

What Did You Expect? *Roger Buehl*

News reports about abuses by U.S. soldiers at the Abu Ghraib prison captured the attention of the nation and the world. There were some related news reports noting abuses and even deaths at the twenty Afghani prisons and questioning the harsh conditions and interrogation tactics being employed at the Guantanamo Bay detention facility. But the primary news focus has been on the Abu Ghraib prison abuses because graphic details and photos supported those reports. Over the past months we heard the stories about atrocities and coercive interrogation tactics, and we have seen the photos of soldiers grinning, gesticulating and standing atop bound and dead prisoners. The guilty-plea statement by Spc. Jeremy Sivits detailing what he witnessed during his one visit to the Abu Ghraib prison is truly shocking. The general public and many in the U.S. Congress have expressed surprise, disgust and outrage at the soldiers' conduct, and rightfully so. In contrast, the reaction and "apology" by the president and his cabinet appeared insincere and contrived, directed more to "damage control" than anything else. What astounds me is that Americans generally, and the politicians in particular, did not anticipate or expect that this sort of thing was going on!

As a state prisoner of twenty-plus years, there was absolutely no question in my mind that alleged Al-Qaeda, Taliban and Iraqi prisoners and detainees were being subjected to severe conditions and coercive interrogation tactics. Anyone familiar with human nature in the prison context, and even slightly cynical about the many confessions obtained, could have arrived at the same conclusion. My own experiences and observations in the state prison system have taught me how many otherwise normal individuals can become vicious, even intoxicated, with the power and control they exercise over prisoners' lives. But the prison policy makers, administrators and supervisors ultimately control what is considered acceptable, regardless of legal limits, because prison guards almost always test the bounds of their "authority" to demean, degrade and abuse those in their custody.

In the late 1980s a major riot and some smaller riots occurred in Pennsylvania prisons. Those incidents, together with the general "get tough on crime" rage at the time, resulted in the enactment of ever-stricter sentencing laws and harsher punitive measures. The anti-prisoner fervor inspired guards to mistreat prisoners in any way they wanted — not because the laws allowed for abuse, which they did not, but because public outrage, righteous indignation and retributive impulses drove the unofficial policy to permit it.

(It is no mere coincidence that Spc. Charles Graner — one of the soldiers at the center of the Iraqi abuse scandal — was a guard at Pennsylvania’s State Correctional Institution-Greene during some of the worst abuses there.) Of course, prisoners, their families and prisoner advocacy organizations reported the abuses, but the majority of such reports or complaints were disregarded, buried or, at best, given cursory and deferential review. It was not until the “get tough on crime” attitude relented and incontrovertible proof (including videos) of abuse was publicly exposed that the systemic abuse and mistreatment of state prisoners was curbed. A similar theme appears to be playing out now in current international events.

After the 9-11 attacks the president characterized the “war” as a good-versus-evil fight wherein “anything goes” in getting the bad guys. The comfortable bubble of denial has been burst wide open with pictures of U.S. soldiers abusing and degrading prisoners, using snarling, biting dogs, compelling sexual acts, taunting, degrading poses and deprivations of basic human needs. And really, what did Americans expect?!

In an effort to maintain the fiction that the U. S. abhors the abuse and murder of enemy prisoners, the president promised that those responsible would be held accountable. No doubt some of the soldiers who served at or supervised the Abu Ghraib prison and a general or two (perhaps Sanchez and /or Karpinski) will have been disciplined by the time this article is published. But they are just scapegoats, offered up to divert attention from those who are ultimately responsible.¹

Clearly the atrocities and coercive interrogations were not some isolated incidents at one prison; they are merely representative of the systemic norm engendered by the “anything goes” attitude, which has prevailed since the 9-11 attacks. Those truly responsible (i.e., the Bush Administration) played on American’s outrage and fears, and ordered or at least condoned those harsh conditions and abusive, coercive interrogation tactics employed by soldiers and intelligence officers. To identify those individuals we need only look to who has taken advantage of the 9-11 attacks for political gain. Who ignored the many reports and complaints about the atrocities? Who suppressed or delayed the news media reports, and who even now denies, spins or minimizes the truth? (Any parole board would find such denials and evasions indicative of an unwillingness to take responsibility, implying a lack of remorse and rendering the applicant unfit for release into our society!)

Perhaps our society is changing, willing now to elevate “necessity” over morality and old values. If that is true, then maybe we should be honest about it and commend those responsible for doing the distasteful, dirty deeds necessary to preserve national security against a fanatic, deadly enemy, instead of sacrificing them upon the altar of hypocrisy.

ENDNOTES

- ¹ For more information see: <http://www.democracynow.org/article.pl?sid=05/10/26/1423248>

The author is 46 and has served 23 years on a life sentence. He is a paralegal employed as a legal aide at SCI-Albion’s law library. He can be contacted by writing to: Roger Buehl, AM-7936, SCI-Albion, 10745 Route 18, Albion, PA 16475.

Made in the U.S.A.: A Postmodern Critique

Charles Huckelbury Jr.

The pictures that came out of Iraq told a brutal story. No, not the ones to which the public has grown disturbingly apathetic, those of American soldiers in action against Iraqi insurgents, or of the flag-draped caskets arriving at Dover Air Force Base. I refer instead to the photographs taken inside Abu Ghraib prison on the outskirts of Baghdad showing American military police in their roles as prison guards torturing and abusing Iraqi prisoners. In one of the more disquieting pictures, a hooded prisoner is shown standing on a small box with electrodes attached to both hands, presumably as a means of delivering electrical shocks should he not cooperate with his interrogators. Several others show guards forcing prisoners to form what appears to be a disordered rugby scrum while naked, to perform simulated sex acts with each other, and to stand in line naked while guards point to their genitals and laugh derisively. Other reports detail coerced public masturbation. The abuse is amplified by the presence of women among the guards, a violation of one of Islam's strictest taboos. Indeed, in two of the photographs, women appear to take a leading role in the abuse, which quite naturally has increased the fury and anti-American sentiment in the Muslim world.

The horrendous stories that emerged were corroborated by newly released prisoners. National Public Radio's *Morning Edition* (May 5, 2004) interviewed an Egyptian-born Canadian citizen who had gone to Iraq shortly before the war began to try to convince Saddam Hussein to cooperate with the United States. He was subsequently detained by American forces and confined at Camp Bucca, where he encountered a female sergeant in charge of the guard detail. According to the Canadian's account, the sergeant slapped him repeatedly, kicked him in the groin, verbally abused him, and demanded that he remember her name. He did. In the same interview, NPR gave the former guard an opportunity to respond. She claimed that she always tried to help the prisoners and accused the Canadian of lying.¹

The response to these episodes among Iraqis has been intense, as might be expected among a people to whom the United States promised a return of individual rights and personal dignity. Perhaps the most graphic example of their response was the mortar barrage directed against the Abu Ghraib prison by Iraqi guerrillas, which killed twenty-one prisoners. Coalition forces were at a loss to explain why Iraqis would launch an assault that would in all probability kill their own citizens. In early May, an explanation came: the prisoners themselves had asked for the attack (*Morning*, May 8,

2004). Female prisoners at Abu Ghraib had smuggled out letters detailing rape by their captors as a method of intimidation. According to a report in the *Boston Herald* (Straub, 2004), a sequestered videotape shows American soldiers raping a female prisoner and Iraqi guards raping young boys. The Iraqi prisoners therefore requested the bombardment as a form of suicide because they could no longer live with the humiliation inflicted on them by their American guards.

As the allegations and scandal grew, the military played defense. The Chairman of the Joint Chiefs, General Richard Myers, stated that he believed that such brutality represents isolated incidents, apparently relying on an earlier military report that denied any systematic abuse in any prison administered by coalition forces (*Morning*, May 11, 2004). But that position shifted. When asked at a press conference about General Antonio Taguba's internal report substantiating allegations of abuse, the Chairman said that he had not seen it, although the report had been available since February (Myers, May 1, 2004).² Secretary of Defense Donald Rumsfeld has likewise denied having seen the report (*Morning*, May 4), although it should be an easy matter for either man to pick up the phone and have the report on his desk in a matter of minutes. General Taguba's fifty-three-page summary document was subsequently parsed by Seymour Hersh (Hersh, May 10, 2004), an investigative journalist for *The New Yorker* magazine. In Taguba's summary, minus approximately six thousand pages in an appendix that the Pentagon did not furnish Congress, the military admits that the abuse shown in the photographs qualifies as "sadistic, blatant and wanton criminal abuses," which are *not* confined to isolated incidents. The types of mistreatment verified by General Taguba include beatings with sticks and chairs, threats of rape, and the use of dogs to intimidate the prisoners. In one case, a prisoner was actually sodomized with an electric light (*Day to Day*, May 3, 2004). The report concludes: "Several US Army soldiers have committed egregious acts and grave breaches of international law [and] senior leaders...failed to comply with established regulations, policies, and command directives in preventing detainee abuses at Abu Ghraib (BCCF) and at Camp Bucca during the period August 2003 to February 2004" (*Day to Day*, p.53).

It is necessary at this point to distinguish between a combat response to an enemy who has recently attempted to kill soldiers and a response that inflicts the abuse and the gratuitous punishment casually meted out by prison guards' intent on alleviating boredom or exercising a personal

need to humiliate their wards. What happened in Abu Ghraib was not an adrenalin-fueled combat reaction. The guards inside the prison had never seen any of the fighting and were therefore never threatened physically on the battlefield by the men and women they abused. Whether the torture and humiliation came as a spontaneous exercise on the part of the guards or as a result of direct orders down the chain of command is irrelevant; there has been absolutely no evidence that the guards were responding to any physical threat. As the pictures clearly show, they were simply amusing themselves.

Although Bush administration officials denied any knowledge of the abuse until May 2004, accusations of torture were filed as early as a year previously. Both Amnesty International and the Red Cross began objecting to the treatment of Iraqi prisoners months prior to the latest disclosures, including the cover-up of at least one death, with ten more suspicious deaths now under investigation. Jakob Kellenberger, head of the International Committee of the Red Cross, complained in the fall of 2003 to Secretary of State Colin Powell and Deputy Defense Secretary Paul Wolfowitz about treatment at Abu Ghraib, and Senator Patrick Leahy personally contacted the CIA, FBI, and the Pentagon about allegations of abuse (*Dead Man Walking*, 2004). The military's initial response to the ICRC's complaints was to restrict its representatives' access to prisoners, including a demand that the ICRC announce its visits in advance, a practice described by military investigators as a "violation of international law" (Higham, White, and Davenport, 2004). Later reports confirm the ICRC's fears describing two murders committed by Americans, one by an Army enlisted man and the other by a private contract employee of the CIA. The enlisted man was discharged, and the private contractor was fired; neither faced criminal prosecution or got any jail time (Miga, 2004).

The administration's persistent claim of ignorance is contradicted by Paul Bremer, head of the Coalition Provisional Authority, and Secretary Powell, both of whom subsequently cited instances of abuse and urged the military to intervene to stop the pattern. Bremer then advised the Vice President, the Secretary of Defense, and Bush's National Security Advisor that guards were abusing prisoners at Abu Ghraib. Yet, there was no official reaction until the story broke in the international news media (Slevin and Wright, 2004).

Non-governmental organization (NGO) concerns have also been validated by the recent revelations in Sgt. Ivan Frederick's journal, a meticulously

detailed narrative of ten pages, in which the 37 year-old reservist assigned to the prison describes torture, abuse, and the choreographed death of one prisoner that included a spurious IV drip to make it appear that he had died of natural causes. Sgt. Frederick claims that military intelligence (MI) and the criminal investigations division (CID) approved and encouraged the abuse of Iraqi detainees (Shave, 2004). In attempting to defend himself against charges of brutality, Sgt. Frederick, a twenty-year veteran of the National Guard who worked in the United States as a prison guard at the Buckingham Correctional Center in Virginia before deploying to Iraq, stated that he had no guidelines with respect to how he was supposed to treat his prisoners (*Morning*, May 3, 2004). Either this individual had no idea that torturing prisoners was illegal, in which case his behavior at the Virginia prison needs careful examination, or he knew it was and did it anyway. In either case, he should not be permitted to hold any custodial position in which the treatment of prisoners would be left to his discretion. And yet, in the face of the numerous cases of brutality and torture, the commander (or warden) of the prison, Brigadier General Janis Karpinski, stated on ABC's *Good Morning, America* (2004) that she had no idea such abuse was taking place.

Senator John McCain (R-AZ) knows a lot about abusive guards, having spent five and one-half years in a North Vietnamese prison as a POW. And yet, this intelligent, sincere man still believes that it is "not plausible that soldiers would abuse prisoners without being instructed to do so" (Peterson, 2004). With all due respect to the senator, he is wrong. When soldiers become prison guards, or when prison guards become soldiers, those "sadistic impulses" that are part of our atavistic complement tend to rise to the surface and express themselves as torture and abuse. A failure to recognize this phenomenon by cloaking excuses in patriotic chauvinism does nothing to alleviate the suffering or prevent its recurrence, either on foreign soil or on our own. Thus, a systemic pattern of mistreatment prevailed inside Abu Ghraib prison, aided and abetted by commanding officers that either refused to admit the problem existed or attempted to minimize its frequency and severity.

Of course, once the abuse became public, various defenses have been offered in the way of explanation for the torture of Iraqi prisoners. One of the more creative efforts, as illustrated by Sgt. Fredrick's account, was that the guards had no practical experience in how to treat their wards. This is a bizarre claim for a number of reasons. The military police unit charged

with guarding prisoners at Abu Ghraib intentionally employed a substantial contingent of troops who were prison guards or police officers in civilian life. As General Taguba's report emphasizes, many of the guards at Abu Ghraib were chosen specifically because they had worked as prison guards or corrections officers in their civilian jobs (Taguba, 2004: 25). Specialist Charles Graner, the supervisor of Cellblock 1A and one of the guards who appears in many of the pictures, is an example. Graner's employment history includes a five-year stint as a jail guard before moving to the maximum-security prison at Waynesburg, Pennsylvania. He was fired in 2000 but later reinstated, and his employment record includes three suspensions and three reprimands. His ex-wife has lodged three restraining orders against him for beating her (Cauchon, 2004). Inside the Waynesburg prison, his professional behavior was invariant from his private life.

Among the complaints filed against Graner by prisoners were descriptions of routine beatings, taunting Muslim prisoners for not eating pork, and failure to follow orders. An ex-death row prisoner, exonerated after twenty-two years by DNA evidence, testified that Graner spat in prisoners' food, made gay jokes during strip searches, and "relished withholding privileges such as exercise" (Cauchon, 2004: 7A). A federal lawsuit filed against Graner alleged that he assaulted a handcuffed prisoner by lifting him off his feet, slamming his head on the floor, and shouting racial slurs at him. Graner is on record as bragging that "the correctional officer in me says, I love to make a grown man piss himself" (Higham and Stephens, 2004). This attitude is confirmed by one former guard (Conover) who worked at a New York prison: "Many [officers] judged themselves and their peers on the degree of control they were able to maintain over inmates" (Conover, 2001: 31). Small wonder, then, that cellblock 1A at Abu Ghraib entrusted to Graner's supervision was described as a "breeding ground for racism and a widespread conviction" that the detainees deserved punishment (Smith, 2004). And yet, there was no public outrage in response to the episodes of maltreatment of *American* prisoners.

This kind of studied disinterest enabled Graner and the other guards in Abu Ghraib prison. Assuming they had the same governmental imprimatur to do whatever they wanted, they committed their illegal acts with the same casual disregard for prisoners' rights as they and others did in prisons across the United States and were no doubt astonished by the reactions once the reports of abuse found their way into the public domain. After all, they had gotten away with it so often in the United States that surely no one would

care if they exported their work ethic and abused prisoners who did not even speak the same language.³

When the 372nd Military Police Company assumed responsibility for guarding the Abu Ghraib prisoners, the unit was made up of reservists largely untrained as prison guards (Higham and Stephens, 2004). According to General Taguba's (2004) report, the men and women who had never worked inside a prison deferred to the members who had civilian prison backgrounds, and the treatment of the prisoners developed with a reliance on the guidance from those same unit members. Even if many of the guards had no practical experience in a prison environment when they got to Abu Ghraib, the members of the unit who worked in prisons in the United States did, and they, more than anyone else, should have known that torture and sexual humiliation were beyond the pale.

Graner's behavior in Virginia and Iraq is hardly the aberration that the government would have us believe. Case law is replete with incidents of physical abuse, often sexual in nature, in America's prisons, and periodicals such as **Prison Legal News** published by prisoners at the state prison in Washington, enumerate in each monthly issue cases in which prison guards have been arrested, convicted, or fired for systematically abusing prisoners. **The Journal of Prisoners on Prisons** has often treated the same subject, including prison guards in Florida beating and kicking a death-row prisoner to death in his cell (Van Poyck, 2003). With respect to the sexual assault of one prisoner in Abu Ghraib, recall the case of Abner Louima, who was similarly raped by police in the bathroom of a New York precinct house. Continuing the pattern that criminal justice officials insist on characterizing as isolated incidents, an FBI agent admitted that detainees in U.S. prisons were routinely tortured, including beatings and sodomy with a flashlight at the Brooklyn Detention Center (Cockburn, 2004).

The unit's commanding officer at the prison Lt. Colonel Jerry L. Phillabaum likewise dismissed the inexperience excuses. He insisted that "The acts of a couple of demented Reserve MP guards, who are prison corrections officers at home, were their own idea" (Higham and Stephens, 2004). General Taguba (2004), however, cast a much broader net, describing Phillabaum as an ineffective leader who did little to control the guards' abuse of prisoners.

