the *Journal of Prisoners on Prisons* (JPP) are familiar with Little Rock Reed's advocacy for the rights of American Indians and prisoners, since he has published various articles in the Journal (Reed 1989; 1990; 1993a; 1993b; Morgan and Reed 1993). Most of you are probably not aware, however, that since the last issue of the JPP, which he co-edited, Little Rock has been forced underground and has become a political fugitive. As a personal friend and as an attorney working with him on behalf of the Aboriginal Uintah Nation, I am impelled to write about his personal circumstances that continue to impede the progress of our work.

On July 5, 1993, several well known and highly regarded social scientists and attorneys² submitted a petition for clemency/pardon to George Voinovich, governor of Ohio, on Little Rock's behalf. Their petition stated:

After having carefully reviewed the enclosed 'Statement of Facts Regarding Little Rock (aka Timothy) Reed's Situation With the Ohio Adult Parole Authority' and supporting documentation attached thereto, it is our informed opinion that Little Rock Reed, an articulate human rights advocate for American Indians and prisoners, has been made to serve many years in Ohio's maximum security prison *solely and expressly because of his legitimate and peaceful activism.*

In our opinion, the enclosed evidence indicates that because Little Rock Reed, while on parole, was exposing civil and criminal violations which have been and continue to be committed by the Ohio Adult Parole Authority (APA), the Ohio Department of Rehabilitation and Correction, and other agencies that have influence with the APA, the APA intends to use its power to place Little Rock back in prison for up to fifteen more years in order to silence his voice. In fact, the evidence is so overwhelming that on June 4, 1993, after reviewing only a very small portion of [Little Rock's sworn affidavit and supporting documents], a Kenton County, Kentucky judge [acknowledged] that Little Rock's life is [indeed] in danger due to the fact that the APA has plans to politically imprison – and very possibly to politically assassinate – Little Rock if and when he comes out of hiding

The petitioners also told Governor Voinovich that, even though under Ohio law, petitions for clemency or pardon are to be submitted to the APA for their review and recommendation, 'in light of the APA's apparent conflict of interest in this particular case, such procedure

would be entirely inappropriate' and 'would preclude Little Rock from being given real consideration for pardon or clemency.'

Notwithstanding the above, on July 28, 1993, Governor Voinovich forwarded the petition to the APA for their recommendation. On July 30, 1993, the Ohio Parole Board denied the petition, stating that Little Rock's petition will be given no consideration until he is back in the APA's custody.

For those of us familiar with the facts set out in the petition, the Ohio Parole Board's response is appalling. Little Rock's affidavit, which is reproduced below, speaks for itself:³

- 1 I was convicted for aggravated robbery and sentenced to 7 to 25 years in the Ohio Department of Rehabilitation and Correction (ODRC). My sentence began in May of 1982.
- 2 Under Ohio law, I became eligible for parole after less than 4 1/2 years. Accordingly, I appeared before the parole board in 1986. Because I was serving a 180-day term in solitary confinement for having committed the offense of going on a hunger strike to protest the ODRC's refusal to recognize and respect the religious rights of American Indian prisoners, I was brought before the parole board clad in handcuffs and [shackles]. The members of the parole board stated to me at that time that, if I were released on parole, I could practice my traditional religious beliefs, the implication clearly being that, if I were to drop the religious issue and impending lawsuit against the prison officials for religious deprivations, I would be granted a parole. I explained to the parole board that, as a result of my hunger strike, I was denied the right to attend my brother's funeral, a privilege enjoyed by all other prisoners in Ohio; I was sprayed in the face with a fire extinguisher; I was kicked and punched by prison guards while defenselessly handcuffed and shackled; I was incessantly ridiculed by prison staff; and I received extensive sensory deprivation in solitary confinement. I told the parole board that, if I forsook my brothers, they would have to go through what I have gone through merely for asserting the right to pray in the manner that was given to our people by God. I told the parole board that I could not forsake my brothers.
- 3 When I refused to drop the religious issue, as set forth above, the parole board denied my parole and told me I would become eligible for parole again after five more years. The 'official' reason given me for the denial of parole was that, in the parole board's opinion, I was an alcoholic and drug addict and they wanted me to participate in Alcoholics Anonymous and/or Narcotics Anonymous (AA/NA), and if expected to be released at any time in the future, I would have to participate in these programs. This official reasoning was entirely inappropriate, for nothing in my recorded history was indicative of my having an alleged drug or alcohol problem, and I stated as much to the parole board.
- 4 Under Ohio law, when a prisoner is given a 5-year extension by the parole board as I was given in 1986, the prisoner is given a review after 2 1/2 of the five years. Accordingly, I appeared before the parole board after 2 1/2 years (this was in 1988 or 1989). At this time the parole board expressed their dissatisfaction with the fact that I had failed to get involved in the

AA or NA programs. I stated to them (and this statement is recorded in the files of the parole board because I mailed them a written copy of the statement in advance), that I clearly had no drug or alcohol problem, a fact that was demonstrated by the work I had been doing in the field of Indian Affairs during my incarceration. I stated further to the parole board that, if I had a drug or alcohol problem and if the parole board was sincerely concerned about my need for treatment, then the appropriate treatment for me could not be found in the AA or NA programs, but rather in the traditional American Indian religious traditions of my people. I stated further that the philosophies of AA and NA are contrary to my own religious, cultural, social, and political philosophies and beliefs, and that to force me into AA or NA would, therefore, be a violation of my rights as are clearly established under international law and United States law. Every aspect of my statement to the parole board was verified in letters the parole board received from social scientists and legal scholars who are experts on the subject matter.

5 Notwithstanding the documentation and statements presented to the parole board as described above, I was again denied parole and told by the parole board that, if I ever expected to be released from prison, I must participate in AA and/or NA.

6 My statement to the parole board regarding AA and NA and the adverse effects those programs have on American Indians due to conflicting values and beliefs was expanded into a major thesis on the subject matter. This thesis, entitled 'Rehabilitation: Contrasting Cultural Perspectives and the Imposition of Church and State' was published in the *Journal of Prisoners on Prisons*, a publication used as a pedagogical tool by professors of criminology and criminal justice in the United States and Canada. The first page of the article, which is attached hereto as Exhibit-A, contains a footnote in which I stated that a 'special thanks goes to each and every member of the Ohio Parole Board whose inhumanity inspired this work.' This thesis (and the footnote) was presented at various conferences such as those of the Academy of Criminal Justice Sciences, the American Society of Criminology, and the International Conference on Penal Abolition, among others. The members of the parole board were aware of this article and the high acclaim it was receiving at these conferences and by the professors who were making it required reading for their students majoring in criminal justice. For example, Dr. Robert Gaucher, a professor of criminology at the University of Ottawa (Ontario), personally contacted the parole board and made them aware of the article's use at these conferences and universities. Dr. Gaucher will verify this if contacted. See Exhibit-5.

