

EDITORS' INTRODUCTION

Unsettling Reflections

Melissa Munn and Kevin Walby

The prisoner as ethnographer. The *Journal of Prisoners on Prisons* (JPP) has always been about recording the lived experience of people imprisoned by the state. As a consequence, the *JPP* is an important counterpoint to the rampant right-wing discourse that is often treated as truth in corporate media and political discourse (see Gaucher, 2002). Over its history, the journal has provided a platform for investigating prison experiences for prisoners and fellow travellers from across the globe. Doing so allows us to critically consider the transcarceral commonality of captivity, while highlighting unique or emerging issues. This issue of the *JPP* follows that tradition and reminds the reader that the struggles inside sometimes mirror those in 'free' society.

In this issue, death in custody is a major theme. Dying in prison emerged organically as a topic. However, it was brought into stark focus for our Editorial Board when Peter Collins, a frequent contributor to the *JPP*, passed away as we were assembling this text. Justin Piché reflects on Peter's life and work, along with deaths in custody in his *Response* at the end of this issue. Before that, Ernest Jack considers the possibility of his own death behind bars. In another contribution, John L. Lennon opens by acknowledging that his greatest fear is dying in prison, before going on to eulogize his friend Lenny who recently suffered this fate. While these pieces reflect on death by natural causes in an unnatural environment, Victor Becerra's article poignantly describes the isolation that leads to suicide in prison. In these works, we are asked to consider life and death behind bars. At a time when activists across the United States are demanding that all of us recognize that "black lives matter" (Petersen-Smith, 2015) we must, in the same anti-colonialist spirit, recognize that imprisoned lives matter too.

The prisoners' sense that their lives do not matter to prison staff and administrators is evident also in the discussions of healthcare that Shawn Fisher, Ernest Jack and Timothy Muise provide this issue. These men speak to the lack of access to medical care, the bureaucracy that makes the most basic testing difficult to acquire, and the way in which their treatment (or lack thereof) is part of a broader systemic attitude towards criminalized persons. Their struggles resonate because we recognize our own frustrations in getting adequate health care. However, the 'free' have the ability to get

a second opinion, to go elsewhere for treatment, to access non-western medicine, none of which are options for many who are incarcerated. A common problem can have uncommon consequences for the prisoner.

Author Robert Blackash considers homo-sociality in his work on men imprisoned in Britain. Here too we see the link between preoccupations in mainstream society and the microcosm that is prison. His article considers queerness and intimacy in prison in a non-exceptionalizing way that does not affirm the LGBT stereotypes too often seen in the media machine.

This sense of being considered ‘other’ – of being different or less deserving of even the most basic human rights – forms the basis of Craig Minogue’s piece on accountability in Australian prisons. At a time when neoliberal doctrine demands that prisoners accept responsibility, those same individuals demand that the various industrial complexes in society do the same. For example, Jarrod Shook demands accountability in how prisoner security classification and pay for labour is determined in Canada’s federal prisons. While specific carceral settings affect prisoners uniquely, the basic concern for accountability and transparency transcend the prison walls.

The *Prisoners’ Struggles* contributions likewise address the issue of accountability. Zaineb Mohammed reflects on the various projects of the Ella Baker Centre for Human Rights, while Madeleine Spain discusses the work of Justice Action in Prisons.

Fighting off the otherness created by imprisonment is difficult. In Greg Webb’s article, the author notes that prisoners use consumption of ‘street goods’ (in this case, athletic shoes) to feel part of ‘free’ society and maintain hope. As peace activist Thich Nhat Hanh (1991, p. 41) noted: “hope is important because it can make the present moment less difficult to bear. If we believe that tomorrow will be better, we can bear a hardship today”. It is this idea that there is hope, and perhaps forgiveness, in the future that compels author J. John Fry to consider the bleak implications of recent changes to the legislation that governs criminal record pardons in Canada.

The *JPP* has a role to play in maintaining hope. Not only does the journal afford the opportunity for scholars to read ‘from the ground up’ about prisoners. It gives the authors the knowledge that they are being heard, to know that their experiences resonate, to connect with the world outside the prison, to feel that their lives do indeed matter.

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Effective Accountability Mechanisms Overseeing Corrections in Australia and Beyond: Are Ombudspersons a Vital Element in the Rule of Law or a Forlorn Hope?

Craig W. J. Minogue

Being inspired by the work of Michel Foucault, I take a personally engaged and personally responsible subjective position on the human and social situation that I believe is terribly wrong and intolerable. Garry Gutting (1994, p. 10) wrote that Michel Foucault's genealogies "begin from his perception that something is terribly wrong in the present" and they are aimed at an understanding of what is "intolerable in the present". Michel Foucault defended his scholarship as being one which was situated in the modality of the specific intellectual who took a subjective stand from within the power relationships which were being examined, rather than presuming that one can stand outside power relations and objectively make pronouncements from an academic high-ground in relation to the rightness or wrongness of the practices being observed. A specific intellectual is a person who works "not in the modality of the 'universal', the 'exemplary', the 'just-and-true-for-all', [rather they work] within specific sectors, at the precise points where their own conditions of life or work situate them" (Foucault, 1980, p. 126). Of Michel Foucault's specific intellectual, Todd May (1993, pp. 6-7) says:

...rather than standing above or outside their society, 'specific intellectuals' are immersed within it. They cite, analyse, and engage in struggles not in the name of those who are oppressed, but alongside them, in solidarity with them, in part because other's oppression is often inseparable from their own. This type of intervention allows them to embrace the oppression that 'universal intellectuals' used to analyse and to understand it better than the latter did, because rather than pronouncing on the fate of others from on high or outside, they carry with them an experience of the kind that belongs to the oppressed themselves.

The specific sector and the precise point where my conditions of life and work situate me are the prison as I have been a prisoner since 1986. The philosopher Gilles Deleuze said of Michel Foucault's work, that it demonstrated its empathy with the subject, by not talking for the subject, and that there was an inherent indignity associated with speaking for

others which results when intellectuals take a universal and objective view from the outside of power-relations (in Foucault, 1977, p. 209). I feel this indignity when my experience is spoken about by others who stand on high and view the situation. Thus, in this paper, I will be speaking for myself and about my lived experience.

The sociological circumstances of prisoners in Victoria, Australia, are much the same around the country, and no doubt similar to those around the industrialised world with poor levels of education and unemployment being common. On reception into prison in Victoria the highest level of education attained or self-reported by prisoners as being attained was as follows:

- 2% have a tertiary or other post-secondary education;
- less than 1% have a trade qualification;
- 3.9% have completed secondary schooling;
- for 1.5% the highest level of their education was primary schooling;
- the majority, 89.2% have a partial secondary education; and
- 67.3% were unemployed (Department of Justice / Corrections Victoria, 2010 pp. 37-38).¹

Issues of mental health are also important when considering the abilities of prisoners seeking re-dress for what they feel is an abuse of power. Defending oneself against an abuse of power requires a level of educational, legal, social and cultural literacy, which many prisoners do not possess. If professional assistance from lawyers is not available, then prisoners are left to their own devices to seek redress for any wrong they perceived as having been done to them. Men and women in custody, and their families, feel the impact of governmental control over every aspect of their lives, more than any other people in the community. Whether a person in custody does, or does not, receive clothing, food or water, is a matter that is at the whim of prison staff.

In my experience as a prisoner since 1986, the major problem which impacts on the lives of prisoners is that prison staff and management do not understand the law as it relates to corrections or proper administrative decision-making processes, and they operate by a 'might is right' modality of their individual will. This might is right modality is supported by instruments of restraint, pain compliance techniques, physical and chemical weapons of restraint, firearms, electro-shock and striking weapons (Minogue, 2005).

In Victoria, and other states in Australia, the Ombudsman's Office is effectively the sole accountability mechanism for prisoners, and "of the 4,248 complaints about Justice, 3,177 (75 per cent) related to prison" (Victorian Ombudsman, 2014). Prisoners are excluded from federal human rights protection by law, and state level human rights are decision-making considerations and not justiciable rights as such (*Minogue v Human Rights and Equal Opportunity Commission* [1998]; (1999); *Minogue v Williams* (2000); *Minogue v Australia* 2004).

According to the Victorian Ombudsman's most recent Annual Report (2014), prisoners complain to the Ombudsman about:

- Prisoner health services (15%)
- Prisoner property (7%)
- Prison buildings and facilities (5%)
- Prisoner placement and location (4%)
- Delays in complaint handling in prisons (4%)
- Prisoner visits (3%)
- Prisoner funds (3%)
- Prisoner telephone access/services (3%)
- Prison food (3%)
- The right to humane treatment when deprived of liberty (3%)

Without the appropriate level of educational, legal, social and cultural literacy to properly pursue a matter of complaint themselves prisoners must rely on an effective administrative and human rights accountability mechanism acting in good faith. By law, the Ombudsman's Office in Victoria fulfils the role of such a mechanism, so it needs to be asked, is that Office an effective oversight mechanism? Such a question could also be asked in other jurisdictions where Ombudpersons are said to provide oversight for the administration of prisons.

I raised the issue of the effectiveness of the Ombudsman's Office with the Committee of the United Nations High Commissioner for Human Rights (UNHCHR) in *Minogue v. Australia* 2004. I argued that when a prisoner makes a complaint to the Ombudsman's Office most were not taken seriously and not investigated or properly dealt with. I supported my claim that the Ombudsman's Office was not effective as an independent complaints handling authority with primary evidence from lawyers and community groups.

Gabriel Kuek (2002), who had been a lawyer for 20 years at the time, and who had acted for numerous people in respect of complaints to the Victorian Ombudsman concerning alleged misconduct and omissions on the part of Victorian public servants, predominantly the police, wrote to the UNHCHR and advised:

Save for one instance, my dealings with the Ombudsman's Office have been discouraging. I have found that Office to be lacking in its investigative and remedial functions. At times, I concluded that Office was more eager to explain and justify alleged misconduct than in conducting a fair and balanced inquiry into the matters my clients complained of. It is my opinion that lodging a complaint with the Victorian Ombudsman's Office is likely to prove futile and have advised my clients so.

Richard Edney (2002), an academic and lawyer wrote to the UNHCHR and said:

In relation to the investigation of complaints by the Ombudsman it has been our experience that the notion of 'investigation' is somewhat misleading. Indeed, it seems that the practice of that Office is to deal with matters on the paperwork alone. In our view, this does not really amount to a proper investigation.

Sam Biondo (2002) from the Fitzroy Legal Service, the most prominent legal service in Melbourne, states in his submission to the UNHCHR that:

Like many others, we have at times found dealing with the Office of the Ombudsman to be an extremely frustrating experience; for example it is a rare occurrence for a complaint against a police officer to be substantiated. We do not attribute this lack of success in many instances to a deficiency with the registered complaint. It is even more frustrating utilizing the Office of the Ombudsman in relation to a prison issue.

Furthermore, the Office relies too heavily on the voluntary co-operation of police and prison authorities. We believe that these authorities are unlikely to fully assist with investigations where an adverse finding is the likely outcome. There are also important issues with the Ombudsman's emphasis

on handling many prisoner complaints through liaison rather than through investigation. . . . Apart from the sorts of delays incurred by individual complaints, the time lags between certain incidents and the conclusion of an Ombudsman's report can be lengthy [and] ... domestic remedies such as the State Ombudsman, [are] of significantly limited value and of no practical use.

Cathy Smith (2002), who was then the Chief Executive Officer of the Victorian Council of Social Services (VCOSS), which is the peak advocacy and policy research agency for the community sector in Victoria and which was established in 1946, states in a letter to the UNHCHR that:

The issues brought to your attention by the Victorian Fitzroy Legal Service would also be of concern to VCOSS as their very existence would seem to imply that a fair share of the community's resources and services and the treatment of all people as equal is being compromised by:

- the lack of adequate resources to investigate the matter properly;
- the tendency to liaise rather than investigate complaints;
- the extremely low rate of substantiated complaints in relation to prisoner complaints; and
- the inability of the Ombudsman to enforce a remedy.

The Committee found the Ombudsman's Office was not an effective remedy and I did not have to exhaust that avenue of complaint before I could bring a matter to the international community under an instrument like the First Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) (*Minogue v Australia*, 2004, para.6.3).

As Table 1 indicates (see below), primary evidence of the ineffective nature of the Ombudsman in Victoria is found in the low rate of substantiated complaints from prisoners. In 2002 and 2003, I published articles questioning how substantiation rates of prisoners complaints could be so low (Minogue, 2002; Minogue, 2003). For the Annual Report 2003/04, and subsequent Reports, the details of the numbers of complaints formally investigated and substantiated from prisoners have not be included.

Table 1: Prisoner Complaints, Investigations and Findings by Year

Year	# of Complaints	Investigations (#)	substantiated complaints(#)
1997/98	787	1	1
1998/1999	771	0	0
1999/2000	562	1	1
2000/2001	746	1	1
2001/2002	699	1	1
2002/2003	673	1	1

Source: Ombudsman, Victoria, 2007.

How does the Ombudsman in Victoria compare to other jurisdictions? In England and Wales, for 2010/11, the Prisoners and Probation Ombudsman (PPO) accepted for investigation, 50 percent of the complaints made (Seneviratne, 2012). The lowest acceptance rate of complaints by the PPO was 36 percent in 2007/08 (ibid). In Scotland, for 2010/11, the Scottish Public Services Ombudsman accepted 29 percent of prisoner complaints for investigation (ibid). In Northern Ireland, for 2010/11, the Prisoner Ombudsman for Northern Ireland accepted 46 percent of complaints for investigation (Seneviratne 2012). Of the 476 complaints made to the Prison Commissioner for North Rhine-Westphalia Germany in 2011/12, only 25 were found to be ineligible and not accepted for investigation (Carl, 2013, p. 370). The Ombudsman in Victoria, accepts less than 1 percent of complaints for investigation.

The one percent of complaints that are accepted for formal investigation and sustained, are often used to publicly discredit prisoners' complaints. For example, a prisoner attempted to redeem a Mars Bar as part of a 'get one free' promotion. The Prisoners Shop, a registered business, refused saying: "We don't run a charity here!" The prisoner complained that the Shop was a retailer who sold the Mars Bar and it said on the packet that if it was a winner that the retailer would redeem the wrapper for a free bar, so why are prisoners excluded? The Mars Bar wrapper complaint, which was referred to by the media as 'the chocolate bar incident', was officially investigated and it was the one token complaint sustained for that year, and the details

of it were highlighted in the Annual Report 2001/02 of the Ombudsman's Office. This case was reported in a screaming headline that "Crims take the cake" (Kelly, 2003, p. 9). The opposition police and corrections spokesman said: "It is ridiculous the Ombudsman was being tied up with such [trivial] complaints. The prison system seems to be operating as a joke in this state" (Kelly, 2003, p. 9). What is ridiculous is that 'the chocolate bar incident' is the one complaint that the Ombudsman's Office chose to formally investigate and substantiated from the 699 complaints from prisoners that year.

In a second case, a prisoner bought potato chips from the Prisoners Shop over a 12-month period. In the chips there were small children's toys. The man saved the toys and wanted to send them out to his children. When the man went to post a large envelope with the toys a particularly nasty guard said it was not allowed and, in fact, he had to put the toys in his property box or throw them away.

I helped the man write a letter to the Ombudsman's Office complaining that the administrative decision not to allow the man to send out his property to his children was unreasonable considering the absentee parenting efforts of this man. The Ombudsman's Office formally investigated and sustained this complaint, the only one for that year. Then the Ombudsman Annual Report for that year detailed the case and it was reported in the media under the headline "Toy ban chipped" (Herald Sun, 2005). It was reported that there were 3961 complaints to the Ombudsman's Office in 2003/04 from all areas under the jurisdiction (no further breakdown was provided), and this is the one which is publicized and reported by the media, the one about "a prisoner with a taste for potato chips" (ibid). The issue here was not the man's liking of potato chips, but rather unreasonable administrative decision-making about prisoner property and abuse of power that negatively impacted upon a man's right to maintain contact with and emotionally support his children from prison. Complaints from prisoners are misrepresented and ridiculed in the media, and thus devalue the need for administrative and human rights accountability mechanisms overseeing corrections.

To understand how effective the Ombudsman's Office in Victoria is in relation to complaints from prisoners about corrections, it will be illustrative to look at another area where the Ombudsman has jurisdiction as an agency of accountability. The Ombudsman's Office also has the jurisdiction over the Victoria Police and in the Annual Report 2000/01, the Ombudsman's Office reveals that it investigated 1,575 specific complaints against police,

and the net formal investigation and substantiation rate was 21 percent (Victorian Ombudsman, 2001, pp. 26-27). This rate is much better than the one for investigation and substantiation of prisoner's complaints, which is less than 1 percent.

A complaint to the Ombudsman's Office is so ineffective that many prisoners view it as not being worth the time and effort. The ineffectiveness of the Ombudsman's Office is also widely known in the community, for example:

Kate Lawrence is a lawyer with the North Melbourne legal centre, which represents many inmates. "The Ombudsman's Office is terribly ineffectual", she says. "Essentially what they do is go to the people you have complained about, get their story and say, there is your answer. You already knew that. The fact that nothing happens can exacerbate frustrations. In terms of teeth, the Ombudsman is a gummy shark. Prisoners don't view it as a serious option" (Mottram, 2001, p. 3).

Another lawyer said:

It is understandable that so far as my clients are concerned, the Office of the Ombudsman is viewed as a waste of space. If you are bashed in a police station and there are no witnesses you are wasting time going to the Ombudsman (ibid).

It is thought by some to be a 'waste of time' complaining about the police, but 21 percent of complaints about the police are substantiated, whereas historically the Ombudsman's Office conducts one investigation and sustains one complaint a year from prisoners. It is not hard to imagine that many of the people who make complaints about the police are for the most part in a similar social situation as people who make complaints about prison officers, and the complaints about the abuse of power are similar in the case of police and prison officers. Complaints about police officers have a substantiation rate which is 20 times higher than that of complaints against prison officers.

