In the past 20 years the plight of victims of street crime and interpersonal violence has been front and centre in the debate over the form and utility of criminal justice responses to social conflict and questions of order. Unfortunately, the plight of victims of crime has been appropriated by the political right as "a stalking horse of repression", with the needs of victims (see Morris) transformed into political ammunition and reactionary cant. In this context, the designation "victim" is selectively applied to those cases and victims which reinforce right-wing punitive justice ideology and serve to forward that agenda (Elias, 1993). This selectivity is evident in most arenas where the "designated crime victim" is allowed to play a role. An initial problem is therefore to identify and distinguish the dominant ideological utilization of the "victim" designation, and to analyse its usage and referents. For example, in the application of the Son of Sam Laws in the USA, Bernard Goetz, the celebrated Wilsonite vigilante, who shot four young Afro-Americans in the New York subway, was not defined as a criminal predator by the New York Crime Victim Board. Rather, his conviction for possession of a firearm was deemed a "victimless crime" and therefore the young blackmen he shot (the dominant stereotype of the urban predator) were not assigned the victim designation (Timmons, 1995).

As the contributors to this issue illustrate, we need to relocate the discourse on victimization, to broaden its parameters to include violent victimization by the state and by the market economies of modern capitalist societies (i.e., distributive injustice). Victimization by the state is of particular significance for the criminalized, incarcerated, and their families and relations, as well as for victims of crimes processed by the penal justice system. A common referent of the concept "victim" in the 1960's and 1970's was victimization by distributive injustice, reproduced in the cycles of criminalization and incarceration of the marginalized and disenfranchised (Sennet & Cobb, 1972; Ryan, 1976). An initial focus of the women's movement in cases of sexual assault was dealing with post assault trauma and preventing the continuing victimization of the assaulted by the criminal justice institutions involved. These aspects are obscured or denied within the current hegemonic discourse on criminal victimization.

What of the recipients of repressive and injurious state punitive justice activities? Do they qualify as victims? Certainly the First Nations
Peoples of North America have cause to claim victimization by the state, as do urban youth who experience the invasion of their communities by armed and dangerous agents of social control (Taylor, 1995 p.10-11; Pedicelli, 1998). The declaration of “War” against crime and drugs has equated to a justification for the terrorization of selected groups of citizens who have been designated the “commodities” of the expanding crime control industry. Are those transformed into carceral commodities “victims”? (Christie, 1993; Wright, 1995a, 1995b; Burton-Rose, 1997)

In this issue our contributors address the political usage and selective application of the victim designation in criminal justice discourse and practice. In doing so, the authors elucidate the political utility of this selective application, and its role in dissuading, indeed denying, the need to discuss the criminal predation of agents of the state (Churchill & Vander Wall, 1988, 1992; Burton-Rose, 1997; Pedicelli, 1998) and the inherent violence of the retributive stance of the reactionary right.

Paul Wright in “Victims’Rights As a Stalkinghorse of State Repression” draws our attention to the selective application of the victim status and the political use of both crime victims’ concerns and societal empathy for their plight. He notes that this political appropriation of the victim designation ill serves both the victim and the defendant. In unravelling the strategic application of the victim designation he alerts us to what types of victims of criminal action are ignored or denied. For example, Wright argues that not all victims of violent crime are equal, as illustrated by the 19 murder victims of Mafia informer Sammy Gravano whose families were not consulted in arranging the five year plea bargain sentence he received. Similar Canadian examples are not difficult to find. In Montréal, the plea bargain deal with biker turned informer Yves Trudeau, consisted of a definitive seven year sentence for his principal part in 43 homicides (Doyle, 1988). I do not think that the families of Jeanne Desjardins, Robert Morin, or William Weichold, who were “innocent” bystanders of Trudeau’s gangland killings were invited to join Victims of Violence, to add their injustice to this group’s protest against lenient sentences awarded to “vicious murderers”.

Victims of police and prison brutality who die in the street or in custody at the hands of state authorities are denied victim status, their deaths most often explained away as products of their own doing, despite evidence to the contrary. For example, the police beating of Richard Barnabé in December 1993 in Montréal (Pedicelli, 1998) mirrored the attack on Rodney King in Los Angeles. Richard Barnabé subsequently
died from his injuries, with no one found responsible. One of the police officers involved actually testified that Barnabé tore out his own hair (Montreal Gazette, May 31, 1995). The eloquent rage of Hakim Al-Jamil in “Who Killed McDuffie?” (1993, pp. 115-116) captures this state of affairs:

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his brain was bashed
cranium crashed
skull fractured/broken
all the way around
but they say those that beat him
didn't kill him
so who killed mcduffie?
....
maybe it was one of those
seizures unexplainable where he
beat himself to death
it wouldn't be unusual
our history is full of cases where we
attack nightsticks & flashlights with
our heads
choked billyclubs with our throats till
we die
jump in front of bullets
with our backs
throw ourselves into rivers with
our hands and feet bound
and hang ourselves on trees
in prison cells
by magic
```

For prisoners, victimization by the crime control industry may start at the moment of arrest and continue throughout their incarceration and after their release. Of particular concern for prisoners is the constant and impending threat of violence posed by staff. Peggy Chrisovergis’ (1997:61) study of deaths in custody in Ontario indicates that from 1986 through 1995 there were 258 such deaths (1997:61), many under questionable circumstances. The recent scandal concerning shooting deaths (24) and injuries (175) of prisoners by staff in California State Prisons (1989-94), including 12 deaths and 32 wounded since, clearly
suggests staff collusion in the delivery of pain and death in that jurisdiction (Arax, M. & Gladstone, M. 1998). This threat of violence is part of the traumatic experience of incarceration that deculturates, brutalizes and debilitates the prisoner, affecting them during their incarceration and pursuing them after release.