7 The article referred to in paragraph 6 above is only one of a long list of articles I have had published in which I have been exposing human rights violations committed by the Ohio Adult Parole Authority and other officials within the ODRC and Ohio government. Another example of my work that the Adult Parole Authority was aware of is an article, 'The American Indian in the White Man's Prisons: A Story of Genocide,' which was published in the mid-to-late 1980s in *Humanity and Society*, the official journal of the Association for Humanist Sociology and in *The Other Side* magazine and in the *Journal of Prisoners on Prisons*. This particular article, which is attached hereto as Exhibit-B, exposes various

crimes committed by ODRC officials and their attorneys, such as the Ohio Attorney General and ODRC having knowingly employed a fraudulent Indian chief of a non-existent 'Indian Tribe' to testify – on more than one occasion – as an 'expert' against Indian prisoners who have filed lawsuits against the ODRC for religious freedom deprivations. My having such articles published in various magazines and journals throughout North America caused the Parole Board to hold contempt for me, a contempt expressed through their treatment of me which has been unlike the manner in which they routinely treat prisoners and parolees in the state of Ohio, which I will now attempt to describe.

- 8 During my incarceration in the ODRC, I watched other prisoners with convictions and sentences similar to mine come and go. If I had been treated by the Adult Parole Authority in a manner consistent with the way in which all other prisoners with my record, my history, my sentence, and my behaviour within the prison system are treated, I would have been granted a parole after serving 4 1/2 to seven years. To use some cases in point, I am able to identify two prisoners who were convicted and sentenced after me who I knew well. Both of these prisoners were sentenced to at least 7 to 25 years for aggravated robberies, and they were both repeat offenders. The only significant difference between these two prisoners and me was that I maintained a fairly clean conduct record while incarcerated, my greatest offense during incarceration being the hunger strike described above, while both of these prisoners had been found guilty of such serious offenses as stabbing other prisoners with knives – on more than one occasion in one of these prisoners' cases. Both of those prisoners were released on parole several years before I was.
- 9 Many people – family, friends, social scientists and lawyers, and the like – wrote letters to the parole board expressing their feeling that I was a political prisoner because the parole board's reason for keeping me in prison no longer had anything to do with my original conviction and sentence, but was the result, rather, of my political activities as described above. I believe that it was because of this enormous public pressure that the parole board decided to drop the AA/NA issue and to reduce the five years they had previously given me to four years so that I would be eligible for parole in 1990. Accordingly, I appeared before the parole board in October of 1990 and without any discussion whatsoever, they notified me that they had decided to grant me a parole and I was scheduled for release from prison on December 21, 1990.
- 10 After the parole board notified me that I was to be released on parole on December 21, 1990, one of their agents approached me and demanded that I sign a contract in which I would relinquish constitutional rights which I had retained, and which all prisoners retain, even while incarcerated in maximum security prison. I complained that this contract was illegal, that to force my signature to be executed on the contract would be a violation of clearly established law, and that the Ohio Adult Parole Authority had no lawful authority to impose this contract on me. I supported my complaint with case law as well as with sections of the United States Code, and I asked the parole board to identify any error in my presentation of the law or any law upon which they relied to impose the terms of this contract on me. I told them that, if the law did, in fact,

authorize them to impose this contract on me, I would certainly be willing to cooperate.

- 11 During the process of my complaint, as set forth in paragraph 10 above, I was in a pre-release program at a minimum security prison to which I was transferred when granted parole at the October 1990 meeting with the parole board referred to in paragraph 9.
12. The chairman of the parole board met with me in regard to my complaint described above. He told me a lot of things that I won't repeat here in detail. I will, however, say that he assured me that he was going to do everything in his power to see that I serve each and every day of my 25-year sentence in prison. He also stated that he doesn't give a damn about my so-called constitutional rights. At the conclusion of that meeting he handed me a piece of paper which stated in his own handwriting that my parole was being taken away from me because 'this inmate said the conditions [of the parole board's contract] as they stand violate his constitutional rights.' This stated reason for taking my previously granted parole was in direct violation of clearly established law. According to what the parole board had now been stupid enough to put in writing, I was being held in prison for no reason other than asserting my constitutional rights. I was then shipped back to maximum security.
- 13 I filed a petition for writ of *habeas corpus* against the parole board in the case of *Little Rock Reed v. Arthur Tate, Jr., and Ohio Parole Authority*, case number 91-CI-122 (Scioto County Court of Common Pleas), in which I presented evidence [substantiating] the factual allegations I have made in paragraphs 10-2 above. The record in that case will reveal that the Ohio Adult Parole Authority admitted that each and every one of my factual allegations set forth in paragraphs 10-12 above are true. In that case, they admitted further that the contract they attempted to force me to sign was illegal and they had no lawful authority to impose such a contract on me. They admitted further that all of my legal arguments were entirely valid and that they had no statutory or case law upon which to rely as a defense to my claims. They argued, however, that because I was originally sentenced to a maximum of 25 years in prison, they should be able to make me serve every day of it in prison without having their motives examined by any court of law. The judge in that case agreed with them: since I was originally sentenced to [an indeterminate sentence of] 25 years, the court held, I have no right to ask any court to examine the parole authority's actions against me until I have actually served 25 years in prison. All of what I am saying here is documented in the court record in the case cited above.
- 14 So that my appeal in the *habeas corpus* action described above would become moot, the parole board granted me a parole and I was released in May of 1992. Within a couple of weeks after my release from prison, my parole officer granted me permission to travel to South Dakota, unsupervised, for two weeks, so that I could participate in the Sun Dance, a religious ceremony. Not long after this, my parole officer granted me permission to travel to Utah to speak at the 43rd annual conference of the *Governors' Interstate Indian Council*, an organization comprised of commissioners of Indian Affairs in the approximately thirty-eight states that have such councils or commissions established for consultation to the

state governors. My purpose for speaking at the conference was to address religious freedom issues on behalf of American Indian prisoners throughout the United States. Attached as Exhibit-C is a letter I received from Wil Numkena, host of the conference in Salt Lake, thanking me for the important role I played at the conference. Exhibit-D is a resolution strongly supporting Indian prisoners' rights which was adopted by the *Governors' Interstate Indian Council* as a direct result of the information I presented at the conference – much of which exposed what participants at the conference perceived as criminal behaviour of the Ohio prison officials and Parole Authority.