Unreasonable delay is also a significant issue undermining the effectiveness of the Ombudsman's Office as a remedy. It is not unusual for complaints to the Ombudsman's Office to take many months or years to be finalized. Many prisoners are simply not in custody long enough to see

a complaint through to completion. In October 1998, a man complained to the Ombudsman's Office about the Melbourne Custody Centre saying it had no natural light, poor ventilation, no fresh air or access to the natural environment, and that he witnessed a person being assaulted by other prisoners and the police did not come to the assistance of the victim (Ombudsman letter, 2000). The Ombudsman's Office replied in a letter 20 months later advising that the police were doing their best under difficult circumstances. I came to know of this matter as the prisoner brought the Ombudsman's letter to me and asked me to explain its contents, as he could not understand what it was about. After some confusion, it was established that the complaint had been made when he was serving an earlier sentence, but that he had since been released, but returned to custody. As far as the man was concerned the delayed response was now irrelevant – he screwed-up the letter and threw it in the bin as he stormed out of the prison library saying: "That was last sentence!"

A question is raised at this point as to if this is a situation of benign inefficiency or malignant bad faith. A way to explore this question is to look at the Free Call service operated by the Ombudsman's Office, which allows prisoners to call and make complaints free of charge. This service was not well advertised, but word leaked out to prisoners at Barwon Prison in August 2007. Five prisoners took the opportunity to call the Ombudsman's Office to make a complaint about the operation of the phone system in relation to a pre-recorded message that is played at the start of all calls made by prisoners.

For a prisoner to place a number on their phone access account they have to submit a Phone Request Form, which is checked against a list of prohibited numbers by the prison's intelligence officer who is called the Collator. A number is prohibited if someone has asked Corrections Victoria not to allow calls to be made to that number from prisoners or a particular prisoner. If the number is not prohibited then the form is returned to prisoner's accommodation unit or some other location and an Officer telephones the person and explains who they are and that prisoner so and so has requested that their number be placed on their phone access account. The Officer confirms the name, the address and number of the person and their relationship to the prisoner. The Officer asks if the person is willing to receive calls from the prisoner. If the person agrees, then they are told that the calls are monitored and recorded, and they are not allowed to divert the calls or to engage in conference calls. The person is asked if they understand all this and if they agree to all of these

conditions. If they agree, then the number is placed on the prisoner's phone access account as being verified. When a prisoner makes a call a recorded message plays and it says:

This phone call has originated from a prisoner at [name of specific institution] Prison. It is subject to monitoring and recording. It is unlawful to participate in a conference call or divert this call. If you do not want to accept this call please hang up now. If you understand the conditions of this call then proceed.

When this message was first introduced in 2007 prisoners made complaints saying:

- the tone in which the message is delivered is rude and threatening;
- it frightens children and confuses old people;
- the list of conditions and threats of 'illegality' are hard for people to understand;
- it sounds like the recipient is at risk of committing an offence;
- it is far too long;
- answering machine messages cannot be heard because of the length of the message, and the end of the message is often recorded on a person's answering machine. The prisoner is left saying "Hello, hello ..." until they realize that the silence must mean that they are talking to an answering machine;
- prisoners with families from non-English speaking backgrounds have been hanging up when the Anglo-Saxon voice starts threatening them;
- it is unreasonable to require people who have agreed to receive a call from a prisoner to hang up if they happen to be using modern technology like call diversion; how it is 'unlawful' for the person receiving the call to divert or participate in a conference call?;
- it is unreasonable to require people who have agreed to receive a call, to then have to understand the implications of the call as that relates to the telecommunications law and wire tapping;
- some legal secretaries and other professional services have refused to put prisoners through to their lawyers as that would be 'diverting a call' and that would be 'unlawful' according to the message; and

- some family members worry or don't know if they can hand the phone to a visiting uncle or family friend who happens to be there when the prisoner calls. Is this diverting the call? Is this then a conference call?

Five prisoners made calls to the Free Call number of the Ombudsman's Office and made contemporaneous notes of those calls. The notes made about those calls in two cases need to be reproduced in full to explore the question of whether there is a benign inefficiency or malignant bad faith operating at the Ombudsman's Office. Although these calls were made in 2007, recent experience in 2014 demonstrates that nothing has changed.

Craig (call made on 29 August 2007)

Craig: I am a prisoner at Barwon and I want to make a complaint about the message that plays at the start of every phone call made by a prisoner.

Ombudsman's Office: Can I have your name and CRN.

Craig: Yes. [name and number given].

Ombudsman's Office: What is your complaint?

Craig: There is a message that plays at the start of each call a prisoner makes. There are two versions, one for legal calls and one for private calls, and these messages have recently been changed in the last 2 weeks. The tone of the message is rude and threatening. It frightens children and old people. The new conditions are hard to understand. It sounds like my people are being threatened with a prison offence. Prisoners with families from a non-English speaking background have been hanging up when the Anglo-Saxon voice starts threatening them.

Ombudsman's Office: Have you complained to the prison about it?

Craig: Yes I have and they say there is nothing they can do about it.

Ombudsman's Office: When did you complain?

Craig: About two weeks ago.

Ombudsman's Office: We like to give agencies at least three weeks to get back to you with a formal response before we intervene.

Craig: I have got all the response I am going to get from them as I raised it with the officer who is responsible for the phone system.

Ombudsman's Office: Well we will have to ask the prison why they are playing a different message, because there will be good reasons why they have added new conditions.

Craig: Before you pre-judge the matter and accept that there are good reasons for them to add the conditions, my complaint is about the tone of the message, which is rude and threatening. It frightens children and old people. The new conditions are hard to understand. It sounds like my people are being threatened with a prison offence. *Why* they are playing the message is not the issue.

Ombudsman's Office: Has the new message affected you?

Craig: Yes it has. It puts my people off. They feel insulted and assaulted by the message. It took my mother a dozen calls before she could fully understand the message. By rights, she should have hung-up on me every time until she understood. If she does not understand or accept the conditions then it is unlawful for her to talk to me according to the message. This is rubbish.

Ombudsman's Office: We will make some inquiries with the relevant agency.

Craig: No. You need to listen to the message and see what you think yourself. If you were to call the Collator at Barwon, I am sure that he or she could email you the WAV files and you could hear them for yourself. It would be a simple matter.

Ombudsman's Office: We will make inquiries with the relevant agency in relation to why the message has been changed and the need for the message.

Craig: No. I am complaining to you about the message, its tone, its rudeness, it is hard to understand, not *why* they are playing it. So will you listen to the message?

Ombudsman's Office: We will give the agency the opportunity to respond first.

Craig: Respond to what? I have their response already. I am complaining to you about the message, and I am asking will you listen to the message so you can hear it for yourself and judge my complaint on the evidence. Will you listen to the message?

Ombudsman's Office: It may not be me as someone else may look at it, or it may be someone else.

Craig: Who is the *someone else*?

Ombudsman's Office: Someone from the agency concerned.

Craig: What is the point in that?

Ombudsman's Office: They can say why the message is being played.

Craig: No. My complaint is not about *why* it is being played. You are not listening to me. I am complaining that the tone of the message is rude and threatening. It frightens children and old people. The new conditions are hard to understand. It sound like my people are being threatened with a prison offence. What has that go to do with *why* they say they are playing the message and what they think about it?

Ombudsman's Office: We will get the agency to ...

Craig: Will you listen to the message?

Ombudsman's Office: I can't guarantee that.

Craig: Will you or someone from your office at least try to listen to it?

Ombudsman's Office: We will get the agency to ...

Craig: Let's say I complained that they had smashed a piece of my property. Would you not want to view that evidence?

Ombudsman's Office: Someone would look at it, yes.

Craig: No. Would someone from your office look at it?

Ombudsman's Office: The appropriate person would look at it.

Craig: Who is that?

Ombudsman's Office: I can't say.

Craig: We are going around in circles here aren't we. Will you get back to me?

Ombudsman's Office: Yes we will.

Craig: Thank you. Goodbye.²

These notes show that in Craig's call the Ombudsman's Office:

- attempted to redefine the complaint relation to the reason why the message was played so that it was a strawman that could easily be knocked over if they had good reasons. The reasoning for the message was never the complaint as Craig tried very hard to make clear;
- prejudged the situation by saying there would be a good reason for changing the message and for it being played – not that this was ever the complaint, and this is prejudging and redefining in one; and
- refused to listen to the evidence, i.e., the message, but rather would allow Corrections to say why the message was played – which of course was never the complaint.

The following example involves another prisoner who has been assigned a pseudonym to protect his identity.

David (call made on 30 August 2007)

David: I am a prisoner from Barwon as you can tell by the message.

Ombudsman's Office: I don't listen to those messages.

David: Well that is exactly what I am ringing up about.

Ombudsman's Office: Can I ask your name?

David: My name is David.

Ombudsman's Office: I don't know if I can help.

David: I need to talk to you about the phone message.

Ombudsman's Office: I don't handle complaints, I am just the person in-between the phone, I will put you on to someone.

David: Is this the number to call?

Ombudsman's Office: [Different person] Hello Ombudsman's Office.

David: I am David. I am ringing about the pre-recorded phone message.

Ombudsman's Office: Have you talked to management about it?

David: Yes I have.

Ombudsman's Office: Have you written to management about it?

David: No.

Ombudsman's Office: For me to process your complaint, you have to exhaust all other avenues of complaint within the agency.

David: I have talked to them about it and I can't get a decent answer other than it is "state wide" as if that excuses the message. The message is upsetting

for my mother and for my children, because there are references to prison charges and a requirement that they must understand the conditions before continuing, but the conditions are confusing.

Ombudsman's Office: Have you written to management yet?

David: No, but they know it is a problem as half the unit has complained about it.

Ombudsman's Office: Yes, I am aware of other complaints, but you need to write to the CEO of Corrections before I can deal with it. Do you know if it's a message generated by the prison itself or by an outside agency?

David: I don't know. No one can tell me anything about this problematic message. Have you listened to the message to see what prisoners are complaining about?

Ombudsman's Office: I don't have to, but what you need to do is write to the CEO and if you are not happy with that explanation, then write to us with copies of all the correspondence and if there is enough complaints then we will look more deeply into the matter. I am not saying that your complaint is not valid, just that there is a procedure that requires you to exhaust all avenues of complaint within the agency before complaining to us.

These notes show that in David's call the Ombudsman's Office:

- attempted to deflect dealing with the complaint by requiring first verbal complaints, and then written complaints to Corrections and that all of these avenues of complaint needed to be travelled down, one after the other, until there was no resolution (this suggested path would take between 8-12 months);
- wanted fruitless avenues of complaint pursued and then the complaints process would be considered to see if that process was handled right, not if the message was problematic. It was never David's complaint that Corrections were not handling his complaint properly; and
- refused to listen to the evidence, i.e., the message, but rather would look at how Corrections handled the complaint about the message.

The Free Call number for prisoners to contact the Ombudsman's Office is promoted by that Office as an example of how accessible and responsive the Office is to complaints from prisoners. For prisoners, however, the reality is that the Free Call number is used as a device to discourage prisoners from making complaints. Prisoners are fobbed-off, talked around in circles and have their complaint re-framed and handballed out of bounds during the call and they hang up thinking: 'What's the point of complaining?'

CONCLUSION

Before I answer the question posed by this paper as to if the Ombudsman's Office in Victoria is an effective accountability mechanism that is faithful to its role in the rule of law, or if it is a forlorn hope, it will be helpful to summarize the evidence in this matter so far.

The disadvantaged and vulnerable social and personal circumstances of prisoners are common, as is the difficulty of an individual person defending oneself against an abuse of power. It is also common ground that professional and government assistance for disadvantaged people is in a funding and availability free-fall. The need for administrative accountability and oversight of the actions of the powerful when vulnerable people are involved should never be in question.

As an example of administrative accountability and oversight, the Ombudsman's Office in Victoria, Australia is an agency of accountability. The role of such an agency is a vital one for the rule of law, and if an abuse of power that victimises vulnerable people is not to go unchecked, such an agency should be accessible and responsive to complaints from prisoners.

I have argued that when seen in terms of the official investigation and substantiation rates of prisoner complaints, as an effective administrative accountability mechanism, the Ombudsman's Office in Victoria, falls far short of international standards. As one example, in England and Wales, the Prisoners and Probation Ombudsman accepted for investigation 50 percent of the complaints made in 2010/11 (Seneviratne, 2012). As a pattern the Ombudsman in Victoria, accepts less than 1 percent of complaints for investigation. Moreover, the complaints accepted for investigation are often matters that are used as cannon fodder to be trivialised in the media. I have also shown that social justice NGOs and lawyers provided ample primary evidence of the ineffectiveness of the Ombudsman's Office, which has been accepted by the UNHCHR (*Minogue v. Australia* 2004).

Finally, in two case studies it was shown that accessibility of the Ombudsman's Office through a free-call number was used to deflect prisoners' complaints by the Office:

- attempting to redefine the complaint away from the real issue being complained about, to a procedural issue;
- prejudging the situation by claiming there would be a good reason for the action taken by corrections;
- refusing to engage with documentary evidence which prisoners claimed illustrated the issue being complained about; and
- attempting to deflect dealing with the complaint by requiring a process that is inordinately long (between 8-12 months).

Effective accountability mechanisms overseeing corrections in Australia and beyond are a vital element in the rule of law. In the case of the Office of the Ombudsman Victoria, Australia, however, accountability amounts to little more than a forlorn hope.

ENDNOTES

- ¹ As of 2013 these statistics are no longer gathered by Corrections Victoria as a cost-cutting exercise.
- ² The Ombudsman's Officer never did get back to the author about this matter.

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Pardon Me!

J. John Fry

Prime Minister Stephen Harper's omnibus crime bill, the *Safe Streets and Communities Act* (Bill C-10), altered Canada's pardoning practices to the detriment of Canadians. The Government of Canada's new prohibitive restrictions to the *Criminal Records Act* places a pardon out of reach for an increasing number of people. The restrictions added to the *Criminal Records Act* include: increasing the length of time required before a person may apply for a pardon (up to 10 years for some applicants); complete exclusion from the process for those applicants with more than three indictable offence convictions, no matter the circumstances of the crimes, how long ago they took place or the kinds of changes the person has made in his or her life since their conviction; utter disqualification of those convicted of child sex offences; and the Parole Board of Canada must be satisfied that the application will not bring the administration of justice into disrepute (Greenspan and Martin, 2014).

It may prove helpful to run quickly through the genesis of what a pardon looked like at an early time in our colonial history and what it has devolved into today. At one time in Canada, a person might have received Victorian mercy from Her Majesty the Queen in the form of a pardon. Under the old law, referred to as a true pardon granted by Her Majesty's Royal Prerogative of Mercy, a convicted person's criminal record was expunged. Anyone who received mercy from the Queen could lawfully deny having ever had a criminal record if they were asked. Today, the definition of a pardon is quite different from its merciful beginning.

In order to have earned a pardon under the old law, the criminalized would have completed the terms of their sentences, which would have included parole for many, remained crime-free for at least five years for indictable convictions and three years for summary convictions, and have been assessed as no longer presenting a risk to public safety (Greenspan and Martin, 2011). Earning a pardon indicates that the individual has become a sustained, taxpaying, contributing member of society. It means that our Canadian correctional system worked effectively in its efforts not only to promote rehabilitation, but also to provide meaningful and lasting pro-social changes.

A pardon under the modern *Criminal Records Act* is no more than keeping the record of conviction separate and apart from other criminal records. In other words, the conviction is sequestered from sight. A virtual red line is drawn through the conviction on file. Certain government

agencies, for a variety of reasons and after obtaining permission, may review the sequestered files. One can no longer deny that they were convicted. This contemporary pardon is referred to as an administrative pardon; administrative pardons cleanse the person of the stain of their conviction from what might be called casual sight (Greenspan and Martin, 2014). It means, for example, that a person could apply for and receive a travel visa to a foreign country or consent to most criminal record checks for the purposes of employment without worrying about past indiscretions, but one could not expect to pass a criminal records check if he or she tried to enlist in the Armed Forces or if one applied for an elementary school bus driver position. This is the pardoning process that Bill C-10 (*Safe Streets and Communities Act*) orphaned from what was long held as a pinnacle of social forgiveness by those who sought its recognition and reward.

Prime Minister Harper and other right-wing thinkers also did away with the word “pardon” when they orphaned the *Criminal Records Act* from what it was before January 2012 to the poor stepchild that it is now. What was once referred to as a pardon is now called a record suspension. If a person is granted a record suspension, which includes such abstract considerations as ensuring the application will not bring the administration of justice into disrepute, the conviction is suspended from casual sight from low-level Canadian Police Intelligent Computer (CPIC) checks. This new criterion would seem to place public perception above the statues of law and fundamental justice. Lawmakers should revise laws to make them more just and to reflect Canadian values, not when they have surrendered to ‘common sense’, which seems to be the case here.

The Canadian Bar Association (2011) called the revisions to the *Criminal Records Act* both unnecessary and counterproductive. According to the Parole Board of Canada (2014, n.p.), “Since 1970, more than 460,000 Canadians have received pardons and record suspensions. 96 percent of these are still in force, indicating that the vast majority of pardon/record suspension recipients remain crime-free in the community”. Pardons and record suspensions remain in effect until a person commits another crime. The fact that 96 percent of all granted pardons are still in effect today would seem to be undisputable proof that the *Criminal Records Act* accomplished what its pre-Bill C-10 authors intended. Given the government’s new and legislated stance on public perception and not bringing the administration of justice into disrepute, one wonders why the Conservative government has

not touted successful pardons from the highest mountain peak. Sadly, rather than support those people who turned their lives around and who earned a record suspension, the government questioned the efficacy of the *Criminal Records Act* triumphs.

According to Statistics Canada, approximately 97 percent of Canadians who applied for a pardon under the old *Act* received it (Parole Board of Canada, 2014). When Prime Minister Harper reported this statistic, he did so in a manner that questioned the integrity of the National Parole Board of Canada office, as though the applicants had not deserved the pardons they received. If 97 percent of applicants met the legislated criteria, we should applaud their hard work and support their endeavours, not cast doubt upon the competence of civil servants who appraised applicant suitability. A 97 percent success rate is an A+ where I went to school.