It is difficult for prisoners to accept that the degrading and brutalizing conditions of their lives are not purposefully created (Shep, 1995; Huckelbury, 1997). Public demand for harsher conditions and penalties as expressed by the reactionary right, agents of social control and their "victims' movement" are currently played out in executions (Ainsworth, 1995. 1997a. 1997b; Allridge, 1995a. 1995b. 1997; Byrd, 1995), and the purposeful destruction of prisoners, especially the "right guy", politicized leadership, via marionization and behaviour modification. There can be little doubt of the intend of these panoptic control units and their eventual results (Jackson, 1983; Morgan & Reed, 1993; Churchill & Vander Wall, 1992; Burton-Rose, 1997). Testimony in the Federal Court of Canada in a 1975 challenge to CSC use of solitary confinement revealed;

Dr. Korn, drawing on his own experience as assistant warden in the New Jersey State Penitentiary testified that it was to 'break their morale, to break down their capacity to resist, to get them into a submissive state, that is the objective ... I thought it was either them or us, and unless we could break them down psychologically and make them submissive they were unsafe to us and the community'.

Dr. Fox, in defining what he understood to be the purposes behind the regime in SCU [Control Unit], stated that 'it is designed, I believe, not so much for security purposes but to reduce the individual to that condition where there is no conceivable human resistance, where they represent essentially nothing'.

... the effect of this was to reduce the prisoner to a state where he had no self-respect, no identity, no dignity. However, 'to relinquish, to admit to the psychological suicide of non-identity, is essentially to violate all conceivable meaning in the evolution of mankind .... To come to have no meaning, to come to be nothing, is essentially the greatest human suffering, that is to say, it ultimately leads to insanity and suicide'.
Dr. Korn, in assessing the process which he had helped initiate in New Jersey ... told the court, ‘This process is fool-proof. If you keep it up long enough, it will break anybody, the more heroic they are, and the more they resist, the more determined you get ... We kept them there for years and when they were finally broken down, we let them out .... Then I began to see what I was doing ... and said, We must stop this, the ends do not justify the means, this is a form of murder, it has to stop’. (Jackson, 1983 pp. 72-73)

In this issue, Charles Huckelbury extends the critique of the strategic designation of victim status by analysing the mythic distinction between victim and criminal rights assumed by the reactionary right. Huckelbury argues that such distinctions deny a fundamental strength of the republic; that is, constitutional rights are to be universally applied as guaranteed by the USA Constitution. The current trend represents a retreat from the realization of these guarantees.

The formal denial of the rights of the criminalized furthers the current fashion of scapegoating designated “criminals” for the ills of modern society. The panacea of public retribution as played out in the commercial productions of the “crime media” provides a consistent image of who constitutes a threat to the social order, and what response is required. The current “great confinement” of working class youth, especially those from Afro American and Hispanic communities in the USA, and Aboriginal communities in Canada, attests to the extent that this scapegoating has taken hold. If we consider factors such as distributive injustice (see Morris) in selective criminalization, it is difficult not to heed the critical claims of the leaders of these communities. This overrepresentation of the poor, minorities and marginalized as commodities in the crime control industry is most apparent at the door of the penitentiary (Reiman, 1979; Churchill & Vander Wall, 1992; Taylor, 1995; Burton-Rose, 1997). Steven King Ainsworth in “The Prize of the Poor” argues that because of the selective application of capital punishment in the USA, state execution is also largely the providence of the poor (see also, Ross, 1995). Indeed, prosecutors play to public fury and demand the death penalty with an eye toward successful career advancement consequent upon securing a conviction and the penalty of death.
The contributors to this issue, like Victor Hassine in “When Victims Knead Victims” acknowledge the suffering and trauma of victims of crime and their consequent needs. However, the current crime victim movement has been fashioned as an ideological tool for affirming the public desire for vengeance and retribution, not for restorative or transformative healing (Morris, 1995). Hassine illustrates how this plays out in the involvement of crime victims in the calculus of pain, which serves neither the designated crime victims nor the criminalized, incarcerated and their families. Most current involvement of crime victims in formal sentencing and release decisions serves to perpetuate the cycle of violence and does not lead to closure for the participants. Like Merton’s structural functionalist analysis of the never ending boundaries of capitalist greed, in the current zeitgeist of dislocation anxiety, the punishment is never enough. (Huckelbury, 1997)

To understand prisoners’ accounts of this issue it is necessary to locate their analyses within their experience of criminalization and carceral life. Wayne Carlson discusses the brutality and faint hope existence of carceral culture as a victimizer of both prisoners and staff. Contrary to Correctional Service of Canada (CSC) ideology (e.g., Solicitor General, 1988; Porporino, 1991) of “blaming the victim” of carceral brutality, the organization and culture of the prison dictate the social relations that occur within its walls (Cressey, 1961; Goffman, 1961; Cohen & Taylor, 1972; Haney et.al., 1973; Gaucher, 1974; Hassine, 1995a; Reed & Denisovich, 1995). What Porporino and other CSC apologists conveniently leave out of their Clemmer (1938) style account of the prison and “prisonization”, is that the prison culture the new prisoner is swallowed up and transformed by, precedes and outlasts him. The great carceral cesspool into which the prisoner is socialized serves to create the delinquent in body and soul (Foucault, 1979), and serves as a finishing school for the marginalized underclass as a recyclable commodity of the crime control industry (see Mathiesen, 1974; re: functions of imprisonment). As Carlson points out in this issue, the processes of deculturation and social debilitation of the total institution affects all who engage it, producing convicts who can neither forgive nor forget, and prison guards who hold grudges and are as “prisonized” as their charges.