A more offensive rationale for the abuse is advanced by Cal Thomas, an administration cheerleader who tends to view every social issue through the lens of Christian fundamentalism. Thomas stated in a recent column

that “We don’t know the identity and intentions of the allegedly abused prisoners” (Thomas, 2004:19). Just so. By U.S. estimates, 70 to 90 percent of the detainees are innocent of any charges and will subsequently be freed (*Morning*, May 14, 2004), so the chances are great that the innocent as well as the guilty are being tortured, a possibility that seems not to trouble Thomas at all. As for the need to determine either identity or intent of the victims before criticizing the torture and humiliation being inflicted, the treatment is *mala in se*, abuse that does not require explication prior to condemnation. Ignoring the presumption of innocence, Thomas closes his insulting screed by placing the blame for the abuse squarely where he thinks it belongs: on the shoulders of the victims. “If there has been humiliation, it isn’t the fault of the West. It is Muslims’ fault” (Thomas, 2004:19). Just as it was the Jews’ fault sixty years ago.

For most rational human beings the claimed ignorance of moral and legal constraints and the shifting of blame to victims stretch the bounds of credulity and civility. It does not require a degree in criminal justice or an IQ much above eighty to acknowledge a moral imperative to refrain from torture, gratuitous assaults on individual dignity, and homicide in any situation, not just in prisons. A former Army interrogator and the current CEO of Team Delta, a Pennsylvania organization that trains interrogators for the police and military, said recently that the Iraqi prisoners were entitled to their rights under the Geneva Convention, which means that interrogators and guards were not entitled to touch them in any way or force them to perform degrading acts (*Day to Day*, 2004). This approach was dismissed by White House General Counsel Alberto Gonzalez in a memorandum to President Bush, in which he maintained that the safeguards enumerated by the various Geneva conventions are now obsolete and “quaint” in the new war against terrorism (Hersh, May 17, 2004). If such a cavalier attitude permeates the highest levels of government, including the White House, then it should come as no surprise that governmental representatives should view prisoners as little more than the bottom of the food chain.

Even so, as a result of the recent photos, six of the guards are facing court martial and seven more commissioned and noncommissioned officers have received reprimands. This does not, however, diminish the repercussions among the Arab population in the Middle East. Neither does it address the overarching question of precisely why those men and women representing the United States thought it was their privilege to inflict both physical and psychological torture on helpless prisoners, notwithstanding the tacit

collusion of superior officers. If all of this sounds vaguely familiar, it is because it happens more frequently than the government's representatives will admit or the public will acknowledge, not in a declared war thousands of miles from America's shores but in an undeclared domestic battle behind prison walls.

Inside America's barred fortresses, guards go about their business with the same sense of callous detachment, the same arrogation of absolute right, that inspired the abuse in Iraq that now outrages so many people, and the outcomes are identical: prisoners are routinely subjected to psychological and physical abuse, often descending to the level of torture, and the persons responsible usually escape punishment. Think what would have happened to these allegations had the Abu Ghraib guards not been stupid enough to incriminate themselves by taking pictures of their activities. It would have become another contest between the testimony of the keepers versus the kept, and that is always a no-win situation for those wearing the chains.

The mistreatment of American prisoners is not restricted to maximum-security prisons like those haunted by the Graners of the correctional industry. For example, it extends even to less infamous facilities under U.S.A. jurisdiction. A recent federal investigation into conditions in the U.S.A. prison system uncovered "abuse, neglect and inhumane conditions" that may have contributed to several deaths (Johnson, 2004:1A). So the abuse of prisoners, including homicide, by governmental representatives is hardly a novel concept except when it reaches a wider audience and compromises the government's ability to accomplish its stated goal.

The discussion and turmoil surrounding these incidents, however, continue to ignore the question of why otherwise normal men and women engage in the abuse of other human beings when placed with positions of power over them, and this returns us to the often debated question regarding the personalities of prison guards in general: are they naturally sadistic and gravitate toward prison work so they can indulge their psychopathologies, or do they become that way as a part of a desensitization process that prison work requires? An illuminating study by Philip Zimbardo provides insight and suggests answers for precisely those questions.

To test the dispositional hypothesis, Zimbardo (1973) recruited students at Stanford University and divided them into two groups, one designated prisoners and the other designated guards. They were then allowed to interact in a restricted setting. After two days, each group assumed the roles assigned to them. Specifically, the prisoners became progressively

more dejected, traumatized and dehumanized. The daily torment increased to include verbal abuse and commands such as cleaning toilets with bare hands, until Zimbardo and his colleagues felt the need to stop the study after six days. In subsequent interviews, the students functioning as guards were uniformly surprised at their own brutality and lack of concern for the “prisoners”. One student guard admitted that he considered the student prisoners as no more than cattle. As Zimbardo’s study demonstrated, the origins of brutal relationships can often be found in the destructive roles assigned to the persons in the relationships.

A corroborating commentary by a contemporary psychologist describes “atrocious-producing situations”, structured environments in which ordinary men and women can regularly commit atrocities when their victims are viewed as “others” or less human and less deserving of fundamental consideration. “In environments where sanctioned brutality becomes the norm, sadistic impulses, dormant in all of us, are likely to be expressed.” And of course, “atrocious-producing situation[s] can exist...in ordinary civilian prisons” (Lifton, 2004: 4-5). Indeed they do. As the events in Abu Ghraib reveal, this is precisely what happens when groups of people are assigned to guard other, whether in military or domestic environments.

In both situations, often there is no thought for the consequences of one’s actions. The gloating guards in the photographs from Iraq clearly show that they had no sense of violating anyone’s rights, or if they were aware of the violations, they simply did not care. The identical attitude obtains when civilian prison guards in the United States routinely abuse their prisoners, even after they are arrested or dismissed for that abuse. The standard excuse is the Cal Thomas defense: they are only convicts. The unrestrained authority of prison staff confers an unmitigated license to treat prisoners in any manner the guards want, including inflicting physical mistreatment, up to and including homicide. There is precious little concern for the prisoner’s rights because the guards have come to believe that American prisoners, like the Iraqi detainees, are subhuman and unworthy of fundamental consideration. If graduates of correctional training facilities were to speak candidly, they would admit that they are taught that prisoners are “the lowest of the low, the scum of the earth,” who are thus unworthy of the same consideration extended to free citizens (Conover, 2001: 33).

Exacerbating the potential for abuse is a we versus them attitude cultivated and nourished in the prison environment, usually sanctioned from the top down. Recent revelations (*Morning*, May 19, 2004) of approved

interrogation techniques for Al-Qaeda suspects confirm that the methods were developed and authorized at the highest levels in both the Pentagon and the Justice Department.⁴ If prisoners are perceived as the enemy, if they are somehow less than citizens deserving fundamental consideration, then the guards will act without concern for their welfare, which is precisely what has occurred in Abu Ghraib and at Guantanamo Bay — and inside America's prisons.

The supreme irony is that America's prison guards can abuse their prisoners with virtual impunity because the public is complicit in the abuse. Whereas in Iraq, a disclosure of abuse inside the country's prisons raised a moral outcry, citizens in the United States are consistently silent when the same thing happens inside their prisons, usually offering the rationalization that since the victims are prisoners, they are obviously guilty or must have done something to provoke the guards, who are decent men and women doing a difficult job. They refuse to acknowledge that in Iraq *and* America, as Zimbardo's study demonstrated, the institutionalization of punishment, with its assigned roles of prisoner and guard, breeds the kind of abuse and denial of fundamental rights that currently has the public's moral conscience so exercised elsewhere.

The Iraqi-American equivalence of attitudes toward the incarcerated therefore explains the treatment of Iraqi prisoners under both Saddam Hussein's guards and American military police. The treatment meted out by Saddam's thugs differed only in degree from the treatment administered by America's representatives, which is only marginally different from the treatment prisoners receive in America's prisons. When Donald Rumsfeld (May 4, 2004) disingenuously lectured the world on America's values, stating that physical abuse of prisoners was not the way "America does business," he ignored the institutionalized racism and brutality of American criminal justice. When Colin Powell (2004) insisted that the Iraqi abuse was "inconsistent with our value system," he turned a blind eye on the same system that until recently permitted the execution of juvenile offenders and the mentally incompetent, often after the evidence has been manufactured by the collusion of police and prosecutors (Mulvihill, 2004). When President Bush (May 4, 2004) claimed that the behavior of the prison guards was not reflective of the "America we know," he was, as in so many other areas of public policy, egregiously mistaken — and perhaps duplicitous — because there are now two Americas: the synthetic America advocated by the Bush administration as the world's moral paradigm and the other, authentic

America of class distinction, divine right and almost feudal treatment of the powerless.

If “a military establishment tends to reflect the qualities of the civil society of which it is a part,” as some scholars claim (Machiavelli, 1965: xlvii), then the actions of the guards at Abu Ghraib clearly demonstrated that President Bush and his administration are deeply out of touch with the troubling ethos that routinely governs the treatment of both military and civilian prisoners, or else they do not care unless the publicity surrounding instances of abuse jeopardizes their political positions.

The founders of the Republic did their utmost to anticipate and remedy such a situation, specifically by limiting the amount and type of coercion a government could apply to its citizens. In adding the Bill of Rights to the Constitution three years after ratification, they recognized a need for the Fifth and Eighth Amendments that forbid tortured confessions and cruel and unusual punishments. Implicit in these amendments is the acknowledgment that unrestricted governmental power will inevitably lead to abuse, a proposition consistently validated throughout history. Nearly two hundred years after the birth of the Bill of Rights, the Supreme Court of the United States reinforced the philosophy of protecting citizens from governmental excess with an opinion that unambiguously circumscribed coercive techniques, including physical abuse, then employed by law enforcement officials to extract incriminating statements from criminal defendants (*Miranda*, 1966).

To put the recent Abu Ghraib incidents in historical perspective, James Madison was correct: individual rights, at least at this stage of our social and psychological evolution, require a degree of protection from governments and the agents acting on their behalf.⁵ It is fine to talk about freedom and democracy, but in point of fact, both can be extraordinarily precarious when fallible human beings are given absolute power over others for whom they have little respect or empathy.⁶ There is no more effective laboratory for demonstrating that benighted tendency than inside a prison, whether in Iraq or in the United States.

Michel Foucault (1975) explored the question of whether imprisonment was a more humane form of punishment than torture, anticipating a choice between the two methods. The situation in many prison environments today sadly demonstrates that in some ostensibly civilized societies a confluence of imprisonment and torture, where the government inflicts both on its prisoners, renders Foucault's insights sterile. If prisons are a necessary

evil in today's world of serial killers and predatory gangs, if they remain indispensable for public protection, abuses will occur, if for no other reason than they provide an outlet for those darker predispositions we carry around from prehistory. The feigned shock of governmental officials will not solve the problem of abuse. Instead of establishing accountability and control, it merely encourages those who engage in the practices to be more circumspect next time. Until those entrusted with the custodial care and treatment of prisoners of any persuasion are adequately educated, trained, and supervised to a degree that prevents gratuitous infliction of pain and suffering, events in both Abu Ghraib and America's prisons will consistently be indistinguishable.

ENDNOTES

- ¹ She was found guilty at a military hearing of abusing prisoners and forcibly discharged. She then returned to her job as a state trooper in Pennsylvania.
- ² General Taguba's report was classified *Top Secret: No Foreign Dissemination*.
- ³ To illustrate the confluence of military and civilian attitudes towards the incarcerated the State of New Hampshire recently selected Brigadier General Steven Curry to head its Department of Corrections. General Curry's previous post was at Fort Leonard Wood, Missouri, where he was in charge of all training for military police, including the detachment of guards at the Abu Ghraib prison.
- ⁴ Techniques include subjecting prisoners to extreme heat and cold; depriving them of sleep, food, and water; and keeping them naked.
- ⁵ Madison was responsible for sponsoring the Bill of Rights and, along with Jefferson, fought vigorously for its adoption in the face of intense opposition by Alexander Hamilton and many others.
- ⁶ Cf. Toqueville's *Democracy in America*.

REFERENCES

- Bush, G. (2004, May 4). Press conference.
- Cauchon, D. (2004, May 17). Former guard has history of complaints. *USA Today*, p. 7A
- Cockburn, A. (2004, May 31). Green lights for torture. *The Nation*, p. 9.
- Conover, T. (2001). *Newjack*. Vintage Books.
- Day to Day*. (2004, May 3). National Public Radio.
- Dead Man Walking. (2004, May 31). *The Nation*, p. 3.
- Foucault, M. (1975). *Discipline and Punish*. New York: Vintage.
- Good Morning, America*. (2004, May 3). *ABC Television*.
- Hersh, S. (2004, May 10). *The New Yorker*.
- Hersh, S. (2004, May 17). *The New Yorker*.

- Higham, S. and Stephens, J. (2004, May 22). Motivation in some abuses come to light. *Concord Monitor*, p. A8.
- Higham, S., White, J. and Davenport, C. (2004, May 17-24). Breakdown at Abu Ghraib. *The Washington Post Weekly Edition*, p. 7.
- Johnson, K. (2004, May 21-23). Feds probe tribal prison deaths. *USA Today*, p. 1A.
- Lifton, J. (2004, May 31). Conditions of atrocity. *The Nation*, p. 4-5.
- Machiavelli, N. (1965). *The Art of War*. (N. Wood, Ed.) New York: Da Capo Press.
- Miga, A. (2004, May 5). Criminal conduct. *Boston Herald*, p. 10.
- Miranda v. Arizona*, 384 U.S. 436 (1966).
- Morning Edition*. (2004, May 3). National Public Radio.
- Morning Edition*. (2004, May 4). National Public Radio.
- Morning Edition*. (2004, May 5). National Public Radio.
- Morning Edition*. (2004, May 8). National Public Radio.
- Morning Edition*. (2004, May 11). National Public Radio.
- Morning Edition*. (2004, May 14). National Public Radio.
- Morning Edition*. (2004, May 19). National Public Radio.
- Mulvihill, M. (2004, May). Probe fingers Unit. *Boston Herald*, p. 7.
- Myers, R. (2004, May 1). Press conference.
- Peterson, K. (2004, May 17). What to tell the kids when the good guys run amok. *USA Today*, p. 6D.
- Powell, C. (2004, May 11). Interview with Juan Williams on National Public Radio.
- Rumsfeld, D. (2004, May 4). Press conference.
- Shave, S. (2004, May 3). Soldier's journal reveals horrors at prison. *Concord Monitor*, p. A1, A6.
- Slevin, P. and Wright, R. (2004, May 8). Warnings of abuse came early, often. *Concord Monitor*, p. A2.
- Smith, R. (2004, May 17). Prison plans suggest wide arc of blame. *Concord Monitor*, p. A2.
- Straub, N. (2004, May 8). Cruel truth hurts. *Boston Herald*, p.5.
- Taguba, A. (2004). Report on prison abuse at Abu Ghraib.
- Thomas, C. (2004, May 8). Abuse pictures don't tell the real story. *Boston Herald*, p. 19.
- Van Poyck, W. (2004). My turn. *Journal of Prisoners on Prisons*. Volume 12.
- Zimbardo, P. (1973, April 8). A pirandellian prison. *New York Times Magazine*.

Charles Huckelbury has been incarcerated for thirty years, and has hopes for release in 2008. An Associate Editor of the JPP, Charles co-edited volume 14:2, 2006, with Susan Nagelsen. *Made in the U.S.A: A PostModern Critique* won **Second Prize in the Essay Category of the American PEN Awards in 2005**. Charles (#19320) can be contacted at the New Hampshire State Prison, P.O. Box 14, Concord, NH 03302.

I've felt all kinds of things since entering this SHU¹ in 1998, while isolated from human touch; caged and tortured; often starved; having shit and piss thrown on my body, my face and my hair; having my dreadlocks pulled out; having ribs and fingers fractured; and having my head and lips busted.

I've had my mail censored, had my personal belongings ransacked, read and used to contact my family and friends in the free world behind my back. My personal photos have been passed out among their gossip hounds for purposes of starting false rumors about my family and friends. I've been labeled a troublemaker, a snitch, a racist, a rapist, a child molester, and a woman killer to try to turn prisoners against me and what I believe in. I've been labeled as suicidal, insane and as a predator.

After the blood, sweat and tears over the past six years on this SHU — the loneliness, isolation, long nights, longer days, the dreams, nightmares, the cold sweats, the hot sweats, and the confusion — what is left of me? I can't understand, relate to, or communicate with people the way I used to. Much as I long for human contact, I find myself pulling back from what opportunities there are for dialogue. I purposefully push people away. I can't afford to allow anyone to penetrate my space for fear of people not understanding my anger, my frustration, and my fears over the last six years.

I tell people that have just come on the unit to be cool and do what it takes to get off the SHU as fast as possible, to avoid misconduct reports that could keep them here longer, to accept the bullshit around here in order to get off, to keep their mouths shut, do what they're told, show no resistance or they'll be here as long as I have...then I look inwardly at where this SHU has brought me. Now this SHU has me preaching passivity and not resistance.

I search to find something positive that I can take away from this experience. What can I possibly tell future comrades about this SHU? All I can think of as advice is to stay the hell away.

Every 30 days, a psycho-doctor comes to ask each of us, "Do you have any problems?" For six years, I've been asked this question. For the first year or so I answered, "No," but as time went on I stopped answering the question altogether. They didn't need me to tell them that they were creating problems for prisoners — mentally, physically, and spiritually.

I feel as though the SHU has emptied me and left me hollow. Have you heard an old saying that goes, "I'm up a creek without a paddle?" Well,

that's me, plus I'm handcuffed behind my back with a million holes in the bottom of the boat and I'm sinking fast... .

Still, I want hope — I crave hope. I seek reassurance that the struggle for prisoners' human rights remains alive — that I remain alive — that the SHU regime can be ended.

I tell you without shame that I'm scared. I'm as afraid as anyone would be here. Some days I don't know where to turn. I cry. I want to give up, but what would I be if I didn't challenge the violence here that haunts me?

I long for the day when I can relax, when I can sleep peacefully for eight hours, eat a good meal, take a nice hot shower, and not have these stresses, these ills, this nonsense, this foolishness, this darkness of the SHU waiting for me when I'm done.

I've counted every brick of these walls in this cell, and it seems that every time that I count them one is missing, or maybe the walls are closing in on me. Whatever the case, this cage has become my friend, enemy, my love, my fear, and my shelter, as well as home to my demons. It plays tricks with my mind, and it soothes my mind. A contradiction? It's much more than that now.