Pardons, or record suspensions in the new vernacular, allow individuals to access better paying jobs that in turn permit them to offer their families an improved lifestyle. It is also a symbol of social forgiveness, a milestone that helps reformed, law-abiding citizens to put their troubled past behind them. Prime Minister Harper's fear-mongering reforms to the *Criminal Records Act* is but one more barrier to positive social reintegration that is akin to a great big boot that pushes one back down into the muck from which a person struggled to remove themselves. Prime Minister Harper has perhaps forgotten that many people who have had a brush with the law have also been exposed to physical abuse, sexual abuse, and emotional abuse as children, and as an adult suffered from a drug or alcohol addiction. Keep your big boot to yourself, Mr. Harper, and extend a helping hand lest you send an ideological message that a segment of our population is unsalvageable. Rather than motivate positive change, the Bill C-10 legislation makes it more difficult for Canadians to repair their lives.

According to a report in the *Globe and Mail*, "statistics released to The Canadian Press under the federal access-to-information law show 15,871 applicants between March 2012 and this past December, down more than 40 per cent on an annualized basis compared with 2009-10" (Bronskill and Cheadle, 2013). It means that our sons and daughters, our brothers and sisters, will forever be second-rate citizens. So much for the family values Prime Minister Harper and the Conservative Party preach at the public pulpit. The sad and sorry fact is that the Conservative Party's get-tough-on-crime agenda elicits public fear and it hopes to earn votes on

Election Day. The changes to the pardon process do not get tough on crime, it gets tough on people who are no longer committing criminal acts, but the government does not seem worried about this public perception. They are more concerned with being perceived as making inroads toward reducing crime without ever having done anything substantive and they do not mind if certain Canadians suffer to achieve this end.

Unbeknownst to many Canadians, violent crime has been declining for two decades. As of today, incidents of violent crime in Canada are at their lowest since the mid-1960s, yet many right-wing conservative politicians would have Canadians believe that criminals are running amuck through our streets and communities and that they alone are single-handedly championing safer streets by restricting access to a record suspension. While Canadians may want increasingly safer streets, how does getting tough on people who have reformed themselves achieve that goal? How does getting tough on people who have lived crime-free for years keep my family safe?

The alterations to the *Criminal Records Act* conflict with the Correctional Service of Canada's mission statement that states, as a core value, "We recognize the offender has the potential to live as a law-abiding citizen" (Report of the Working Group on Human Rights, 1999). Prime Minister Harper knows all too well that pardoned, law-abiding citizens pay taxes, but he also realizes that the few hundred people that receive pardons each year are not a statistical voting threat. Former prisoners represent a segment of the population that the federal government can punish with impunity while appearing to champion justice to the rest of the people. It is unlikely that special interest groups will risk the negative media coverage and come to the aid of ex-criminals, ergo Mr. Harper and his backbenchers are free to play King of the Mountain with the lives of the underprivileged.

Hidden behind the smoke and mirrors of get-tough-on-crime rhetoric, the Conservative Party's stance gets tough on rehabilitated criminals while doing nothing to prevent unlawful behaviour. If judged solely by the modifications to the *Criminal Records Act*, Bill C-10, the *Safe Streets and Communities Act*, promotes exclusion while adding to a growing number of underprivileged social outcasts. This would seem to elevate the likelihood of crime, not reduce it. While Canadians were distracted by the boisterous 'dog and pony' show, the Harper government chipped another chunk of compassion out of our approach to evidence-based justice. Unless Canadians stand up true, north, strong, and free, Prime Minister Harper and

his right-wing Conservatives will strip Canada of this aspect of its national identity. The words “pardon me” will disappear from our language unless we stop stopping inaction against unreasonable government practices.

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Jeremy Fry is a 53 year-old man who was sentenced to life for killing a man in the mid-1980’s. Jeremy is currently on parole and working as an electrician while he pursues his goal of becoming an author. *Kalen’s Sword*, one of his earlier novels, was published by TallTails Press in 2004. His latest work, *Never Look Back*, is under review by Ekstasis, a publishing company out of British Columbia.

Mass Incarceration Two: The Continuing Saga

Shawn Fisher

With an estimated 2.4 million people being housed in over 7,000 prisons, jails and facilities across the nation, the United States (US) holds the dubious distinction of being the world leader in incarceration (Wagner and Sakala, 2014, p. 36). China, whose human rights record is often decried by American politicians, ranks second with 1.64 million people behind bars (Zoukis, 2014, p. 9). In the last 20 years, we have seen our nation shift from a defense-based economy to an incarceration-based economy. It is reflected in the fact that 1 in every 31 people in this country are either behind bars or on some kind of supervised release or in the fact that 1 out of 8 state employees works for a corrections-based agency (Reutter, 2009a; Reutter, 2009b), or in the rise of an \$80 billion dollar mass incarceration industry – the list goes on (Larson, 2014, p. 3). The point is how can we contest with entities that have a mandate to incarcerate and have a budget reliant upon the incarceration of people? This dilemma is echoed in the words of Upton Sinclair when he said, “it is difficult to get a man to understand something when his salary depends on him not understanding it” (cited in Frank, 1999, p. 891).

The stark reality is that in this country, public safety continues to be shaped by public opinion. It is reflected in society’s perception that its safety – and therefore its preferences for tougher laws – continues to be patterned after high profile tragedies, along with anger and revenge. It is about basic assumptions regarding what states must do to people who violate the law, not only to ensure safety, but to satisfy the sense of justice of law abiding citizens. As Doran Larson (2013) notes, all “this is at a time when tough-on-crime politicians [and presidential appointees] acknowledge states are going broke funding prisons with no substantial return to taxpayers – including no net boost to public safety” (n.p.) Larson (2013) continues: “Prison size is not determined by crime rates, but by what states decide to treat as crimes, how much punishment the public demands and how successful the prison industry is in forming that demand. All those factors are determined by whom voters imagine this punishment landing upon”.

In his article on Scandinavian prisons, Doran Larsen refers to the findings of Norwegian criminologist Nils Christie when he writes “more homogeneous nations institutionalize mercy, which is to say they attend more closely to the circumstances surrounding individual criminal acts. The opposite tendency ... not only results from, but widens social distance. The harshness of the punishment that fearful voters are convinced is the only

thing that works on people who do not think or act like them becomes the measure of the moral distance between those voters and people identified as criminals” (Larson, 2013, n.p.).

Since 1988, Massachusetts has trembled in the shadow of Willie Horton¹ and now that shadow has been extended by the actions of Dominic Cinelli.² After the horrific tragedy on 26 December 2010 where the latter shot and killed a heroic Wobum police officer, the anguish felt by the officer’s family, friends and colleagues quickly turned to anger – not toward the murderer but toward a system that allowed him to murder. Within days that anger turned to outrage as media outlets revealed unsettling instances of incompetence. Many felt that based on Cinelli’s record he never should have been granted parole. However, it was the lack of proper supervision by parole officers that caused a media storm. Soon the public demanded that Governor Patrick take immediate and swift action to prevent this from happening again. In the days that followed, Governor Patrick navigated a chaotic landscape in which promptness equalled political survival. Within weeks he forced the resignation of five of the seven members who presided over Cinelli’s parole hearing. On 13 January 2011, the Governor explained his actions at a press conference:

I understand that the decision to parole an inmate is an important part of the judicial system and fully appreciate that there are no guarantees in those decisions... However, the facts surrounding this decision and the consequences resulting from it demand action to maintain the public’s faith in the parole board and to protect the integrity of the parole itself (Keiper, 2011),

Unfortunately, the events surrounding Dominic Cinelli were a culmination of systemic failures, none of which were addressed by Patrick. For a deeper understanding surrounding the murder of Officer McGuire one must go beyond the failure of parole supervision or a tough on crime policy that Patrick resorted to. The systemic failures come from the DOC’s inability to rehabilitate the prisoners in their custody, the refusal of the parole board to utilize the tools that would recognize when someone is truly rehabilitated, and the negligence of the executive branch to make use of policies that have long been on the books in Massachusetts since 1899.

In a 2013 promotional video, Department of Corrections Deputy Commissioner Peter Pepe stated “we make every attempt to equip the inmate in our care with the tools that they need to re-enter society and become productive law abiding citizens”. While sounding like a well-polished platform, it is nothing more than a convenient cover story behind which \$364 million dollar salaries hide. A clear indicator that shows the folly of Commissioner Pepe’s statement is a 2014 recidivism report that calculates the recidivism rate for Massachusetts at 43 percent (Haas, 2014), a rate on par with the national average of 43.3 percent (PEW Trusts).³ That number is critical to understanding how Massachusetts has failed to utilize visitation, education, compassionate release and parole to prevent future released prisoners from creating more victims.

VISITATION

Studies stretching back over 40 years have consistently found that prisoners who maintain close contact with their family members while incarcerated have better post-release rates (Friedman, 2014, p. 24). However, prison officials often make visitation an unpleasant process, including lengthy waits, onerous searches, restricted visitation time, rigid enforcement of often petty rules, and staff who are abusive and disrespectful to visitors, as well as prison volunteers. The whole visiting process is made into scenes of collective humiliation. For example, one female was turned away because her newborn baby did not have shoes on his feet, while another mother was not let in *until* 4pm despite the fact she arrived at 12:40pm. Another waited while it took two hours to process eight people, and an 11-year-old boy was turned away for wearing sweat pants. The boy cried so much that it left his younger autistic brother traumatized. Even volunteers cannot escape the problematic issues that plague the visiting procedures.

An 83-year-old female volunteer was told she could not wear winter gloves despite the fact that she had to walk the length of a football field, in winter, to get to the chapel. That same woman cried when staff said her clothes were “too revealing”. A catholic Nun was visibly shaken after being told to remove her Habit, and yet still, a staff member told two new volunteers that “for as long as she has been here, she’s never known this religious stuff to work. They’re all phonies (referring to the prisoners)”. The volunteer later said “I’ll pray for her”. Then again during a special Family

and Friends Mass, the same staff member said within earshot of visitors “I can’t believe they allow them to have this. We have to find a way to stop it”. These are just a few of the examples that go on at MCI Shirley. Imagine what goes on at other facilities.

According to a 2011 Vera Institute study, many family members indicated that prison rules and practices – including searches, long waits and inconsistent interpretation of dress codes – can be unclear, unpleasant, and too restrictive and even keep people from visiting again (Friedman, 2014, p. 25).

It is abundantly evident that maintaining family support lowers recidivism rates and therefore results in less crime, which benefits society as a whole. Yet, in spite of this clear correlation, the DOC does little to encourage contact between prisoners and their family members (Friedman, 2014). To further illustrate this point, the Federal Communications Commission (FCC) voted in August of 2013 to reduce the cost of prison phone calls nationwide to foster rehabilitation and recidivism. FCC Commissioner Mignon Clyburn stated “contact beyond prison walls can make a real difference... promoting rehabilitation and reducing recidivism. Making these calls more affordable can facilitate all of these objectives and more” (FCC, 2013). Yet, numerous “D.O.C. officials filed objections to the FCC’s order” (Friedman, 2014, p. 26).

EDUCATION

In addition to family relationships, education plays a significant role in the rehabilitation process. However, since 2007, the amount spent on programming has steadily decreased across all states (Haas, 2012). In 1994, President Bill Clinton gutted prison education programs by barring them from receiving Federal Pell grants. As a result, college programs for prisoners dropped from approximately 350 nationwide to around a dozen according to *The New York Times* (Clarke, 2014). Then Congress failed to renew federal funding in 2011, 2012, and 2013 for Spector grants, a program that helps finance higher education courses. The elimination of Spector funds compounds the woes of prison education programs. A study by the RAND Corporation on behalf of the Bureau of Justice Assistance, integrated a 2013 meta-analysis of more than 30 years of previous research that concluded “inmates who participated in correctional education programs had a 43% lower odds of returning to prison than inmates who did not” (ibid, p. 34). “These findings reinforce the need to become smarter

on crime by expanding proven strategies for keeping our communities safe and ensuring that those who have paid their debts to society have the chance to become productive citizens”, US Attorney General Eric Holder said when the findings were released in 2013 (ibid). Yet, in Massachusetts, the Department of Correction spends less and less of its half billion dollar yearly budget on prisoner programming (see *Table 1*).

US Secretary of Education Arne Duncan has stated that “[c]orrectional Education programs provide incarcerated individuals with the skills and knowledge essential to their futures” (ibid). The effects can be felt as far as Oklahoma down to Florida and from Minnesota to West Virginia. Stephen Steurer, Executive Director of the National Correctional Education Association (NCEA) said, “[w]e’re cutting our throats” (ibid).

Table 1: Percentage of Yearly Budget Allocated to Programs

Massachusetts D.O.C. Spending for Prisoner Programming				
Fiscal Year	2007	2009	2010	2011
Budget \$	\$13,409,837	\$12,882,947	\$11,308,339	\$10,833,784
Percentage of Budget	2.5%	2.4%	2.2%	2.09%

Figure adapted from: <http://www.realcostofprisons.org/writing/>

In New York, a senior official with the administration of Governor Andrew Cuomo, told reporters at a 31 March 2014 briefing that non-profit organizations and foundations had expressed interest in financing the Governor’s plan to expand college classes at ten prisons. The announcement signalled the revival of a program that Cuomo unveiled in February of 2014, which was quickly scuttled after New York State law makers voiced fierce opposition to using taxpayer dollars to fund college courses for prisoners. When confronted about his educational program expansion, the Governor conceded that “I don’t agree with it but I understand it, and I understand the appearance of it” (Clarke, 2014, p. 36). Yet, despite political backlash and criticism, he never gave up on his plan.

What Governor Cuomo understands is what Fedor Dostoevski explained in his 1866 novel, *Crime and Punishment*, that by treating those society

deems to be the worst of the worst in a humane manner, you enhance the social conscience of society itself. Providing an education to the criminalized is not the misguided act of condoning irresponsible behaviour, nor is it a reward for breaking the law. On the contrary, it is an investment into enhancing public safety by redeeming the ‘incurable’, which curbs recidivism and prevents the further erosion of our social fabric.

Citizens are outraged about paying for prisoners’ education when law abiding citizens cannot afford to pay for their own children’s education. The truth is if we spent less on crime and punishment, then more financial aid would be available to help those very people send their kids to college. In Massachusetts taxpayers spend over \$1 billion on an incarceration industry. Why not invest 0.01 percent of that annual budget – equal to \$1 million – on proven strategies like college education or vocational education which would lower the burden of cost to the taxpayer over time? Why pay more for punishment when we can pay less for rehabilitation?

Massachusetts used to be highly regarded for developing innovative programs to reduce recidivism, as well as our work evaluating these programs with the strongest research methods available at the time. Today, we lag far behind the country in implementing reforms proven to reduce costs and improve public safety (Forman and Larivee, 2013, p. 10). The DOC’s culpability for their lack of reforms and developing programs is well documented. However, the failings of the executive branch go widely unnoticed.

COMPASSIONATE RELEASE

According to an American Civil Liberties Union (ACLU) study, Massachusetts ranks third with the highest percentages of aging prisoners at 19 percent, while West Virginia and New Hampshire were in the top two respectively at 20 percent (Prison Legal News, 2014, p. 40). It is also the major reason why state corrections spending has grown by 674 percent over the last 25 years, the ACLU study determined. While ballooning expense of caring for geriatric prisoners is a national issue, the ACLU and other advocacy groups have proposed alternatives.

Some of those proposed alternatives are for parole boards to grant conditional releases to elderly prisoners, using a peer-reviewed, evidence-based assessment to determine the risk to public safety. States should also utilize and expand medical parole, known as compassionate release,

and commutation, an executive decision that has been on the books in Massachusetts since 1899.

An October 2013 report by the Pew Charitable Trusts analyzed data on prison healthcare spending from 44 states. Those states spent \$6.5 billion on healthcare in 2008 – a 2.3 billion increase from 2001 (Ridgeway, 2012, p. 22). Massachusetts alone spent \$95,626,660 on medical costs in 2011 (Department of Corrections, 2011). Contrast those totals with the actual cost of \$3,200 per prisoner to be monitored on electronic bracelet if given a Compassionate Release (Siedlitz, 2012). “When you have people serving life sentences, they’re going to die in prison, just like people serving 20, 30 and 40 year sentences are inevitably going to grow old behind bars”, noted Jamie Fellner, senior advisor of the US Program at Human Rights Watch (Prison Legal News, 2014, p. 40). Since 1983, deaths in prisons nationwide increased an astonishing 550 percent (Siedlitz, 2012).

“The risk to re-offense is much lower after age 50”, said David Fathi, who heads the ACLU’s National Prison Project (Prison Legal News, 2014, p. 40). Empirical studies have shown that by age 50, arrest rates are just over 2 percent and almost nil at age 65. In New York, for example, only 7 percent of ex-prisoners ages 50 to 64 return for new convictions. In Virginia, only 1.3 percent of ex-prisoners over 55 committed new crimes (ibid, p. 41). Despite such evidence Massachusetts has granted only one commutation in 27 years, and the only commutations given for medical reasons were in 1979, 1980 and 1981.⁴

One small step toward reform was taken by US Attorney General Eric Holder who announced on 12 August 2013 that the Bureau of Prisons would institute new Compassionate Release policies for federal prisoners.⁵ Currently, there are only 10 states that do not have some type of medical release programs for state prisoners. Most north eastern states (New Hampshire, Connecticut, Rhode Island, and Vermont) have such measures (Muisse, 2013). Until the social distance between the citizenry and those incarcerated narrows, Massachusetts will remain without.

Parole

Doran Larson (2013, n.p.) concludes his article on Scandinavian prison with the following words: “In 1832, Alexis Tocqueville and Gustave de Beaumont came to America to study its prisons. They concluded their report with a warning: Guard against extremes, and do not let the zeal with which

you advocate certain means obscure the object sought to be obtained by them". That warning went largely ignored by Governor Patrick following the Dominic Cinelli incident. Patrick, in bowing to public fears and outrage, attempted to correct the problems, but overzealously forced five of seven board members to resign and appointed a former District Attorney (DA) Josh Wall to head the state's parole board. Both measures were extreme and in no way addressed the problem.

Josh Wall then took the task, as a DA does, to retry the convictions of all candidates for parole with the criminal justice mantra of 'tough on crime' being modified to 'tough on parole'. In fact, from 2011 until May of 2014, there were 365 parole hearings for lifers of which only 28 received positive votes (8.2 percent) (Swartzapfel, 2014, p. 58). His 'tough on parole' mantra earned him a promotion in 2014 as he was appointed a judgeship.

This is a popular political response to a high profile tragedy that gives the public the appearance that it is now safer, yet all it does is obscure the reality of being a criminal justice failure. "Policies that have led to more draconian sentences and fewer paroles", writes Wesley Lowery, of the *Boston Globe*, as they "have extended prison stays by a third since 1990, costing the state an extra \$150 million a year" (Lowery, 2003).