Dan Cahill in “Victimization” speaks for many older prisoners who, through hard experience, have come to understand the effects of criminalization and carceral existence. The depths and extent of the attack
on being and self, perpetrated in the name of punitive justice, has been recognized in the vast body of prison literature of the past (e.g., Dostoevsky, 1951, 1972, 1985; Serge, 1977; Davies, 1990). A common thread between many of these accounts is the sense of being “overpunished”: the experience of having one’s life seized, and transformation into the degraded and destructive being of a convict (Hassine, 1995b; Huckelbury, 1997). For those who have developed a social and political consciousness within these experiences, their victimization is apparent and something to resist. (Cohen and Taylor, 1972; Churchill & Vander Wall, 1992; Morgan & Reed, 1993; Morse, 1995; Rivera, 1995; Dana & McMonagle, 1997; Burton-Rose, 1997). As illustrated in this issue by Cahill’s forthright portrayal of his experience as a “career criminal/convict” the sense of victimization of the prisoner is heightened by the realization of the wastefulness and futility of the punitive response and their own active participation within it.

Cahill also notes that the prisoner’s struggle for survival within the prison involves emotional and psychological survival as well as physical survival (see also, Cohen and Taylor, 1972). Victor Hassine in “Monochromes From Over a Prison’s Edge” uses his delicate pen to tease out the process of his own awakening to the psychological and emotional dangers of life in the penitentiary. Hassine vividly portrays “madness” as a common response to imprisonment and the lurking spector of madness in the lifes of all longterm prisoners.

In the current selective application of the victim designation, victimization by the state, in the name of the public (i.e., scapegoating rituals), is denied and ignore as just deserts required to protect society. The refusal to recognize the prisoner as a human being allows the consequences of state oppression to also be denied. Indeed, the end result of punitive justice practices (e.g., longterm warehousing) are looped back to substantiate the original criminal designation.

Not surprisingly, the recognition of the traumatizing effects of carceral life and social relations is apparant in CSC analysis of staff problems and needs (CSC, 1990; 1991; 1992;). Lois Rosine’s (1992) study of CSC staff exposure to stress producing “critical incidents” indicates that “17 percent of officers in the study experienced effects severe enough to be clinically diagnosed as suffering from PTSD (Post Traumatic Stress Disorder).” A further 57 percent of the sample presented a variety of debilitating stress symptoms (p. 33). So what does constant exposure (without the ability to retreat) to critical incidents do to
prisoners? What are the lasting effects of such traumatization of prisoners, and how does it affect their behaviour in prison and after release?

If prison staff are traumatized by their experiences of prison life and the routine critical incidents that characterize it, what of prisoners who are often forced to endure post critical incident terrorization at the hands of traumatized staff. For example, in the aftermath of the horrific Kingston Penitentiary riot of 1971, the prisoners transferred to the new and speedily opened Millhaven maximum security penitentiary were forced to run a gauntlet of armed staff and then endure years of terrorization at their hands. These terrorist attacks included regimes of isolation and attendant sensory deprivation, psychological and physical attacks. (see Swackhammer, 1973; MacGuigan, 1977; McNeil and Vance, 1978; Culhane, 1979, 1985). Eventually Millhaven prisoners’ resistance to this oppression coalesced in the Odyssey Group’s non-violent Prison Justice Day response to institutionalized terror (Gaucher, 1991).

In “Unity Walk”, Jon Marc Taylor presents an account of prisoners’ attempts to transform a situation ripening toward rebellion, into a peaceful, and socially responsible demonstration of prisoners’ grievances and solidarity. In Taylor’s account, the role and calming influence of older convicts, (many whom had educated themselves while in prison) created the consensus needed to produce a responsible and non-violent response to increasing repression. The aggressive response of the Indiana State Reformatory’s administration and the Indiana Department of Corrections reveals an important contradiction in the prisonocrats justificatory ideology. The official designation of the older, moderate convicts as “criminal predators”, and their subsequent segregation and isolation from the more volatile youthful population suggests an institutional interest in maintaining a threatening and violent prison atmosphere. That is, an interest in maintaining an environment which will justify the periodic unleashing of their own traumatized and prisonized staff to terrorize the prisoners they control. These are the same type of convict “criminal predator” routinely isolated by prisonocrats under conditions of “marionization”, and this belies the justification for “marionization” put forth by the likes of Norm Carlson and Bruce Ward (Gaucher, 1995 pp. 3; Kisslinger, 1996). It reveals that “marionization” is utilized as a tool for domination of those prisoners who have survived the carceral experience and emerged as socially conscious and responsible people.
Taylor also illustrates the "rehabilitative" qualities of higher education and highlights the current warehousing industrial model's elimination of such opportunities. (see also, Taylor, 1997).

In contemporary penological discourse the importance of the prisoner's family and friends is largely ignored, though they often play a major part in the prisoner's experience of criminalization, incarceration, and eventual reintegration into society. If considered at all, their involvement is often negatively framed as a threat to the security and good order of the institution. Certainly the victim designation is not readily available to the family and friends of the prisoner, despite their experiences of victimization at the hands of the state. In this issue Amy Friedman Fraser and Arlene Leigh Squiers forcibly argue that as a consequence of the criminalization and incarceration of the prisoner, family members experience social dislocation and disequilibrium which is exacerbated by prison authorities' negative actions towards them. The public degradation of the criminalized in the mass media and in criminal proceedings is firmly stamped upon their family members and friends. The analysis of Fraser and Squiers indicates that the family of the prisoner come to share their discredited social identity which heightens their shared experience of social exclusion and alienation.