- 15 My parole officer allowed me to speak at other conferences as well, including, for example, a state-wide gathering of Indian organizations at the Ohio University at Columbus in October 1992. The content of my speech was arousing many people's concern about the atrocities being committed against American Indians by the officials within the ODRC. See, for example, the affidavit of Lance Kramer, Assistant Provost at the Ohio State University and assistant director of the Ohio Centre for Native American Affairs, attached as Exhibit-E.
- 16 Within several days after the state-wide meeting referred to in paragraph 15, my parole officer called me to his office and told me that my public speaking was getting high-ranking ODRC officials upset. He told me that the chief of the Adult Parole Authority contacted him and ordered him to see to it that I stop speaking. He told me that the chief of the Adult Parole Authority told him to order me to cease all correspondence with prison officials in Ohio on behalf of American Indian prisoners or my parole would be revoked. This last order was a direct result of correspondence I had initiated with Ohio prison officials in which I was able to get them to unwittingly admit to their human rights violations against Indian prisoners. A true and accurate copy of such damaging correspondence is reprinted in a chapter of a book soon to be published by Vintage Books, a division of Random House, Inc.. A copy of that chapter is attached hereto as Exhibit-F.⁴ One of the authors of the correspondence I refer to which is contained in Exhibit-F, Marlo Karlen, Administrator of Religious Services for the ODRC, implied in said correspondence that my parole would be revoked if I continued this activity. Lenny Foster, spiritual leader and director of the Corrections Project of the Navajo Nation, also told me that Marlo Karlen told him that he was outraged that I would force prison officials to meet with Indian representatives to discuss ODRC policies, and that I belong in prison for causing these problems and making his job difficult. Foster told me that Karlen stated to him that Karlen intended to contact the ODRC's legal counsel to see what could be done in the way of having my parole revoked. Karlen made these statements to Foster, as Foster will attest if contacted, approximately one day before my parole officer ordered me to stop corresponding with prison officials as set forth above.
- 17 When my parole officer told me I would no longer be able to travel to speaking engagements (even within the state of Ohio), I was forced to cancel several engagements, including some conferences I had been scheduled to speak at, such as the annual conferences of the Catholic Committee of Appalachia (approximately a 2-hour drive from my home), the Commission on Religion in Appalachia (approximately a 2-hour

drive from my home), a Christian conference at the Ohio State University in Columbus (approximately a 2-hour drive from my home), and a Christian conference at a church in Covington, Kentucky (approximately a 5-minute drive from my home). I also had to cancel plans to testify before the United States Senate Select Committee on Indian Affairs concerning the religious rights violations and persecution of American Indian prisoners. My parole officer told me that, if I appeared to speak at any of these conferences, he would be forced to revoke my parole as ordered by the chief of the Adult Parole Authority. He said he was sorry, but that this was being controlled by the highest ranking officials in the Parole Authority and he was only following orders. He also told me that this was the only time in his career as a parole officer that he had ever been personally contacted by the chief of the Adult Parole Authority and given such orders regarding any parolee.

18 It is the standard policy and practice of the Ohio Adult Parole Authority that if a parolee wishes to travel for any purpose, the parole officer is the person who decides whether or not the parolee may do so. Such decisions are never made by officials at the central office in Columbus – except in my case. My parole officer admitted that he had absolutely no control over my travel requests and that these decisions in my particular case were being made by his superiors. In addition to admitting this to me, he admitted it to William Weathers, a reporter for the *Kentucky Post*. See Exhibit-G, an article by William Weathers in which he reports such a statement by the parole officer.

19 When an Ohio parolee's job requires that he travel (for example, a parolee who drives a truck for a living), the parole officers as a general practice allow the parolee to travel. The travel requests I made which were denied were job-related, as I was to speak at conferences in my capacity as the director of the Native American Prisoners' Rehabilitation Research Project (NAPRRP). In denying my job-related travel requests and in having such decisions made at central office in Columbus rather than by the parole officer, and clearly so as to suppress my speech, the Ohio Adult Parole Authority violated my rights to free speech and to petition the government for redress of grievances and to equal protection of the laws, as well as to due process.

20 While on parole, I was doing everything in my power to comply with the conditions of my parole and I was working hard full-time as well as attending college full-time. My academic goals were clearly set and I was in the process of completing my bachelor's degree with a major in Criminal Justice and Indian Affairs, with plans to begin working on my doctoral dissertation (a text book entitled *An Introduction to Indian Studies*). The plans were certainly realistic, as I have written various papers that are used as required reading in college courses in the United States and Canada, and professors of Indian Studies and of Criminal Justice have already informed me that they plan to use a book I have just completed as a text in courses they teach. See, for example, letters of confirmation from Cindy Kasee, an Indian Studies professor in Florida, and Hal Pepinsky, a criminal justice professor in Indiana, attached hereto as Exhibits-H and I, respectively. See also the affidavit of Bill Williams, my academic advisor at the Union Institute, attesting to the hard work I

- was doing as a student at the Union Institute while on parole. (Exhibit-J.)
- 21 While working full-time and attending college full-time, I had been fortunate enough to meet some sincere people who believed in what I was doing and who wanted to support the objectives of the NAPRRP. One such person was Dinah Devoto, a city council member in Villa Hills, Kentucky, the same town that the offices of the NAPRRP are located in. Ms. Devoto's husband, however, did not see eye to eye with Ms. Devoto, and he expressed a concern that her affiliation with me and the NAPRRP (an ex-convict and an organization that supports criminals) would damage the reputation of [him] and his family in the minds of the community members of Villa Hills. He demanded that she stop affiliating with me and the NAPRRP and she refused to do so. Accordingly, he threatened my life, unprovoked, over the telephone. He contacted me and told me to stay away from his wife, children, and house, and he cussed at me. I hung up on him but was very upset by his call and I immediately called him back and said that perhaps we could meet somewhere and resolve the matter right now. At that time, he yelled, "I'll blow your fuckin' head off you sunuvabitch!" I responded that, during my thirteen years of imprisonment, I have learned to deal with people like him (meaning people who make threats from afar), and I told him that if he came near me with a gun I would take it away from him and stick it up his ass. I then hung up on him and that was the end of it as far as I was concerned.
- 22 A week after I was threatened over the telephone by Steven Devoto as described above, I was served a summons to appear in court to answer charges he had placed against me for allegedly threatening his life. A copy of his sworn statement is attached hereto as Exhibit-K.⁵ If his statement is to be taken at face value, I am obviously an idiot who threatens to kill people for no reason at all, without any apparent motive. If his statement is to be believed, he never implied that he would blow my head off. However, his 6-year-old daughter, Grace, stated later that she personally heard him threaten to blow my head off. She made the statement in the presence of both her mother and her father. See the affidavit of Dinah Devoto attached hereto as Exhibit-L.
- 23 After I was served a summons as set forth above, I was told by Claudia Aylor that Steve Devoto stated to her a couple of weeks previously that he would do something to me. He clearly threatened me in conversation with Ms. Aylor, but Ms. Aylor never told me about it previously because she was afraid I would confront Devoto about it and possibly get into trouble. See Ms. Aylor's affidavit attached hereto as Exhibit-M.
- 24 After I was served the summons as set forth above, I was told by Dinah Devoto that Steve Devoto had threatened me on numerous occasions in conversations with her, but she withheld this information from me for the same reason Claudia Aylor did. See the affidavits of Dinah Devoto attached hereto, Exhibits- L and N.
- 25 I was served the summons referred to above in the evening at the Villa Hills office of the NAPRRP. The police arrived to serve me the summons at approximately 8:00 PM. Actually, I know that Claudia's clocks said 7:55 PM when the police arrived because we both checked the clocks at

that time. The police who served the summons [who are friends of Steve Devoto] claim that they arrived at 8:10 PM. I won't attempt to argue about the variance because I was at the Villa Hills address until about 8:40 that night anyway because my brother, Matthew Scull, didn't arrive to pick me up until 8:40 PM. He would generally pick me up at 8:00 PM and we would catch the last ferry across the river (a couple minutes past eight is when the last ferry runs). He has been late to pick me up on several occasions, and the night I was served the summons was one of those occasions. See the affidavit of Matthew Scull attached hereto as Exhibit-O. The reason Matt would usually pick me up at 8:00 PM is because I had written permission from my parole officer to be in Villa Hills, Kentucky at that address from 8:00 AM to 8:00 PM. seven days a week to work for the NAPRRP. And the reason I mention all of this is that my parole officer has stated that the Adult Parole Authority feels that because I was at the Villa Hills office after 8:00 PM, I have violated the conditions of my parole and these are grounds to return me to prison. I'll bet I'm the first parolee in the United States ever to have parole revocation proceedings initiated against me for the crime of working at the office ten minutes over-time.