When I'm taken from this cell for anything, shower, sick call, law library, I long to return. Despite all the negative things the cell is, I also see it as my protector. Explain that! But it shields me, not from the shit and the piss throwers, but from something that I can't explain, yet I feel protected from everything else. Crazy, huh?

Despite my isolation, or perhaps because of it I long to be as alone as possible. I sleep (or try to) during the daylight hours and stay up all night. My thoughts just seem to work better during these hours, because of all the bullshit that goes on around me during the day. I steal what time I can for myself, by reading and writing. I take joy from any escape from SHU madness.

I hope that I can be "de-SHU-ed" when I leave here — that I'll become more social when I'm back in a regular population where prisoners interact with each other. I had the experience of being off the SHU recently. In February and August of 2003, I returned to the county that I'm from, up north, to go to court to request a modification of my sentence. I had to stay in an over crowded county jail. The cells were made for two people, but held four — a very tight fit. I could neither sleep nor interact. I felt paranoid, out of place. I isolated myself as best I could, from everybody else. When

the other three were out of the cell, and I stayed there alone, I felt more at peace, more comfortable, more protected from sharing even my feelings.

When it was lockdown, from 11pm until 4am (that's the time the doors were locked and we were confined to that small cell), I sat up and watched these other three dudes. None of them was threatening in any way. I was there for four days each visit to court, and every night I slept sitting up, as to be in a defensive position — physically and mentally. That's how I felt.

One of the dudes in the cell asked me, "Man, why are you always by yourself"? I said, "Just thinking about this court date".

By my second visit to the jail, I was at least aware of keeping to myself and why I did it. It wasn't that the dudes posed a threat to me, but that I was uncomfortable because I had not had interaction in so long that I didn't know how to act. I was basically in shock, and my fear level was off the scale. I was scared to be around people. Isn't that crazy? I've never talked about this to anyone before now. I find myself wondering what my reaction will be if I'm let off the SHU back into population with other prisoners, let alone released from prison altogether.

This is a look inside this SHU, as well as a look inside my mind and feelings. I think people need to know not just about the shit and piss throwing, but about the possible long-term effects of isolation, the dehumanization, loneliness, and being forgotten. All questions, criticisms, or whatsoever that's on anyone's mind, please address your questions to me personally. Just please don't assume you know about me. If you have any questions, please ask.

This was hard for me to write and it was even harder to let somebody read it. I feel that I have exposed myself to a lot of people. I worry that some people will try to use my words against me, but I'm all right with that as long as we can possibly help to "de-SHU" prisoners, not just in Indiana but nation and worldwide.

ENDNOTE

- ¹ SHU is the Indiana Department of Correction's term for its "Security Housing Unit," known elsewhere as adjustment units, control units, and supermax prison units; beginning with the federal prison unit in Marion, Illinois, designed so that in theory, prisoners can be held in well-lit and monitored isolation with no direct human contact — advertised as models of technological advancement.

The author may be contacted at: Billy Brown, WVCI, #855988, SHU P.O. Box 1111 Carlisle, IN 47838.

Mother's Day

Brenda Murphy

Dawn. I lie awake. Nausea has been sweeping over me for hours leaving me in a cold sweat. A foot away my cell mate Lorraine lies snoring, her long hair covering most of her face, her arm hanging out of the bed, white and thin, and dangles there, it looks unreal, like a cheap prop from a Hammer horror movie. She looks about sixteen. She is in fact nineteen, serving two life sentences, for murder and attempted murder of a policewoman and policeman. The cell is full of gray, weak light, its high arched ceiling gives the impression of a lot more space than the reality of this ten foot by twelve foot world we share.

On the wing I hear the muted sound of footsteps and the crisp jangle of keys, it is the night guard, doing her hourly check, I have been waiting on her. I climb off the bed awkwardly, my belly, swollen with nine months of baby makes me clumsy. I press the buzzer on the wall beside the cell door, and hear the soft clicking, and see the glow of the flashing light under the cell door. This is how we summon help. The screw will see the flashing light and she will either come or ignore it, depending on her mood. A few moments later the cover on the spy hole in the door slides back, an eye looks in on me, a voice asks, "What is it"? I tell her there is a medicine in the guardroom for me, and I need it. She listens and tells me, not unreasonably, that in an hour I will be out of the cell for breakfast and I can get it then. If she gives it to me now she will have to fill in a report and she has enough to do. With that she slides the cover back on the spy hole, switches off the flashing buzzer and walks away. I lean my back against the cell door, I feel very calm, not angry at all. I am surprised at myself, I am known for my bad temper, I am too weary to argue. In the bed Lorraine moves then sits up, pushing her hair away from her face, seeing me standing at the door she asks if I am all right. I tell her I have been feeling sick. That I had asked for my medication but the screw can't be arsed. She springs from the bed. "We will soon see about that, the bastard!". I start to laugh, tell her to forget it, calm her down. We return to our beds and talk quietly in the growing light until the cell door opens.

This is Sunday morning, the 5th of March 1977, it is Mother's Day. We are glad it is Sunday because we are allowed out of our cells on a Sunday, we can mix with one another, clean our cells, do our washing. We are (Irish) Republican prisoners, there is a war going on in our country, we see ourselves as prisoners of that war and demand to be treated as such.

So we have been on protest, refusing to cooperate with prison authorities; that includes refusal to do prison work, and refusing to recognize prison authority over us. When we must communicate with them we do so through our own command structure, we do not take orders from screws, we ignore them. Our punishment for this is to lose a day's remission for each day we do not work, lose our weekly food parcel, and weekly visit. We can only have one half hour visit a month. We also lose our right to attend education classes, and lose the right to free association with fellow prisoners. Total overkill as usual. But it is Sunday, and there is no compulsory work on Sunday, and so we are allowed out.

All of a sudden the wing is awash with sound. As the day shift of screws arrives on the wing, keys in locks, doors flung open, the trail of bleary eyed women, each holding chamber pots of piss and shit walk to the sluice room to dump the detritus of their bodies down the loo. I stand in line. I piss a lot now, my pot is over flowing, and the smell of the sluice over powers me. Rosie Callaghan, a young woman from the Short Strand, takes my pot from me, tells me to go and sit down, she will empty my pot. I am grateful. On the wing I breathe in deeply, and start to feel better. Mairead Farrell shouts across the wing to me, she is the OC of our wing. No sign of that brat popping out yet Murphy, a wee bit of semtex might help get things moving." I remember this is her birthday, I can't remember if she is 20 or 21 today. I wish her happy birthday. We have a system for birthdays, we all pool any spare food, biscuits, whatever we can get our hands on during the week and on a Sunday we have a party for whoever's birthday it was during that week. I had been losing weight and I have been allowed a food parcel once a month from when I was in the sixth month of pregnancy, and so we have a good bit of decent grub for the party this time. We banter a bit and I go down to the MO and get the anti nausea medicine.

I sit on a chair outside our cell, while Lorraine cleans it. The wing is all noise and jokes and talk of visits, and gossip, and the pain starts in my back, nothing too bad, but I know all the same that this is the start of labour and I am frightened, but I say nothing. It's early, people are looking forward to the party, I am too. This afternoon, the party is in full swing in the association room, the record player is on, the girls are dancing, I get up, walk to the door, call Lorraine my cell mate and tell her I am in labour. She screams, tells the others, they flock round me. Mairead demands the Principle Officer, she goes to the guardroom to inform her. I go up to my cell to get a bag that

I can put the baby things into. The MO arrives, examines me, and confirms that I am in labour. I wait in the cell with all the women squeezed in there with me, making me laugh. Eileen Morgan informs me having a baby is a doddle, Peggy Friel asks how the fuck would she know, she replies, ``it must be, her Ma done it fourteen times``.

About an hour later the wing gate opens and my name is called. I leave the cell followed by the entire wing of women, two male screws and two female screws are waiting on me. I go to them and they escort me off the wing. All the girls are yelling and cheering, my cell mate is crying. I am brought through the prison to the reception area, where armed police are waiting. They handcuff me and take me out to the yard. There are two police land rovers there, and a British army personnel carrier, a Saracen. There are British soldiers standing about with their rifles. I am in a dressing gown, slippers, with a nightdress underneath, handcuffed. They are all looking at me, I want the ground to open up and swallow me. A policeman points at the Saracen and says, "You get in there." I can't believe it. I am five foot tall, the step into the Saracen is really high off the ground. I walk towards it, everyone watching, then a British soldier walks towards me, looks at the cop and says, "Why can't she travel in the land rover"? The cop says, "Because I say so, put her in". The soldier tells the cop he is just being a bastard, a row goes on for a few moments, but in the end I have to go into the Saracen.

The soldier jumps into the Saracen in front of me, calls to his mates, and they literally lift me inside it. There are two wooden bench type seats running along each side of the Saracen. I sit on one. The soldier sits beside me and the rest of the soldiers pile in behind him and take their places. The doors close, we drive off. The soldier says "You all right love"? I say yes and I thank him. He takes his jacket, rolls it up and puts it behind my back like a cushion, he lights a cigarette and hands it to me. I stopped smoking because I was pregnant but I take it, grateful, he chats away to me. When we arrive at the hospital I have to wait for quite a while in the Saracen, the other soldiers get out but the nice guy sits with me, he is from Newcastle, his name is Ben. A wheelchair arrives. Ben helps me down, young nurse smiles at me, tells me to sit in the wheelchair, I do. The policeman who insisted I ride in the Saracen, steps forward, he opens the handcuffs on the wrist then locks it onto the arm of the wheelchair. The nurse objects, he ignores her. I am pushed into the hospital, two armed policemen on either side, two female screws behind, everyone staring at me.

The day passed in a series of arguments between the police and doctors about their presence in the room, the handcuffs. The final stage of labour arrives and I was to be brought to the delivery suite. They all came along, screws, cops, the lot. Once they had me on the bed in the labour ward, they produced a chain that went around my body and the labour bed, then round each wrist, the doctors went ballistic but it made no difference. The cops informed me I would be giving birth to a deformed provo-bastard and made a few other choice comments. The doctors insisted they remove themselves to the far end of the labour ward, and mobile screens were brought into allow me some privacy for the last stage of labour. I could still hear them talking and laughing, but by then I was beyond care. I was determined not to cry out, at least I could control that.

Just after midnight my mother and sister were allowed in to the labor ward and a few moments later my baby was born, a beautiful girl. Less than 48 hours later I was back in Armagh gaol, at my request. The doctors finally realized that having to stay in a side ward with armed police with me every minute was just too much stress. Back at the prison the other women went crazy over my child, a baby in prison is a cause for great joy. After six weeks the governor came to my cell, he told me I had a choice to make. If I continued with the protest my baby would have to be sent outside to my family, or I could come off the protest and keep my baby for a year at which time they would review my case with the potential to keep her with me until my sentence was served. It was emotional blackmail and more, it was another way of breaking your will, another rub on the grindstone that was the system. More than anything that happened to me in the prison system, this would haunt me forever.

Brenda Murphy is a writer and actor living in Belfast, Northern Ireland. She was interned on two occasions for her support of Irish Republican struggles, including membership in the Irish Republican Army.

Until Further Notice

Sami Al-Kilani

To the residents of the town and the surrounding camps: By the order of the Military Governor, you are hereby under curfew until further notice.

The recurrent and abhorrent phrase, arousing pessimism and depression, is heard again from the loudspeakers on the jeeps and from the loudspeakers on mosques and minarets. It repeats with an annoying interference until you would be unable to differentiate between the words had you not known them by heart. You know without listening to the words. Your skin feels it, your clothes feel it as do your pajamas, which you wear day and night until they are so attached to you that you don't know whether you are wearing them or they are wearing you, or if something else with a repulsive colour, smell, and feel is wearing both of you.

You stand on the porch of your home looking towards the city's neighborhood that spreads to the north and south. The words continue to resound from all minarets, but instead of a unifying call-to-prayer, comes the unifying chorus of curfew and imprisonment, homes destroyed, hunger, screaming children, and all that unites people in misery. The echo that reverberates between both mountains to the north and south envelops the town and screams destruction. This same echo distorts all shapes and colours.

.....Until. Further. .. notice. .. further. ..notice. .. further... The curfew is imposed until further notice, and is lifted until further notice. Two hours ago the echo blurted out another until "further notice". This "further notice" was like a huge key opening the lock of a giant cell, the city and the surroundings. Young and old rushed out of their houses into the streets like birds from a suddenly opened cage. The adults rush to the bread and vegetables in the market, forming a human traffic jam — those with cash-in-hand with dignity, and those buying on credit with difficulty. Large and small cars rush out followed by the donkeys from the nearby villages, carrying cucumbers, yoghurt, and figs. The children fill the empty streets with their screaming and jumping.

Further notice and "further notice" of a different kind. It's like currencies where identical numbers denote different values. The values of these currencies go up and down with the same result, destroying the house of the poor. And you, Sir Anis, belong to the poor. Even though you console

yourself by feeling rich in spirit, education, and knowledge, this changes nothing. And the price of the “further notice” also destroys one’s home and one’s nerves. The curfew notice usually lasts for three days (could we ask for more?), is then lifted for two hours, and even that decision is placed in the fidgety hands of a monkey and is subject to cancellation for any reason. The price of the further notice goes in one direction — depriving every one of this sacred freedom. Curfew and imprisonment go hand in hand.

*O prison darkness, spread around
 We love darkness
 O curfew darkness, spread around
 We love darkness
 O guards slow down
 Listen to our words
 Allow us to enjoy the air
 Which is forbidden to prohibit us*

Sir Anis had decided to spend the reprieve of the last “further notice” in a new way. The curfew had become routine; the house had become routine; unfairness had become routine. He’s been waiting for something new for a while. Renewal, O` God, renewal! Even a new kind of oppression, even if the innovation is only a new way of destroying houses. He decided to kill the monotony by forsaking the short freedom. He told his wife and children: “Go wherever you wish while I stay home”. People looked out from their porches. Some friends passed by. He invited them to drink coffee and watch people together, particularly since the house was well stocked. In the previous reprieve he had luckily managed to get all he needed, and this time there was no need to shop for anything — other than a few luxuries that his wife could get from the nearby groceries.

The reprieve passed by without his noticing it. He was caught unaware by the announcement of the curfew and surprised by the high price of the “further notice.” A fatal error! He had been tricked and lost. Three more days within the walls, within the pajamas. No, this curfew would not end before the next national commemoration. Such are the thoughts of the one who imposes curfew: as long as you have started the curfew, extend it to include all the upcoming occasions. A demonstration of the Arabic proverb: if you feed someone be sure he is satiated; if you beat someone be certain he is in pain. They are trying to prove that they are indeed our cousins.

Imagine that the enforcer of the curfew is a big general who appears on the television screen with the title “General in Charge of Prohibitions”. Imagine him declaring, with artificial equanimity: “For the welfare of the population and in order to control those who disturb the peace, we have taken necessary pre-emptive measurements — such as curfew. Those who disturb the peace will bear the full responsibility for all the damages and inconveniences caused to population in the territories”.

Three days! You General of the Curfews! Do you understand what does it mean to me, “...The curfew starts now and will be in effect until further notice”?

The repetition of the message that came from the loudspeakers of both the minarets and jeeps presented one face: the face of the General of Curfew. Sir Anis did not pay attention to his wife and children who were coming towards their house from the edge of the street. Under the hammers of the alternating sound and echo, the house was a tube of toothpaste. Each squeeze pushed the twisted paste through the narrow opening.

With every “further notice” Sir Anis becomes stretched thinner and taller. His head emerges from the porch. With another “further notice” the shoulders come out. With another, one of his arms; with another, the waist, then the knees emerge. He becomes a tall, slim ribbon dancing in the air in front of the porch. With every “further notice” he becomes taller and slimmer, twisting north and south.

Sir Anis’s eyes were surprised at the appearance of the General of Curfew. He turned around and tried to reach the porch but the handcuffs found his hands first. Big hands pulled him to an army car. He tried to resist, but the force of pulling him was much too strong. He found himself in a hall filled with military personnel of all types and colours. The judge came and asked his name. He replied, while thinking — in a helpless state of reliance on God — what do they want from me, and why did they pull over here?

“You are accused of breaking the curfew. Do you admit to the accusation,” he was asked? He replied in shock, “I didn’t break the curfew, in fact I.” He was not allowed to continue. The judge said something and waited a bit. The captain whom he had seen in the army car came in, stood on a wooden platform and made a gesture Sir Anis understood as taking on oath. He remembered the courts and judicial system and thought to himself, he

must be saying, "I swear by great God to tell the truth, the whole truth, and nothing but the whole truth".

The captain spoke, the translator translated: "We arrested the accused while out of his house during a curfew". The captain left the platform. From the other side another captain rose at greater length than his predecessor. The translator translated: "The prosecution requests the imprisonment of the accused for one month with an additional three months of suspend sentence and an additional fine of 1,000 shekels".

He told the translator that he wished to speak. The latter transmitted his wish to the judge, who permitted him to speak on condition that he be brief. He said: "I was standing on my porch and my head extended from the porch under the pressure of the echo and sounds. I did not leave the porch".

The judge spoke. The translator translated: "The person is where his head is and not where his feet are. The human being is the brain. Are you opposing the will of the Creator?"

Sir Anis lost his mind.

The judge rose. The high-ranking military personnel withdrew. The soldier pulled him, cuffed his hands by the entrance of the hall. He wished that he had been granted an additional time to say a final word: "Before you dragged me over here I was thinking about a son of one of our neighbours who had just completed his 16 years in prison. I was thinking about the coming three days of the curfew when he passed me. He bore the imprisonment and emerged strengthened. I envied him for his strength, and here you are granting me the opportunity for a similar experience".

The soldier pushed him into the army car where a few youths were seated. One of them welcomed him with "Hello Sir Anis." One of his students recognised him. From them he learned that they were awaiting transfer to prison.