In the mid 1980's, amidst a televised (C.B.C.) public debate over the reinstatement of capital punishment in Canada, a number of people in the studio audience referred to the shooting death of an Ottawa police officer as the type of homicide for which the death penalty was suitable. The mother of the young man convicted of the crime quieted the audience and changed the direction of debate by noting that she had three other children who would be strongly affected by the execution of their brother (see also Allridge, 1995a; 1997). What of the waves of pain and trauma that crash over the family of the executed and incarcerated? Are their interests to be ignored in the quest for retribution?

In line with Cahill's call for a restitutive and restorative response to crime, and Taylor's illustration of the benefits of rehabilitative opportunities, Fraser and Squiers note the essential role and shared societal goals of family and friends in the rehabilitation and successful reintegration of many prisoners. Fraser and Squiers argue that despite the importance of their role and contrary to CSC claims, the family of prisoners are defined and treated negatively by prison authorities. As a result, their ability to assist in the rehabilitation and reintegration of their family member is compromised.
The experience of selective criminalization and incarceration, and its attendant brutalities and consequent injustices does little to rehabilitate or restore the prisoner. The current trajectory, with its escalating demands for harsher punishment can only fuel the crime control industry and its cycles of vengeance and retribution, fear, hatred, and division. Ruth Morris in responding to the articles in this issue identifies the essential needs of crime victims, noting that vengeance is not one of them.

In “Two Kinds of Victims: Meeting Their Needs” Morris relocates the concept “victim” within a broader conceptualization of the experience of injustice. In this formulation, victimization is also a consequence of distributive injustice. Ruth Morris’ analyses and work has consistently drawn us away from the state as the method of resolving community conflict and righting injustices. (see also Morris. 1995). For Morris, the way out of the cycles of violence and injustice perpetuated by the criminal justice system is found in the nexus of “community” relations and community control. It is in their communities that the victims of crime and all types of injustices are best served and healed. This need for transformative justice is revisited in the current debate on crime prevention and in some left realist analysis which addresses social conditions as essential factors in the reproduction of crime/social problems in western societies. (see Currie, 1993).

However, in light of the war measures mentality of contemporary angst, it seems clear that societal fears and insecurities will continue to be played out in the scapegoating rituals of punitive criminal justice. Growing inequalities, enforced by paramilitary models of surveillance, control and confinement, suggests that the rich have indeed declared war on the poor and are in the process of rationalizing the crime control industry as a means of furthering it. (Christie, 1993). The self interested, political usages of the pain and trauma of crime victims by the organized reactionary right, epitomizes the current vituperate approach and its success.

As exemplified in the traffic in narcotics, once established, the dynamic of supply and demand is difficult to dislodge (Currie, 1993). The growth of the crime control industry in the past two decades should be triggering alarm bells, as it gathers more and more working class and minority youth into its clutches. What will be the impact of this form of distributive injustice on the communities from which these carceral commodities are drawn? How many generations will it take to repair and
heal the harm done to these communities by the actions of the state? Certainly the long difficult road to recovery facing Canada’s First Nations illustrates the extent of the damage the coercive actions of the state are capable of producing.

The formal absorption of crime control and the delivery of pain by the capitalist market economy serves to further entrench the economy of the prison in widely dispersed locations (Moore, 1994). The current industry definition of the carceral subject as a carceral commodity formalizes this transformation. This societally shared desire to inflict violence on others (regardless of how it is legitimated) like dependency on narcotics, once established is not easily put aside. The growing surplus labour components of capitalist societies guarantee a ready supply of carceral commodities and the economic rewards of the industry guarantee that orchestrated public demands for penal retribution will be answered. If this slide towards “gulags western style” is to be halted, the essential social philosophy of societies will have to change. If we are to break the cycle of violence and revenge, we will have to move towards a more inclusive and less competitive social order. A social order in which we share rights and responsibilities, as individuals and communities, and therefore share an interest in righting distributive injustices upon which current punitive justice approaches feed.

Unfortunately, the current climate suggests a drift towards fascism (Gross, 1982; Churchill, 1992) that will not be easily deflected. As Richard Cobden (1999) in an opinion piece in the Washington Post recently observed, the ready acceptance of police brutality and wrongful convictions, and the enthusiastic support for capital punishment in the U.S.A. “... suggest not that the authorities are out of control, but what they are doing is precisely what we want.” This trend is fraught with danger for everyone in civil society. As Hakim Al-Jamil (1993) warns us

....
so for your own safety,
you should know the pedigree of
who killed mcduffie
you should know the reason of
who killed mcduffie
you should remember all those
forgotten
who died of the disease nobody
Bob Gaucher

makes claim to
so we wont be here asking
who killed you

**ENDNOTE**

1. The “Son of Sam Laws” refer to USA legislation which focuses upon the seizing of monies derived from the relating of criminal or suspected criminal involvement by the suspect/convicted, for profit. The first such legislation was passed in New York State in 1977 in response to rumours that David Berkowitz (Son of Sam case), was being offered large sums of money by the mass media to sell his story of murder and mayhem. Subsequently, similar legislation was passed federally and in 42 States in the USA. In New York State, the Crime Victim Board has the power to determine in what ways and to whom the legislation (Executive Law 632-a) applies. The publishing house of Simon & Schuster challenged the New York law in 1987, and eventually in the USA Supreme Court, where it was overturned in 1991. In 1998, the Canadian Standing Senate Committee on Legal and Constitutional Affairs rejected a similar Bill (C-220) which had been quickly passed and unduly considered by the Canadian House of Commons (see also, “Editor’s Note”).