As *Boston Magazine* writer and professor Jean Trounstein (2013, p. 39) wrote "a drop in parole numbers actually makes us less safe". The percentage of prisoners leaving under parole was slashed from 38 percent in 2010 to 19 percent in 2011 under the Governor's newly appointed parole board.⁶ The result was that more prisoners were leaving the harsh prison environment and were dumped directly into society with no supervision or transition assistance. Massachusetts' per capita parole rate is less than one fifth the national average and is the sixth lowest rate for adults on parole. Put differently, while the national rate is 351 parolees per 100,000 residents, in Massachusetts there are 65 parolees per 100,000 residents (Glaze, 2010, p. 33). Is this better public safety or another example of Massachusetts lagging behind in implementing proven reform strategies? Perhaps there is a better way.

Successful parole systems throughout the country employ a system of graduated sanctions. This means that a parolee's restrictions on freedoms are gradually lessened as he/she successfully handles those freedoms, or gradually increased if they fail. In any event, parole revocation is only for newly committed crimes or continued violation of sanctions.

The idea of graduated sanctions should begin in prison long before a prisoner even sees a parole board. Prisoners should move to lower security as they approach parole dates, but that is not happening in Massachusetts. In the 1990's, the DOC and its union managed to convince the legislature to build a super maximum security prison that required more correctional officers than the lower security facilities they were closing at the same time. By 2011, only 14 percent of the prison population was in minimum security facilities. By 2008, less than 33 percent released on parole from prison left from minimum security (Department of Corrections, 2008, p. 64). Six years later, the problem has only become worse.

Rhiana Kohle (2008, p. 25), who authored *Massachusetts Recidivism Study*, concluded: "If an inmate is going to be released into a community without being paroled (as current trends indicate), policy makers should devise a method of reducing, if not eliminating, the number of inmates who live in a medium or maximum custody prison one day and in the community the next". Doing so supplants a prisoner from a hostile environment that does little to prepare prisoners for re-entry and places them squarely into an environment unequipped to handle a person that is institutionalized, unsupervised, and without a support system.

Presumptive parole requires paroling a prisoner at the earliest release date unless negative behaviour of the prisoner or lack of programming occurred during incarceration. So, rather than a parole board focusing their investigation into an already convicted person's crime, as they currently do, they would limit their research to the prisoner's incarceration record. If prescribed rehabilitative programming and education was engaged and the prisoner remained nonviolent and drug/alcohol free – parole is presumed. For a presumptive parole system to be employed in Massachusetts, new legislation is required. Current law states that parole cannot be granted "merely as a reward for good conduct" in prison (Massachusetts General Law Chapter 127ss130), but what about rehabilitation? Statistics and certificates alone do not accurately depict an individual's growth.

Effective determination of parole eligibility is best determined by those with firsthand knowledge of the parolee regardless of the crime. In 1964, Ronald Johnson was convicted for the murder of a Boston police officer and sentenced to die in the electric chair at the maximum security state prison in Walpole. His original sentence of death was overturned by the US Supreme Court under *Furman v. Georgia*, 408 US 238.33.LE 2nd 346. 92 S CT 2726

(1972). By 1974, less than two years after leaving death row, Mr. Johnson was granted furlough status. He completed the necessary 156 furlough hours in order to become certified for all future furloughs. This certification meant his furlough papers no longer had to go to the Commissioner's Office, but were automatically approved by a phone call. By 1984, he received a favourable vote of 4-2 to forward a commutation recommendation to the Governor. When he went before the Commutation Board he had amassed a large number of support letters comprised of a who's who of correctional officers and DOC Personnel.⁷

Needless to say, Mr. Johnson did not receive a commutation nor did he receive it on his three future attempts. He completed 2,917 furlough hours and his institutional record was nearly perfect. He was, however, a casualty of the politically charged Willie Horton commercials that all but ended Governor Dukakis' presidential run.

Nonetheless, it is what he did receive that is of significant importance. Receiving letters of support were much easier back then. Today, such letters are as extinct as payphones – unknown, unheard of and definitely forgotten – even by those who once used them. In today's culture, letters of support are frowned upon and discouraged. The very people who know you better than any statistic or six-part folder are not relied upon for arguably the most important decision that directly impacts public safety. DOC staff is wide-eyed when asked for such letters and volunteers are fearful of being banned. One such volunteer who taught Bible study at MCI Walpole, showed up for a parole hearing in March of 2007 and found himself banned for life from all institutions.

Instead of alienating such people, they should be encouraged to give their feedback on all lifers going before the parole board. Members of the parole board should be making periodic unannounced visits to keep abreast of a prisoner's progress or by simply calling the institution and speaking to those who are familiar with the prisoner and his/her daily habits. Of course this does not address the needs of a prisoner once granted parole. For presumptive parole to work effectively it would require more of an investment in parole field officers. In 2007, there were only 51 field parole officers with an average case load of 47 parolees, which is 30 percent higher than the national average (Massachusetts Parole Board, 2007). In the US the average parole field officer carries a case load of 39 (Rezendes, 2012, B2). Shifting human resources from prisons to parole is fiscally sound policy

because parole management is only 6 percent of the cost of incarceration (Haas, 2010, p. 22).

Without changes in the system, Massachusetts parole will not be able to function effectively. Parole's intended purpose of supervised integration back to society would best be served if the recommendations in this paper are implemented. Strengthening our parole system and making it more effective will reduce recidivism, increase public safety and save millions of taxpayer dollars. But again, presumptive parole requires legislative action.

CONCLUSION

"The punishment is the restriction of liberty; no other rights have been removed", reads a fact sheet on criminal services in Norway (cited in Zoukis, 2014, p. 9). Scandinavian prisons believe in the concept of rehabilitation without being naïve. They believe that prisoners want to change and prison officials do whatever they must to help facilitate that change. It is a combined process that involves prison, probation and greater society. Inside American prisons "the ideology holds that punishment, for the sake of the infliction of pain, is the logical response to all misbehaviour" (Larson, 2013, n.p.). The maxim that "*nothing else works* is not a statement of fact; it is a declaration of that ideology" (ibid).

As Paul Wright (2014, p. 10), editor of Prison Legal News wrote in an editorial: "While there are undoubtedly prisons in other parts of the world that are 'worse' than those in the U.S. it is worth noting that as a general rule it is not a deliberate government policy in such countries to treat people poorly and cruelly as part of a punitive system, whereas the U.S. spends billions of dollars to do just that". Rather than remediating the effects of what led a person to prison, prisons tend to institutionalize them.

Without changes to visitation policies, incorporating educational programs, legislating compassionate release and revamping the parole system, prisoners will continue the cycle of creating victims. To echo Governor Cuomo, "we're imprisoning, we're isolating, but we're not rehabilitating the way we should" (cited in Clarke, 2014, p. 34). So why continue with the draconian and antiquated prison system that is failing both those who reside inside them and those who live in society?

US Supreme Court Justice Anthony M. Kennedy summed it all up best when he stated, "A people confident in its laws and institutions should not

be ashamed of mercy... a decent and free society founded in respect for the individual ought not run a system where the sign at the entrance for incarcerated people says ‘Abandon All Hope All Ye Who Enter Here’ (cited in Hames, 2013, p. 175).

ENDNOTES

- ¹ Willie Horton left Massachusetts during a June 1986 furlough (his tenth). He had been serving a LWOP sentence for first-degree murder in the 1974 death of Joseph Fournier, a gas station attendant. Horton was convicted under the Massachusetts felony murder law because the slaying occurred in the act of a robbery. It was never proven that Horton, rather than one of his accomplices, actually committed the act. During his tenth furlough, he left the state and broke into the Maryland home of Clifford Barnes and his fiancée and, armed with a gun and a knife, slashed him repeatedly and raped her twice. Horton was convicted by a Maryland court and sentenced to life in imprisonment. The case achieved national notoriety because of its impact on the Presidential election strategy. The case was particularly notable in the long-term because it increased public fear of crime and of corrections policy.
- ² Dominic Cinelli was convicted of Armed Robbery and sentenced to life in prison. In September 2009, Cinelli was granted parole and remained on parole until 26 December 2010, when in the commission of a robbery he killed a Woburn police officer and wounded another. Cinelli was shot and killed in the shootout. During the investigation, several glaring “management lapses” were discovered that led to the resignation of numerous parole board members and other public safety officials who held key positions during Cinelli’s parole period.
- ³ John A. Burke (1979) second-degree murder; Anthony McDonald (1980) second-degree murder; Maurice Roulhac (1981).
- ⁴ Based on that average rate an estimated 276,000 prisoners who are released can be expected to recidivate each year.
- ⁵ Other public figures such as Jennifer Granholm (Michigan), Mike Huckabee (Arkansas), Rick Perry (Texas), Jeb Bush (Florida), Andrew Cuomo (New York) and Newt Gingrich have taken similar public policy positions against the current embrace of penal populism, and have expressed the desire to eliminate inefficient government spending and utilizing the tools necessary to accomplish that task.
- ⁶ Statistical data from Annual Report of the Parole Board, as well as the Department of Corrections.
- ⁷ Ronald Johnson had support letters from such individuals as Commissioner of Corrections, Luis Berman, Associate Commissioner Fred Butterworth, Superintendents Alvin Jones and Barbara L. Young, Deputy Superintendents George Madderi, Bill Boyajion and Dennis W. Brown, along with head correctional social workers, correctional counselors, staff psychologists, administrative assistants, supervisors, executive directors, etc.

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Check Out Time

Victor Becerra

This morning at about 6:00 am, I woke to a feeble scream. “MA-AN DOWN! MAN DOWN!” It was almost time to get up and ready for breakfast, so I was alert right away. I could tell the screams were coming from the cell in front of mine. I recognized the guy’s voice.

Everything was quiet, but after the weak calls for help, the wing became even quieter. One never knew what the situation was. Could it be a heart attack? An overdose? A cell fight? One can never know. I imagined that everyone who heard the cries for help was trying to figure out who was yelling and what the situation was. My cell-mate got up right away and approached the cell door, trying to figure out what was going on. “Is probably a *dope end* who overdosed”, he said, worried that breakfast would be delayed.

“MA-AN DOWN... MA-AN DOWN”, the skinny guy in his early 60s yelled once more, as if embarrassed to call for help. “His cell-mate is probably dead already”, my own cell-mate said, as though unconcerned by what was happening.

After about a minute, the guard, who was already walking on the tier, unlocking the doors to let the wing workers out, looked inside the cell that the yelling was coming from. The guy inside very casually raised his hands so that the guard could see his cut wrists. He had slashed his wrists in a sorry attempt to terminate his life sentence in prison. His hands were covered with plastic bags so as to contain the blood and when he raised his hands blood dripped down from his elbows to the floor.

“Look what he did”, my cell-mate said, shaking his head. “He cut himself. I guess he couldn’t wait until the *Board* lets him out... He must have demons in his head... I guess he changed his mind about killing himself... If he really wanted to die, he wouldn’t have put bags over his hands to hold the blood... Some people are just too weak and can’t handle prison”.

By that time the guard had used the radio to call for medical assistance, they were already there. Breakfast was delayed by about 30 minutes, but, other than that, everything ran normally – just like on any other day.

There are many people living behind bars who do not care what happens to their neighbours. Many do not believe in depression or believe that depression is something only weak men get. But every time I hear the words “man down”, I feel uneasy.

Some people may think that suicide is the coward's way out, but after twenty years behind bars the body gets frail, sick and old. Worse than that, without the possibility of ever getting out, it is understandable that one might want to *check out* before becoming another elderly, sick, lonely man in prison, with nobody to take care of him.

It is a peculiar thing to see how lonely a person can become, even in a crowded state prison. Some prisoners have nobody to talk to about their personal problems – it is hard to open your heart to someone who may later use it against you.

Carrying a heavy load alone is not an easy thing to do – this I know very well. I have been through illnesses, losses, deaths of family members, streaks of bad luck, waves of depression and fear. And I have had to act as though I was living on top of a rainbow.

I understand why someone would rather go out that way than wait until he dies of old age, or worse, dies a violent death. For you see, in prison, one does not have many choices when it comes to dying.

As for the guy who had slashed his wrists, if he was having personal problems now and had nobody to talk to, I cannot even imagine how he will be in another twenty years.

At breakfast, other prisoners were talking about how they wished the “man down” screams had been because of a cell-fight. That would have been more exciting for them. Those comments made me sad and the thought of someone dying alone, even in this crowded place, made me want to cry. But of course I did not. I would not want to look like a wimp.

After breakfast, some prisoners went to school, others to work, and others to the yard. But I stayed in my cell and organized my property. I wanted to have everything in order, just in case one day I feel the pressure of time.

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Lenny's Last Days... in Attica *

John J. Lennon

My biggest fear is dying in prison. I do not fear the drama of dying, whether by sword or by sickness, but rather, the idea that I will be unable to get out and give life another go. I fear the idea that *this* will be it and that is why my friend Lenny's plight has pained me. He came to prison thinking he would make it out. Turns out, he will not. This is a story about Lenny's last days.

Nowadays, the typical bank robbery is pulled off with a note, and that is how it went down at a Bank of America in New York State in September 2004. "C'mon lady, hurry up! You read the note", the robber demanded. "Give me the small bills". The teller complied. Then it was over.

The robber wore a baseball cap and sunglasses. He also sported a heavy heroin addiction. Lenny robbed this bank and two others in New York the same way before heading west where he hit another bank and was captured at the bus station with a bag of money. He served five years in a private prison and was then extradited to New York in 2010 to begin a ten-year sentence in Attica.

Today, he is a sixty-something white man, grey on the sides, bald on top, overweight, with thick, Buddy Holly eyeglasses that are surprisingly fashionable again. Lenny's glasses are state-issued, but they give him a bad look for Attica. Guards and prisoners often wonder if he is a pedophile. He is not.

Lenny and I saw each other at volunteer programs, the only forums for rehabilitation in Attica. We went to seek some semblance of sanity and of humanity. Cephias, a support group that began after the notorious 1971 uprising, is hosted by volunteers and meets twice a week. A few years ago, Lenny shared with the group that he had been diagnosed with colon cancer. "Yeah, I was out at the hospital. They gave me radiation for a few weeks, then operated", he said. "I have to wear this colostomy bag for now, and if the cancer doesn't come back they said they'll seal me up in a few months". He looked pale, but he seemed hopeful.

As months passed, Lenny seemed to lose his upbeat swagger. He walked the corridors with his head hanging, stopped shaving and his scruff grew into a gray beard. He stopped saying hello, stopped sharing in Cephias groups and seemed to stop hoping. One time, while waiting to be called out of the bullpen for a Cephias meeting, other prisoners in the waiting area began to whine about a sewage-like odour that permeated the room. "Ay, yo, who da' fuck smelling like shit?", one said. Lenny sat shamefaced as other dopey prisoners joined in on the rant and held their shirts over their

noses like mean kids on the playground. One prisoner looked at Lenny and said, “Motherfuckas’ need to wash they ass!”

Prison is crude that way where people just react – to a smell, an observation, a thought, and then blurt out whatever comes to mind. We can be abrasive, socially awkward, devoid of empathy, and we do not even know any better. Initially, I only empathized with Lenny because I have Crohn’s disease and, worst-case scenario, I may wind up with a colostomy bag or even develop colon cancer myself. So I would pick his brain about cancer symptoms and pretend to be interested in him, though I was mostly concerned about my own ass.

Some weeks ago, Lenny moved from E-block – Attica’s sweetest block, which houses prisoners assigned to cushy work details – to my company in C-block, Attica’s most notorious block – a bellicose environment where the toughest guards operate under a mantra “security... security... security”. Lenny told me he thought one of the guards in E-block got tired of smelling the odour from his colostomy bag and had him transferred, which sounds about right. Plenty of dangerous prisoners, many of whom recently finished stints in solitary, are housed in C-block. My particular company houses the block porters, like me, who do cleaning and other chores, as well as the sick and elderly, like Lenny. But why house the feeble with the fearless? Stuck with the gangbangers and all of C-block’s misery, Lenny settled in.

Recently, we were in the shower together and I saw his colostomy bag. “I thought they were gonna seal you up?”, I asked. “No. I’m terminal, John. The cancer came back”. “Oh, man... Ah, waddaya’ gonna’ do, John?”, I replied. “It’s my time”, he said. “They gave me a year, two tops”. Death had sunk its teeth into Lenny like a poisonous snake and venom was now spreading throughout his body.

At that moment, in that shower, I knew I needed to write about Lenny’s story, because it is empowering to have the ability to put pen to paper and thrust Lenny’s pain upon an audience to evoke emotions. And his story, turns out, is a sad one from beginning to end.

While writing this piece, I exchanged kites (written notes) with Lenny, transported by one of the porters. The guards like this porter because he regularly beats up rapists and child molesters for them. He is a thug with a raspy voice. “Yo, John, sup’ wit’ that old-ass white dude? He look mad funny-style”. I told him that Lenny was good, which meant that he was not a child molester and that he was my friend.

Because Lenny and I attend another fellowship together, I know he knows about good sobriety and the honest self-reflection that comes with it. So I asked him about making amends. “What about scaring those bank tellers?”, I wrote. I immediately regretted asking him that, because it is a bit much for a convicted murderer, like Yours Truly, to solicit contrition from a man who robbed banks with notes. Lenny kited back: “John, I know about empathy and amends, but at this point I just don’t care anymore. I’m very negative now. I just want to die”.

Lenny entered the system young. He told me he was fifteen when he stabbed his alcoholic father with a kitchen knife because he hit his alcoholic mother. He was sent to juvenile hall, then wound-up in foster care, and then he became an emancipated minor. After that, his dysfunctional life played out. He became an alcoholic and addict, a lousy husband, a deadbeat dad, a liar, a thief, a jailbird.

If he had stayed sober out there, he probably would have had a shot at a second act in life. Sadly, though, Lenny’s life has resembled one long, self-destructive, drama-filled first act. Now he is dying slowly, in a humiliating way, in a disgusting place – in Attica.