Sami Al-Kilani is the Director of An Najah University's Community Service Center and formerly Director of the University's Public Relations Department. Like many Palestinian men and women, he has been a political prisoner under the Israeli occupation of Palestinian territories. He may be contacted by email at smkilani@najah.edu

Translation: Musa Khaldi and Ophir Yardin

Days of Ansar 3:

A Pulsing Thorn in My Heart

Sami Al-Kilani

Man is great because he can break the limits of time and place. Did anyone else say that before you? Before me? Man can break the limits of pain and make life out of pain. If he fails in doing that, the limits will become narrower every day. The walls of prisons and jails and detention camps are one. The most hostile limits to man since the time of them being invented. Invented? No, invention is a nice word. Since they were introduced, since they were put in the face of innocent man. These walls are sometimes seen as the most fragile to you, and the most strong and isolating at other times. When your homeland becomes a neighborhood of prisons, the walls may swallow your spirit like a tiny monster or they are demolished by your waves of smiles and thoughts as you sit on your bed in a certain cell in a certain jail. Man is great because he can break the limits of time and place.

Days in Ansar 3 were like being in front of a huge monster that opened its wide mouth to take us to the lands of death in life, to the lands of hatred, and to the lands of revenge. It can take you to the green grazing fields where the sheep triumph over the fear of the wolf. Those who broke the unseen walls of Ansar 3 were great, as they could keep the seed of life alive inside of them. On both sides of the walls there were fists that bang the wall. Palestinians from the inside, and from outside there were Israelis who realized that they can't be free while their government is occupying other people in their name. They kept the seed of life alive as they broke the walls towards the promising lands of peace. They are still struggling to break the walls that are used to try to block the road to peace. They are still hammering the walls when they meet in a dialogue that explores ways of transforming pain into a constructive energy to defend peace offended by the Israeli policies of building settlements on the Palestinian lands, and when they march together under the slogans of peace.

This job of using your inside energy to break a wall while you are behind walls and bars is not an easy one. It's painful and joyful when you look upon it through your eye as an experience that passed, and when you look at it through the eyes of your friends who are still behind bars. The days and nights of Ansar 3 can look as rosy as the baby rose bathing in the dew of an early summer dawn. Those very days and nights can become, in the

blink of an eye, as thorny as the prickly cactus you fell into when you were a six-year-old jumping kid.

Whether these days and nights are like a thorny rose or a rosy thorn, they are your days and nights. Write them! Write them for the sake of the pain and joy.

When I attempt to write about my days in Ansar 3, I find that I am unable to find a means of expression which does justice to the experience. Also, I am not a good documentary writer, and the literary style, which forces itself on me even when I want to document, is inappropriate. What can you do when many people tell you they want to read an account of those days at Ansar 3 in the Negev? The easiest way is to talk, and to leave it to someone else to write the things down, and phrase them in the style that he desires. But this is the way of evading responsibility. You yourself must write something about those days. Therefore, write the outline for your upcoming composition. Write it in terse prose, write about the peaks of your experience, and leave the dark details to the future. It may be that there is someone who does not agree with you regarding the designation of a specific peak or of several peaks. It doesn't matter, because differences of opinion are legitimate and they will enrich your future composition.

THE ROAD TO ANSAR 3

The path I took the first time from Jeneid Prison near Nablus to the Negev, and which was, in a sense, the writing on the wall, cannot be erased from memory. In those same moments in the morning hours which I love, I reflected on the visit that was supposed to take place the following day. I thought about my son who had been born just a few days before, and whom I would see tomorrow for the first time. The officer entered with a few guards and they began calling off a list of names. We understood the matter: we were to be transferred to the Negev. The soldiers on guard wanted us to pay careful attention: before leaving the internal prison gate, they instructed us to cover our eyes with a strip of cloth from our clothing, and they checked that the cover was tight and that no light seeped through. The buses remained in the prison courtyard from 11:00 a.m. until 4:00 p.m., with us inside them, blindfolded and tied two-by-two. When we would ask them to decrease the pressure of the metal handcuffs, one of the soldiers would answer with a curse or a string of curses, strike the iron part of the

seats with his club in order to instill fear, or strike the nearest prisoner. Five hours in a tin box, in the August heat, when you are tied and blindfolded, is not something which can be forgotten. An additional picture is etched in my mind: shouts were heard from the second bus. I lifted my blindfold very slightly and looked out the window: a soldier bearing a club burst into the bus as if he were storming a military stronghold. Another soldier kicked Jamal, who was seated on the ground in the scorching sun, with his eyes tied. Things one sees in a stolen glance are etched in the mind, just as a photographed picture is etched in the camera's sensitive film.

The buses set out on their way and the heat became less unbearable. Many details on the way earned a place in my memory. The journey was torture. My neighbors and I spoke among ourselves as blind people. It was then I understood why blind people speak to one another without moving their heads. One of the soldiers caught us whispering and suddenly thrust his hand on my neighbor's neck. The worst, most painful blows are those which you receive when you are blind. Abu Hussein, who suffers from diabetes, began to plead that they allow him to urinate. He explained to the soldiers that he had diabetes and had to urinate immediately. His bladder might burst; he was likely to urinate in his pants. He spoke in Hebrew and the soldiers understood him well. One of the soldiers began mocking him, saying he was acting like a child. After over two hours, the bus stopped at a gas station, one of the soldiers brought him to the bathroom, and remained by his side to urge him to hurry. He was not able to urinate, apparently for psychological reasons. He returned to the bus, writhing in pain, and thus remained until the end of the journey.

When the buses stopped we waited for a long time until they removed our blindfolds. We felt that an eternity passed between the stopping of buses and the removal of our blindfolds. Suddenly we saw Ansar 3, Ketziot, the desert detention camp in the Negev... tents extending out into the distance, spot-lights, people moving behind the barbed wire fences, voices calling out, asking us who we were, from where did we come...the people finally descended from the buses, and at long last I was allowed to free my hand from the accursed chains. My hand had fallen asleep, the skin was a blue color, and handcuff marks looked like burns. The laceration and the handcuff marks on my hands remained for several days. They placed us in a large square where many armed soldiers equipped with gas masks were circulating. Every soldier was more than ready to give orders, yell, and

curse. They commenced the procedures for inducting us into the prison. All of the possessions we brought from Jeneid were taken from us, and we each received four blankets. We were not permitted to exchange anything. Half a blanket is a whole blanket if the officer says so, and you have to keep quiet. The clothes are large or small, they fit you or they don't, torn or whole, clean or covered with dust and the sweat of the person who wore them before you. These are the things about which it is forbidden to argue. Many preferred not to argue in order to speed up the moment of entrance to the tents and to see those who had arrived before us.

At 3:00 a.m. we entered our section of the camp. Most of the prisoners in the wing woke up, and we spoke with them a bit. We each received a sponge sheet, which with extreme exaggeration could be called a mattress. We laid the mattress on a *dargash*, curled up in the blankets, and sank into a deep sleep. The absence of a pillow delayed my falling asleep. The Israelis can be proud that the Hebrew word *dargash* (a low platform for sleeping) has become a daily word, just as the Palestinians can take pride that the word "Intifada" has entered many languages, and one English dictionary has included it among its entries. The voice of the *shawish* (*Shawish* is the detainees representative to contact the camp's administration) tore me from the depths of my sleep: "Count-off, men!" We went out to the square, and the "*shawish*" explained to us how the counting was to proceed: you sit in rows with your hands behind your back. He added that within a day or two the (court) battle against this policy of humiliation was to begin, but that Ansar 3, which had two weeks previously sacrificed two martyrs, would never accept this.

The stranger the clothes you wear, the less you realize your tragicomic appearance. The shirt's buttons are torn off, and the pants are a fist's-width wider than your waist, and therefore you connect two belt loops from the right side, and two from the left, by means of a wire or rope, because a belt is a dangerous item and it is forbidden to bring one into the detention camp. On this minor point, the mentality of the occupation and the prisons is revealed in all its stupidity. The instructions say that bringing belts into the camp is forbidden due to a fear that the prisoners may use them to commit suicide, and this in a place where there are many ropes and thousands of other ways to commit suicide, if someone only wanted to commit suicide. The point is that these clothes do not change you in your own eyes, but when you see them on someone whom you knew outside of the detention

camp, you grasp why they take a person's clean and neat clothes, which suit him, and give him these rags in their place, which are called, generously, clothes. They want everything around you to cause abasement and misery and will search for every way, large and small, to bring you to live in an emotionally difficult situation. But they do not know that a person who knows for what he is struggling is able to knock an opening in any steel wall so that the light will pass through.

OFFICERS

Life in a detention camp, and transfer between two camps, enables you to see many types of soldiers and officers. At one extreme, there is the officer who always behaves, sometimes with reason and sometimes without, in a way that convinces you without doubt that there is no human dimension to his personality. You cannot imagine, not even in an instant of humane thinking, that he is son to a father and mother, or that he is the father of a boy or girl, or that he was once a child in grade school full of innocents, jumping and playing. You cannot imagine him as anything but a murderer who will take any opportunity to kill, and if he does not have an opportunity to kill in actuality, for reasons beyond his control, he releases his animosity and hatred in every possible manner. At the other extreme there is the officer who says to you: "I want to pass my period of military service with the absolute possible minimum of problems. It was not I who brought you here. I do not know why they brought you, and my job is to fulfill my duty according to the law." Then there is another type, of whom I met only one. In order not to do him injustice, my human responsibility obligates me to mention him, despite the fact that he is an exception. This is the type who is interested in hearing your story, and is very astonished when the details of "administrative detention" are made known to him, and he declares before you in all honesty, "I know that this is evil, but I don't have the courage to refuse to serve".

THE FAREWELL INSULT

The day of release, the day of freedom, the day of joy, the day of meeting your loved ones after the separation. We thanked God that they moved us out of our section early. That meant that we'd get home early, and wouldn't have

to stop over and lose another night in Dhahriyya Village or in Hebron. That is what happens to those who get out later in the day: they find themselves in the evening hours at Arad junction without any way of getting home. Things went smoothly. They carefully checked our bags, confirmed the discharge date, returned our possessions which had been deposited since we came into the camp, and everything was ready. At 1:00 p.m. we got on the bus, and the officer responsible for our bags and deposits told the bus driver that everything was ready and that he could set out.

The period of waiting dragged on. At 2:00 we asked one of the soldiers when the bus was leaving. He was kindhearted, and went and asked the driver. The driver turned to a young officer and spoke with him, and then the officer came to the bus and began shouting, "Who asked when the bus was leaving? I am the one who decides when the bus leaves. Whoever opens his mouth will have his head opened. Is there anyone here who is asking about the bus?"

He ordered, with gestures and in easy Hebrew, to take the number of one of the prisoners, and to go check if his administrative detention had been renewed. We were worried, and our hearts were with our friend. We were almost positive that the matter was staged, and that the officer did not have the authority to carry it out, but we still felt for our friend, because there is nothing more difficult than the extension of your detention when you are just a step away from freedom. Extension of detention is difficult in general, but this is the most difficult type. Apparently the officer was aware of this, and therefore decided to part from us in this way. The officer exited with his sunglasses, hatred on his face, and the bus left at 4:30. Another day lost, far from our families.

THE BUSH

When we entered Ansar 3 the water problem was the worst problem of daily life. A large water truck would fill up black plastic tanks, and every two of those would supply water to one of the spigots in the section. We spent most of the afternoon hours in thirst. Despite this, we longed for the color green, the color of life. Some people took initiative and cultivated small plots of land in the back entrances to the tents. The plots were sometimes as small as a chessboard, planted with lentil, hummous (chickpeas) or fowl (broad beans), which they got from the kitchen. I heard that in Section 7

they planted watermelon seeds, and they germinated and gave fruit which got bigger and bigger, but before the date of harvest, the residents of the section were transferred to a new section. When I saw the vegetable plots in the neighboring wing I became filled with the intoxication of victory. Ansar 3 did not succeed in the mission for which it was created. It did not kill the seed of life, and the love of life. I was reminded of the houses in the refugee camps. What tugged at my heart strings the most was that despite the narrow dimensions of the tiny front yards, their owners found enough room to plant a grape vine that would creep and fill the space with green.

Apparently, one of the officers discovered the secret. When he passed near the barbed wire fence which surrounded the section he noticed a small bush climbing along the tent rope. He approached the gate, called to the *shawish*, and demanded that he uproot the bush. The *shawish* argued and staunchly defended the bush. In the end, the officer stood his ground, but the *shawish* for our wing refused to do it. During the count, the officer entered with soldiers armed with gas, behind whom were soldiers with rifles, and behind them a tracked military vehicle mounted with an automatic rifle. But the officer and the soldiers did not leave after the count was completed. The officer turned to face the row of tents, and after some time returned, carrying the uprooted bush. The prisoners rose on their feet, but I remained sitting in the local courtyard, in my numbered spot. I thought of the Russian novel *Rainbow in a Cloud* which I had read during my previous prison term in Jeneid, and the description of an officer of the occupation, holding a newborn infant by his legs, shooting him in the head before the eyes of his imprisoned mother who had given birth to him the previous night.

THE TEACHER!

I was transferred from Ansar 3 to Dhahriyya. I remained there for six days, without knowing the reason for my transfer, and then I understood that I had been transferred so that I could meet an American professor who had been sent by the American Physical Society (APS) to investigate the complaint I had submitted on being beaten relentlessly for an hour and a half in a barrage of immeasurably painful blows at the checkpoint between Tulkarm and Nablus. I thought to myself: Great, either they don't want my American colleague to see the Negev, or they don't want to trouble him with the journey to the Negev. Following the visit, I was not immediately

returned to the Negev. Instead, I was transferred to ‘Anatot, from ‘Anatot to al-Fara’h, from al-Far’ah to ‘Anatot, and from there to the Negev. When I arrived at al-Far’ah, I hoped that the chain of transfers would continue, and would include Meggido as well, so that I’d be able to see my brother who was imprisoned there.

On the way from ‘Anatot to al-Far’ah we were blindfolded. We were quiet until we had fully left the ‘Anatot camp, since the security procedures in each place required that the prisoners keep silent when entering and exiting the camp. We remained blindfolded a long time, and then we told the soldiers that we had come from the Negev to Dhahriyya, and from Dhahriyya to ‘Anatot, without blindfolds. Therefore, why should we be blindfolded now? An officer spoke with us. We didn’t manage to communicate with him in Hebrew or Arabic, although our Hebrew vocabulary was far more extensive than his Arabic vocabulary. I spoke with him in English and tried to appeal to reason, but he held his ground: “That’s how I want it, so shut up”. During the exchange, one of the prisoners told him that I was a university lecturer, so he turned to me and said, “Professor, if you explained something twice to one of your students, and he didn’t understand you, wouldn’t you call him an ass?” I really wanted to see the face of this man who thought himself a professor, and us his pupils who must understand the first time around — who thought that by virtue of the rank on his shoulder he could do whatever he wanted, and if we didn’t cooperate we were asses. Someone suggested that we all remove our blindfolds together, and that they could do to us as they pleased. We made our intentions known to one of the soldiers, from whose voice we discerned that he was more easygoing than the others, and he apparently transmitted our plan to the officer. Because of this he came and began to discuss the blindfolds with us. His condition was that we sit silently on the bus. They removed the blindfolds, and I recognized the one who had seen himself as my teacher and me as his prize student. He had a child’s face, and the beard growing on his face was nothing but yellow peach fuzz.

DOCTORS AND MEDICAL CARE: YOU WON’T DIE TONIGHT

Since the time I met him in that tent I can still see the pain in his eyes. Perhaps his eyes had become smaller due to all the pain he had suffered. When his ulcer bothered him, he would sit on his mattress wrapped in

blankets and smoke, despite the fact that smoking exacerbated the problem. I asked him why he didn't go to the doctor. He said that it wouldn't help since at best, the doctor would give him a pill or two and advise him what to eat and what not to eat, as though he were residing in a hotel. The problem of eating proper food and avoiding harmful food is a painful problem when brought up by a doctor on reserve duty who comes to the prison for a month and then leaves. He wants to get that month's service over with in whatever way he can and get away from this desert. There is another reason which prevents Ali from going to the doctor and preferring to wait for medication sent by his family through a lawyer even though he may have to wait a long time (first, the Red Cross transmits a letter from Ali to his family). The family then gives the medicine to the lawyer, who waits his turn for a visit. When the visit takes place he gives the medicine to the administration of the camp, which passes it on to the clinic when someone remembers to do so. The clinic then passes the medicine on to the prisoner.) Ali told me this additional reason when his eyes were almost bursting from a combination of pain and controlled hatred. One night he had a terrible attack of pain. He tried to control himself but the pain was very strong and he felt as if knives were cutting his stomach. His friends in the tent went to the *shawish* and woke him up. The *shawish* went to the guard at the gate, the guard spoke with the officer, and the officer decided to send him to the clinic. Two of the prisoners laid him out on a platform and took him to the clinic. After they waited for a while the doctor came out rubbing his eyes. Apparently they had woken him up from a deep sleep. He approached the platform, and without even bending down to see the patient, asked him, "Does your stomach hurt very much?" Ali said yes and the doctor said, "You won't die tonight. Come back tomorrow morning". After that he told the guards to return Ali to his section.

SHUT UP!

At the time of the routine examination (when I first came to the camp), I asked the doctor for a salve for hemorrhoids. He said that I had to request to see him after I was already in the camp. The Dhahriyya prison is Ansar 3's twin brother. Both were established at the same time and the same stories can be told about them. On the first day the nurse practitioner (medic) didn't arrive. The second day I signed up, but they didn't see me. On the third or

fourth day (I don't remember anymore), I went with other prisoners to the clinic. There were about ten of us. We stood in a line in front of the clinic. We were sick and supposed to receive treatment. A soldier came and told us to stand up and keep quite, not to sit down on the ground, and to face the wall. He cursed and hit the iron bars on one of the doors with his club. We waited for a long time and no one called us. After about an hour the door opened and the doctor came out. I stole a glance at him: he was a strange looking man, with his shirt hanging out of his pants, and his hair down to his shoulders, he reminded me of a hippie from the 1960's or the early 70's. He began to call us one by one. Each one went in and came out after a few minutes. I waited impatiently for my turn to go in and rid my body of the stiffness accumulated from standing up facing the wall. I went in and explained my ailment to him. He said that the medication I needed was not available then and that they would send it to me when it arrived. I went out hoping to return to my tent and was surprised to see that those who were ahead of me were standing facing another wall. The soldier placed me alongside of the others. When there were five of us I heard the doctor out in the yard joking with a woman soldier. We started to get annoyed and asked when we would be freed from standing in such a stiff position. This was punishment, not treatment. An officer came and threatened and warned us that he didn't want to hear us again. One of us asked when we would return and the officer screamed that he was the officer here and he would decide when we would return. The doctor, who was strolling through the yard approached us. It looked like he was resting and loosening his muscles after having worked very hard examining the five of us. I thought of raising the matter with him. I didn't think that a doctor would agree that his patients should receive this kind of treatment.