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How the ruling class defines and punishes "crime" goes a long way towards demonstrating whose class interests are being served by the criminal justice system. The criminal justice system in the United States is used as a tool of social control to ensure that dangerous classes of people, primarily the poor, are kept disorganized, disoriented and otherwise incapable of mounting any serious, organized challenge to the political and economic status quo (D. Burton-Rose, D. Pens and P. Wright, 1998).

A key component of this strategy is to first define crime so that the poor are overly included and the wealthy and powerful are largely excluded and weeded out of the arrest, prosecution, conviction and imprisonment cycle. For an excellent discussion of this process, see J. Reiman (1978), *The Rich Get Richer, The Poor Get Prison*.

The flip, and equally important side of this process lies in defining who is a victim and who is not. At different levels some victims are defined as "worthy," others are not. Recent years have seen increased activity by victims' rights groups as well as legislatures who loudly claim concern for the victims of crime. While more questions than answers exist on this complex issue, to date, "victims' rights" has been used primarily to expand state power and repression in a manner that police and prosecutors would otherwise have been unable to do directly (Elias, 1993).

The first step lies in defining who "the victim" is. An illustrative example are the steps being taken to add a victims' rights amendment to the U.S. constitution. This amendment would require that prosecutors notify victims of any court hearings involving the defendant, give victims an opportunity to speak at sentencings, be consulted about plea agreements, et cetera. This amendment is due to be voted on by the U.S. Senate in the near future. A key change made after the bill was introduced was to define the term "victim" to include only the victims of violent crime. The victims of economic and property crime are excluded from coverage by this amendment. Since more people are victimized by economic and property crime than violent crime, apparently that victim majority is not worthy of protection.¹

The thousands of people bilked out of their life savings by the likes of fraudulent scamsters Charles Keating and Jim Bakker are among those
not considered worthy of protection as victims. Just as criminal activity by corporations and the wealthy is effectively decriminalized through lax enforcement of the laws or diversion into the civil justice system, so too are the victims of predation by corporations and the wealthy “devictimized.” Workers killed in accidents that result from a company’s cost cutting measures to maximize profit are not victims. Consumers killed by dangerous products knowingly marketed by corporations to make more money are also not victims.

A miner killed because his employer cut costs on safety measures is not a victim. His widow who loses her life savings due to fraud by bank owners is not a victim, even having her car stolen by local thieves does not make her a victim. But, if she is robbed at gunpoint of five dollars, she is now a victim worthy of constitutional protection.

GOOD VICTIMS AND BAD VICTIMS

Various studies have shown that a majority of incarcerated sex offenders were themselves sexually abused when they were children. At what point do the sexually abused cease being victims and become criminals? When they are arrested?

Getting beyond the defining of who is an official victim and who is not, lets examine the victims of violent crimes against the person (murder, rape, robbery and assault with bodily injury). Here the key issue defining a person as a victim is not merely a matter of economic loss but the key issues of the identities of the victim and the victimizer. Or, not all victims are equal.

A point raised by some prosecutors opposed to the constitutional victims’ rights amendment, which has been largely ignored by the media, is that a substantial number of violent crime victims are themselves criminals with their injuries being the result of dispute settling among members of the lower class criminal element.

Sammy Gravano was given immunity for the murder of 19 of his fellow mafia compatriots, in exchange for his testimony against John Gotti. Obviously police and prosecutors and a judge decided that Gravano’s 19 murdered mafia victims were not worthy of the definition. Under a victims’ rights amendment would the families of Gravano’s victims be allowed to speak out against his five year plea bargain sentence? When one drug dealer shoots another in a dispute over money or turf does the slower shot now become a victim?2
Every day across the U.S. police and prison guards kill, beat and brutalize the citizenry. Prisoners are also assaulted, sexually and otherwise, and subjected to bodily injury by their fellow prisoners and prison staff. However, the political establishment is not calling on rights for these victims. Abner Louima, a Haitian immigrant in New York City who was sodomized with a police truncheon in a police station bathroom by New York’s Finest, is not referred to as a “crime victim.” We never heard the term “crime victim Rodney King” because even when police are convicted of criminal acts, to call the brutalized people “victims” necessarily implies the police perpetrators are criminals. And we cannot have that.\(^3\)

The political problem for the advocates of “victims’ rights” becomes even greater when prisoners suffer injury. The political discourse that has been created around “victim rights” steadfastly implies what it cannot openly say: “worthy” victims are nice, middle and upper class people, usually white, who are raped, robbed or killed by poor, violent strangers, especially Black or Latino strangers. If the police, media and politicians have made the universal face of crime that of a young black or Latino man, they have also strived mightily to make the face of the universal victim that of a middle or upper class white woman or child. Brutalized prisoners do not advance this political agenda. Hence, there is no concern whatsoever for the prisoner who is raped, robbed, beaten or killed, whether by prisoners or prison staff. Not surprisingly, no one speaks of “victims’ rights” for the prisoners subjected to violent crimes against their person.\(^4\)

Then we reach the forgotten victim: people wrongfully convicted and imprisoned or executed. Whatever one says or thinks should be done with people convicted of a crime, however crime is defined, what about the innocent? Some studies estimate that 1 - 2% of criminal convictions each year are wrongfully obtained, not in a legal sense, but as a matter of fact: the accused did not commit the crime for which they were convicted (Wisely, 1994). Recent cases in Philadelphia where hundreds of prisoners were released after successfully showing they had been set up and convicted on false drug charges by corrupt police are but one example.\(^5\) Whatever the actual numbers, as a matter of statistical probability, of 1.8 million people imprisoned in U.S. prisons and jails at least some are factually innocent. Few defenders of the criminal justice system claim it is infallible.