Recently, Lenny and I marched through a gauntlet of guards and headed to our evening group. He was randomly pulled off the line to be frisked before entering the chapel. Because of his pierced eardrum, he did not hear the fresh-faced guard ask him if he had anything on him. When the guard felt the colostomy bag, he squeezed it, which caused fluids to seep out. He then shoved Lenny’s face against the wall. “What the fuck is that?” “It’s a shit bag. I have colon cancer”, Lenny said. Disgusted, the guard said, “Get in the chapel. C’mon man, hurry up!”

In November 2014, a version of this piece ran in *The Marshall Project*, a news organization focused on the American criminal justice system. The article garnered some positive attention. There were letters to the editor, and Lenny received letters too, sympathizing with his plight. Then the doctor spoke with him for an hour. He told me that had never happened before.

However, the guards read the article too, and they threatened Lenny, called him a whiner, and told him he was not the only one with a shit bag. They broke his fan and lamp during a cell search. Then they left him alone for a bit. Due to the odour, they moved him to the last cell on the company, which had no running water. Two weeks passed. At our evening group, a dehydrated Lenny told me about his ordeal. I had since been transferred out of C-block, and, fortunately,

had not received any reprisal myself. I immediately wrote to the superintendent and cc'ed it to a reporter I knew was writing an investigative piece about Attica for *The New York Times*. Lenny's water was fixed the next day.

At our next evening group, Lenny told me that the plumber said that the valve had simply been turned off. Lenny could not see why the guards would intentionally do that to him. "Man, the poor bastard that was in that cell before me must have really pissed off the guards", he said. Lenny's naiveté was almost endearing. "I'm glad your water's back on", I said.

There was no need to tell Lenny that it was likely he who was the poor bastard. I felt bad that I had caused Lenny more pain. But how can someone read this article and think that Lenny deserves to suffer more? There is a meanness that exists in Attica, which surely oozes out of some of us prisoners, and the guards allow it to seep into their souls. It is also the drudgery of the job, I suppose, the us-versus-them mindset that has cascaded from the 1971 uprising. The result is apathy.

Sadly, the Attica guards are not the only apathetic ones. Lenny's application for medical parole was denied a few months ago. He was told to reapply. In January 2015, a specialist told Lenny his days were numbered. I pray he gets medical parole next time. Admittedly, this story is as much about my own existential purpose, as it is about my own desire to feel empathy. In the end, perhaps my biggest fear is living life like I am dead inside.

ENDNOTES

An earlier and shorter version of this article first appeared in *The Marshall Project* (see <https://www.themarshallproject.org/2014/11/15/dying-in-attica>).

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John J. Lennon was born and raised in New York City. He used drugs, sold drugs, toted guns and eventually shot another man to death. He is in his fourteenth year of a twenty-eight-years-to-life sentence. He is currently in the Attica Correctional Facility, where he has been participating in a creative writing workshop since 2010. He also participates in a privately funded college program, from which he expects to graduate with an associate degree in 2015. He was first published in *The Atlantic* in August 2013. His work has also appeared in *The New York Times* blog nytimes.com/ontheground, *Times Union*, *Grapevine* and *The Marshall Project*.

Collins Bay Institution: A Cluster F*#k

Jarrod G. Shook

They say the sun never sets on the Collins Bay Empire. At least not now that Collins Bay Institution is a multi-level complex, a super prison where maximum, medium, and minimum security prisoners are brought under the sovereignty and subject to the panoptic gaze of a centralized administrative team.

Correctional Service of Canada (CSC) officials, along with the conservative ideologues who envisioned this domain in the so-called *Roadmap to Strengthening Public Safety* (Sampson *et al.*, 2007), have been referring to the new prison model as a “clustered site”, a more “efficient” way of doing corrections. It is a cluster, alright – a cluster f*#k.

In the 2009 report, *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety*, which attacks this pernicious scheme to appeal to the conservative base and remodel Canadian prisons on the failed American prison industrial complex, the UBC law professor Michael Jackson and Graham Stewart (2009), the former executive director of the John Howard Society of Canada, ask some pointed questions about what this new “philosophy” in corrections might actually mean in practice. Among them is the question: can treatment, school or correctional staff—even administrators—easily move between prisoner groups of various security levels and adjust to these groups in an appropriate manner, or will they tend to act as though all groups are made of higher security prisoners?

This is a decisive question, because according to CSC policy, prisoners classified at maximum security require a *high* degree of supervision and control, at medium security a *moderate* degree of supervision and control, and at minimum security a *low* degree of supervision and control. Accordingly, CSC uses “research based tools” to assist in determining the most appropriate security level for the penitentiary placement of a prisoner. This includes establishing “behavioural norms” at institutions, or the degree to which an individual’s behaviour compares to the behaviours expected for those placed at a particular penitentiary’s specific security level. For instance, maximum security prisoners are expected to “interact effectively and responsibly, while subject to *constant* and *direct* supervision” (Commissioner’s Directive 706). Contrast this with minimum security prisons, where prisoners are expected to interact effectively and responsibly with *minimal* supervision. Certainly staff, for reasons of all kinds, whether

they are security officers or otherwise, must adopt a particular posture and temperament on the job that reflect the nature of their working environment. This is particularly true for guards.

To use an analogy, think of this system of control as if it were a game of hockey. Correctional officers might all be on the same team when they come to work, but they are playing different positions when they work at different security levels. Sure a forward (maximum) might be able to fall back and play defense (minimum) every now and again, or vice versa, but the coach does not go switching the roster around every game and most certainly not every shift. This would not only be too confusing for everyone, but would ultimately affect the dynamic of the game. But this is not a game. There are implications for everyone.

Not only will this “more efficient” way of doing things create havoc, but it could also have the effect of turning Collins Bay’s Minimum (formerly Frontenac) into a *de facto* medium security prison.

Convict culture is rigid. Prisoners enforce strict social rules upon one another, sometimes on the threat of violence or severe social ostracism if not adhered to. Not everyone conforms to these rules. Typically, however, as prisoners cascade from higher to lower security levels, their commitment to the convict code erodes somewhat. For this reason, minimum security prisons are generally free from the politics, and ultimately violence, that is associated with higher security levels. Prison guards too have their own particular culture and, just like prisoners, correctional officers at higher security levels are generally committed to a particular philosophy. You do not see this as much at lower security levels, nor do you see the adversarial *us* against *them* mentality that so often places an additional and unnecessary strain on an already distressful and antagonizing environment. This is a good thing – for everyone. It protects the environment from becoming any more toxic than it already is. As rotating shifts of prison guards from maximum to medium to minimum on Monday, Tuesday, and Wednesday are put into action, the cultural milieu of higher security levels will likely creep its way into the minimum. The result is being hardened and a *de facto* increase in the institutional security level. Without a change in trajectory, it is only a matter of time before this happens.

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Incentive to Scrutinize

Jarrold Shook

In line with the army of changes the Correctional Service of Canada (CSC) have been marching forward with as a part of their “transformation agenda” on the government endorsed *Roadmap to Strengthening Public Safety* (Sampson *et al.*, 2007), the topographers themselves have decided to carve out yet another jagged valley for prisoners to traverse through. As of 1 October 2013, federal prisoners are now required to pay a sizable percentage of their already meagre prisoner employment earnings towards food and prison cell accommodations. Concomitantly, prisoners employed by the Crown Special Operating Agency, CORCAN, will no longer receive incentive pay in exchange for the many hours of labour they contribute towards the production of goods and services used by CSC, other public institutions, and purchased through private corporate contracts. These “accountability” measures, along with other rules and practices which were announced by former Conservative Minister of Public Safety Vic Toews in April 2012, were then branded as an attempt to usurp a few million extra dollars per year in savings from the nearly 3 billion dollar annual budget of CSC.

Prior to the changes, prisoners would receive a maximum of \$6.90 for one day of prison work in areas such as food services and prison maintenance, while CORCAN employees would receive the same base pay along with an additional \$2.20 per hour. With the proposed changes in effect, prisoners will receive 30 percent less per day and the CORCAN incentive pay will be eliminated altogether, meaning that the rate of pay will be reduced to \$4.90 per day for a basic exchange of labour. Meanwhile, the more complex skills-based labour at CORCAN will no longer be expressly remunerated above the base rate at all.

While the treatment and wage status of prisoners are no doubt low on the public list of priorities in these austere times – when even many law-abiding citizens are feeling the effects of government cutbacks – this issue is one that deserves attention. It must be looked at in terms of the broader interest of public safety and the future of CSC.

It is interesting that the former Minister of Public Safety advertised these measures in terms of the financial benefits that could be reaped through their implementation and terms of the implicit message of accountability that it would send to prisoners. In actuality, these measures will likely have the exact opposite effect.

A prison is essentially a miniature society, and naturally one with few comforts and many deprivations. With such scarcity, access to basic goods, which are already tightly regulated, take on extraordinary meaning for the individuals living under such conditions. One of the ways that prisoners access these goods is through the prisoner canteen, where prisoners can purchase items with the payments they receive for their work assignments. This creates a level playing field so that those without family members in the community able to provide them with financial support can still purchase things like stamps, hygiene items, the occasional chocolate bar, Tylenol, or place money on their prisoner telephone card.

In keeping with the analogy of the prison population as a micro-society, it is the access to and control of scarce resources that generates the most competition and conflict. By further severing prisoners from their ability to access these resources, the prison environment will naturally become more hostile. Prisoners will more often come into conflict with one another and they will be more inclined to find illegitimate means of satisfying the deficit through participation in the underground economy of the prison and/or by trafficking illicit drugs in the institution (although CSC will vehemently deny their availability).

From a financial perspective, these new security threats will likely generate hundreds of thousands of dollars in both static and dynamic security measures each year for each of the dozens of institutions that CSC manages. Such expenditures will only be dwarfed by the additional costs of managing prisoners who end up in administrative segregation, the many extra hours worked by security intelligence officers performing investigations and the substantial increase in the reclassification of prisoners as maximum security prisoners.

In terms of accountability, altogether eliminating the scant \$2.20 per hour payments that CORCAN prisoner-employees received for their productive labour sends an entirely negative message to workers. If anything, it sends the message that one is being exploited. Part of the reason that CORCAN jobs were attractive for prisoners was the fact that meaningful labour could be exchanged for a little extra money that could be sent home to family members, used to finance post-secondary education, or put away for an eventual release. Of course, the incentive component also ensured that CORCAN had a steady supply of willing prison labourers to contribute to the \$60.5 million in sales that the agency generated in 2006-2007 when Sampson et al. (2007, p. 46) made their recommendations for the federal penitentiary system.

In response to the elimination of incentive pay for CORCAN prisoner-employees, one might ask why a prisoner would still be willing to work there. The obvious answer is that they most likely will not, which is why one must read this measure, along with the 30 percent reduction in inmate pay, as a part of a much larger agenda to emulate the failed, draconian American-style of federal corrections (CBC, 2009). If one reads the unfolding of this agenda as such, it becomes clear that the groundwork is being laid for the implementation of still more uncritically endorsed transformative recommendations found in the partisan policy pushing *Roadmap to Strengthening Public Safety* chaired by Harris-Era private prison politician Rob Sampson.

The continued implementation of this document will work to Americanize the Canadian penitentiary system, linking more prison discipline and increased structure through mandatory work programs tied to the Canadian economy, and lead to the eventual abolition of statutory release and the creation of a system of coercively earned parole (Jackson and Stewart, 2009). All activities that derive from this agenda can only be understood as stepping stones towards a Canadian prison industrial complex and, thus, should be thoroughly scrutinized.

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Expressions of Male-To-Male Intimacy in a UK Prison (and What We Might Learn From Them)

Robert Blackash

CONTEXT

This paper is an autobiographical research piece exploring male-to-male intimacy in a UK prison setting during 2014. The research was undertaken as an act of “resistance” (Ward, 1997) to expose the reality of prison life and further the research agenda in relation to the rehabilitation of the criminalized. Ward (1997) suggests that all actions undertaken by those who experience abuse or marginalization by people in positions of power, might be seen as acts of resistance, and my research activity is both an act of resistance and also a positive assertion of my improved mental health, integrity, and self-regard. This paper is intended as one part in a series of pieces based on my research, all of which was undertaken at Her Majesty’s Prison X.

Prison X is a part of the overcrowded UK prison estate relying on nineteenth-century accommodation designed for approximately 400 prisoners to incarcerate around 750 human beings. During 2014, a national re-organisation campaign saw the prison become primarily a location for sex-offenders and other vulnerable prisoners.

My first-hand experiences are my primary source of research evidence and many questions might be raised regarding this approach to “insider” research (Drake and Heath, 2008). This is my lived reality, for the most part recorded in the form of a handwritten prison diary. All names have been changed to protect the identities of the individuals concerned, and many of my subjects were fully aware of my academic interests because I followed the principles of “self-disclosure” as set out within Queer Theory (Semp, 2011). The prison authorities were given a number of opportunities to participate, which they consistently declined.

ON QUEER THEORY AND A COUNTER-CULTURE OF MALE INTIMACIES

Utilizing a dual theoretical approach, I access queer theory and those employing a similar methodology (Semp, 2011; Roseneil, 2007; Weems, 2007). I have also adopted an approach based on an interpretation of Foucauldian theory (Halperin, 1995; Sharpe, 2010; Danaher, Schirato & Webb, 2000; Golder & Fitzpatrick, 2009) on the intimacies that I experienced

and witnessed in this “specialist” prison setting. At the time the research was undertaken, Prison X accommodated a mixed profile of prisoners including sex-offenders, prisoners identified as vulnerable if they had lived in a mainstream setting, and drug/gang affiliated prisoners separated from those in other institutions.

Moreover, queer theory is useful in non-traditional spaces, especially in the context of the prison (Berlant & Warner, 1998). My research took place in an all-male prison, although transsexual prisoners were present (and my observations and interaction with one such individual, K, are referred to here).

Prisons fit my interpretation of Berlant and Warner’s (1998) definition of a counter-public space. In my interpretation, Prison X incarcerated prisoners, restricted public access and limited potential contact opportunities with the outside world. As such, ‘normal’ public appearance and performance were prohibited. As a consequence, rather than existing, traditional, British culture(s) being replicated by prisoners, a range of alternative, varied and nuanced relationships developed. The culture that exists within Prison X is not simply a sub-culture of wider British culture (Roseneil, 2007). Rather, the very excluded nature of 740 labelled “sex-offenders” (Foucault, 1977) and their physical isolation creates the necessary conditions for a “counter” cultural dynamic, which I seek to explore and define by examining a range of intimate relationships that existed between the men I observed, and considered as my peers, associates and, in some cases, my friends.

The dynamic to which I refer consists of, according to Roseneil (2007), a rejection of clichéd “heteronormative” relationships (Halperin, 1995) based on a romantic ideal of stereotypical familial settings, and instead is focused on complex, interwoven, uncertain, and ambiguous intimacies which abandon a simplistic dominant discourse (Foucault, 1977). The latter adopts a binary between “straight” and “gay” instead using a multiplicity of discursive strategies around intimacies – a deliberate pluralisation on my part – across a complex spectrum including heteroflexibility, prison-gay, and deep friendships.

As Kehler (2007) and Herek (2004) both write, within the hegemonic cultural context, a great many men are withheld from embracing (e.g. kissing in public) or expressing a fondness for each other. Herek (2004, p. 8) suggests that the stereotypical gender role for men means many never acknowledge their desire for the company of other close male friends or intimate male relationships. Whilst I would agree with Kehler’s (2007)

argument that the emphasis on masculinity has made male-to-male intimacy a “precarious business”, within Prison X, expressions of intimacy were far more commonplace, and asserted a “dynamic” that exposed more varied and intimate “friendship practices” than anticipated.

I suggest that Bolsø (2012) offers some potential stages along the spectrum of intimacy that I adopt in my exploration of male-to-male intimacy in Prison X. Intimacy starts at the point where individuals care for each other. It develops as the care becomes physically expressed through touching – where that touching is more than might be considered the “norm” between two men in society. Moreover, it develops still further as that care, protection, and contact are accompanied by increased levels of “playfulness”. I attempt to exemplify and expand on each of these stages throughout this paper. I also acknowledge that some intimate relationships develop beyond the level of playfulness through a series of further stages and lead to a range of sexual activities, but there is insufficient space to address these instances here.

I would not describe the intimacies I witnessed and participated in as simply second-best compensatory relationships (Roseneil, 2007), a poor-man’s alternative to “proper” heteronormative relationships “on-the-outside”, because – as the following testament will evidence – these were not inferior or less significant relationships. In fact, some were far more important and I believe will prove life-changing because, at the very least, they demonstrated an attitudinal position on the part of many men, which differ from that anticipated in the hegemonic, heteronormative domain (Mac an Ghail, 1994).

Almost 30 years ago, Davidson (1986) alluded to the levels of male intimacy in his work on Foucauldian archaeology, suggesting that intimacies existed beyond the “normative” roles referenced by Kehler (2007). However, I would like to start by presenting my evidence at the normative point, with reference to the simplistic labels of “straight” and “gay”.

In a prison of approximately 740 prisoners, more than 80 of them attended a meeting for the GBT group (Gay, Bisexual and Transgender – GBT was the preferred nomenclature of the group, although my personal preference would have been for the better-recognised LGBT). This meeting was held in September 2014 and was one of several I attended. At the “normative” level, the one associated with the dominant discourse of “gay” and “straight”, over 10 percent of Prison X’s population at that time were

confident in identifying themselves as GBT or GBT-friendly. Campaigning LGBT organisations such as Stonewall in the UK suggest that between six to eight percent of the adult population might identify as gay, whilst government departments, including the Department for Education, set a nominal target of securing 6 percent gay representation amongst their employees. So, despite the heteronormative climate that supposedly exists in prison settings, many men actively participated in a GBT focused event, more than might have been anticipated. As a result, I suggest we have the first evidence of “transgressive” behaviours (Madrueria, 2007), which are the focus of much research based in queer theory and counter-cultures.

Within this group situation, I witnessed elements of intimacy on the spectrum or continuum which Bolsø (2012) has led me to suggest exists, and which I explore here in three phases: 1) care; 2) care and contact; and 3) care and playfully-close contact.