I called to him. "Doctor!" His answer was short and to the point, "Shut up!". I regretted that in my naivete I had deceived myself into thinking that I would get a kind response from a cruel person.

MOHAMMED

Mohammed raised his medical problem with the Red Cross doctor who visits us in the prison camp and takes complaints, though she has no authority to do anything about the treatment of the patients. I acted as interpreter. I understood that sometimes air from his lungs escapes into his chest and

causes him pain. He had undergone surgery prior to his arrest and was supposed to be under medical supervision. Perhaps he would need another operation. He had explained his condition to the camp doctor some times ago and the doctor had promised to send him to the hospital to be examined by a specialist and to undergo the necessary examination. Mohammed was subsequently transferred to a different section of the prison camp. About a month later, I was transferred to the same section. I asked about him. His friends told me that he had been sent to the hospital. I was happy for him, but my happiness evaporated when he came back and told me what had happened to him.

He had been taken to a hospital in an army ambulance under the guard of two military policemen. All the way they cursed him. He understands Hebrew. I don't remember whether they told him in the hospital that he had come to the clinic by mistake and that he had to go to another ward, or whether they scheduled an operation. I sometimes confuse his story with that of Sami. In short, he returned without being treated. On the way back, the guard's cursing turned into slapping his face while his hands were tied. One of the guards said to him, "Why do they send you for treatment? Someone like you deserves only to die: I feel like killing you". When Mohammed returned to the camp he asked to submit a complaint. An officer came to him, heard his complaint, recorded it, and left.

We were released on the same day. We left the prison camp without his getting to the hospital and with out ever knowing the outcome of his complaint.

Sami Al-Kilani is the Director of An Najah University's Community Service Center and formerly Director of the University's Public Relations Department. Like many Palestinian men and women, he has been a political prisoner under the Israeli occupation of Palestinian territories. He may be contacted by email at smkilani@najah.edu

Many, perhaps most Americans look at judges as lofty beings of higher, rarer order, divorced from the dull humdrum lives in which we dwell. They are seen as more brilliant, more rational, and wiser than the rest of us. And then Texas, the state that was once a republic, gives us all an example of just how human, how flawed, and yes, how biased judges really can be.

The now-famous case of Thomas Miller-El was just before the U.S. Supreme Court some two years ago, when three of the nine justices determined that the “Court of Appeals erred in denying a certificate of appealability [COA]” on Mr. Miller-El’s claim of racial discrimination in the selection of his jury.

When Mr. Miller-El went back before the state and federal courts of Texas he had every reason to expect them to respect the decision of the U.S. Supreme Court. But, as the saying goes, he “had another thing coming”. Both the Texas Court of Criminal Appeals (sort of a Texas Supreme Court for criminal cases) and the 5th Circuit U.S. Court of Appeals promptly denied Miller El’s claims by virtually ignoring what the majority of the Supreme Court said and glomming onto what was written by the lone dissenter in the case, Associate Justice Clarence Thomas, to support their denials. In legal circles, this is almost unheard of. One former Circuit Court Chief Judge, John J. Gibbons, said, “The idea that the system can tolerate open defiance by an inferior court just cannot stand”.²

We shall see.

In legal opinions, dissenting views have some, albeit limited value. They reflect splits among courts, and signal to reviewing courts that problems existed in a given case. They have often spoken down through the pages of history of errors made by the present court that will hopefully be seen and addressed at a later age. But, in a strictly legal sense, in the case before it, dissents mean nothing. They have no force of law. It is a fundamental legal principle that majority opinions carry the deciding weight of which way cases are decided.

If that is so, why did a majority of the Texas Criminal Court, and, more importantly, the 5th U.S. Circuit Court of Appeals, essentially ignore the determination of the majority opinion and deign to abide by the dissenting opinion? Why would learned, experienced judges dare do such a thing?

Surely, part of the answer may lie in the simple fact that 30% of the Texas appellate courts are staffed by ex-prosecutors who have learned from their

former jobs to give short shrift to defendants' arguments. Many of them worked their way onto the bench by doing the very same things that the Supreme Court has criticized in the 1986 case *Batson v. Kentucky*,³ where the Court forbade States from removing eligible Black jurors on the basis of race. If such an action was indeed unconstitutional, how many of these judges acted unconstitutionally when they were district attorneys? And while such an answer may suffice for the state appellate judiciary, what of the 5th Circuit, where federal judges, not state jurists, hold sway?

The answer to this conundrum may lie not in the law but in the realm of politics. For judges, though they wear black robes are yet political creatures. Even on the federal bench, judicial officers are appointed in, and by, the political system. Senators submit their names; presidents nominate them for Senate votes. And how does the ambitious judge come to the attention of national elected officials? By demonstrating her or his conservative credentials. Judges, in the lower *Miller-El* cases dared to violate fundamental rules of judicial procedure because they were *auditioning* for seats in the judicial hierarchy. Mr. Miller-El was nothing more than a Black, living stepping-stone on the road to their rising position.

For *Miller-El*, 53, there would seem to be some question that cries out for resolution, for, in his case, the prosecutor struck 10 out of 11 eligible Black jurors. Miller-El's argument was that this represented the "systematic exclusion" of such jurors, and, as such, a blatant violation of the *Batson* rule. To the state and federal courts hearing his claim, however, it merited little more than a terse, unsigned *per curiam* decision, which borrowed substantially from Justice Clarence Thomas' earlier lone dissent (without attribution). According to the view of a *New York Times* reporter, the 5th Circuit opinion seemed like judicial "plagiarism".⁴

To Gibbons, former chief judge of the 3rd U.S. Circuit, "The Fifth Circuit just went out of its way to defy the Supreme Court".⁵ Apparently, the Supreme Court agreed with Gibbons' view, for by summer 2005, the Court once again reversed *Miller-El*, echoing its earlier reversal. There was a rare judicial hint that this might be the result, found in the words of then-Justice (since retired) Sandra Day O'Connor (no foe of the death penalty), who expressed clear displeasure at Mr. Miller-El's most recent treatment before the lower courts. O'Connor opined that the 5th U.S. Circuit was merely "playing lip service to principles" of capital case jurisprudence, which has "no foundation in the decision of this court".⁶

On June 13, 2005, the Supreme Court again reversed *Miller-El*.⁷ As of this writing, he awaits retrial before the same courts that judicially approved the unconstitutional removal of Black jurors in the first place.

We shall see whether majority opinions are the law; or dissenting opinions become the law.

ENDNOTES

- ¹ *Judges of Death* first appeared in audio form, at www.prisonradio.org, on December 14, 2004. It is reprinted here with permission of www.prisonradio.org.
- ² Liptak, Adam and Ralph Blumenthal, "Death Sentences in Texas Cases Try Supreme Court's Patience", *New York Times*, (Online), 5 Dec. 2004, p. 4. <http://www.nytimes.com/2004/12/05/national/05texas.html?hp&ex=1102309200&en=cbc23993931bdaa&ei=5094&partner-homepage>
- ³ *Batson v. Kentucky*, 476 U.S. 79 (1986).
- ⁴ *New York Times*, (Online), 5 December 2004, p. 3.
- ⁵ *Ibid.*, p.3.
- ⁶ *Ibid.* pp. 1 and 2.
- ⁷ *Miller-El v. Dretke*, 545 U.S. ____ [June 13, 2005].

Mumia Abu-Jamal is a prolific writer whose work has appeared in the *Yale Law Review*, *San Francisco BayView*, and in the *Journal of Prisoners on Prisons*. He has written numerous books, the latest of which is *We Want Freedom: A Life in the Black Panther Party* (Cambridge: South End Press, 2004). A book on jailhouse lawyers is forthcoming. As of this writing (April 2006) Mumia Abu-Jamal remains on Death Row in Pennsylvania.

The Pendulum of Change and California's Three Strikes Law

Eugene Alexander Dey

As a drug war correspondent buried alive for a nonviolent drug offense, I make my reports from deep within the bowels of the California prison system — one of the last true bastions of absolute prison industrialism remaining from the tough-on-crime era.

“I have been locked up longer on this drug case than all my strike cases put together,” said 54-year-old Manuel Madrid from San Fernando Valley, incarcerated since 1997 and serving a life sentence. “I’m an old man. I’m going to die in here”.¹

THE HEAVY-HAND OF JUSTICE

The “three strikes and you’re out” sentencing law came into being at the apex of the lock ‘em up movement in the early to mid 1990s. The state of Washington first established a three strikes sentencing scheme in 1993, but only included violent crimes in the recidivist statute.² California lawmakers, on the other hand, used the 1993 kidnapping and murder of twelve year old Polly Klaas by sexual predator Richard Allen Davis to write the most extreme version of three strikes imaginable.³ Ten years later, this statute has proven to be infallible, surviving a gauntlet of state and federal judicial challenges. Entering its second decade of existence, the regulation is being challenged once more, this time in the court of public opinion.

Through an enormous effort by concerned citizens to gather the required signatures, *The Three Strikes and Child Protection Act of 2004* (Proposition 66) easily qualified for November’s ballot.⁴ If the proposition passed, penalties for child molesters would dramatically increase, while the experiment of sending nonviolent offenders to prison for life would come to an end.⁵

Associated with three strikes, and California corrections in general, are numbers that suggest justice gone astray. Over 7,400 have been given life sentences under this controversial sentencing methodology, 57 percent of which are nonviolent third strikers.⁶ Additionally, 35,000 second strikers have been sentenced under this law, the vast majority of whom are nonviolent offenders.⁷ Further, second strikers must serve 80 to 85 percent of their doubled-up sentences,⁸ while third strikers have to serve at least 25 years before they are eligible for parole.⁹ This steady-stream of “strikers”

has brought the state prison population to an all-time high of 164,000 prisoners.¹⁰

MAINTAINING THE CRIMINAL JUSTICE STATUS QUO

While the pendulum of change is beginning to swing, and most of the country is moving away from incarceration as the primary approach to deviance, California's criminal justice hierarchy refuses to acquiesce. "Crime is down, which proves to us the law is doing what it was supposed to do. We don't want to reverse that progress," said Carol Norris, president of the California Probation, Parole and Corrections Association.¹¹

The progress about which Mrs. Norris speaks is a state that spends approximately \$30,000 a year to incarcerate a prisoner¹² and roughly \$5,000 a year per pupil on education.¹³ By investing so generously at the wrong end of the problem, the children from under funded education are systematically absorbed into the California Department of Corrections (CDC) by \$100,000 a year prison guards: more money than tenured professors.¹⁴

California spends nearly \$6 billion a year on corrections,¹⁵ and the CDC alone employs over 50,000 workers.¹⁶ The influence the 31,000 unionized prison guards exert on state government renders their power unmatched and the success of their bottom-feeder industry assured for generations.¹⁷ Crime is not down in California. CDC's rates of recidivism lead the nation at near 70 percent,¹⁸ while violent crime has dropped at a greater rate in non-three strikes states than in California.¹⁹ Contrary to the conclusions drawn by the proponents of the heavy-hand of justice, crime in California is a chronic social problem and displays no signs of going away.

THE MYTH OF DISCRETION

As with most issues, few understand the nuances of how this law actually works in the courtroom. Unknown to most is that power has been transferred from judges to the prosecutors. There is a tremendous amount of rhetoric surrounding how discretion works in a three strikes case. "[J]udges and prosecutors already have substantial discretion to avert application of 'three strikes' in the furtherance of justice," wrote state Senator Chuck Poochigian (R-Fresno) against Proposition 66.²⁰ Poochigian refers to the California Supreme Court's decision in *People v. Superior Court (Romero)* (1996), which held that a sentencing judge has discretion to avoid excessive

punishments in the interest of justice.²¹ “My sentencing judge spent five minutes considering *Romero* and denied it,” said Tommy Wallen, a 34 year old from Kern County who was struck out for receiving stolen property in 1996. “It makes me very angry because it is so misleading to the public. Very rarely is it exercised because most judges are afraid to use it”.²²

Wallen is right and Poochigian completely mis-states the truth. Since post-*Romero* case law favors the prosecution, few judges are willing to exercise their limited authority under *Romero* over the objections of the prosecutor.²³ This is especially so in counties like Kern where three strikes is vigorously pursued by the District Attorney.²⁴

Further, in *People v. Carmony* (2004), the state Supreme Court upheld a three strikes life sentence when a sex offender failed to register by a mere five days, a technical violation.²⁵ This case was watched closely to see if even the smallest hole would be poked in the three strikes bubble which always appears ready to burst. “The court did leave open the possibility that it still could happen,” said Deputy Attorney General David Andrew Eldridge, the prevailing attorney in *Carmony*, when asked under what circumstances a judge would risk exercising discretion. “But it would have to be extremely rare”.²⁶

Poochigian, like so many who vigorously support harsh punishments (including California’s Attorney General, Bill Lockyer),²⁷ cites discretion as a substantial safeguard when it is, in fact, a non-factor except when politicians are spinning the facts to influence society.

THE DRUG WAR JUDICIARY

On March 5, 2003, the Supreme Court of the United States ruled in *Lockyer v. Andrade*²⁸ and *Ewing v. California*²⁹ that giving life sentences to California shoplifters did not violate the ban against cruel and unusual punishment as guaranteed by the Eighth Amendment of the United States Constitution.³⁰ Leandro Andrade received 50 years to life for two counts of shoplifting videotapes,³¹ while Gary Ewing received 25 years to life for stealing golf clubs.³² Both had serious and violent felony strike priors committed years ago, which qualified them for a third strike life sentence.³³

Of the 26 states that have a form of three strikes on their books, California is the only one to include the “any” felony provision within the language of the statute.³⁴ This is why it is the toughest sentencing law in the country.³⁵ Had the Court declared these sentences violated the Eighth Amendment

and were disproportionate under the three-pronged proportionality test articulated in *Solem v. Helm* (1983),³⁶ thousands of us similarly situated (e.g., petty theft, grand theft, drug offenses, and other relatively minor, victimless transgressions) would have attempted to expand the scope of the Court's ruling.³⁷

While the decision was a devastating blow to California's community of nonviolent lifers, the high court refused to accept responsibility. "This criticism is appropriately directed at the legislature, which has primary responsibility for making the difficult policy choices that underlie any criminal sentencing scheme. We do not sit as a 'superlegislature' to second-guess these policy changes," wrote Justice Sandra Day O'Connor in *Ewing*.³⁸

Generally, the Supreme Court gives wide deference for States to create their own needs-specific laws, no matter how harsh. This is best illustrated in their watershed Eighth Amendment ruling in *Harmelin v. Michigan*.³⁹ In 1991 the Court held it was not cruel and unusual punishment for the State of Michigan to impose a sentence of life without the possibility of parole for those who possess over a kilo of narcotics for the purpose of distribution.⁴⁰ *Harmelin* is the oft-cited linchpin in the Court's drug war era role to allow states and the federal government to do their worst.⁴¹ The case signaled America's absolute willingness to do what no other industrialized nation would attempt: to eradicate drugs through incarceration no matter what the cost. Moreover, *Harmelin*⁴² directly led to the even harsher *Andrade*⁴³ and *Ewing*⁴⁴ 12 years later.

Yet, despite *Harmelin*⁴⁵ and its progeny, Michigan's lawmakers have recently amended their ultra-tough mandatory minimum drug laws.⁴⁶ Even New York, with the Rockefeller drug laws from the early 1970s, and the federal government have altered their ultra-harsh sentencing mandates.⁴⁷ These changes came about due to years of pressure on state and federal lawmakers to at least address the extremes these laws create. Amazingly, the Supreme Court recently ruled in *Blakely v. Washington* (2004) that a judge could not increase a penalty based on a judicial determination of fact without allowing a jury, not just a judge, to consider the evidence.⁴⁸

Blakely has brought into doubt the constitutionality of the entire federal sentencing guidelines, which likely would include about ten state systems with similar sentencing schemes, and has resulted in the drastic reduction in sentences all over the country.⁴⁹ Change is spreading like wildfire all over the criminal justice landscape, and the Supreme Court has decided to address two post-*Blakely* cases to clarify their position.⁵⁰ With the high

court largely seen as a hard core drug war judiciary by strengthening, not weakening, *Blakely*, they may signal a shift to the left after twenty years of drug warmongering.⁵¹ It is not likely, but possible.

THE DRUG WAR AND THE VOTER INITIATIVE

The tough-on-crime movement has been buttressed by heavy-handed prosecutors, judges and politicians. Yet it was the voter initiative that actually started the pendulum moving ever so slowly away from prison as the primary solution to crime. Paul Soros, international financier, John Sperling, founder of the University of Phoenix — both billionaires — have teamed up with Peter Lewis, multimillionaire retired CEO of Progressive Insurance, and formed the Drug Policy Alliance Network.⁵² They work through grassroots efforts and intense, well-organized media campaigns to attack the drug war on as many fronts as possible.⁵³ In 1996, the Drug Policy Alliance backed two key voter initiatives in Arizona and California. Voters in Arizona approved mandatory treatment over jail for those who have committed drug offenses,⁵⁴ while California voters approved the legalization of marijuana for medicinal purposes.⁵⁵ This was no small feat because of the heavy-handed criminal justice atmosphere of the mid 1990s. Yet the commonsense message of approaching addiction and medicinal marijuana in its proper context, instead of mindless incarceration and ignoring the benefits of allowing certain illnesses to be treated with marijuana (a natural remedy) made more sense when packaged correctly.