The U.S. Supreme court has held that it does not violate the U.S. constitution to execute the innocent, so long as the condemned received a "fair trial." Justice Blackmun commented that executing the innocent "bordered" on simple murder. If innocent people are convicted, imprisoned or executed for crimes they did not commit are they too not victims? Victims of a system no less, for unlike individual crimes committed by people acting alone, imprisoning and executing the innocent requires collusion by the police, prosecutors, judiciary, and sometimes juries and the media, to accomplish its end result. To call the imprisoned and executed innocents "victims" would call into question whether or not the entire criminal justice system is a victimizer.

A large part of the problem with defining who is and who is not a "victim" lies with the degree of impunity the perpetrators receive. Not surprisingly, brutalized prisoners and citizens and the wrongly convicted who suffer at the hands of police, guards, prosecutors and judges are not considered worthy of the title "victim" because the victimizing institutions of social control, prisons, police, judiciary and prosecutors, are rarely if ever held accountable for their misdeeds. People cannot become a "victim," not a worthy victim anyways, unless the social and political decision is first made by the ruling class to have a "criminal." Thus the same reasoning applies to why people who suffer economic and physical harm due to the predation of the wealthy and corporations are also not considered worthy victims.

THE POLITICS OF VICTIMS' RIGHTS

The political use of the victims' rights movement is seen by the rise of this movement as part of the overall trend towards increased state repression that began in 1968 but which accelerated markedly with the Reagan presidency. Virtually all the well funded victims' rights groups receive substantial portions of their funding directly from law enforcement agencies or groups linked to such agencies. The result, intended or not, is that these groups tend to parrot the party line of more police, more prisons, more punishment, more draconian laws. The Doris Tate Victims Bureau in California receives 85% of its funding from the California Correctional Peace Officers Association, the union which represents prison guards. The union also provides the Bureau with free office space in its Sacramento headquarters. Not surprisingly, the Bureau likes what
the union likes, especially things like "3 Strikes" laws which will help ensure full employment for prison guards. The net result is that those with the biggest vested interest in maintaining and expanding the prison industrial complex, police, prosecutors and politicians, eagerly use "victims' rights" groups as their stalking horses to expand repressive state police power in a manner that would seem crassly self interested if they did so directly.

It is important to note, however, that not all victims' rights groups fall into this category. Murder Victim Families for Reconciliation (MVFR) and the restorative justice movement are the most notable examples of victims' rights groups that are not political pawns for those who seek to increase state repression. But, this also proves the point. Who thinks of MVFR or restorative justice when discussing victims' rights? They are neither well funded nor well publicized. Because their goal of actually helping the victims of property and violent crime deal with their loss does not advance a broader political agenda for the dominant class they are largely ignored.

The current criminal justice system ill serves the victims of crime, all crime, not just that which the ruling class frowns upon, and it ill serves the criminal defendant. Most people who suffer the loss of property would prefer compensation to the thief's incarceration. Of course, those robbed by the rich usually get neither compensation nor imprisonment as satisfaction.

For the victims of personal violent crime committed by poor individuals the current system offers only punishment. (Which any discussion with the majority of victims' rights advocates quickly leads to the conclusion that no amount of punishment is ever enough). Punishment rarely gives the victim the closure or the perpetrator any type of empathy, understanding or rehabilitation. But as long as the purpose of the criminal justice system remains that of the tool of social control over the poor this is unlikely to change. Likewise, this is exactly what makes it unlikely that restorative justice will make inroads into the criminal justice system. Even less likely is that any organized voice will call for the inclusion of all victims of violence and theft, even if the perpetrators are agents of the state, the wealthy and corporations; even if the victims of these crimes are poor, imprisoned or socially disadvantaged.

For the foreseeable future victims will continue to be defined as the occasional white, middle and upper class person who is killed, raped, robbed or assaulted by a stranger who carries out this act in person.
Unless critics of the criminal justice system begin to question and expose the current role of the "victims' rights" agenda its veneer of legitimacy and influence will go unchecked.

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ENDNOTES

1. The Nation and the New York Times have reported extensively on this amendment since it was put forth.
2. The New York Times and Time Magazine covered Gravano's deal and his testimony against John Gotti. [For Canadian example, see editorial in this issue].
4. Every issue of Prison Legal News contains verified accounts of violent crimes against prisoners.
5. For details of this case, see coverage in the New York Times.
7. The Sacramento Bee and Los Angeles Times have reported upon this connection.
8. See also, Wright, 1995.

REFERENCES


Victims' Rights: The Fallacy of the Zero-Sum Solution
Charles Huckelbury, Jr.

“A great empire and little minds go ill together.”
Edmund Burke

The State of Florida executed Pedro Medina in March 1997. The execution itself hardly marked a watershed; neither did the flames that erupted from Medina’s head as the voltage surged through his body. The same thing happened in 1991 during Jessie Tafero’s execution, and the responses to the unanticipated horror were identical. Again calls came from various public and private organizations to abolish if not capital punishment per se, then surely the electric chair itself as an antiquated method of both psychological and physical torture. At the other end of the philosophical spectrum were those who insisted on the chair’s efficacy and even heralded its use as an extra measure of deterrence to would-be killers planning forays into the Sunshine State. One legislator, commenting on whether lethal injection should supplant electrocution, objected because lethal injection was too easy: it was like going to sleep.