- 26 At 9:00 AM on the morning after, I was served the summons as described above, I was on the telephone to contact my parole officer to inform him about the charges Steve Devoto placed against me. I stated to the parole officer all of the above facts relating to the threat and to the charges except at that time I was unaware that Devoto's daughter, Grace, personally heard him threaten to blow my head off. For this reason, that is the only information I didn't give to the parole officer. I also informed him that Steve Devoto had stated to his wife that he was going to drop the charges, and that they were not accurate. I also told the parole officer that I had in my hand the sworn affidavit of Dinah Devoto, swearing that Steve set me up and that the charges against me were false. The parole officer told me that I must turn myself in to his office on the following Monday morning at 9:00 AM so that he could take me into custody and place me in jail and initiate parole revocation proceedings. I couldn't believe what he was telling me, and I asked if he would arrest me even if Steve Devoto and Dinah Devoto came in with me on Monday morning to verify that I had never made a threat against Devoto. The parole officer told me it didn't matter. He said he was going to arrest me anyway because that is the policy regardless of any evidence of my innocence. Matthew Scull was sitting at the kitchen table with me during my phone call to the parole officer and he heard my end of the conversation and can attest to the same. See the affidavit of Matthew Scull attached hereto as Exhibit-O.
- 27 At approximately 7:00 PM on the day after I was served the summons as set forth above, Dinah Devoto called my parole officer to verify that the charges against me were false and that her husband threatened me – I didn't threaten him. At this time the parole officer informed Dinah Devoto that the parole board holds contempt for me because of my political activities, and they would now have an excuse – regardless of my innocence – to revoke my parole and force me to serve the remaining years of my 25-year sentence in prison. See the affidavit of Dinah Devoto attached hereto as Exhibit-L.
- 28 If I had showed up at my parole officer's office on the following Monday morning as he ordered me to do, I would have been arrested and placed

in jail. The parole officer stated as much to me as set forth above, and to Dinah Devoto (see Exhibit-L), and to my grandmother, Gladys McAllister (see Exhibit-P).

29 Prior to the Monday morning that I was to turn myself in, my parole officer told Dr. Hal Pepinsky over the telephone that when I report to his office on that Monday, he planned to pick up the telephone and contact his superiors in Columbus, Ohio, to receive instructions as to what action to take against me. See the affidavit of Harold (Hal) Pepinski, attached hereto as Exhibit-Q.

30 The day after Dinah Devoto and I contacted the parole officer to inform him of Steve Devoto's false charges, Devoto's attorney contacted my parole officer's superiors in Columbus. As a result of that contact, the Adult Parole Authority issued a warrant for my arrest. This action against me by the officials in Columbus was contrary to the routine procedures of the Adult Parole Authority. The arrest orders, and the decision to issue such orders, are as a matter of standard procedure (as well as statutory law – see section 2967.15 of the Ohio Revised Code) carried out by the parole officers, not the officials in Columbus.⁶

31 Since my parole officer planned to contact the officials in Columbus (the same officials who issued the arrest order) for instructions as to what actions to take against me as set forth in paragraph 29 above, my right to due process was violated from the beginning. No one directly involved in my arrest is allowed to participate even indirectly in the decision-making process that was to occur when the parole officer sought instructions from his superiors in Columbus. See *Morrisey v. Brewer*, 92 S. Ct. 2593 (1972). My due process rights as set forth by the Supreme Court in *Morrisey v. Brewer* were also violated in that the decision-making process is to be performed by a 'neutral and detached' decision-maker. Because of the contempt for me which is harboured by the Adult Parole Authority in Columbus, and because of the long-standing pattern of abuse toward me which has resulted from that contempt, it is my contention that no parole revocation procedural hearings conducted by the Adult Parole Authority or anyone appointed by the Adult Parole Authority [in my case] can possibly be conducted in a 'neutral and detached' fashion.

32 I have been told by several people who have been in contact with my parole officer, including *Kentucky Post* reporter Bill Weathers, that two additional reasons exist as grounds to revoke my parole [according to the parole officer]:

1) I had moved to the Villa Hills address and was living there without having first notified my parole officer or sought his permission to change my residence; and

2) I failed to report to traffic court in Cincinnati to answer for a ticket I received as a result of a car accident.

33 There is absolutely no evidence that I was living at the Villa Hills address. I was there working from 8:00 AM to 8:00 PM seven days a week, and I had permission to do so. I was living at my mother's address in Cincinnati. See the affidavits of Nancy Scull, Matthew Scull, Gladys McAllister, and Claudia Aylor, attached hereto, respectively, as Exhibits R, O, P, and M.

- 34 The reason I didn't pay the fine for the ticket I received (for 'failure to control') as a result of a car accident referred to above is that I was going to be found not guilty of the violation. The cause of the accident was the slush on the road. I was driving 10 mph in a 35 mph speed zone. I violated no law, and the woman I bumped into as well as the officer who issued the ticket, were prepared to come to court to testify on my behalf. The reason I failed to appear at that traffic court is that the court date was subsequent to the date I failed to turn myself in to the parole officer so that I would be jailed as a result of Steve Devoto's false charges against me. Ultimately, my grandmother paid the traffic fine and the case in traffic court was closed.
- 35 There are many documents contained in the files of the Ohio Adult Parole Authority which substantiate my claims [against] the Adult Parole Authority. For example, there are copies of correspondence between me and members of the Adult Parole Board, the chief of the Adult Parole Authority, and my parole officer. If the parole officials deny that such documents exist, I will locate the copies I have stored away
- 36 I declare that the foregoing statement of facts is true and accurate to the best of my knowledge and belief, and I hereby affix my signature to it under penalty of perjury.

Much has happened since the above affidavit was executed on April 28, 1993. On June 29, 1993, Little Rock was tried *en absentia* on the Kentucky charge. The trial only lasted an hour, in which Steven Devoto testified that Little Rock, without provocation, threatened Devoto's life. Devoto's testimony was the only evidence against Little Rock. Testimony for the defense included the following:

- Dinah Devoto, the wife of Steven Devoto, testified that on numerous occasions her husband had told her that he was going to 'get rid' of Little Rock if she continued to support Little Rock's organization, the Native American Prisoners' Rehabilitation Research Project. Mrs. Devoto also testified that on the day her husband threatened to blow Little Rock's head off, he (Devoto) bragged to her about his having threatened to blow Little Rock's head off.
- Grace Devoto, the 6-year-old daughter of Steven Devoto, testified (through stipulation) that she heard her father threaten to blow Little Rock's head off.
- Claudia Aylor, assistant director of the Native American Prisoners' Rehabilitation Research Project, testified that prior to the telephone conversation in which Little Rock is alleged to have threatened Devoto, Steven Devoto told Aylor that he would do anything he could to have Little Rock placed back in prison and that he would call on favours owed him by Villa Hills police officers, if necessary, to accomplish it.