With their 1996 successes giving them the momentum they needed, the Drug Policy Alliance again targeted California, with the largest prison system in the country and the harshest laws.⁵⁶ In 2000, Proposition 36, a mirror of Arizona's treatment over jail rehabilitative methodology, passed by a margin of nearly two to one.⁵⁷ This successful initiative was yet another serious blow against those who advocate punishment over rehabilitation. "The war on drugs had failed.... We pay \$25,000 annually for prisoners when treatment costs only \$4,000," wrote the authors of the initiative in the summary argument of the voter pamphlet.⁵⁸ For the first time since the drug war had been launched, the people were beginning to understand — first in Arizona, then in California — that indefinitely consuming unfathomable amounts of resources to incarcerate an unending number of nonviolent drug offenders simply made little sense. The prison-building boom suddenly looked like a big mistake. Yet, for the drug war hawks, they would continue

to claim treatment comes at a very reasonable price: at approximately \$30,000 a year per inmate multiplied by however many addicts cannot cure themselves on their own.⁵⁹

This is not America's first war against its own people. The Prohibition against alcohol in the early 20th Century is the drug war's predecessor.⁶⁰ With addiction to alcohol ravaging the American family, the root cause was ignored and the government decided to attack both supply and demand.⁶¹ This became a real American war. The potential for profit by supplying the nation's desire to drink outweighed the risk. Throughout the Prohibition era, for nearly fifteen years, cheap and powerful contraband was readily available.⁶² The government created a persevering market force because violating the nation's liquor laws was a victimless crime — just like in the drug war. Addiction, the variable that fueled the illegal industry, could not be brutalized into submission. Alcoholism was eventually accepted to be what it is — a disease and not a crime.⁶³ The "Nobel experiment" came to an end.⁶⁴ Now, contemporary America lawmakers have invested over 30 years into yet another failed ideology, despite the lessons history has to offer. The American drug war, just like Prohibition, proves criminalizing addictions does not work.

In the here and now, the people, through the voter initiative, because of the Drug Policy Alliance and their growing movement, are in the process of making some serious changes in how America deals with drugs, crime and addiction. A criminal justice Renaissance appears to be under way. Many are watching to see what happens with the latest attack on a controversial sentencing mandate that derived from the heavy-handed drug war mentality which has failed so miserably on so many levels — California's three strikes.

TO FIGHT THE GOOD FIGHT

Being a jailhouse lawyer, writer and activist, I am fighting my conviction, sentence and circumstances on as many fronts as possible. To me, it is not just about Supreme Court precedents, constitutional analysis or public opinion, it is about justice. I am a 38-year-old three striker. Due to a robbery and two burglary convictions committed in my late teens and early 20s, my current nonviolent drug offense resulted in a 26 year to life sentence.⁶⁵ Everyday I am reminded about the injustice of this law. The recipients of nonviolent

life imprisonment are my friends, neighbors and enemies — such being the nature of prisonhood. We are an amalgam of unfortunates.

Moreover, my injection into the three strikes debate touched a nerve in my hometown of Sacramento, the state capital. I argued in favor of Proposition 66 against state Senator Poochigian in the “Forum” section of *The Sacramento Bee* on July 25, 2004.⁶⁶ I claimed the law is too harsh, includes too many, and I called for justice.⁶⁷ The Senator contended crime was down because three strikes is a big deterrent to recidivist behavior.⁶⁸

Afterwards, *The Bee* published a couple of rebuttals which are prime examples of how the drug war mentality has convinced so many that 30 years of prison industrialism is sound public policy. “He minimizes a crime spree from 1984 to 1988...slashing a juvenile across the chest with a knife, requiring 200 stitches,” wrote Jan Scully in a letter to the editor. Scully is the District Attorney for the County of Sacramento and responsible for striking me out six years ago. “Most recently, a buck knife was found in his car along with 200 baggies of marijuana”.⁶⁹

A columnist from the same paper, Marjie Lundstrom, took a similar path and claimed, in addition to slashing a juvenile in 1986, I committed yet another assault in 1988. Making me look even worse, she said I possessed not one, but two knives in the commission of the current drug crime — while accusing me of downplaying my past.⁷⁰

While a rap sheet is never a pretty picture, neither are prosecutorial journalists who spin the facts in an election year and take the debate to the lowest common denominator. I never had 200 bags of marijuana, just one bag weighing five grams.⁷¹ The 1986 slashing, while tragic and regrettable, was reduced to a misdemeanor because the prosecutor discovered the juvenile lied about his culpability.⁷² It was a case of self-defense. Moreover, a misdemeanor is not a strike and there was not a second assault from 1988.

Sadly, the 200 bags of marijuana that do not exist, the misdemeanor assault that is not a strike, and the second assault that never happened have no logical correlation to the buck knife in the glove box, the multi-wrench with a 2-inch blade on the seat of the car-nor do I have any connections to bin Laden, Al Qaeda or ever possessed any WMDs. I am just a man with a past who possessed some drugs in the present.

The fact is I entered prison a 22-year-old high school dropout in 1988, and left a college-educated, published writer in 1994. I paid my debt to society in full.⁷³ “When I entered prison I had no post-secondary education

and little understanding of the world from which I was separated,” I wrote in the *San Francisco Chronicle* on May 23, 1994. Then I enrolled in Soledad State Prison’s college program and graduated *summa cum laude* from Hartnell Junior College. I presently maintain a 3.75 GPA in a Bachelor of Arts in Social Science.⁷⁴ Upon release from prison I pursued a number of goals, taking a full-load at my hometown university, starting a construction company from scratch, and volunteered for the *Prisoner’s Rights Union* for two years. That is the short list. I became a consummate taskmaster and never looked back. The troubled youth from my past no longer existed. I buried him through work and study.⁷⁵

However, just like a rap sheet, a relapse is not a pretty picture. I started using again. Eventually, after serving two drug-related parole violations in 1996 and 1997, I was caught with approximately 20 grams of methamphetamine in 1998, a felony, and have been buried alive ever since.⁷⁶ With six years in, I have an unimaginable 20 to go for a victimless crime that only carries a year or two in every other jurisdiction in the nation.⁷⁷

Still, regardless of our individual stories, fear mongers like Poochigian, Scully and Lundstrom work very hard to portray three strikers like myself as an amalgam of murderous pedophiles about to be unleashed on society if voters approve Proposition 66. Too often, as I experienced first-hand — and the main thesis I advance as a *pro se* litigant and activist-writer — their arguments are based on flawed analysis, evidence that does not exist, and illogical correlations that are contrary to the truth.

“I hope and pray the public will see the injustice of the current law and vote to make the changes,” states Wallen. “It is a huge misconception that the District Attorneys Association is trying to say that murderers, rapists and child molesters will be freed. This change only affects nonviolent convictions”.⁷⁸ Like Wallen, Madrid, thousands of us, our friends, families and supporters, we hope the pendulum of change will finally begin to swing away from the drug war mindset that has resulted in an exhaustive list of injustices.

California’s three strikes law and the American drug war are failed American experiments, just like the Prohibition against alcohol, and both need to be repealed. Whether Proposition 66 passes or not really is not the point. A correctional Renaissance needs to take place in order to truly bring the nation out of the criminal justice Dark Ages. This is a generation distinguished by the domestic POW, collateral damage in the war on drugs. MIAs (Missing in Action) we are — and it’s time to bring us home.

AFTERWARDS

We lost the election for Proposition 66 by a few percentage points, but that does not mean we lost the war. The pendulum is swinging, and the prison industrialists are fighting viciously. So it did not surprise me when the prisoncrats used my photo in an anti-Prop. 66 television campaign of fear: it worked well. The people bought into the propaganda, and they believed the fallacy that Prop. 66 would release “126,000 murderers, rapists, and child molesters”. I do not take such matters personally: politics is a dirty business. With the three strikes again going up on the ballot in November [2006], I am prepared to do battle. With fear on the side of the zealots, and right on the side of the permanently incapacitated, we push with all our might to ensure the pendulum swings all the way to California — the prison industrial wasteland.

ENDNOTES

- ¹ Face-to-face interview with Manuel Madrid (2004). California Correctional Center (July).
- ² Clark, J., Austin, J. and Henry, D. (1997). “Three Strikes And You’re Out: A Review of State Legislation 1,” U.S. Department of Justice, National Institute of Justice (September).
- ³ *Ewing v. California* (2003). 123 S.Ct. 1179, 1189.
- ⁴ Sforza, T. (2004). “Initiative To Change’ 3 Strikes Qualifies,” *The Orange County Register* (June 4).
- ⁵ Dey, E. A. (2004). “Should Voters Change Three Strikes Law This Fall? Yes: Why Are Inmates Like Me Doing Life Terms For A Drug Case?” *The Sacramento Bee* (July 25).
- ⁶ Domanick, J. (2004). “They Changed Their Minds On Three Strikes. Can They Change The Voters’?” *Los Angeles Times Magazine* (September 19) p. 12.
- ⁷ *Ibid.*
- ⁸ California Penal Code 667.
- ⁹ *Ibid.*
- ¹⁰ Wood, D. B. (2004). “California Tackles Its Prison Boom,” *The Christian Science Monitor* (July 20).
- ¹¹ *Ibid.*
- ¹² Meechan, K. (2004). “The Cost of Incarceration in Contemporary California,” *Fortune News* (Summer).
- ¹³ Dey, E. (1994). “Education Is The Key, Even For Prisoners,” *The San Francisco Chronicle* (May 23).
- ¹⁴ *Supra* note 5.
- ¹⁵ Institute of Governmental Studies, University of California (2004). “Proposition 66: Limitation on ‘Three Strikes’ Law,” (August).

-
- ¹⁶ Hinch, J. (2004). "State Prisons Threatened With Federal Takeover," *The Orange County Register* (July 21).
- ¹⁷ Furillo, A. (2004). "Revamp Of Prison Agency Urged," *The Sacramento Bee* (July 25).
- ¹⁸ Poochigian, Chuck (2004). "Should Voter's Change Three Strikes? No: The Law's a Big Deterrent for Repeat Cases," *The Sacramento Bee* (July 25).
- ¹⁹ Arnold, Mark (2004). "Three Strikes: Will It Be 'Out'?" *The Bakersfield Californian* (September 26).
- ²⁰ Supra note 18.
- ²¹ *People v. Superior Court (Romero)* (1996). 13 Cal. 4th 497.
- ²² Face-to-face interview with Thomas Wallen in July 2004 at the California Correctional Center.
- ²³ Cooper, C. (2004). "Courts Face Slew of 'Three-Strikes' Cases," *The Sacramento Bee* (May 7).
- ²⁴ Supra note 19.
- ²⁵ *People v. Carmony* (2004). 33 Cal.4th 367.
- ²⁶ Dolan, M. (2004). "Three Strikes Sentence Upheld In Sex Case," *Los Angeles Times* (July 9).
- ²⁷ California Ballot Pamphlet (2004). "Proposition 66: Arguments."
- ²⁸ *Lockyer v. Andrade* (2003). 123 S.Ct. 1166.
- ²⁹ Supra note 3.
- ³⁰ United States Constitution, The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."
- ³¹ Supra note 3.
- ³² Supra note 28.
- ³³ Supra note 28 and 3.
- ³⁴ Supra note 5.
- ³⁵ *Ibid.*
- ³⁶ *Solem v. Helm* (1983). 463 U.S. 277.
- ³⁷ Supra note 5.
- ³⁸ Supra note 3.
- ³⁹ *Harmelin v. Michigan* (1991). 11 S. Ct. 2680.
- ⁴⁰ *Ibid.*
- ⁴¹ *Ibid.*
- ⁴² *Ibid.*
- ⁴³ Supra note 28.
- ⁴⁴ Supra note 3.
- ⁴⁵ Supra note 39.
- ⁴⁶ Butterfield, F. (2003). "With Cash Tight, States Reassess Long Jail Terms," *The New York Times* (November 10).
- ⁴⁷ *Ibid.*
- ⁴⁸ *Blakely v. Washington* (2004). 124 S.Ct. 1354.
- ⁴⁹ Richey, W. (2004). "High Court Sentencing Showdown," *The Christian Science Monitor*, (October 4).
- ⁵⁰ *Ibid.*

- ⁵¹ Cose, E. (2004). "Reading Between The Sentences," *Newsweek* (July 26).
- ⁵² Ainsworth, B. (2004). "Soros, 2 Others Give Financial Boost To Three Strikes Ballot Measure," *The San Diego Union* (September 14).
- ⁵³ *Ibid.*
- ⁵⁴ Cooper, M. (2002). "The Battle Against The War On Drugs," *Razor Wire*, 6,1.
- ⁵⁵ Supra note 52.
- ⁵⁶ Supra note 54.
- ⁵⁷ *In re Varnel* (2002). 115 Cal. Rptr. 2d 464. Proposition 36 refers to legislation that allows non-violent drug offenders (possession) to receive treatment instead of incarceration.
- ⁵⁸ California Ballot Pamphlet (2000), "Proposition 36: Summary Argument."
- ⁵⁹ Supra note 18.
- ⁶⁰ United States Constitution, The Eighteenth Amendment: Prohibition. States Given Concurrent Power To Enforce. In 1919, The Volstead Act was established and the Prohibition began. By doing so it became very profitable to make and sell alcohol.
- ⁶¹ *Ibid.*
- ⁶² *Ibid.*
- ⁶³ United States Constitution, Amendment 21, Repeal of Prohibition. Ratified 1933. After 15 years of Prohibition, the "Nobel Experiment" was abandoned in favor of regulation and treatment.
- ⁶⁴ *Ibid.*
- ⁶⁵ *People v. Dey* (2000). 101 Cal. Rptr. 2d 581.
- ⁶⁶ Supra note 18.
- ⁶⁷ 31. Supra note 5 and 18.
- ⁶⁸ Supra note 18.
- ⁶⁹ Scully, J. (2004). "The Rap Sheet," *The Sacramento Bee*, (August 5).
- ⁷⁰ Lundstrom, M. (2004). "One Man, Three Strikes — But Many More Facets To His Story," *The Sacramento Bee* (August 12).
- ⁷¹ Dey, E. (2004). "The Pitiful Poster Child," *The Metro Newspaper*, (September 22).
- ⁷² *Ibid.*
- ⁷³ Dey, E. A. (2004). "Three Strikes, He's In," *Sacramento News & Review*, (March 11).
- ⁷⁴ Supra note 13.
- ⁷⁵ *Ibid.*
- ⁷⁶ Supra note 71.
- ⁷⁷ *Duran v Castro* (2002). 2002 U. S. lexis 20157.
- ⁷⁸ Supra note 22.

Eugene Alexander Dey has been serving as an inside reporter for the *North Bay Bohemian*, a weekly newspaper. He writes regularly for *Fortune News*, *Prison Focus*, and the *MIM Notes*. PEN recognized a memoir, "A Three Strikes Sojourn," with a 2006 Honorable Mention. He is currently serving a life sentence at the California Correctional Center (CCC) in Susanville. He welcomes correspondence. Write to Eugene Dey, P-37864, CCC-III/L5-247, P.O. Box 2210, Susanville, CA 96127.

Private Prison Problems

Richard G. Hogan and Stephen C. Richards

Dramatic increases in incarceration rates (Donziger, 1996: 37; Austin *et al.*, 2001; Austin and Irwin, 2001; Ross and Richards, 2002, 2003) continue to send record numbers of Americans to prison. However, Selke (1993: xiii) suggests that the United States is approaching unsustainable levels of incarceration that are “beginning to outstrip our ability to pay”. At the same time, as the result of deteriorating prison conditions and overcrowding 40 states were placed under federal court supervision (Lemov, 1993: 45). These prison systems were searching for a solution when the private corporations offered to “finance, construct, own, and operate prisons and jails” (Logan, 1990: 10; see also Logan and McGriff, 1989).

The private prison industry promotes itself as a means of solving the problems of overcrowding and escalating prison costs. Corporations claim overcrowding in state-owned prison systems may be reduced by transferring prisoners to privately operated facilities. Further, these companies assert they can build and operate prisons for less, saving government millions of dollars.

The private prison industry promotes its service as a means of saving the local, state and federal government money (Logan, 1990: 78; Thomas, 1994: 12-13; Brister, 1996: 319). However, recent studies, such as the *96-97 DC Annual Report* (Florida Department of Corrections, 1997) and the General Accounting Office’s examination of five major state studies (U.S. GAO, 1996: 7) put the claim of cost reduction in serious question.

Coupled with the need to reduce overcrowding and costs, the private prison industry must meet the needs associated with operations. These include establishing staffing and the conditions of confinement. Private corporations claim they reduce the costs of operation by lowering expenditures on personnel and the day-to-day operation of facilities. This article discusses problems such as overcrowding, escalating costs, and the needs of operations as they relate to the claims of the private prison industry.

MODERN PRIVATE PRISON CORPORATIONS

The Corrections Corporation of America (CCA) was founded in 1983. CCA was financed by Massey Burch, a Tennessee venture capital company and the financial support for Kentucky Fried Chicken and Hospital Corporation of America (Press, 1990: 28; see also Corrections Corporation of America, <http://www.pnnewswire>). The corporation was formed for the specific purpose of providing profit from punishment.

Chairman of the newly formed corporation was Thomas Beasley, the former Republican Tennessee state chairman (Press, 1990: 8). In addition, CCA's first major group of investors included such politically influential persons as former Governor Lamar Alexander's wife and Ned Mc Wherter, who at that time was the Democratic speaker of the House and the subsequent Governor of Tennessee (Press, 1990: 28).

In 1984, CCA offered to "privatize" the entire Tennessee prison system. The Tennessee legislature turned down the initial offer. However, CCA was then awarded a contract limited to operating the Hamilton County, Tennessee, Silverdale facility (Press, 1990: 28). From this first Silverdale contract, CCA has grown into the largest operator of private prisons in America.