The most startling result of Medina’s execution, however, was not the accompanying argument concerning the method of putting people to death. The public’s mandate seems sufficiently clear to permit the states to choose whatever vehicle suits their particular populations’ tastes in death machinery. Instead, another, older argument raised its head: the question of the rights of the condemned versus those of their victims, and by extension, the perceived discordant rights of predator, prey, and society in general.

Shortly after Medina’s execution, Court TV broadcast an installment of its popular “Cochran and Grace” show, featuring Johnnie Cochran and Nancy Grace. Cochran, of course, represented O. J. Simpson and served as the program’s liberal commentator. Nancy Grace was a former prosecutor from Georgia and Cochran’s conservative foil. On this particular program, Grace echoed Florida’s attorney general, Bob Butterworth, by advancing the argument that irrespective of the nature of Medina’s death, including whether he suffered before dying, right-thinking men and women would be better advised to put their concern for Medina’s victim’s rights before his.

That is, quite simply, impossible because, as I will argue, the rights of both criminals and their victims (including the families of the primary
victim) are identical and cannot be differentiated, either philosophically or existentially, as long as the country is governed by the Constitution.

I do not quarrel with the jury’s verdict in Medina’s case. I accept his guilt for statistical reasons alone: there are far more guilty than innocent people in prison. Neither will I argue Medina’s mental competency at the time of his execution. I wish, rather, to address a more fundamental problem with attempting to establish a tripartite separation of rights, the same rights that are rooted firmly in the political and philosophical underpinnings of the Republic. This tactic always produces a zero-sum solution with perpetual losers.

Grace and the majority of conservative commentators insist on one group of rights for criminals (here defined as anyone convicted or even suspected of committing a crime), one for victims of crimes, and yet a third for the majority (shrinking as I write) who have had no contact with the criminal-justice system on either side. Grace et. al. complain that the criminal enjoys a distinct set of rights that not only infringes those of her/his victim and the public in general but is even more sacrosanct. Thus, there is a need to redress this grossly unfair (and impolitic) imbalance with a new declaration of rights for America’s version of the sans culottes. What neither Ms. Grace nor anyone else can find, however, is any distinct set of rights for criminals anywhere outside the Eighth Amendment to the Constitution, which prohibits cruel and unusual punishments. These “rights” are a fabrication, the club used to beat the socially undesirable elements of society once they come under the control of the criminal-justice monolith.

Under the law, the technical definition of a criminal (notwithstanding Grace’s inclusion of anyone arrested) is someone who has been convicted of a crime. No matter how high the mountain of evidence, how heinous the offense, how obvious the guilt, until a defendant is convicted by a jury or pleads to the charges, he or she enjoys the same protection that the law and the Constitution extend to every citizen of this country. We can hate Timothy McVeigh before his conviction if we believe him guilty of the carnage in Oklahoma City, but he did not stop being a citizen of the United States, with all the rights and privileges that status confers, until the jury rendered its verdict.

In the Declaration of Independence, Thomas Jefferson asserted that “all men are created equal [and] endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.” Mr. Jefferson naturally understood “men” to mean white
males, but his point is that citizens of the United States all possess civil rights that originate from their Creator. Leaving aside the religious implications and Jefferson's racism and sexism, the greatest single mind in the country articulated a philosophy under which a government was instituted to secure those basic rights of its citizens. So fundamental were those rights that Jefferson acknowledged the duty of the citizens to overthrow any government that failed to protect them.

The Constitution became the vehicle by which those rights were secured, specifically in the Bill of Rights, something of a radical document that requires closer examination for the purpose of this essay. So subversive are these first 10 amendments that Ed Meese, a former Attorney General of the United States publicly labeled the American Civil Liberties Union a "criminals' lobby" for the organization's unqualified support of the universal application of the Bill of Rights. What provokes this kind of response and how does it bear on the current separation of rights?

Only four of the amendments arouse the ire of the proponents of victims' rights vis-a-vis those of criminals, with the Fourth being the perennial whipping boy. This amendment deals with search warrants and probable cause. The Supreme Court has steadily eroded the peoples' dignity to the point where the "right of the people to be secure in their persons, houses, papers, and effects" is problematic, all because of the perceived miscarriage of justice caused by the so-called exclusionary rule that prohibits the admission at trial of illegally obtained evidence. But the Fourth Amendment is designed to protect all citizens, not just those accused of crimes, against over-zealous and sometimes criminal-minded police.

The Fifth and Sixth Amendments articulate injunctions against double jeopardy and self-incrimination and mandate due process of law, a speedy trial, and assistance of counsel. Here is where the much maligned Miranda decision first took form. Although these two amendments pertain to criminal and civil proceedings, it hardly seems unreasonable to prevent unrestricted trials, unguided by rules of law, coerced confessions, and denial of counsel to laymen ignorant of the law and their own rights. At the risk of becoming laborious, I repeat: these rights apply to everyone, guilty or innocent. If you are asleep in your home, the police cannot enter your house, coerce a confession, and hold you incommunicado while the prosecutor prepares a case against you. At least, not yet. These are not "criminal" rights but basic rights that protect each citizen.
The Eighth Amendment, as previously noted, prohibits cruel and unusual punishments, but it - or at least its interpretation - has been vilified by politicians as infringing on a state’s rights to inflict appropriate punishment on its prisoners. Perhaps some obscurantists would return us to the rack and wheel, but this amendment is necessary for a civilized society to govern the treatment of those it convicts and sentences to either imprisonment or death. If there is a criminals’ right, this is it, but few would argue that the state should officially sanction cruelty at any level.