On cross-examination, Steven Devoto again swore that he had never threatened Little Rock and that neither his wife, nor his daughter, nor Claudia Aylor were telling the truth. Accordingly, the judge found Little Rock guilty as charged.

Little Rock, upon hearing of the verdict, immediately filed a *pro se* motion for a new trial based on the ineffective assistance of trial counsel. His motion was based on the fact that trial counsel, without consulting with Little Rock (which he is by law required to do), decided not to elicit testimony from Claudia Aylor regarding her having witnessed Little Rock's end of the telephone conversation. She is the only first-hand witness, aside from Little Rock, to Little Rock's end of the phone conversation. Without her testimony to this, there was no evidence with which to refute Steve Devoto's claim that Little Rock threatened his life. Additionally, Little Rock's pleadings in support of a new trial indicated that his trial attorney had failed to elicit further testimony and evidence (of which he was aware prior to the trial) that would have served to vindicate Little Rock, including:

- Dinah Devoto made trial counsel aware (through affidavit) that she contacted the Acting Regional Administrator of the Ohio Adult Parole Authority who verified that Steve Devoto, in an initial state of remorse for having pressed false charges against Little Rock, called the Parole Authority to inform them that he was going to drop the false charges, and asked that they take no action against Little Rock.
- Dinah Devoto made trial counsel aware (through affidavit) that when Steve Devoto learned that Little Rock had filed a counter claim against Devoto for threatening Little Rock's life, Steve Devoto retained a lawyer who persuaded him that the best legal strategy would be to maintain the charge against Little Rock notwithstanding Little Rock's innocence, since Little Rock was an ex-convict on parole.
- Dinah Devoto made trial counsel aware (through affidavit), as did Little Rock through telephone conversation, that Steve Devoto and his lawyer made Little Rock believe that Little Rock was to meet with Devoto and his lawyer for the purpose of signing an agreement whereby the charges would be dropped, while in reality, Devoto's lawyer was on the telephone getting Ohio Adult Parole Authority officials to issue a warrant for Little Rock's arrest. The testimony of Dr. Hal Pepinsky would have corroborated this as well, a fact of which trial counsel was aware prior to the trial.
- Trial counsel had in his possession affidavits and other extensive documentation demonstrating that Little Rock had over the years become a nationally recognized advocate for peace, including evidence that he was personally responsible for keeping prisoners from rioting at the prison in Lucasville, Ohio, yet counsel made no effort to introduce any evidence or character witnesses that would have indicated that the threat he was alleged to make against Devoto is directly contrary to his nature.

In addition to bringing this evidence to the court's attention in his *pro se* pleadings, Little Rock pointed out that *the charge itself was inapplicable to the case according to Kentucky law*, something his trial counsel failed to point out to the court, which indicates that trial counsel did not do any legal research in Little Rock's case. From Little Rock's *pro se* motion:

The evidence in this case ... indicates that Steve Devoto did in fact threaten to blow Defendant's head off, which was a threat against Defendant's life.

[The] evidence indicates further that in response to Devoto's threat against Defendant's life, Defendant reacted by stating that IF Devoto came after Defendant armed with intent to kill Defendant as threatened, and IF Devoto did not succeed in killing Defendant, Defendant would A) take the gun away from his attacker and 'stick it up [his attacker's] ass,' or B) kill his attacker.⁷

Assuming *arguendo*, that the latter response is the response Defendant made to Devoto's threat against his life, this Court must nevertheless dismiss this case. In *Thomas v. Commonwealth of Kentucky*, 574 S. W. 2d 903, the [Kentucky Court of Appeals], in discussing the legislative intent of the statute Defendant is charged with, explained that the statute [Kentucky Revised Statute section 508.080(1)(A)]:

is taken from section 211.3 of the Model Penal Code (10 ULA), p. 539 entitled 'Terroristic Threats' The drafters' comments following this section of the Model Penal Code ... explain the application of this section: ... 'In drafting legislation penalizing threats, we would not wish to authorize ... sanctions against the kind of verbal threat which expresses transitory anger rather than settled purpose to carry out the threat or to terrorize the other person' (574.2 S. W. 2d at 907.)

It is thus clear that the Kentucky Supreme Court and the Kentucky legislature did not intend for this statute to apply to cases such as the instant one, where the Defendant's alleged threat against Devoto was merely an expression of transitory anger and fear after having his own life threatened rather than a settled purpose to carry out a threat or to terrorize the other person.

Little Rock's motion for a new trial was denied. The conviction, therefore, constitutes an incontestable technical parole violation authorizing the Ohio APA to place Little Rock back in prison for fifteen years, if and when apprehended. The effect of the conviction in Little Rock's case, therefore, is equivalent to more than two consecutive life sentences under Kentucky law, as parole eligibility on a life sentence in Kentucky arrives after seven years. Little Rock is appealing the conviction and has stated that, where tax-payers are concerned, this case will very likely be the most expensive misdemeanour case ever tried or litigated in United States history.

Since the day Little Rock went underground, the APA and other prison officials who want him in prison have discovered even greater cause for wanting his voice silenced. As stated in a May 25, 1993, affidavit signed by Dr. Harold Pepinsky, a board member of the American Society of Criminology who has been monitoring some of the conditions at Ohio's maximum security prison in Lucasville for several years now:

The prison wing [Little Rock] would have undoubtedly been sent back to in Lucasville had he reported to his parole officer this past March 22 shortly thereafter broke out in a riot. There he would have been a likely choice of rioting prisoners to be their spokesperson. Had he survived the riot, he would now be a prime candidate for murder prosecution simply by having been in the prison at the wrong time. I believe he might well have died instead. Mr. Reed's fellow writ-writer and defender of American Indian

religious freedom, Dennis Weaver, was brought out of the riot area and later found dead in his cell long before the riot ended, with signs of having been beaten.

During the Lucasville riot, prison warden, Arthur Tate, Jr., and the other prison administrators refused to allow the media to interview the prisoners, even though the prisoners stated that they would kill their hostages if they could not speak with the media. When Little Rock learned of this, he travelled to Ohio and spoke with the media on behalf of the prisoners whose voices were being silenced. He was interviewed by the Columbus, Ohio, ABC television news affiliate which was aired throughout the United States. The *Plain Dealer*, Ohio's largest newspaper, ran a story in which they exposed some of the facts documented in a lawsuit filed by Little Rock on behalf of Lucasville prisoners which indicated that warden Arthur Tate basically did everything in his power to instigate the riot that occurred. The record in the case further revealed that Tate was warned that the riot was impending, yet he stated to the media during the riot that the administration had no prior warning that a riot was imminent. Tate also told the media that the rioting prisoners' claims of religious freedom deprivation were not true. The untruthfulness of Tate's media statement to that effect was revealed in Exhibit-F of Little Rock's petition to the Governor, where Tate in his own correspondence (reproduced in that Exhibit) made it quite clear that no Indian spiritual leader will ever enter the walls of his prison.