INTIMACY 1: CARE AND BOUNDARY TRANSGRESSIVES

I had a close friendship with M, a long-term prisoner of a similar age (in his forties), a divorcee and father. M identified as “straight”. We were friends and physical contact between us was limited to a hand-shake, strong eye-contact, and a caring disposition. M shared intimacies relating to sexual relations he had with his ex-wife and accounts of his sexually-charged dreams in prison. He exemplifies, in this study and from my perspective, the modern gay-friendly straight man – open-minded and tolerant. Many other prisoners were similar in their interactions with me. I want to consider the extent to which these men were “boundary transgressives” (Madrueria, 2007). They were transgressive in so far as they recognised – perhaps subconsciously – that the shared location meant that some prisoners would develop different, ‘less-conventional’ relationships and styles of relating, as opposed to traditional, accepted bi-polar gay-straight intimacies. Furthermore, they were transgressive in their toleration of these alternative relationships and, thereby, failed to uphold a heteronormative hegemony (Roseneil, 2007).

However, M is also important because he shared a cell designed for single-occupancy with K, a transsexual prisoner. There is insufficient space here to outline the infringement of K’s human rights, the intrusion on K’s feelings and the appalling impact on K’s emotional state. However, the

salient point in terms of this piece is that M, a straight man, demonstrated his emotional support for K by attending the GBT meeting, explaining to me that he wanted to be publicly seen as openly supportive of K, and to be both discrete and sensitive enough that others in a similar position to K's and those wishing to talk with K could feel safe enough to approach their shared cell, even if M was in there alone. So, intimacy in terms of the care M showed towards K – and K's associates – did not simply transgress a boundary in terms of “enabling” as I suggest above, but also consisted of active transgressions on the part of M.

This evidence suggests that the process of “abjection” described by Blackbeard and Lindegger (2007, p. 30) was weak. Those who I might have expected to maintain boundaries of normative behaviour, in this case boundaries associated with male intimacies, did not do so. Abjection was limited because those social actors who uphold certain heteronormative and hegemonic values were, perhaps, either too weak to do so – perhaps in terms of numbers or in terms of social status – or simply did not want to.

INTIMACY 2: CARE AND CONTACT – A FORM OF KINSHIP

Whilst M's very public acceptance of K's transsexual status was an act of intimacy in terms of its work towards establishing a strong friendship, another form of intimacy existed that I interpreted as kinship (Berlant and Warner, 1998). The strategy commonplace in the vocabulary of ethnic minority prisoners was to use the slang term “fam” to describe a familial or brotherly level of intimacy that existed between them. In my second observed example, 24 year-old prisoner D became close friends with a significantly older gay-identifying prisoner, P. D, like many young white “street-wise” youth, adopted sub-cultural language and conventions from their ethnic minority peers, openly knuckle-touching, hugging, and referring to P as “fam”.

The relationship, as I observed it, and as both D and P reported it to me, reflected a particular kind of older gay-man's “avuncular” idolisation of a handsome young person. Both maintained a level of intimacy and felt they benefitted emotionally from the relationship, while also attending the GBT meeting where D was the focus of some unwanted attention from several

gay prisoners who evidently found him attractive – this had happened before – but this did not deter D from continuing to attend to be with P. D and P had become friends more than 6 months prior in an educational setting, and, although physically located in separate parts of the prison and no longer in the same courses, they remained close friends, treating each other as “family”, evidencing another level of intimacy that I disclose here within a Foucauldian-style analysis.

I witnessed a situation where P was reported to be the subject of some bullying by prisoner F – a 32-year-old straight prisoner. D and a close associated, N – also 24, a mixed-race father who identified as straight – collaborated and confronted prisoner F with a view of protecting P from further bullying, which was not homophobic in nature, although the motivation may have been. When we discussed their actions, D and N were adamant that they would not allow their “fam” (P) to be bullied by F. Their identification was not then with another straight prisoner, but rather with a set of principles regarding “protection of family”. Not only then was intimacy between male prisoners shown through deep tolerance, caring friendships, and active public demonstrations of the latter, intimacy also meant offering supportive intervention to secure and maintain familial relationships, despite the lack of biological “blood ties”.

Two other points need to be raised at this stage in the paper. First, whilst D attended the GBT meeting, ostensibly to meet with P, he was fearful of overt-gay attention in the session. His friend N would not attend the meeting despite being asked to do so. He admitted a fear of being “labelled” as gay. My point is that “boundary transgressive behaviour” was context specific and personal to the individuals involved. Second, the protective behaviours of D and N towards P crossed anticipated lines between sub-cultural groups on the basis of both age and sexual-orientation. This supports my assertion that a broader counter-culture existed within the prison setting, as opposed to a mere replication of sub-cultural groups on the outside.

INTIMACY 3: CARE AND PLAYFULLY CLOSE CONTACT

Bolsø (2012) also suggests that intimacy is reflected in playfulness. Above, I outline my assertion that this playfulness often accompanies elements of care and contact, and is the expression of a more significant

level of intimacy. Prisoner N developed a more playful relationship with Prisoner Q, who is white, aged 45 and openly identified as gay. N, although straight, demonstrated his care for Q through the delivery of small gifts and services. Meanwhile, Q similarly cared for N, assisting him in writing letters and reminding him of duties and obligations in the way a parent might remind a teenager. At this level, their public intimacy consisted of care, but was also manifested in touch – both hugged regularly and masculine “back-slapping” behaviour was commonplace between them. Here, the familial reference seen between D and P was less evident, although something similar might have been said to exist in the more public contexts of prison “association” (social times) and movement (when prisoners move between accommodation wings and vocational/educational facilities).

However, N and Q’s relationship also featured a degree of playful, sexualised intimacy. Q pinched N’s backside, and N was keen to show Q his muscular physique to the point that he sought Q out, inviting him to massage N’s sore shoulders after over-exertion at the gym. N was fully aware that Q was gay, yet actively worked to develop and secure a relationship. N playfully sat on Q’s lap in the private space of Q’s cell and although neither reported anything overtly sexual happening, it was evident that the level of intimacy between them was more intense than that which I had witnessed between P and D.

Weinberg (1972, p. 14), writing on the subject of intimacy between men, said “It is expected that men (even lifetime friends) will not sit as close together on a couch whilst talking earnestly... they will not look into each other’s faces as steadily or as fondly (as women may)” (cited in Herek, 2004, p. 8).

However, I regularly observed N sitting close to Q in a physically-restrictive cell space and sustaining long-term physical contact whilst in conversation, even when a number of other prisoners were present. During the period of this research, Q left Prison X. Although I did not witness it, others reported that N, a young straight male with a child and long-term female partner, wept. At this third level, the male-to-male intimacy, certainly from my experience, remained relatively open – it was neither covert nor secret, but was expressed through bonds of homosociality which were mutually stimulating, empowering and pleasurable for both parties.

CONCLUSION

Roseneil (2007) suggested that “Queer Research” inevitably scavenges its approach from a range of psycho-sociological theories. In this case, I suggest that, across the spectrum of intimacy, we might find several of the fundamental human needs and “archetypes” which Jung (cited in Gilbert, 2010) identified. My research shows the powerful motivation on the part of prisoners to secure a sense of belonging and connection to others. In my experience, men who identified as straight attended GBT meetings for a range of reasons often associated with the different degrees of intimacy they experienced with their gay-identifying peers, friends, and fellow-prisoners. Similarly, prisoners who identified as gay also provided support, care, and affection in complex, nuanced and personal ways in return. Men from both ‘so-called’ gay-straight groups practiced homo-sociality and intimacy, which made the stereotypical traditional labels of “gay/straight” seem rather outmoded. As a counter-public space, the prison setting, rather than reinforcing stereotypical public definitions of sexual orientations, seemed to allow for more fluid performances based first on genuine friendship, care, and expressions of affection.

In this article, I have attempted to extract several small incidents from a significant body of research regarding male-to-male interactions and intimacy in a contemporary UK prison setting. The very nature of these prison settings as socially excluded locations makes them open to certain types of participant research and exploration of different behaviours, specifically the dynamics of homo-sociality. This led to a complex range of nuanced and context-specific responses, all underpinned by a psychological need, motivation, or desire on the part of men in prison to establish positive, supportive, and nurturing “relationships” with other men.

For research such as this to have value, it must impact social policy. More research is required, not only regarding the degrees of intimacy which might exist between men in counter-cultural “isolated” settings, but also into how intimacy might manifest differently in “Public Spaces”, particularly given the legal changes occurring in several countries in relation to the Equality Agenda. In particular, future research might consider how far developing and dynamic societies interested in reducing incidence of crime and improving social relations might reflect upon the social status of individuals in regard to their sexual orientations. It appears that, if we are seeking to secure the

rehabilitation of the criminalized and desistence from further conflicts with the law, we might do so by challenging hegemonic boundaries, questioning stereotypical labels of “straight” and “gay”, and allowing for a more tolerant and accepting understanding of each individual and their motives to achieve that fundamental, core human need for intimacy and connectedness.

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Why Compassionate Release? A Follow-up to “What is Compassionate Release?”

Timothy Muise

My article “What Is Compassionate Release?” appeared in Volume 22(2) of the *Journal of Prisoners on Prisons* (Muise, 2013). I did my best to describe what the compassionate medical release of prisoners is and how it has become what I feel is one of the most pressing topics in penology. In this follow-up article, I emphasize the urgency for the medical release of prisoners, as it is clear that the wheels of justice and humanity have spun for far too long on this topic.

In the summer of 2000 the *New England Journal on Criminal and Civil Con nement* ran a piece by Nadine Curran (2000) which, in Nostradamus-like fashion, laid out the future of elderly prison populations and landscape of corrections yet to come if this dilemma of aging prison demographics is not aggressively addressed. Her piece, “Blue Hairs in the Big House: The Rise in Elderly Inmate Population”, should have been the harbinger of change, at a bare minimum started a discussion about plans for change, but sadly her stark warnings went unheeded. As a result, we are in the midst of a true crisis in the form of the aging prisoner populations and the negative impact it has on the daily quality of life for the American taxpayer cannot be discounted.

For decades, the estimated costs of housing elderly prisoners have been three times the cost of housing prisoners under 50 years of age (Sutton, 1983). These astronomical costs are driving state corrections budgets through the roof. In Massachusetts, medical care takes up 18.52 percent of the total yearly corrections budget, ringing in at about \$95 million (Massachusetts Department of Correction, 2011). The added security costs of housing dying prisoners, coupled with the complicated medical care that must be afforded the chronic conditions this population faces, makes caring for these ‘Big House Blue Hairs’ untenable. Many of the individual case-studies show the elderly prisoner no longer poses any threat to society, making security unnecessary. However, in corrections security comes first as this need is what employs guards. The tail wags the dog.

The detrimental effects of housing aging prisoners are not always discussed, but are just as traumatizing to public safety as are the financial costs. Tough on crime policies, such as more widespread use of life without parole sentences, fuels prison overcrowding (Turner *et al.*, 1995). Such overcrowding is a great concern due to the fact that it so negatively impacts

rehabilitation, as well as the health and safety of prisoners and prison employees. Physical, spiritual and mental health are all negatively impacted by prison overcrowding (Gottfredson, 1984). Many times the end result of such overcrowding and the hopelessness of life sentences is an increased suicide rate (Rosenblat, 1991). The state of Massachusetts, which has no compassionate / medical release, proves this when in 2010 Massachusetts rose to number one in per capita prison suicide rate (Hayes, 2007). As a result, the Norfolk Lifers Group, of which I was a member of the board of directors at the time, met with Massachusetts Undersecretary for Criminal Justice, Sandra McCroom, and then Commissioner of Corrections Harold Clarke, who both expressed at that meeting that overcrowding was thought to play a role in suicides in Massachusetts. I personally presented the case for compassionate release to then Commissioner Clarke, but he was unreceptive. His proposed solution was to build another maximum-security prison – typical corrections-minded thinking. While Mr. Clarke no longer works in Massachusetts, the dilemma of the aging prisoner, their social costs, is still ours here in the Commonwealth.

The greater number of prisoners in any facility results in greater delays in receiving services, whether rehabilitative or medical (Ornduff, 1993). The American Medical Association (AMA) has also found that long term housing in overcrowded conditions accelerates heart conditions and high blood pressure (Rosenblatt, 1991), again increasing medical costs. The AMA also found that the psychological effects of prison overcrowding decreases the immune system (*ibid*). When you create an environment that is so unproductive to rehabilitation, you endanger the very public that corrections was created to protect. Increasing prison populations ensure jobs for corrections employees but diminish the quality of life for citizens who demand that public safety efforts actually make them safer (Procurier v. Martinez, 1974). Overcrowding breeds hopelessness and this is the key element for recidivism.

There are also legal ramifications to housing old and dying prisoners in an overcrowded and abusive prison environment. Elderly prisoners become prey to younger and stronger prisoners. This wolf-prey concept constitutes cruel and unusual punishment (Kelsey, 1986), as does housing them in overcrowded and services stressed conditions (Ornduff, 1993). The United States Constitution not only guards against “torture and other barbarous

methods of punishment”, as clarified by the United States Supreme Court, but also demands and protects, “broad and idealistic concepts of dignity, civilized standards, humanity, and decency” (Ornduff, 1993). To keep an elderly prisoner, who no longer poses any threat to society, in overcrowded, undignified and indecent conditions of confinement is actionable under the law, but more deflating is that it is morally reprehensible. This once proud nation must hang its head in shame as we have placed prison/law enforcement complex before compassion, humanity and decency. The time is long overdue for the United States of America to be the shining beacon of justice tempered with mercy.

Both the judicial system and the legislature have powers to create and implement a viable system of compassionate release (Rosenblatt, 1991). An advisory board of licensed, accredited, and peer-reviewed professionals needs to be assembled to ascertain who would meet an objective set of criteria for immediate release to managed care facilities. The first direct savings financially would be the elimination of security costs. The direct social impact would be freeing-up services for prisoners seeking rehabilitation opportunities. The courts would have the power to issue early release orders if corrections and public safety officials are reluctant to abide by advisory board recommendations (*ibid*). If the legislature cannot pass law in the required time the urgency demands then the court system may be the only viable alternative. Once the legislative branch enacts law the judicial branch would ultimately be charged with enforcing it, but the House and Senate cannot pull themselves out of the political quagmire (they have been arguing medical release measures since 1993),¹ the burden must fall upon a brave judicial system. Such courage has been rare here in Massachusetts, but public outcry would inject valour into the circulation of those wearing the robes. The gavel must bang for solutions.

Our society can no longer afford this massive criminal justice bureaucracy that has created the “prison industrial complex” (Schlosser, 1998). The focus must be placed back on rehabilitation and proven crime reducing programming and education. Learning is the cure for crime and compassion surely the elixir for all that ails the system.

Two organizations here in the Commonwealth of Massachusetts are working to make compassionate medical release a reality here in the state. To find out how you can get involved, please contact:

Holly Barnoski	Karen Schulman
Secretary	Secretary
CURE-ARM, Inc.	BREAD and WATER PRISONERS
PO Box 396	PO Box 84
Billerica, MA	Hopedale, MA
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facebook.com/curearminc	facebook.com/BreadandWaterPrisoners

Both groups would love to hear your thoughts, ideas, commentary and support. Why compassionate release? Our humanity and dignity demands it.

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- ¹ See the Massachusetts House Resolution #4149 (1993) and #3699 (1997b).

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Where Are We Running To?

Greg Webb

On the inside or outside of the prison, contemporary society is dominated by material consumer culture where the objects or things that are consumed come to have a sensual quality. “[T]hings like shirts and shoes, music, furniture, cars and bikes, technology, food and drink maintain an important presence within the Prison” (Griffiths University, 2013, p.4). Consumption, of course, does not end with these mundane consumables. Specific sites also become a consumption space in their own right, a kind of a gravity well of the time of one’s life.

As a prisoner serving a sentence, I have limited access to the wider public sphere. My view of the world is therefore focused on the consumption space within a medium-security male prison, where I deploy a specific and subjective approach to material culture studies. That is, I will rely on my own personal experience, descriptions and interpretations of social behaviour within the prison (Robertson 1987, p.36). My objective is to provide an understanding “between persons and things” within the consumption space (Woodward, 2013, p.15).

One node of material (consumer) consumption is the sale of running shoes in the male prison system in Victoria, Australia. My observation of the consumption of running shoes by prisoners will provide the material for consideration of the psychological and sociological inquiry into the actions of consumers, in addition to the exploration of the symbolic meaning of the objects themselves. That is, I have observed that the purpose running shoes serve in the prison is to foster feelings of autonomy, difference and choice. This is in contrast to the general conformity imposed by prison issued clothing and footwear – the ‘prison issue’ is demoralizing and systematically deprives people of individuality. Individuals are classified as ‘the other’ (Harper, 2014, p. 2), removed from society, given little choice and a limited sense of personal or political agency in the public sphere (Belk, 1988, p. 142; Wise, 2012).

THE PROMISES MADE

As it applies to the prisoner, the product is interpreted as promising an affirmation, one that implies that they are still, in part at least, included in the wider system of consumption in the ‘free world’ outside of the prison

– as such material consumption is a symbol of hope (Chantraine 2009). Miller (1987) says that a neo-liberal society that is dominated by the market determines the classification of people based on their consumption of material objects. That is, people are either included or excluded based on the quality of the products they purchase. Prisoners deceive themselves with the consumption of material objects, such as expensive running shoes, so as to divert their sense of self from the harsh reality of their bleak confinement and removal from society.

THE SEMIOTIC ELEMENTS

The running shoes which are sold within the prison, the Asics brand, are a wide point of communicative engagement between people, one which brings into play colours, logos, words and myths, all of which signal value and meaning for the conscious and subconscious sense of self. The possession and wearing of the item is used to regulate and control the symbolic value of the objects, so the person is seen to have control and mastery of the signs and codes of their social cohort (Thwaites *et al.*, 2002; Woodward, 2013). That is, “the dominant signified” seems to act as an ordering of, or a “symbolic marker of class” (Thwaites *et al.*, 2002, p. 83), which signifies autonomy in opposition to the conformity of being imprisoned. More so, the running shoes operate as metaphorical signifiers of athleticism, strength and heroism that are metonymic signifiers of the Asics shoe company¹ and even society itself (*ibid*). This situation illustrates the process that exists between persons and things, and the system of behaviour and relationships from which they emerge.

THE CULTURAL PURPOSE

According to Wright (2000), one of the purposes of the prison industrial complex is to create docile people through punishment to produce an image of good order and security within the prison (Western, 2011). In the context of this paper, I will note that the ability to purchase running shoes through Mamgoneet Prison’s ordering of privileges indicates that access to material goods and objects are notably reserved for those prisoners who comply with the coercive and disciplinary program of the prison.