In 1998, CCA purchased Kentucky based U.S. Corrections Corporation's (USCC). Like CCA, there appears to be some political influence in the creation of USCC. Prior to being awarded a \$3.2 million contract to construct and operate the Marion Adjustment Center in St. Mary's, Kentucky, USCC had contributed \$27,500 to the campaign of Governor Brereton Jones (Buck, 1994: 356). By 1995, USCC operated four private facilities in Kentucky.

Like CCA, another early entrant into the prisons for profit business was Esmor Corrections Corporation (Esmor). Esmor is important in establishing early qualifications for private prisons that were all but non-existent. It would have been difficult to find an enterprise with a worse history of contract non-compliance. Sullivan and Purdy in a *New York Times* article, "A Prison Empire: How it Grew," reported on the early history of the Esmor Corrections Corporation:

In the 1980's, James Slattery and Morris Horn ran one of the most notorious welfare hotels in New York City, the filthy, crime-ridden and profitable Brooklyn Arms in Fort Greene. After the city closed the hotel in 1989, Mr. Slattery and Mr. Horn, with no experience in the prisons business bid to open a Federal halfway house (Sullivan and Purdy, 1995: 1).

Slattery and Horn operated welfare hotels and federal halfway houses in New York City. They later expanded Esmor operations to include U.S. Immigration and Naturalization Service (INS) detention facilities.

Esmor's operation of federal halfway houses was of the same low quality as that of their welfare hotels. Sullivan and Purdy (1995: 1) reported the

federal government largely overlooked the company's record of problems detailed in inspection reports of its New York City halfway houses. These included low-paid and untrained employees, poor building conditions, rats, leaky plumbing, exposed electrical wires and other fire hazards.

Not only did Esmor have problems with the federal contracting authority, its dismal record of maintaining halfway house facilities alarmed the city administration and neighbors. William Banks, who was identified in a *New York Times* article as a "political operative," handled local problems. In 1993, Esmor paid him \$222,000 in compensation for his services. Banks' compensation exceeded the salary and compensation of James Slattery (\$197,633), Esmor's president and chief executive officer (Sullivan and Purdy, 1995:1). The difference in compensation between the corporation's "political operative" and chief executive officer suggests that political influence was more highly valued than management skill at Esmor.

As Esmor looked to expand into the private prisons market, Richard Staley, the former acting director of the INS central office in Washington, was hired as senior vice-president. Lilly and Knepper (1993: 158) referred to this as a revolving door practice, which is one of the identifiable characteristics of a "corrections-commercial complex." The "heads of private prison firms are often former government officials or corrections administrators who have left public service for private interest" (Lilly and Knepper, 1993: 158). Hiring Stanley appears to have enhanced Esmor's ability to acquire INS contracts.

STATE CONCERNS WITH OVERCROWDING LEAD TO PRIVATIZING

Starting with these early contracts, private prisons have grown to be a multi-million dollar business in America. This growth is related to the need of state and federal agencies to reduce overcrowding in their facilities (Durham, 1989: 118; Logan, 1990: 9-10) while also delivering the same or similar levels of service at a reduced cost (Logan, 1990: 76; Knepper, 1995: 56).

Texas and Florida were among the most overcrowded prison systems and are now the largest contractors with private prisons (Hunzeker, 1991: 24; Thomas, 1996: 29). Today, Texas has 39 private prison facilities, representing 41 percent of the adult secure private facilities in America (Thomas, 1996: 30). These 39 facilities have a rated capacity of 23,008 prisoners (Thomas, 1996: 29). Florida is second to Texas as a market for private corrections with 11 facilities representing 9 percent of America's

private facilities (Thomas, 1996: 30). Florida's convict population in private facilities is approximately 10 percent of the total private convict U.S. population (Thomas, 1996: 29). In other words, Texas's involvement in private corrections is four times greater than that of Florida in the number of facilities and prisoners (Thomas, 1995: 29-30).

In 1985, Florida began experimenting with private management contracts when CCA assumed the operation of the Bay County Jail. Prior to CCA's take over, Bay County was devoting 65 percent of its budget to the jail and was still in violation of state regulations regarding correctional facilities (Logan, 1990: 29). The contract with CCA appeared to offer a solution to these problems.

Florida facilitated the privatizing of prison and jail facilities by the enactment of Chapter 957 of the Florida Statutes in 1993, which provided for the creation of the Florida Correctional Privatization Commission (Thomas, 1994: 12). Then in 1994, Florida signed contracts for the operation of three new state facilities with CCA and Wackenhut Corrections Corporation (WCC), the second largest provider of private prisons (Thomas, 1995: vi).

REDUCING COSTS?

While one objective of privatization is to reduce overcrowding, a second and even more significant purpose is to reduce the costs of operation. Corporations claim to reduce cost through "economies of scale" (Logan, 1990: 84). The premise of economies of scale is that each incremental unit added to existing units does not increase total cost significantly. In other words, prisons have a very high fixed cost, defined as costs independent of the number of prisoners. If a facility's design capacity is capable of incarcerating 1000 convicts, the costs associated with confining 1100 convicts are not terribly different. This is especially true if the state pays the private company a fixed amount for each prisoner, and the private prison spends little per additional prisoner on services (e.g., food, uniforms, medical) and programs (e.g., educational, vocational, recreational).

Private companies suggest they can save the public money by using cell space more efficiently. In practice this means using them to beyond capacity by double celling, laying mattresses in corridors, and converting common areas into makeshift dormitories. This means a prison can overcrowd to produce more profit for private companies.

EXPORTING PRISONERS FOR PRIVATE PROFIT

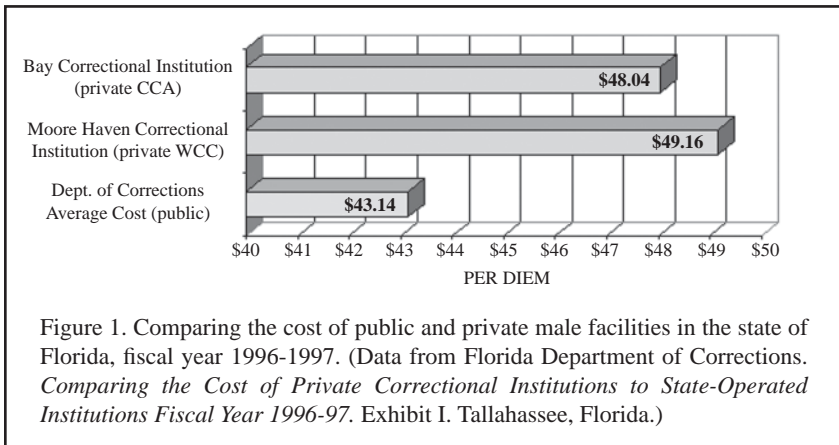
Contracting across jurisdictions has led to men and women sentenced in one state serving their time in another. Many states now export prisoners to private prisons in states thousands of miles away. This practice has become routine. For example, Missouri and Oklahoma ship prisoners to several facilities in Texas (Thomas, 1996: 3, 12). Hawaii sends prisoners to the Dickens County Correctional Facility in Spur, Texas, operated by the Bobby Ross Group (Thomas, 1996: 2). Virginia sends prisoners to the Newton County Correctional Facility in Newton County, Texas, also operated by the Bobby Ross Group (Thomas, 1996: 2). Alaska and Oregon send prisoners to the Central Arizona Detention Center in Florence, Arizona, operated by CCA (Thomas, 1996: 4).

Examples continue with an *ABC News Special Report* by David Phinney, “Have Prison, Will Travel”. In this report Susan Hart, spokesperson for CCA says, “The governmental customer is looking for one single thing and that is how to save money”. The report continues with how one state is looking to save money: “Looking for cheap labor, inexpensive land and obliging local officials to build your next prison? Try Mexico. Arizona is doing just that — considering plans to ship its convicts to a private prison across the border” (Phinney, 1998).

CORPORATIONS DOCUMENTING COST REDUCTIONS

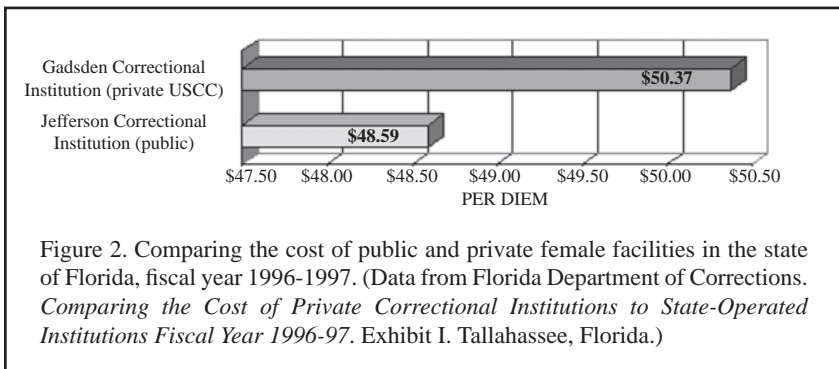
Private companies claim they can document reduced costs. Thomas asserts that the “most thorough documentation of cost savings comes from Florida” (Thomas, 1994: 12). However, his assertion is not supported by the findings of the Florida Department of Corrections (1997), the “Performance Audit of the Gadsden Correctional Institution, Office of Program Policy Analysis and Governmental Accountability (OPPAGA, 1996), or the “Review of Bay Correctional Facility and Moore Haven Correctional Facility” (OPPAGA, 1998).

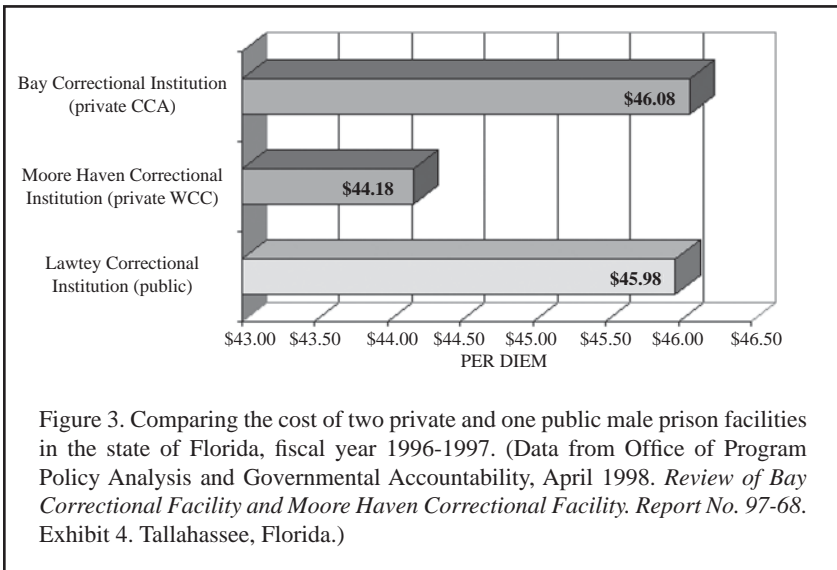
Thomas’ assertion is directly contradicted in data from the Florida Department of Corrections (FDC). The FDC reported that the average “per inmate day costs” for private prisons ranged from \$48.04 to \$49.16, while the average per inmate day costs of all state operated male institutions was \$43.14 (see Figure 1). The adjusted per inmate day costs of Bay Correction (private CCA prison) Institution and Moore Haven Correctional Institution (private WCC prison) were compared to the adjusted average per inmate day cost of public facilities.



Additionally, the “1996 Gadsden Correctional Institution Report,” also fails to support Thomas’ assertion. This report found that costs for the private female prison facility were 6 percent higher than for the most comparable state facility, Jefferson Correctional Institution (OPPAGA, 1996: 4). The comparison made in the report between the private facility and the public facility produced a per diem rate of \$50.37 for the USCC operated Gadsden Correctional Institution, which was \$1.78 per inmate day higher than the \$48.59 rate for the state operated Jefferson Correctional Institution (see Figure 2).

The latest comprehensive study out of Florida is by OPPAGA. This study revisited the private facilities, Bay Correctional Institution and Moore Haven Correctional Institution, while introducing Lawtey Correctional Institution as a comparable state-operated facilities (see Figure 3).





The report, although narrowing the gap between per diem costs of public and private facilities concluded that the “cost of operating private prisons did not meet the expected level of savings for the 1996-97 fiscal year” (OPPAGA, 1998: 9). Analysis included in the Florida Department of Correction’s annual report was even less encouraging and found that the “two minimum/medium custody male units (Bay and Moore Haven Correctional Institutions) cost significantly more to operate (10 percent for Bay and 12 percent for Moore Haven) than the average operating cost of a group of similar state-operated facilities” (Florida Department of Corrections, 1997). In other words, the Florida studies show that public prisons are cheaper to operate than private prisons.

In 1996, the U. S. General Accounting Office (U. S. GAO) completed an examination of five major studies comparing the cost of public and private prisons from Texas (1991), New Mexico (1991), California (1994), Tennessee (1995) and Washington (1996). The report concluded “the studies reported little difference and/or mixed results in comparing private and public facilities” (U. S. GAO, 1996: 7). So, existing research continues to suggest that the cost savings claims made by the private prison industry and their proponents are often unrealized.

STAFFING

Adequate staffing levels are essential to the day-to-day operation of prisons. A study conducted by the Office of Program Policy Analysis and Government Accountability of the Gadsden Correction Institution (1996), operated by USCC, reported that over a ten-month period, 424 different individuals held 223 total positions (p. 3). This suggests that the average length of employment for prison personnel was less than five months.

Another study addressing appropriate personnel levels at the Monroe County Jail indicates that extreme differences of opinion exist about adequate staffing between contracting authorities (Monroe County) and contractors (WCC). Florida standards require one correctional officer for every eight prisoners, but WCC was operating the Monroe County Jail with one officer for every thirty prisoners (Hanson, 1996: 10). The contract was canceled approximately 12 months after it started when "Sheriff's deputies led by their SWAT team and backed up by local and state law enforcement officers reasserted control" (Hanson, 1996: 1).

Esmor's operation of the Elizabeth Detention Center in New Jersey provides still another example of inadequate staffing. Sullivan and Purdy reported in the *New York Times* article, "A Prison Empire: How it Grew":

The jail was so understaffed that guards were forced to work back-to-back eight-hour shifts. The night of the uprising, 9 of 13 guards were working a second consecutive shift, and when the disturbance broke out employees adopted an every-person-for-himself mentality and fled the facility (Sullivan and Purdy, 1995: 2).

The lack of enforcement of contract provisions by the Immigration and Naturalization Service (INS) directly contributed to the detainee riot at the Elizabeth Detention Center. Staffing was a problem at the facility, but the INS is not blameless in this incident. INS maintained a monitoring representative at the facility who simply failed to act.

Comments by Carl Frick, the first warden of the Esmor facility at Elizabeth, provide some insight into the corporate pressure to reduce staffing costs. Frick's assessment of the problems at Elizabeth was that Esmor executives "don't want to run a jail. They want to run a motel as cheaply as possible. Money, money, money. That's all that was important to them" (Sullivan and Purdy, 1995: 2).

Incidents such as the staffing turnover rate at the USCC operated Gadsden Correctional Institution, understaffing at the WCC operated

Monroe County Jail and excessive use of double shift staffing at the Esmor operated Elizabeth Detention Center suggest that private prison operators tend to reduce staffing, sometimes to dangerously low levels, in an effort to increase profits. This practice may lead to dangerous conditions of confinement for both prisoners and prison staff.

CONDITIONS OF CONFINEMENT

The continual pressure to reduce staffing also affects the conditions of confinement regarding decency (Walzer, 1991: 172) and safety (Immigration Center, 1995). The INS Houston detention center is an example of the primacy of cost savings over humane conditions of confinement. According to Brister (1996) the “350-bed illegal alien detention center constructed in Texas in 1984” (p. 319) demonstrates the ability of private prisons to reduce costs.

Brister maintains “private contractors have reduced labor costs by eliminating unnecessary overtime and reducing employee benefits — typically over inflated sick leave and retirement benefits paid to unionized government workers” (Brister, 1996: 319). However, Walzer suggests cost reduction is achieved by substandard housing:

The institution demonstrated what are possibly the worst conditions we have ever witnessed in terms of inmate care and supervision. The inmates were contained in large dormitories each containing between 50 and 60 beds with no privacy whatsoever, no lockers, no screening around toilets or showers which were open to view by both male and female staff. Inmates dined in these dormitories (Walzer, 1991: 172).

Donna Hunzeker noted that the Texas Sunset Advisory Commission (1991) discovered a special master’s report on compliance. Hunzeker (1991: 25) states, “that a special master’s report on compliance with court-ordered standards found deficiencies in education and training programs at the privately operated facilities”. This contradicts assertions that privately operated facilities “meet all recognized standards and court orders” (Brister, 1996: 319). John Gilbert, who oversees the facilities of the Texas Department of Criminal Justice, also acknowledged the deficiencies and expressed the opinion that “the programs do not measure up to the programs we offer” (Hunzeker, 1991: 25).

The lack of enforcement of contract provisions by the contracting jurisdictions has resulted in some unfortunate incidents. The riot at the Elizabeth Detention Center was just such an incident (Sullivan and Purdy, 1995: 2). Alien detainees had filed numerous complaints, ranging from guards robbing prisoners to denial of basic necessities (Immigration Center, 1995). After the riot, an "Assessment Team found numerous contract deficiencies and made recommendations in nineteen areas specifically addressing the Esmor contract" (Florida Corrections Commission, 1996).

Nevertheless, the subsequent investigation of the operating practices and conditions of confinement that caused the riot at Elizabeth did not result in the termination of Esmor's contract. Instead, the contract was transferred from Esmor to CCA through a process identified as "novation" (Florida Corrections Commission, 1996). Novation is defined as a process where a new party, in this case CCA, is substituted for the original party, Esmor, under the same terms and conditions as those of the original contract. Novation requires the agreement of all parties, which in this case includes CCA, Esmor and INS.