Throughout all of this, Little Rock has been busy as legal consultant and spokesman for the Aboriginal Ute Nation, a group of American Indians terminated by an Act of Congress in 1954 who had asked Little Rock to assist them in their struggle. The Ute people were one of more than a hundred Indian tribes that were terminated in the 1950s and 1960s, yet while the other tribes were entirely terminated, Congress only terminated about one-third of the Uintah, based on racial blood quantum, the result being to divide and destroy not only the tribe but also families.⁸ The effect of termination of the Utes was to dispossess them of billions of dollars worth of land and resources through fraud and deceit; to eliminate their right of self-determination and self-government, so they would become subject to state laws and taxes; and to eliminate their identity as Indian people, so that as individuals they may receive no protection of their rights as Indians under US laws. For example, they may not invoke the Indian Child Welfare Act to enjoin the Mormon State of Utah from ripping their children away and placing them in white Christian (Mormon) homes, which, according to Mormon doctrine, is more or less a religious duty.

Because of his status as a political fugitive – a status which has been discovered by some of the Aboriginal Uintah Nation's foes – Little Rock was recently forced to leave the reservation and go back into hiding. Meanwhile, I am continuing, by myself, the extensive factual and legal

investigation we started together and were hoping to finish together – an investigation which, even though not complete, has exposed the crime of genocide that has been and continues to be perpetrated against the aboriginal people of the Uintah and Ouray Indian Reservation.

AFTERWORD

After writing this chapter, I showed it to Little Rock. This was his response.

The Adult Parole Authority probably thought that, when I was released from prison, the fire in my spirit would die and I'd be quiet, content with my new freedom. But freedom is a relative term, and so long as one human being is oppressed or unjustly imprisoned, no human being is free. So long as my heart beats, I will ask questions, I will write, and I will speak the truth about government officials' atrocities against humanity, and now I think the Adult Parole Authority realizes it. With that realization comes the common sense conclusion that the only way to silence my voice is to make my heart stop beating. Whether or not the Adult Parole Authority has that much common sense, I do not know. But I'm certainly not taking any chances ...

NOTES

- 1 A California human rights attorney who has been actively involved in American Indian prisoners' rights issues, Deborah Garlin recently moved to the Uintah and Ouray Indian Reservation in Utah to assume the position of *pro bono* legal counsel for the Aboriginal Uintah Nation.
- 2 The petitioners were attorney Ed Kagin of Covington, Kentucky; Dr. William Williams of the Union Institute in Cincinnati, Ohio; Dr. Lance Kramer, assistant provost at the Ohio State University at the time of the petitions' filing and now vice president of the Ohio Centre for Native American Affairs; and Dr. Harold Pepinsky, a retired attorney currently teaching at Indiana University and serving as chairman of the Division of Critical Criminology, American Society of Criminology.
- 3 Due to space limitations, the nineteen exhibits attached to Little Rock's affidavit, and which are referred to throughout his affidavit, are not included here. However, the petition to the governor with all the attached exhibits, as well as the governor's and the APA's responses, are available from the Native American Prisoners' Rehabilitation Research Project, 2848 Paddock Lane, Villa Hills, KY 41017, for \$10.50, which will cover the costs of copying and postage. Any other contributions with which to carry on the campaign to free Little Rock would be appreciated as well.
- 4 At the time this affidavit was drafted, this book was under an optional contract with *Vintage*, but due to the need to get this book out to promote legislation that will protect the rights of Indian prisoners, Little Rock terminated the contract with *Vintage*. *The American Indian in the White Man's Prison: A story of Genocide* was published in November, 1993 by Uncompromising Books, P.O. Box 1760, TAOS, NM 87571.
- 5 According to Devoto's sworn statement, Devoto politely asked Little Rock to leave Devoto's children alone (Dinah Devoto would often bring her children to the NAPRRP office with her and Little Rock would play with them and tell them stories, give them ice cream and the like). In response to Steve Devoto's 'polite' request, Devoto claims that Little Rock told Devoto that 'because he [Little Rock] had been in prison for 13 years, he knew "how to deal with people like you – I'll kill you, motherfucker."'
- 6 In an April 28, 1993, affidavit of Dr. Harold Pepinsky, he stated:
I confirmed by telephone call to [Little Rock's] mother that local police had searched her home Saturday, March 20, for [Little Rock] under the authority of an arrest warrant which under Ohio law could only lawfully have been signed by the parole

officer. Nonetheless, the parole officer on Sunday, March 21, denied any knowledge of an existing warrant for [Little Rock's] arrest, and tried to reassure me that a decision whether to arrest Mr. Reed would not be made until he checked with Columbus the following morning.

- 7 As a matter of fact, if Devoto had attempted to carry out his threat against Little Rock, and if Little Rock had killed Devoto in response to such an attempt, Little Rock's killing Devoto would have been permissible under Kentucky's self-defense law. Accordingly, even if Little Rock told Devoto that he would kill Devoto if he attempted to carry out his threat against Little Rock, Little Rock's counter-threat would have been permissible under Kentucky law. Had Little Rock's trial attorney taken the time to research the law concerning the matter, he would have known this and brought it to the court's attention, which he did not do.
- 8 Approximately 89% of the terminated Utes were Uintah, one of the three bands of the Ute tribe. The Uintah were the original land holders, to whom the reservation belonged, while the other two bands were relocated by military force to the Uintah reservation more than a decade after its establishment in 1861.

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- 1990. 'Rehabilitation: Contrasting Cultural Perspectives and the Imposition of Church and State.' *Journal of Prisoners on Prisons*, 2 (2): 3-28
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- 1993b. 'No Neutral Ground.' *Journal of Prisoners on Prisons*, 4 (2): 119

PRISONERS' STRUGGLES

SUPPORT PUERTO RICAN PRISONERS!

For information on the campaign to free Puerto Rican political prisoners and prisoners of war in the USA contact:

National Committee to Free Puerto
Rican Political Prisoners and
Prisoners of War
1112 N. California
Chicago IL (U.S.A.) 60622
Phone (312) 278-0885

And in Puerto Rico

OFENSIVA 92
Apartado Postal 20190
Rio Piedras PR 00928

OHIO – CALIFORNIA

In April 1993, after a riot at Southern Ohio Correctional Facility (in Lucasville), more than 120 inmates were transferred to the Mansfield Correctional Facility.

Both the inmates that were forced to stay in Lucasville, and those that were forced to go to Mansfield, have suffered harsh retaliation: from harassment and physical and mental abuse to cruel treatment, bodily harm without medical assistance, and forced interrogation. No visits from family or friends or recreation periods have been allowed, and racism is rampant both from the guards and the warden, particularly in Lucasville. Abuse of power, arbitrary overruling, and bad treatment seem to be more and more frequent in the US correctional system, increasing the spiral of violence and the violation of human and constitutional rights.