SPECIAL SPENDS – THE SYSTEM OF PRIVILEGES

Mamgoneet Prison has an incentive based program that provides prisoners with access to a variety of items that are not available at the prisoner's canteen (Harper, 2012; Harper, 2014). The purpose of the Prisoner Shop is to "stock items" of a "convenience nature" (Harper, 2014, pp. 2-3). That is, prisoners are approved to purchase additional food products such as "confectionery, soft drinks, stationery, education needs, postage stamps, toiletries, [quilts and quilt] covers, pillows, telephone credits ... [and] plain packaged tobacco products subject to their behaviour and finances" (Wise, 2013, p. 2). Additionally, prisoners can request the purchase of other items, such as "sporting requisites [like running shoes²], hobby items, electrical items, music CDs and tapes" (ibid). The request must be submitted to the Operations Manager/Supervisor of the prison through the special spend process and that person is required to "take into consideration ... [the prisoner's] current behaviour and attitude, work/program attendance and general compliance' before approving the request"³ (Harper, 2012, p. 18). Chantraine (2009, p. 59) says this system of privileges becomes the "pragmatic management of daily life for the penitentiary administration".

According to OP 2.2-5, prisoners who do not conform to the rules are penalized by the Disciplinary Officer who has at [their] disposal the option to impose sanctions (Harper, 2013). As a result of the prisoner's non-compliance to the community expectations of the prison, a loss of privileges is imposed (ibid). For example, "any prisoner ... found guilty of a prison offence will be ineligible to purchase 'special spends' for a period of three months" (Harper, 2013, p. 8). Therefore, the special spend process is a covert disciplinary measure which aims to create docile prisoners with the threat of punishment, while it provides the opportunity for officers to challenge unacceptable institutional behaviour by the removal of the 'candy system'⁴ – a system of privileges or rewards that are granted to the compliant prisoner (Chantraine, 2009; Harper, 2013; Western, 2011).

Nonetheless, a prisoner who continues to be a 'bad-machine'⁵ and receives disciplinary punishment still has desires and needs for the consumption of other material objects of value. As such, this scenario sets the stage for interaction with others within the prison and initiates the emergence of the black market – a trading or acquiring of material objects through an alternative agency for the prisoner. Therefore, "it is in acquiring, using and

exchanging things that individuals come to have social lives” within the prison (Lucy, 1996, p. 12).

ACCEPTANCE OF OTHERS

The psychological and social importance of the acceptance of one’s peers in penal institutions is a vital survival mechanism for most prisoners. The main dialogue in the prison revolves around a constant battle of gossip and harassment of the other, until the purchase of an expensive and colourful pair of running shoes enters the peripheral vision of the audience. Exclamations such as ‘those runners are mad’ are a colloquial type of argot that confirms approval of the wearer’s choice and their style of running shoes by the receiver of the symbol. On the face of it, this seemingly simple expression does not mean much to the reader. However, it becomes a decisive observation and forced interaction for the prisoner – *‘Is this comment the basis of building a relationship or is it a threat against me?’*

The individual who possesses the clean, crisp, and unique shoes becomes the focal point, as the item transmits a symbolic message to the receiver and acts as a conversation starter: *‘What size are they bruz?’⁶ Where did you get ‘em? What catalogue are they in? How much did they cost ya? They’re the ones I was tellin’ya about’* (Warde, 1994; Griffiths University, 2013). The answer to these questions and statements are obvious to the person asking and just as obvious to the person who is expected to respond because the prison only has one avenue for the purchase of such an object (Griffiths University, 2013, p. 40; Harper, 2012, p. 18).

This node of communicative engagement between people creates an opportunity for interpersonal inclusion in a space, one that is designed for solitary reflection, punishment and reform (Robertson, 1987). The prisoner, who possesses the clean, crisp, and unique shoes, begrudgingly accepts the onerous responsibility of explaining and defending his consumption choices to others, at least until another prisoner becomes the subject of conversation by purchasing another more colourful pair of running shoes. I have experienced, observed and interpreted this interaction between prisoners as a break in the mundane routine of punishment, conformity, and the bleak existence of becoming a docile individual through reform.

The purchasing of materialistic items of consumption – subject to the individual person’s behaviour – acts as a reward. It is a system of privileges

aimed at correcting unacceptable behaviour, which allows, if only for a brief moment, the person to feel like a ‘real person’ – a free person in the community with the free-will to participate in the mass consumption of ideological capitalistic individualism (Chantraine, 2009; Fromm, 1976; Harper, 2013; Warde, 1994).

Men in prison collect and wear running shoes as a fashion accessory as they do in the free world. However, the symbolic value of objects in prison is more sharply focused by the interpretation of the items within the isolated consumption community. An exaggerated importance placed on the consumption and collection of running shoes in the community would be a fetish. Within the prison, however, the consumption and collection is a sign of personal power, importance, wealth, and status (Thwaites *et al.*, 2002). As Tietjen (2013, p. 76) says it is a way for “others trapped in the de-habilitating confines of the [prison] to find their way out”. It allows the prisoner to hold onto their “old citizen self” and try for as long as they can to reject their ‘inside’ prison self by paradoxically conforming to the inside values of the prison (Tietjen, 2013). Therefore, these symbols are all messages aimed at the audience, both prisoners and the Prison Officers that work in the prison and their well accepted consumption habits and value judgments about what it is to be a person of a higher status, a distinguished person from the mass of docile people (Woodward, 2013).⁷

HOW IS THE PHENOMENON TO BE UNDERSTOOD?

All cultures and societies have developed, through the workings of the various defused fields of power relations,⁸ the meaning and value of things. However, material items like clothing and footwear have long acted as symbolic indicators of wealth, status, cultural knowledge and cohesiveness (Foucault, 1980; Woodward, 2013). This means, that through the use of language, social divisions are created – people are either included or excluded based on their consumption choices, or simply because of their behaviour and tastes (Bourdieu 1979; Warde, 1994). Therefore, as Belk (1988, p. 150) says:

We may suppose that money enlarges the sense of self because it enlarges imaginable possibilities of all that we might have and do. Money also

gives us the power to selectively acquire or reject purchasable objects, thereby more selectively shaping our extended self.

Freedom provides boundless opportunities for shopping and consumption for consumers to personalize the meeting of their needs, and to express their values through the products they consume (Edwards, 2001). Prisoners, however, are not free, rather they have imposing restrictions not only on their movement, but also in freedom of expression and experience as their options are limited and predetermined (Robertson, 1987; Leder, 2004). That is, there are no shopping centres, advertisements or end of season discount sales. There is only a fortified hole-in-the-wall Prisoner Shop commissary and an-out-of-date special spends catalogue where commodities are limited and seen as a privilege. Meaningful options are a thing of the past for the individual who is spatially and temporally removed from society (Chantraine, 2009; Harper, 2014).

According to Slater (1997, p. 154) “status is measured by one’s distance or exemption from mundane, productive labour; consequently, the manner of consuming time and goods must demonstrate that distance”. Furthermore, Belk (1982, p. 141) suggests that “possessions are seen as part of self”. It follows that an unintentional loss of possessions should be regarded as a loss or lessening of self (Sykes, 1958; Goffman, 1961). Therefore, in a capitalist society, individuals who do not, or cannot, acquire, possess, or control anything of materialistic value feel alienated, and are observed as having lost their community and individual identity (Belk, 1982; Fromm, 1976). Prisoners are observed attempting to replace the bleakness of emotional experience and material possessions/experiences within the environment of muted colours through the purchase of expensive and colourful running shoes. As well as seeking pleasure in the sensual qualities of limited material commodities, excitement and status, it is as if they are running from the bleakness of conformity (Douglas and Isherwood, 1979).

Prisoners use or display their purchasing of running shoes as social and symbolic capital. That means, a prisoner seen in, or with a pair of brand new running shoes is symbolically being heard to say that he is not only a person of wealth (and therefore importance), but he is a person with whom communicative engagement can be initiated. Whether the receiver of the message consciously aspires to exploit the sender of the message or subconsciously aspires to collude with others to exploit a vulnerable prisoner

remains unknown. However, what can be substantiated through my observation is that this face-to-face interaction is perceived by the sender or the receiver as an opportunity to determine what the other has to offer. That is, to make a value judgment – to “classify themselves or others ... through distinctive objects or practices in which their ‘powers’ or knowledge, is communicated via words or symbols” (Bourdieu, 1979, p. 16). Therefore, his new running shoes are a node of rapid social communication, a point of communicative engagement and comparison between persons, a point at which the receiver of such signs focuses his aspirations to improve his status through purchasing running shoes from the next up-to-date special spends catalogue.

CONCLUSION

Acquisitions and displays of material and symbolic commodities are commonly accepted without question as ascribing a personal and social position, class, or status by which others may judge the possessors of such objects (Solomon, cited in Belk, 1988). In the grip of “casino-capitalism” our individualism is based in materialism and commodification of every human experience, this commodification has become the dominant semiotics of the moment (Bessant and Watts, 2007, pp. 26-27). Neo-liberal ideologies have generated myths of ideal lifestyles and the consequences of these myths are everywhere throughout society, even within the prison (Barthes, 1972). Despite these well-publicized myths of an ideal life through consumption, our spirits are lower than ever. We feel as if the nihilistic forces of local and international crime are driving us behind security shutters of all types. In their pivotal study Wilkinson and Pickett (2009, p. 230) note:

Living in unequal and individualistic societies, [people] use possessions to show [themselves] in a good light, to make a positive impression, and to avoid appearing incompetent or inadequate in the eyes of others. Consumerism shows how powerfully [people] are affected by each other. Once [people] have enough of the basic necessities for comfort, possessions matter less and less in themselves, and are used more and more for what they say about their owners. Ideally, [peoples] impressions of each other would depend on face-to-face interactions in the course of community life, rather than on outward appearances in the absence of real knowledge of each other.

Capitalism has deeply fractured society and relationships to the extent that individuals in prison are attempting to rebuild their public relationships through the commonality of self as consumer. Essentially, regardless of the location, people are all prisoners to the mythology of neo-liberalism. All that is left to do, it seems, is for people to spot a symbol or a sign, and use that to make contact with, rather than having any real knowledge or understanding of the other person.

ENDNOTES

- ¹ Asics is an acronym for the Latin phrase *anima sana in corpore sano*, which translates as “a healthy mind in a healthy body” (see <http://corp.asics.com/en/>).
- ² “The only runners/sneakers approved for purchase through prison shops are... [the] Asics brand with an upper price limit of \$160. Where appropriate, prisoners may purchase outside of these restrictions upon supply of special documentation from a medical officer or podiatrist” (Wise, 2013, DCI.4.08, p.3).
- ³ Mamgoneet Prison implements a unique “W-IV... attendance record for prisoners” (Norman, 2010, p. 1). The W-IV attendance record is an acronym for *Who (Prisoner)*, *What (Activity)*, *Where (Venue)*, and *When (Prisoner Day timeslots)* (ibid, p. 2). The system is designed to schedule required and completed attendances of prisoners at activities outlined within their Local Management Plan. For example, the attendance of an Offender Behaviour Program by a prisoner (ibid, p. 1). According to the weekly timetable at Mamgoneet prison, the objective of the “W-IV Prison Activity Timetable” is to allocate a prisoner “30 hours of meaningful activities per week”. More importantly, the timetable is a covert instrument of control, thus Prison Officers can locate a prisoner without delay and can impose a reprimand upon prisoners that do not comply with the timetable.
- ⁴ Chantraine (2009) introduces this term as a modern form of psychological rather than physical discipline to the non-conforming prisoner. The candy system, similar to the “special spends system” is an incentive based disciplinary program used by the Canadian prison system, to “*minimize disorder In prison*” (Chantraine, 2004 in Chantraine 2009, p.67, original emphases). That is, by the removal or granting of individual and collective privileges, such as mobility in prison or exceeding quotas of cell property to prisoners, the prison is able to control unacceptable behaviour whilst rewarding acceptable behaviour with treats, like running shoes, ‘time In the trailer’ (conjugal visits) or an excess of cell property. Hence the term “candies or candy system” is presented as something worth desiring, something *sweet* (Chantraine 2009, pp. 68-69, original emphases).
- ⁵ In a fictional sense, the concept referred to as “bad machine” is influenced after reading the play, *1984* by George Orwell, *A new adaption* created by Robert Idee and Duncan Macmillan. Metaphorically, I am referring to the individual – the non-conformist – of an institution as a bad machine. That is, an individual that is not compatible with other machines because it does not follow the program.

- ⁶ “What size are they bruz?” is a type of argot known within the prison system used to trick vulnerable prisoners, often new to prison, into revealing the size of their shoes. Thus, to have an invulnerable prisoner stand over them and take their shoes, which are then traded on the ‘black-market’ for other material objects of value within the prison. However, if a prisoner was to say “my size”, this is indicative that the prisoner is not vulnerable and can defend themselves against such covert violent behaviour. Hence, the threat is played down and seen as funny.
- ⁷ Interestingly, running shoes are symbolic of fitness, health and athleticism, which stands in opposition to the docile body within the prison. Perhaps there is a subliminal message being transmitted by the prison system that “It’s time to get fit and change your life”.
- ⁸ Foucault (1980) casts power relations as a wide field of human interactions, and not just the obvious forms of power as they relate to the state, and, for example, the police and justice as a punitive instance of power.

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Prison Doctors and Deadly Mistakes

Ernest J. Jack

Due to high incarceration rates in the United States, about one percent of its adult population rely on correctional services for health care (Wilper, 2009). I am one of those people.

I was diagnosed with untreatable metastatic stomach cancer that was discovered only in its advanced stage (stage IV). Prior to my diagnosis, I had all the symptoms of anemia, which is sometimes a sign of cancer. Signs like fatigue, shortness of breath, muscle aches, stomach pain, racing heart or pulse and dizziness are all indicators that something was wrong (Beers *et al.*, 2008). I reported those symptoms to my provider each time I went on sick call in the prison. According to the Eighth Amendment's prohibition of "cruel and unusual" punishment, the provider has a duty to follow-up on those symptoms (Wilper *et al.*, 2009). For whatever reason, no medical personnel put things together until it was too late. In this short essay, I want to outline what happened with my diagnosis to illustrate what is happening to those of us who depend on our jailers for care.

I have been suffering with my stomach since before 2010. I read through a book called "The Merck Manual of Medical Information" (Beers *et al.*, 2008), and determined that I might have anemia and possibly cancer. However, I had to convince the providers here at Coyote Ridge Correction Center (CRCC) that I had a serious illness. While there is a provider to see the prisoner in most cases, it is only when they say it is necessary that doctors meet with the incarcerated. A provider is like a Registered Nurse and this is who we mostly see.

On 1 June 2013 I noticed that my stool was black. That was not the first time it happened. Because of the medical reading I had done, I was worried. Anemia is a condition in which the blood is low in red cells or in hemoglobin, resulting in paleness, weakness, internal bleeding, and other health problems (Beers *et al.*, 2008). Each of the times before, I used the sick call sheet in the unit. By the time my name showed up for sick call, my stool was back to normal. The provider would give me test strips to take with me for stool samples. Once I had turned the test strips in, I would not hear from anyone and so I assumed that the tests were negative.

So this time I put in a service kite, instead of just signing up for sick call in the unit. This was 2 June 2013. After receiving my kite, the next day, a provider called the unit and asked for the officer to send me in as soon as possible. On the kite I told them "I am really concerned about my stomach

that's out of shape, like a swelling on the right side that's been there for a while, plus, the last two days, 6-1-13 and 6-2-13 my stool comes out black. Does this have something to do with my stomach?" I was seen on 3 June 2013 and lab work was finally ordered.

The answer to my kite dated 3 June 13. "You will be on call out in 1 week to have blood drawn and then the next week you will be seen by a provider. You can either drop off the stool sample cards when they're completed or you can bring them with you to your appointment for your blood draw". I took them in when it was done. It is hard to get this service. As noted in a study by Wilper and colleagues (2009), only 3.9 percent of prisoners with active medical problems which routinely require blood testing, were provided with that service.

At the clinic, the provider took my vitals (e.g. blood pressure, fever, etc.), and gave me more strips for my stool and told me to turn them in when done. I was called back again for my blood draw and sent back to wait for my provider to call me after all the test results came in.

Having sent a health kite, I was seen faster. That kite left a paper trail for me. Around 12 June 2013, I was again called in to see the provider after all tests came in and that is when he told me that I was anemic and had been bleeding on the inside for more than eight months, requiring a blood transfusion. How did he know that I was bleeding for eight months? He had to see that on my records and if he did then why did he not see that before? Why did he not see me the times that I complained about black stool and other signs that I reported on sick call? The Washington State Department of Corrections website states that "emphasis is placed on early identification of health concerns, care for acute and chronic health problems and preventive care" (Department of Corrections, 2015), but this is certainly not my experience.

The doctor said: "I'm going to get you a wheelchair to get you around until I can get you approved for that blood transfusion. In the meantime, if you feel like you're going to pass out again, come in to sick call and I'll declare an emergency and send you to the hospital in town". Just think, I am bleeding and was sent back to my unit to wait and possibly bleed to death.

On 24 June 2013, after more complaining, the provider finally declared an emergency and I was sent to Kadalic Medical Center for the blood transfusion and more tests. I was given two units of blood. A positron emission tomography (PET) scan, which is similar to an X-ray, revealed

that I had cancer that was too close to my esophagus for it to be removed. It was too advanced. Had my provider read my results from those earlier tests taken, my cancer might have been in the early stage and I might have been able to get the cancer removed. It is no wonder that cancer is one of the five leading causes of deaths in jail in the United States (Noonan, 2012). In fact, in 2010, cancer was the most common cause of death in prisons (ibid).

I know I am not alone in facing a chronic condition in prison. In the study by Wilper and colleagues (2009), the researchers found that almost 50,000 prisoners had chronic health conditions. But since it takes so long to see anyone, I think prisoners should take it upon themselves to research their illness, then they could convince the provider if they feel they are not making the right diagnoses. They should always try to leave a paper trail.

Two months after the provider declared an emergency, I started my treatment at St. Mary Regional Cancer Center in Walla Walla, Washington. I have since been transferred to Airway Heights Correction Center (AHCC) where I have completed my second cancer treatment because the disease returned.