The evidence suggests that private prisons value profits over providing decent and safe living environments for prisoners. As of 2002, private corporations have only managed jails, immigration detention facilities, minimum-security, and a few medium-security prisons. In effect, the companies have "creamed the top" of the prisoner population, building and managing new facilities that house "easy" short-time prisoners. Still, there are few favorable reports on conditions of confinement (Mobley and Geis, 2000; Ross and Richards, 2002, 2003). In fact, private prison managers have lost control of a number of facilities, resulting in injury to prisoners and staff. Just imagine what a bloody mess there would be if the corporate profiteers ever managed to persuade government to let them operate a "mainline" maximum-security penitentiary.

CONCLUSION

The private prison industry cultivated political connections by placing former key political figures on boards of directors, through stockholders with political connections, making key campaign contributions and by employing individuals as "political operatives". Corporations claim they can save the public money by reducing overcrowding and costs in the public prison systems. Our discussion disputes these claims and suggests that privatization of prisons may lead to higher costs and dangerous conditions of confinement.

REFERENCES

- Austin, J., and M. A. Bruce, L. Carroll, P. L. Mc Call, S. C. Richards. (2001). "The Use of Incarceration in the United States." American Society of Criminology National Policy Committee. *Critical Criminology: An International Journal*, 10, 1: 17-41.
- Austin, J., and J. Irwin. (2001). *It's About Time: America's Imprisonment Binge*. Belmont, CA: Wadsworth.
- Brister, R. C. (1996). "Changing of the Guard: A Case for Privatization of Texas Prisons." *The Prison Journal*, 76: 310-330.
- Buck, P. D. (1994). "Arbeit Macht Frei": Racism and Bound, Concentrated Labor in U.S. Prisons." *Urban Anthropology and Studies of Cultural Systems and World Economic Development*, 23: 331-372.
- Corrections Corporation of America. (1998). *Corrections Corporation of America and CCA Prison Realty Trust*. Retrieved March 17, 1999. Available: <http://www.pnewswire>.
- Donziger S. R. (11 September 1996). *The Real War on Crime: The Report of the National Criminal Justice*. "A Refugee Escapes from Togo, Body Intact, But Family Torn." *New York Times*, Sept., p. A1.
- Durham, A. M. III. (1989). "Origins of Interest in the Privatization of Punishment: The 19th and 20th Century American Experience." *Criminology*, 27: 107-139.
- Florida Corrections Commission. (1996). *1996 Annual Report*. Retrieved June 23, 1998. Available: <http://www.dos.state.fl>.
- Florida Department of Corrections. (1997). *1996-97 DC Annual Report: The On-Line Guidebook to Corrections in Florida*. Retrieved June 23, 1998. Available: <http://www.dc.state.fl>.
- Hanson, R. A. (1996). "The Failure of Privatization in the Monroe County Jail: An Exception or the Rule?" Paper presented at the Midwest Criminal Justice Association Meeting, Indianapolis, IN.
- Hunzeker, D. (1991). "Private Cells, Public Prisoners." *State Legislatures*, 17: 24-27.
- Immigration Centre. (22 July 1995). *The Kansas City Star*, p. A10.
- Knepper, P. (1995). "The Kentucky Penitentiary at Frankfort and the Origins of America's First Convict Lease." *The Filson Club Quarterly*, 69: 41-66.
- Lemov, P. (1993). "Jailhouse, Inc." *Governing*, 5, 44-48.
- Lilly, J. R., and P. Knepper. (1993). "The Corrections-Commercial Complex." *Crime and Delinquency*, 39: 150-166.
- Logan, C. H., and B. W. McGriff. (1989). "Comparing Costs of Public and Private Prisons: A Case Study." (NCJ 119964). Washington, DC: U.S. Department of Justice.
- Logan, C. H. (1990). *Private Prisons Cons and Pros*. New York: Oxford University Press.
- Mobley, A., and G. Geis. (2000). "The Corrections Corporation of America AKA the Prison Realty Trust." In M. Gilbert and D. Shichor (Eds.), *Privatization in Criminal Justice: Past, Present and Future*. (pp. 202 – 226), Cincinnati, OH: Anderson.
- Office of Program Policy Analysis and Government Accountability. (1996). "Performance Audit of the Gadsden Correctional Institution." Tallahassee, FL: Office of Program Policy Analysis and Government Accountability.

- Office of Program Policy Analysis and Government Accountability [OPPAGA]. (1998). "Review of Bay Correctional Facility and Moore Haven Correctional Facility." Tallahassee, FL: Office of Program Policy Analysis and Government Accountability.
- Phinney, D. (1998). "Have Prison, Will Travel." *ABC News Special Report*. Retrieved June 9, 1998. Available: <http://www.abcnews.com>.
- Press, A. (1990). "The Good, The Bad, and the Ugly: Private Prisons in the 1980s." In D. C. McDonald (Ed.), *Private Prisons and the Public Interest*. (pp. 19 – 41) London: Rutgers University Press.
- Ross, J. I., and S. C. Richards. (2002). *Behind Bars: Surviving Prison*. New York: Alpha.
- Ross, J. I., and S. C. Richards. (2003). *Convict Criminology*. Belmont, CA: Wadsworth.
- Selke, W. L. (1993). *Prisons In Crisis*. Indianapolis, IA: Indiana University Press.
- Sullivan, J. and M. Purdy (1995). "A Prison Empire: How it Grew." *New York Times*, July 23, Special Supplement.
- Texas Sunset Advisory Commission. (1991). "Contracts for Correctional Facilities and Services (staff report)." Austin, TX: Texas Sunset Advisory Commission.
- Thomas, C. W. (1994). *The Transformation of Correctional Privatization: From A Novel Experiment Into A Proven Alternative*. Gainesville, FL: University of Florida, Center for Studies in Criminology and Law.
- Thomas, C. W. (1995). *Private Adult Correctional Facility Census* (8th ed.). Gainesville, Florida: University of Florida, Center for Studies in Criminology and Law, Private Corrections Project.
- Thomas, C. W. (1996). *Private Adult Correctional Facility Census* (9th ed.). Gainesville, FL: University of Florida, Center for Studies in Criminology and Law, Private Corrections Project.
- U.S. General Accounting Office (1996). *Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Services*. Washington, DC: U. S. Government Printing Office.
- Walzer, M. (1991). "Private Prisons are Unjust." In S. L. Tipp (Ed.), *America's Prisons Opposing Viewpoints*. (pp. 168 – 173) San Diego, CA: Greenhaven.

Richard G. Hogan is an ex-convict professor. He is also a former Kansas City, Missouri Police Officer, Federal Special Agent, and federal prisoner. He is now an Assistant Professor of Sociology and Criminology at Northwest Missouri State University.

Stephen C. Richards is an ex-convict professor. He is now an Associate Professor of Criminal Justice at the University of Wisconsin-Oshkosh and a Soros Senior Justice Fellow. His most recent books are *Behind Bars: Surviving Prison* (Alpha/Penguin) and *Convict Criminology* (Wadsworth), with Jeffrey Ian Ross.

BOOK REVIEW

***No Surrender: Writings from an anti-imperialist
Political Prisoner* by David Gilbert
Reviewed by Claude Marks**

David Gilbert will not be able to do a book tour to promote his insightful new book, *No Surrender: Writings from an anti-imperialist political prisoner*. David has been a political prisoner in New York State since 1981, which makes the publishing of this collection of his essays and commentaries a truly remarkable event. David was a founder of Columbia University SDS, a veteran of the Civil Rights and anti-Vietnam War movements and fought and organized for many years as part of clandestine resistance against U.S. imperialism. He was captured in 1981 in the course of an armed action and since then has organized and written inside the New York's State prisons.

No Surrender is an amazing collection written under some of the most adverse conditions possible. Despite his physical isolation, Gilbert manages to stay connected to other political prisoners, many progressive struggles, and maintains a sharp analysis of a world that is physically beyond his reach. There are in-depth essays and book reviews on a stunning variety of historical and current issues — AIDS education, African liberation, Palestine, Chiapas, male supremacy and feminism, environmental racism — and much more. He writes three haikus to Mumia Abu Jamal and another entitled:

Our Politics in 17 Syllables
Love for the people
Means nonstop struggle against
Imperialism

Unlike most other writings about the movements of the 60s, 70s and 80s, Gilbert is honestly self critical in looking back at his own political development and involvement and at the political errors and advances of those movements. Whether it is his look at SDS (Students for a Democratic Society) and the Weather Underground Organization or more general reflection, he encourages today's activists to "study the past to draw lessons to help us liberate the future". He writes about what it means to challenge white and male supremacy, organize and fight to build a future based on

a more humane and just vision of the world. He calls for others to reflect honestly upon contributions and errors:

Why hasn't there been more written on our errors? The obstacle of not giving up security details to the state can be readily overcome by focusing on the political themes and lessons. So I believe our main problem has been our reluctance to face up to and analyze our errors, along with the lack of consensus about them. There is no way to sugarcoat it: this dearth of self-criticism and analysis is a serious failure to carry out our responsibilities to the movement. (p. 269)

Gilbert's book is serious analysis and reflection; it also conveys his resilient spirit, sense of humor, creativity, and gives us a glimpse into his very close relationship to his son Chesa, now in his 20s.

This is a challenging, powerful, and deeply moving book. Intelligence, courage, positive energy, and revolutionary dedication shine through every page, echoing the closing lines of a poem by Turkish poet and political prisoner, Nazim Hikmet, that opens the book:

It's this way:
Being captured is beside the point,
The point is not to surrender.

No Surrender can be ordered from Abraham Guillen Press in Canada & AK Press in California.

PRISONERS' STRUGGLES

Women Political Prisoners in Iran:

A Political Art Project

Shahrzad Mojab

A missing page in a vibrant history of Iranian women activism since the 1970s is the struggle of women political prisoners. With the coming to power of the Islamic regime in Iran, women became the first target of political and social oppression. There were many women among the several thousand prisoners who were executed in the summer of 1988. This is known among Iranians as “the Massacre of 1988” (*koshtar-e 1367*, in Farsi).

Over the years, some of the prisoners who served their prison terms have been able to leave the country. They, unlike ex-political prisoners in Iran who are not free to write about their prison experience, have produced momentous literature, which provide detailed accounts of theocratic disciplining of prisoners, torture, rape, execution of loved comrades, husbands, sisters, brothers, and resistance within the prison. This literature is written in Farsi, and is thus not widely accessible to international human rights activists, prison abolitionists, feminists and academics. These prisoners have also spoken about their ordeal in art forms such as music, film, painting, and photography that visually depict their individual and collective resistance and some of the atrocities committed against them.

This literature is significant in its own right, although it is perhaps unique in its details about Islamic theocracy and the gender dimension of its penal practices and policies. In both torture and indoctrination, womanhood and motherhood turn into sites of state repression; there are stories about children living with their mothers in jail or separated from them, a situation where unborn and newly born children are targeted by the state to break the resistance of the prisoner.

In the last three years, I have tried to open a space in academia for the voices of women political prisoners of the Middle East. This initiative includes the compilation of a comprehensive bibliography consisting of books, films, art productions, journal articles, and web-based materials; I plan to mount them on a website. An outcome of my SSHRC-funded research on the impact of war and displacement on women's learning has been the realization of the importance of political autobiographical writing as a process of resistance and conscious healing. Political autobiography can encourage a radically

new approach to understanding the histories and struggles of women activists. I have organized writing workshops for women political prisoners, the first of which was facilitated by Haifa Zangana, an Iraqi woman political prisoner, novelist, and anti-war activist. Haifa discussed the importance of autobiographical writing and the process of using art to express historical and political events. The workshops continued with the volunteer work of a respected Iranian-Canadian woman novelist and writer, Mehri Yalfani. The writings produced by women prisoners in these workshops will soon be published as the first English anthology on this subject.

I have also used the Prison Film Festival, organized by Prison Justice Action Committee in Toronto in the last two years, as a politically exuberant space for educating the public on the struggle of women political prisoners of the Middle East. In collaboration with *Sumoud* (www.sumoud.tao.ca), we have shown a series of films on women political prisoners of the Middle East (for a complete list of films check the following website www.pjac.org).

For further information contact Shahrzad Mojab, Director of Women and Gender Studies Institute at the University of Toronto and Professor in the Department of Adult Education and Counselling Psychology at OISE/UT: smojab@oise.utoronto.ca & www.utoronto.ca/wwdl

JUSTICE FOR MUMIA ABU-JAMAL

The movement to free Mumia Abu-Jamal is an international one. Millions of people around the world recognize that Mumia was framed and call for his release. The heart of the movement is based in Philadelphia and is headed by the International Concerned Family and Friends of Mumia Abu-Jamal. Affiliated with that organization in the US are three main centers of organizing:

International Concerned Family and Friends of Mumia Abu-Jamal
PO Box 19709
Philadelphia, PA 19143
(215) 476-8812
www.mumia.org

Free Mumia Abu-Jamal Coalition (NYC)
PO Box 16, College Station
New York, NY 10030
(212) 330-8029 (hotline: leave a message, your call will be returned within
24 hours)
www.freemumia.com

Mobilization to Free Mumia Abu-Jamal
298 Valencia Street
San Francisco, CA 94103
(415) 255-1085
www.freemumia.com

The movement focuses on providing information on Mumia's legal situation, on broader educational events, and on mobilizing people into campaigns and street actions that put pressure on those who control what happens in the court system. We are convinced that the courts will only grant justice to Mumia and other political prisoners when our movement reaches the level and intensity that those in power cannot ignore. We must build such a movement while recognizing the government's constant attacks on us and its many attempts at undermining our work.

While most of us are convinced that Mumia did not kill Officer Faulkner, the crime for which Mumia was convicted and sentenced to death, we welcome all those who believe Mumia did not get a fair trial, regardless of

whether or not they see Mumia as innocent. We popularize Mumia's books, his statements, and recorded messages from prison. We frequently focus on Mumia's history in the Black Panther Party as well as his long-time support for the MOVE Organization and the MOVE 9 (nine political prisoners now incarcerated for 27 years) to present the context in which Mumia was framed. We participate in the anti-war movement, the immigrant movement, and many other movements for justice. We bring Mumia's voice to different struggles to highlight the profound leadership he provides even from Death Row, and to demonstrate the connection between Mumia's struggle and what is happening in our society as a whole: war, repression, destruction of the planet, governmentally sanctioned torture whether at home or abroad, and the general degradation of life. But the issues we address most, those most highlighted by Mumia's case, are the struggle to free all political prisoners, the death penalty, police brutality, and massive U.S. incarceration.

December 9, 2006 will mark the 25th anniversary of Mumia's incarceration. A major activity will take place in Philadelphia on that date.

An Injury to One is an Injury to All.
Free Mumia Abu-Jamal!
The Partisan Defense Committee

The Partisan Defense Committee (PDC) is a class struggle, non-sectarian legal and social defense organization that champions cases and causes in the interest of the whole of the working people. This purpose is in accordance with the political views of the Marxist Spartacist League. For the past 18 years the Partisan Defense Committee has been centrally involved in the fight to free Mumia Abu-Jamal, a former Black Panther Party spokesman, supporter of the Philadelphia MOVE organization and award-winning journalist.

In 1982 Mumia was framed up on charges of killing Philadelphia police officer Daniel Faulkner and sentenced to death for his political views and activities. We have emphasized that this is a political frame up of an innocent man; a death penalty case which illustrates the racism endemic in this country in its cruelest, most vicious form and lays bare the essence of the capitalist state — armed bodies of men to protect the profits, property and rule of the capitalist class. Beginning in 1989 we held rallies in cities across the country and internationally and succeeded in getting other forces to take up his case.

The fight to free Mumia has now reached a crucial juncture. In December, 2005, the federal appeals court put Mumia's case on a "fast track" for decision. In a short time, even as soon as six months, the court could decide what is next for Mumia: death, life in prison or more legal proceedings. In nearly two decades of appeals, each and every court has rejected the reams of documented evidence of the blatant frame-up. For over four years, Pennsylvania state as well as federal courts have refused to even consider the sworn confession of Arnold Beverly that he, not Mumia, shot and killed the police officer for which Mumia was falsely convicted. The fight for Mumia's freedom is urgently posed. While we are for pursuing every legal avenue in Mumia's behalf, we put no faith in the "justice" of the capitalist courts. We struggle to mobilize the broadest social forces, centered on the labor movement, to demand Mumia's freedom and the abolition of the racist death penalty.

Reviving a tradition of the International Labor Defense in 1986, the PDC initiated a stipend program for class-war prisoners. We currently provide monthly stipends to sixteen class-war prisoners, among them Mumia, members of the Philadelphia MOVE organization, Black Panther

supporters David Rice and Mondo we Langa, anti-imperialist fighters Jaan Laaman and Tom Manning and prison activist Hugo Pinell. Since initiating the stipend program, we have provided support to more than 35 prisoners across three continents.

The PDC is partisan: we stand unconditionally on the side of working people and their allies in struggle against their exploiters and oppressors. Initiated in 1974, the PDC cut its teeth organizing successful international defense campaigns for Latin American leftists. We launched fund-raising campaigns for striking British miners in the mid 1980s as well as for the people of the Afghan city of Jalalabad when it was besieged by CIA-backed Islamic reactionaries in 1989. We have initiated mass labor/black mobilizations to stop the KKK from marching in cities across the country, including the 10,000-strong mobilization in New York City in 1999. In Oakland in 2002, the PDC and the Labor Black League for Social Defense initiated a united-front demonstration centered on the powerful longshore union in defense of immigrants and in opposition to the Patriot and Maritime Security acts. This past September we also held rallies in defense of death row political prisoner Mumia Abu-Jamal, leftist attorney Lynn Stewart, framed up on bogus “support to terrorism” charges and Assatta Shakur, the courageous Black Panther leader framed on charges killing a New Jersey state trooper and now in exile in Cuba. An injury to one is an injury to all. Free Mumia now! Abolish the racist death penalty! Free all class-war prisoners!

Contact the Partisan Defense Committee at P.O. Box 99, Canal Street Station, New York, New York, 10013, ph. 1-212-4064252, partisandefense@earthlink.net.