For more information and support write to:

F.V.S.P.P.
Post Office Box 565
Madison WI (U.S.A.) 53701-0565

PELICAN BAY INFORMATION PROJECT

Founded in 1991 by attorney Catherine Campbell and physician Corey Weinstein, the PBIP hopes to inform the population about the conditions under which prisoners are forced to live, and the way the so called "State-of-the-art" maximum-security Pelican Bay State Prison is run by the warden and the California Department of Corrections. The Security Housing Unit (SHU), known as a "chamber of horrors", where guards' brutality is a daily treatment and conditions of isolation are cruel, dehumanizing and inhumane, is one of the main features of this \$224 million prison, built in 1989. A lawsuit over the conditions and the behaviour of the personnel of Pelican Bay State Prison has been brought by inmates against Warden Charles Marshall and the Department of Corrections.

For support and information on PBIP and on the results of the lawsuit contact:

PBIP
2489 Mission Street # 28
San Francisco CA (U.S.A.) 94110
Phone: (415) 821-6545

SAVE MUMIA ABU-JAMAL

Jamal's legal team, led by Leonard Weinglass, and including the NAACP Legal Defense and Education Fund, prepared an application this spring to be filed in the Pennsylvania State Court to expose the frame up and the many gross trial violations of Jamal's rights. The team initiated an exhaustive investigation to find witnesses of what happened that night, eleven years ago.

A Committee to Save Mumia Abu-Jamal has been established, whose chairpersons are actors Ossie Davies and Mike Farrell.

For contributions to this campaign and more information contact:

PDC
P.O. Box 99, Canal Street Station
New York NY (U.S.A.) 10013

Tax deductible contributions for the defense of Jamal should be payable to the Bill of Rights Foundation, earmarked Mumia Abu-Jamal Legal Defense, and sent to:

Committee To Save Mumia Abu-Jamal
163 Amsterdam Ave, No. 115
New York NY (U.S.A.) 10023-5001

TOM CLANCEY SUPPORT COMMITTEE

Tom is 25 years old and is charged with first degree murder. He has always maintained his innocence. After looking carefully into his case, the Board of Rittenhouse — A New Vision — came to the conclusion that "there is a mounting body of evidence that suggests Tom has been unjustly accused", and decided to set up the T.C.S.C. in order:

- (1) to assist Tom during his incarceration;
- (2) to assist in any way possible his defence, and
- (3) to help reduce the suffering of his family.

Tom Clancey is an inmate in Don Jail and his trial started on August 31. Donations should be made out to the "Tom Clancey Support Fund".

For more information write:

Tom Clancey Support Committee
c/o John Gell
77 Runnymede Road
Toronto, ON (Canada) M6S 2Y4

Review of Peter Linebaugh. 1992. *The London Hanged: Crime and Civil Society in the Eighteenth Century.*

Cambridge University Press, 484 pages

Gordon Haas

Anyone who opens the cover of *The London Hanged* expecting a romp through the annals of the famous and near-famous who dangled from the end of the hangman's noose in eighteenth century London will surely be disappointed, for this is not the intent of this book. This should not, however, dissuade anyone from reading this fine work. Peter Linebaugh sets the stage in the first paragraph of the Introduction by defining the aim of *The London Hanged* as an exploration of 'the relationship between the organized death of living labour (capital punishment) and the oppression of the living by dead labour (the punishment of capital).'

Linebaugh's central thesis is that the spectacle of a hanging from Tyburn Tree was not simply a form of punishing transgressors, but served a more sinister purpose – a means employed by the power elite to force the working classes to accept conditions that were clearly detrimental to their health and well-being. Those who might recoil, supposing they will have to wade through either a Marxist or a 'bleeding heart' diatribe, in these days of twentieth century capitalism and conservatism would do themselves and *The London Hanged* a great disservice. It is a clear mistake to try to impose twentieth century doctrines onto the eighteenth century world, for whatever protections exist for the working classes of today were distinctly absent two centuries ago.

What is relevant for today, however, is the question of how effective was the attempt to utilize the death penalty as a means of social control, particularly for the United States, since its resumption of the death penalty in 1977. This question is even more germane to the states contemplating restoring executions and those who already employ capital punishment but seek to extend it beyond murder to other crimes such as drug offenses. Whether the death penalty can be defended as a deterrent is, or should be, a central question in this debate, and *The London Hanged* offers significant testimony on that point. Eighteenth century England, as Linebaugh pointedly describes, had more than two hundred statutes which called for the death penalty and the overwhelming majority concerned crimes against property which, for the power elite of those times, was sacrosanct. For instance, as reported in Roy Porter's (1990) *English Society in the Eighteenth Century* (Penguin Books: 17), of the 678 people executed in London and Middlesex between 1749 and 1771, 602 had been convicted of crimes other than murder. It is the relationship between property – how it was defined

and exploited as well as the laws enacted to preserve and protect it – and the forms of criminal activity that resulted which Linebaugh dissects throughout the entire book. Whatever the industry (e.g. tobacco, meat and poultry, the making of watches, shoes, hats, tailoring, weaving, coal, domestic service, or the ship yards) the pattern was alarmingly consistent.

— Wages were consciously regulated either by Parliament or the owners at levels which could not possibly meet the needs of working men and women and their families. To make up the differences required merely to survive, for even eighteenth century folk had the irritating habit of needing to eat, working men and women would help themselves to unused by-products of their trades such as sweepings of gold or silver flacks, chips of wood, pieces of coal, remnants, or anything else that may have resulted from cuttings, grindings or whatever process was being employed. Owners saw this practice as lost capital; workers saw it as the long-standing custom of the work place. As long as the tasks were manual, divided into minute steps and put out for work in homes, the custom of appropriating excess materials was accepted and the owners had little recourse, other than maintaining low wages to compensate for their 'losses.' But, as industries became more mechanized and the work regimented, the owners were able to wield the political clout necessary to have passed ever increasing numbers of death penalty statutes with the expressed intent of bringing the losses of 'their' property to a screeching halt.

There was the very real question of who did in fact 'own' the by-products of a worker's labour. The finished product or portion thereof that any worker completed was not at issue. At issue were the strips of wood of no use in ship building, but which could heat a hearth or be of use in the home, or remnants of cotton or leather which could be made into clothes or shoes for children, or a myriad of other 'waste' products. Long standing custom decreed that such were the province of the worker and this was, concomitantly, reflected in the low wage structures. This, however, was reversed by the passage of laws codifying such 'pilfering' as theft and punishable by death, transportation, branding, whipping, or combinations thereof. Wages, of course, remained depressingly low. The result was the parade to Tyburn Tree; the whipping post; or transportation to America, Australia, or some other colonial outpost. That many who were caught and prosecuted escaped the hangman's noose, and in many cases were even acquitted, bears testimony to the fact that even juries thought the penalties to be extreme. Still, Tyburn Tree claimed its victims and Linebaugh describes in colourful detail the carefully managed spectacle that encompassed a hanging, for it was a very public event, precisely because it was intended to be an abject lesson for others to learn the necessity to control their actions in the manner expected by the power elite. How well the technique succeeded needs to be judged very carefully by those expect-

ing the same results today. While property may no longer be at issue, the means to the end are still the same.