AFTERTHOUGHT

I feel that the providers here at CRCC acted recklessly and with deliberate indifference to my serious medical needs. I wrote this piece because I think this is common practice in many instances. Prisoners are made to feel intimidated so they will not complain even when mistakes (sometimes deadly in effect) are common, but we have little power to get better care. When you are in prison, the avenues to get better care are not available and you are stuck with the kind of care I have described.

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ABOUT THE AUTHOR

Ernest Jack is a 66-year-old disabled Vietnam veteran doing 14 years in Walla Walla State Prison. He is a writer with stories online at www.prisonsfoundation.org and he is hoping for an extraordinary release under the RCW 9.94A.728 as his current release date is in 2023.

RESPONSE

Reflections on the Contributions of Peter Collins and the Death of Humanity Behind Bars

Justin Piché

Every single day we are reminded that human beings are capable of great acts of generosity and extreme acts of cruelty. While these moments tend to define our time on earth, it is the unremarkable, mundane, everyday things we think, say and do that embody and convey who we have been, what we have become, and who we want to be. Like the seasons where the cold wind turns into many flowers that bloom, where the heat gives way to leaves that eventually fall to the ground which turns to snow, we change, we are ‘unfinished’, we become renewed (Mathiesen, 1974). And in those seas of change lies hope that we can abolish what we consider to be unjust, work towards what we consider to be just, so that we may live at peace with others and ourselves as we strive for better days always out of reach, because we can always better (Pepinsky, 2007). As long as there is this hope, life has meaning, life has a purpose, life becomes more than about survival, life becomes about thriving to the degree that is structurally possible in this world rife with inequality and injustice (Davis and Mendieta, 2005).

The Peter Collins I came to know through his artwork and writing for the *Journal of Prisoners on Prisons* when I first became involved in the publication and our many letters never gave up on this hope that the world and the beings that inhabit it, including himself, could be better. He denounced the cruelty in our midst, notably that of the Canadian carceral state (e.g. Collins, 2008a; Collins, 2008b) and even his own (Duffy, 2015), which most, including myself, are not able to do at the best of times. He, like many “lifers” (Irwin, 2012), was accountable and held others to account. He resisted the temptation to just go with the flow. He decided to fight for what is right, to fight for a world where we treat each other with unwavering compassion so that we do not succumb to the poisons of fear, spite and vengeance.

Unfortunately, such toxins have again become integral discursive ingredients in the kool-aid many choose to drink to the point of intoxication and delight (see Webster and Doob, 2015). My heart is heavy, disturbed by the fact that Peter, who suffered from inadequate care for cancer and other health issues behind bars, was denied compassionate release and that the “Life Means Life” proposal by the Conservatives would, if made law,

remove parole eligibility for certain offences, thereby officially enshrining the other death penalty in Canada. That such a measure is celebrated in some circles is wrong and it must be resisted.

For all of colonial Canada's faults, I believe I still live in a country where the value of a life, mine or yours, is not reduced to our worst actions. I believe that human beings are capable of improvement, of change and of doing good in this world. I believe that it is wrong to condemn fellow human beings to die in prison, when history has taught us that this kind of demonization and dehumanization can only lead to great atrocities in the name of higher loyalties that deserve no loyalty at all (Bauman, 2001). What is on the line here is not just the fate of those in prison, but of us all, of our humanity.

In memory of Peter and others who have shared his fate, I echo *JPP* contributors whose work is included in this issue and previous ones who call upon us to mobilize an effective resistance that says "no" (Mathiesen, 2008). "No" to deaths in custody. "No" to prisons as a catch-all response to complex conflicts and harms that we criminalize and punish today. And "no" to bars that divide and deprive all of us of our common humanity.

Thank you Peter for striving toward a better world in impossible circumstances and for inspiring us to do the same.

ABOUT PETER COLLINS

Serving a life sentence in prison, *Peter Collins* knew he had to come to terms with the consequences of his actions and so dedicated himself to working for positive social change. Since the late 1980s, when the official position of the Correctional Service of Canada was that intravenous drug use, tattooing, and sex were illegal – therefore not happening – until today when prisoners continue to be denied access to clean needles and syringes, Peter's tireless efforts to defend the health and human rights of prisoners often led to strained relationships with prison officials, undermining his efforts to get paroled. While in prison, Peter earned an honours diploma in Graphic and Commercial Fine Arts, as well as a certification as a Frontier College ESL tutor. He was an Alternatives to Violence Project facilitator and Peer Education Counsellor. Peter was instrumental in setting up a Peer Education Office in Bath Institution and advocated on behalf of fellow prisoners on issues ranging from health access to employment. He also wrote a book helping prisoners prepare for

successful and safe release into the community. Regularly donating his time, expertise, and artwork to numerous charities and social justice initiatives, Peter's dedication contributed to improved health and safety in the prison system, and by extension, in the community at large. Peter passed away in August 2015, days after Prisoners' Justice Day.

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Justin Piché is an Assistant Professor in the Department of Criminology and has held various roles with the *JPP* since 2007. His research examines the reproduction of imprisonment as a dominant response to criminalized conflicts and harms in state and popular discourses, as well as explores strategies to work towards abolishing punitive logics, policies and practices.

PRISONERS' STRUGGLES

Ella Baker Center for Human Rights

Zaineb Mohammed

The Ella Baker Center for Human Rights works to promote racial and economic justice for people of colour and low-income communities. Throughout our nearly twenty-year history, we have won victories in policy advocacy, civic engagement, the green jobs movement and violence prevention.

We are named for Ella Baker, an unsung hero of the civil rights movement who inspired and guided many emerging leaders. Ella Baker believed in the power of ordinary people to dream big and create change. We build on her legacy by giving people the opportunities and skills to work together and strengthen our communities so that all of us can thrive.

Some of our biggest achievements include building California's first-ever support and advocacy network for over 1,400 families of incarcerated youth, stopping the construction of a super jail for youth in Alameda County, closing five out of eight California youth prisons, and initiating a green collar jobs movement that helped ensure the passage of the federal 2007 *Green Jobs Act*. In addition, we have launched civic engagement campaigns like Soul of the City, which involved organizing participants who contributed 1,500 hours of community service and voter mobilization in Oakland and Heal the Streets, a fellowship program that trained local youth impacted by violence to become advocates for peace and social change.

Past successes have led us to our current mission: to end mass incarceration by moving resources away from prisons and punishment, and towards services like job training, education, healthcare, and housing that will build stronger and safer communities. Our focus on ending mass incarceration is based on evidence suggesting that the punishment economy in the United States, which functions through the application of punitive solutions to all social problems, has made entire communities less safe. The U.S. spends over \$60 billion annually to keep nearly 7 million adults under 'correctional' supervision. Recidivism rates remain around 67 percent. Black and Latino/a Americans are more likely to be incarcerated, to struggle with poverty, and to be victims of crime.

If not for forty years of mass incarceration, the poverty rate would be much lower today. Specifically, 5 million fewer people would live below the poverty line (Bobo and Thompson, 2010). Women of colour in particular

bear much of the direct and indirect impact of mass imprisonment. Yet these groups are absent from dialogue, and are not adequately considered during resource allocation decisions that drive public safety and economic policy.

We know that the way forward is a books not bars, jobs not jails, and healthcare not handcuffs agenda. To successfully tear down our punishment economy, we must build a national membership-based movement that develops the capacity of ordinary people who have been directly impacted by the prison system to take collective and courageous action.

For too long, the voices and perspectives of those who have been incarcerated, or those whose family members have been incarcerated, have been left out of the conversation about criminal justice reform and public safety policies. We aim to promote the growth of leadership in these families, so that all can benefit from community-driven solutions. As such, we are working at local, state, and national levels to advance policies that move funding away from prisons and towards services that will help people.

During a recent local initiative, we successfully campaigned for the adoption of a Jobs Not Jails budget in Alameda County. Throughout the last six months, we worked with faith leaders, community members, and grassroots leaders to demand that the Board of Supervisors allocate half of their public safety realignment funds towards community-based re-entry programs that provide job training, housing, healthcare, and education to people coming out of jail.

In the past, the supervisors allocated the majority of funds to the sheriff, but declining crime rates and empty jails indicate that that approach is unwarranted. Our collective organizing led to the recent adoption of a budget proposal which will award more funding to community programs that will help people coming out of jail rebuild their lives. We will continue to work with local officials to ensure that the budget is successfully implemented and that community organizations receive the funding.

Another local effort that demonstrates the positive effect of community-driven solutions is our partnership with Restaurant Opportunities Centers (ROC) United (see <http://rocunited.org>). Together, we hope to launch the Restore Oakland Center. Restore Oakland will serve as a multipurpose hub and will contain a restaurant, a cooperative food-enterprise incubator, and feature training programs focused on helping low-income and formerly incarcerated people advance to livable-wage jobs, as well as restorative justice programs. The project will serve as a space for empowering

community members and will provide an alternative to the cycle of criminalization and incarceration too many families in Oakland face today.

At the state level, we are advocating for legislation that will limit abusive practices in the prison system and for bills that promote reinvestment in re-entry services. We, for instance, are co-sponsoring a bill that would limit the solitary confinement of youth, as well as bills that would prohibit housing discrimination against people with criminal records and that would increase credits for state prisoners participating in rehabilitation programs, which can reduce their prison terms. We are also sponsoring legislation that helps people reduce their parole terms by complying with the terms of their supervision. Savings from the reduced parole supervision would support employment and housing for people coming out of prison.

The passage of Proposition 47, a measure in California requiring that certain low-level offenses like shoplifting or simple drug possession be charged as misdemeanours and which directs the millions in annual savings from reduced rates of incarceration towards mental health and drug treatment, school programs, and victim services, was a major victory for us and gave the state an opportunity to become a leader in smart on crime policies throughout the country. We are working with other local organizations to make sure that eligible persons take advantage of re-sentencing under the proposition.

Nationally, we are working with 20 organizations in 13 states on a community-driven research project that aims to document how mass incarceration impacts formerly incarcerated people and their families. This project will help address the lack of representation and the misrepresentation of low-income communities of colour in the design of smart solutions that can increase public safety, as well as economic and familial stability in communities with high incarceration rates.

Since April 2014, we have engaged over 1,000 formerly incarcerated people and their families in focus groups and one-on-one interviews in order to document their experiences. We are also interviewing over 200 employers to learn about their experiences with hiring formerly incarcerated people in order to discover the challenges that come with hiring them, and what incentives or support would make them more likely to hire formerly incarcerated people.

In October 2015, we released a national report documenting our findings and highlighting policy solutions that demonstratively enhance public

safety, public health, and economic security. In addition, we will introduce sentencing reform and community investment legislation (like California's Proposition 47) in other states, including Florida, Ohio, Louisiana, and California.

We hope that our efforts will contribute to the creation of a national membership-based movement that will end the systemic criminalization and incarceration of communities of colour. Ending mass incarceration is one of the most important fights since the civil rights movement and we will work with communities across the country to ensure that we seize the moment and win.

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Justice Action in Prisons *Madeleine Spain*

Malcolm Baker, a gentle 67-year-old Australian prisoner is being subjected to forced medication and 15 years of solitary confinement, 23 years after being given a life sentence. Tracy Brannigan died from a drug overdose due to negligence on the part of prison authorities, just three months shy of her potential release from prison. Over 13 years after being found not guilty of manslaughter and malicious damage to property by reason of mental illness – which normally results in a 3-and-a-half year sentence – Saeed Dezfouli is still being held indefinitely and forcibly injected because he will not stop resisting.

Justice Action stands beside each of these people. Without such support, they would be isolated and without hope. Together, these situations illustrate the ways in which the justice and mental health systems marginalize and degrade people. It is struggles like these that provide context for fighting for prisoners' rights.

In Australia, the prisoner movement traces its history back to colonization, when the country existed as a penal colony. The slavery and overall degradation of human beings that occurred during this period prompted the rise of the prisoner movement. Justice Action exists as a part of this movement, and, since its inception, has targeted abuses of authority against vulnerable citizens. We are especially focused on disadvantaged people such as prisoners and individuals who have mental health concerns. In addition to its work in defending human rights, Justice Action aims to improve the social and mental health of affected communities and advocates for methods that reduce recidivism.

As an independent, non-governmental organisation, Justice Action is self-funded through the social enterprise Breakout Media Communications, strengthening its ability to perform its watchdog functions. Our team members come from all walks of life. We draw our lifeblood from prisoners, ex-prisoners and their families, who bring their concerns about prison to the public sphere. Justice Action also relies on the work of students and community members who share with us their passion for social justice and their desire for learning, as well as on lawyers and academics who lend their skills and expertise. Justice Action believes that meaningful change in Australia's criminal justice and mental health systems can only be achieved through the free exchange of communications and greater community involvement, and that *all* members of society should take responsibility.

Our organisation uses many approaches to affect social change. For example, in 2013, Justice Action launched iExpress as a means of ending the social exclusion faced by those in prisons and locked hospitals. iExpress is the world's first prisoner social media system. It empowers people in prisons and forensic hospitals by reducing the digital divide that exists between them and the outside world, and provides them with a means of social integration prior to release. The system includes free services, such as personal email and online profile management software programs, and provides prisoners a link to the outside world. The service also serves as a creative outlet by allowing prisoners to showcase their artwork and musical compositions, encouraging positive communication and expression.

While the rhetoric of rehabilitation used by the state stresses active participation, prison culture conditions people to become submissive and wait for time to pass. For this reason, Justice Action continues to advocate for the implementation of online counselling in prisons. Counselling through computers in cells is a cheaper and more effective alternative to face-to-face therapy. Online counselling offers prisoners stable services that can be accessed long after incarceration and that is not affected by transfers. This stability is important in building counsellor-patient relationships and promoting psychological health. Additionally, prisoners are able to choose to partake in online counselling on their own, encouraging self-management and active use of cell time, skills which can be further developed upon release and are important in preventing recidivism. Justice Action has also produced a research paper on the issue, *Computers in Cells*, which was presented at the Fifteenth International Conference on Penal Abolition in Canada. The paper generated widespread interest from authorities in Australia and abroad, and, subsequently, helped gather support for a roll-out of this program in Australian and New Zealand prisons and mental health hospitals.

Justice Action has also defended prisoners' rights to store their possessions, as proper storage is essential to reintegration after incarceration. The loss of identification documents poses obvious practical problems, while the loss of letters, photos, and family heirlooms has less tangible, but no-less-real consequences to the well-being of the criminalized. Given that prisoners often do not have a home or job to return to, and have often lost their connections to the outside world, the storage of belongings has become an important factor in ensuring a high quality of life for prisoners post-incarceration. To ensure

that these essential storage services be provided to prisoners, Justice Action assisted the NSW Prisoners Aid Association in advocating for their continued funding as a storage facilities provider. This campaign has been rolled out to other states, territories, as well as to New Zealand in 2015, ensuring a more widespread provision of storage to inmates.

Justice Action's work does not stop at research. It also works on a case-by-case basis to uncover and rectify abuses of authority. More specifically, after three Supreme Court cases, Justice Action experienced success in the area of mental health in regards to the issue of forced medication. These issues include defining the role of hospitals and the limitations of tribunals. Justice Action presented a publication titled *Mad in Australia*, at the Ninth National Forum on Reduction and Seclusion and Restraint Forum, in an effort to voice the detrimental effects of forced medical intervention on behalf of people affected by the penal system.

Justice Action also publishes *JUST US*, the only newspaper in Australia and New Zealand distributed to people in prisons and hospitals. Giving a voice to those silenced by the criminal justice and mental health systems, *JUST US* is crucial to Justice Action's continued engagement with the community it serves. Showcasing art, poems, articles and letters from the inside, along with news and information on prisoner and patient rights, *JUST US* continues to keep our audience informed about their rights and pertinent issues in the criminal justice system. Justice Action's most recent *JUST US* publication provides statements from political parties regarding criminal justice issues, and reminds people in prisons and hospitals that they have the right to vote in elections, empowering them to view themselves as equals with other Australians.

Prior to the 2015 election, Justice Action prepared a questionnaire to examine various political parties' responses to a spectrum of prison-related criminal justice issues. This project allowed for an open dialogue between political parties and the community in bipartisan policy development. Some of the issues raised pertained to Indigenous Australians, women, youth in custody, bail, and education and training in prison.

We strive to challenge authorities and to end abuses of those they control. Justice Action works for the rights and welfare of prisoners, mental health patients, and their families, and to express the views of the prisoner community. With the support and participation of the wider community, our work will continue.

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COVER ART

Peter Collins was a writer, artist, musician, cartoonist, activist, filmmaker, organizer and prisoners' rights advocate. Peter was a social critic who offered thoughtful insights about the structures of violence inherent in the world around us. His tireless commitment to social justice from inside prison made him a target of harassment by the Correctional Service of Canada (CSC), which ultimately prevented his release. Peter passed away on 13 August 2015 of bladder cancer after having served 32 years on a Life 25 prison sentence. He was 10 years passed his parole eligibility dates.

Front Cover: "Omnibus"
2011
Peter Collins

Back Cover: "Birds"
2010
Peter Collins

Books available for review



The **Journal of Prisoners on Prisons (JPP)** is seeking individuals who would like to write reviews on new books related to prisons and punishment. Book reviews typically range from 800 to 1200 words. Should you be interested in writing a review, please write us at the address below and we would send a book by mail.

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Available books include: *Words Without Walls: Writers on Addictions, Violence, and Incarceration*; *A Country Called Prison: Mass Incarceration and the Making of a New Nation*; *The Outside Circle: A Graphic Novel*; *Captive Nation: Black Prison Organizing in the Civil Rights Era*; *Prison and Social Death*; *The Marion Experiment: Long-term Solitary Confinement and the Supermax Movement*; *Criminalized Mothers, Criminalized Mothering*; and more. Check our website for more available titles or write to the above address for a full list.

Matrix

Matrix Magazine: CALL FOR SUBMISSIONS

Canada's prisoner population is a diverse and underrepresented community with much to offer in terms of creativity and literary contributions. Matrix Magazine is pleased to announce its forthcoming Writing from Prison issue. Matrix Magazine is seeking poems and short stories written by Canadian prisoners for an upcoming issue. Please send up to five poems and short stories no more than 3000 words to barnet@ualberta.ca by **January 15, 2016**.