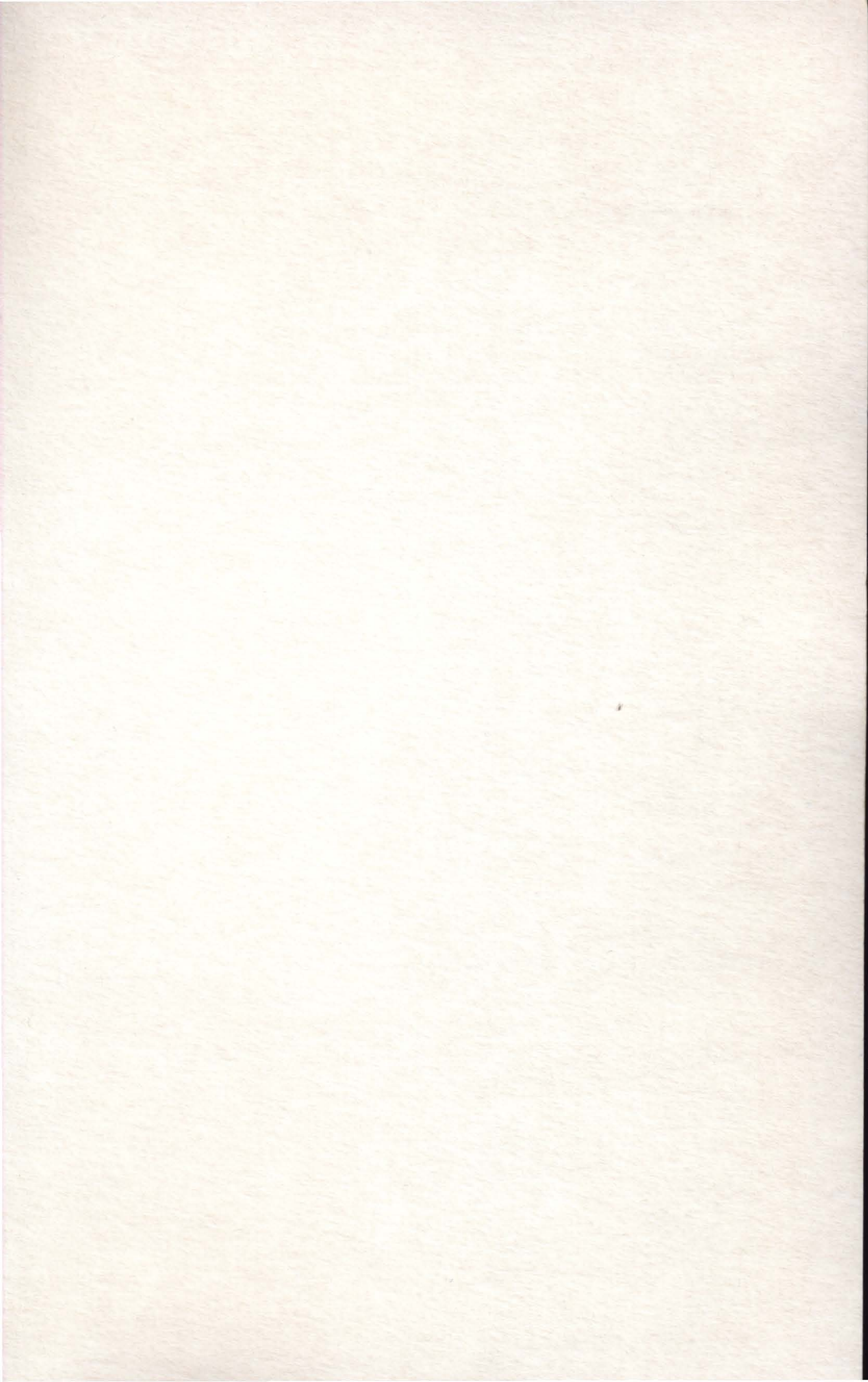
Not everyone who was hanged, of course, 'stole' scrapings or remnants, and Linebaugh also delves into the cases of men and women who took to poaching or highway robbery. While the 'crimes' certainly were different, even here the underlying motivations were quite similar. In an age where a worker could earn only approximately one-half of what was needed to avoid starvation, and where credit was for all practical purposes non-existent, Linebaugh points out that the worker was left essentially with choosing one of three options – to reduce expenses, to ally with other income workers, or to meet one's needs in ways outside the money economy. For many that translated into robbing and poaching, and the result was a procession to Tyburn Tree. Linebaugh does not glorify those who were duly convicted and hanged. Law and order aficionados, however, may grumble at his description of the adventures of one Jack Sheppard early on in the book. Sheppard was a hero to the common folk because he displayed an uncanny knack of frequently escaping from captivity. Sheppard's daring deeds were the products of his unique abilities, combined with incredible stupidity and incompetence on the part of his keepers. Interestingly, even after he had escaped, he would return to his old haunts and resume his thieving. Finally, he ran out the string of good fortune and was hanged. Why he continually returned to the very areas where he was well known only he could answer, but that pattern was repeated by many others who had escaped in foreign ports from transportation sentences and made their ways back to England, only to be caught and hanged.

Whatever motivated these people to play such a risky game, fear of execution was obviously not a factor. Nor did the surfeit of death penalty statutes for stealing appear to lessen the high eighteenth century crime rates in England. Given the choice between stealing and starving, many simply opted for the former. When a 'gentleman' inquired of a young man whether or not he felt it was foolish for people to so risk their lives, the 'gentleman' was told: 'Master, Provisions are high and Trade is dead, that we are half-starving and it is well to die at once, as die by Inches.'

There are some factual assertions by Linebaugh, however, that bear closer scrutiny. In dealing with conditions aboard ships of the Royal Navy, he states that '133,708 sailors died of scurvy and other diseases ... during the Seven Years' War' (130). In his classic work, *The British Seaman 1200-1860: A Social Survey* (Farleigh Dickinson University Press, 1970: 258), Christopher Lloyd quoted that same figure but stated that it is a combined total of those who 'who were lost by disease *or* desertion' (emphasis added). Linebaugh's basic point – that there was a huge disparity between the number killed due to enemy action (1,512) versus those who died from disease – remains valid nonetheless. Linebaugh also points out that sailors were allotted only fourteen inches for their

hammocks (130) but neglects to add that the work details were arranged so that when one seaman used his hammock the one next to him was empty because that seaman was on duty. Thus, the serviceable space was twenty-eight inches. Linebaugh states that 'Widow's Men' were imaginary seamen carried in the muster books, and whose wages were contributed to a fund for 'the benefit of sailors' widows' (142). Actually, only officers' widows were paid benefits from that fund. Regular seamen's widows received no compensation from that or any other fund, save the generosity of the sailors themselves who purchased a dead sailor's effects at auction on the ship, with all the proceeds to be paid to the sailor's family. Linebaugh also cites the figure of 171 for those hanged in the eighteenth century who were born in Ireland. He then offers the following religious breakdown of this group as 109 Catholics, 7 Protestants, and 53 unknown (288). Unfortunately, those figures add up to only 169. These 'errors' are minor irritants, but they do unfortunately detract from this fine book.

Still, *The London Hanged* is must reading for anyone who desires a carefully crafted analysis of the working classes, their trades, and the attempts by those in power in eighteenth century London to use the threat of death to force acceptance of conditions that were clearly detrimental to the health and well-being of those struggling to survive. Given such conditions, who can truly say they would rather have starved to death than have tempted a fateful trip to Tyburn Tree?



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