As with any section of the Constitution, these provisions are subject to interpretation by the Supreme Court, but the protections remain logical extensions of the political thought that founded the Republic and are as viable today as they were in 1789. The public would no more consider rescinding any of these civil rights than they would revoking either the abolition of slavery or the extension of the franchise to women and blacks. All are fundamental civil rights, not criminals’ rights.

Why, then, the insistence that the two are distinguishable? H. L. Mencken once observed: “The trouble about fighting for human freedom is that you have to spend so much of your life defending sons of bitches; for oppressive laws are always aimed at them originally” (Quoted in Stubbs and Barnet, 1989). That describes the basis of the argument about rights today. Nancy Grace’s gratuitous advice to spend more time focusing on the victims’ rights than on those of the criminal’s ignores Mencken’s cogent analysis; namely that the rights are identical. It is the inclusion of a criminalized element beneath the umbrella of civil rights that appears to scandalize many citizens and their representatives, who think that such an inclusion is tantamount to a preferential treatment of those who ignore the laws the rest of society follows. Or, as Ed Koch, the former mayor of New York City, observed in an article for the New Republic, “When we protect guilty lives, we give up innocent lives in exchange” (Koch, 1985).

This is not to say that specific conflicts do not arise, especially where economic inequities dictate tough choices. Certainly a society should direct its resources to helping victims of crime, including compensation and restitution where possible from the guilty party. If a conflict exists between extending aid to a victim or his/her predator, then of course priority should be given to the victim’s needs, even if that means fewer amenities for the convicted felon. But that is a long way from an endorsement of the proposition that the rights of both are any different or that one’s rights should supersede the other’s, at least not until the
Fourteenth Amendment guaranteeing equal protection under the law is repealed.

Victims of crimes do have rights, just as any other citizen of the country. They have not been abridged by any special treatment of the men and women who harmed them. All that is necessary is for them to exercise those rights, whether in a courtroom or other public forum. Indeed, they must avail themselves of the opportunity, if for no other reason than to dispel the myth that criminals’ rights have miraculously contravened their own. Unfortunately, victims and society in general tend to see the extension of any civil right to those arrested, incarcerated, or merely suspected of committing a crime as a miscarriage of justice and an affront to decent people everywhere. This ignorance of the law and avenues for redress creates a climate of fear and loathing that amplifies a specious class division, the result of which is an iatrogenic disaster.

Consider what happens when civil rights are redefined and relegated to criminals’ rights.

Surveys have consistently shown that when asked if they would voluntarily submit to a search of their persons while walking down the street, most people respond affirmatively, explaining that they have nothing to hide and therefore see no inherent objection to such a search. These same individuals would consent to wiretaps on their phones and warrantless searches of their homes, all because they are not breaking the law and have nothing to hide. After all, it’s only the bad guys who would object to a search. These well-intentioned citizens ignore the purposes behind the formal articulation of those rights, willing, as Dr. Franklin put it, to surrender a little liberty for a little security, a proposition that usually gains neither.

And it gets worse. Recently, the Supreme Court ruled that during a routine traffic stop, police can force everyone in the vehicle to get out. This is deemed a reasonable intrusion to protect the lives of the police making the stop. No matter what the weather or how infirm a passenger might be, forget probable cause, driver and passengers must leave the vehicle when ordered or face arrest.

Every such tactic contradicts both the spirit and the meaning of the Fourth Amendment. Yet, they are acceptable to the majority, the same majority who think that only criminals get searched or have their phones tapped, because of an erroneous distinction between civil and criminal rights. It is impossible, however, to attack one without attacking the other because both arise from the same safeguards written into the Constitution.
This insistence on two (and often three) sets of rights and the consequent reaction against the concern for the criminalized and disenfranchised is hardly new. In his *Discourses*, (1950) Niccolò Machiavelli described the phenomenon. "[F]or seeing a man injure his benefactor arouses at once two sentiments in every heart, hatred against the ingrate and love for the benefactor." Citizens naturally see the state as their benefactor and equate themselves as part of it. At the very least, they commiserate with any victim of crime, because, as the same Machiavelli states in *The Prince*, (1950a) "lawless acts injure the whole community." Since the rights of a victim are always grafted onto the rights of society at large, the citizen "feels that he himself in turn might be subject to a like wrong and to prevent similar evils, sets to work to make laws."

And well she/he might, but the laws, to be effective and fair, must apply to everyone. Anger at antisocial behaviour is both natural and acceptable but not at the expense of the laws that bind a people together.

It is precisely this emotional response that is most pernicious and divisive. John Locke thought that men’s emotions must be restrained by the intellect. Indeed, it is the capacity to reason and control instinctive responses to prevent a greater harm that sets man apart from the beasts. The current insistence on condoning, or at least acquiescing to brutal executions because the public should pay more attention to victims’ rights is a graphic example of what Locke feared. It is not whether Timothy McVeigh should be executed but rather at what costs to the national psyche and in terms of damage to civil rights?

All victims of crime have been denied their fundamental human rights by whatever predator attacked them, but society must do better than responding emotionally and creating a class of victims’ rights that by its very nature subjugates other human and civil rights. We do not have the luxury of picking which laws we want to obey, at least not without penalty. Nor can we opt for certain constitutional protections for ourselves while excluding others, a tactic both illegal and immoral. It is as easy to point to interpretations embodied in, say, *Miranda* and criticize them as it was to argue against *Brown v. Board of Education* that ended segregation in the public schools. As unpopular as both decisions were, they each set forth civil rights that are the province of all citizens of the Republic, those arrested and those free, those in school and those out. The rights enumerated by the Constitution remain in force for every citizen, no matter what scurrilous arguments attempt to compromise or subvert them.
In 1782, Hector St. Jean de Crève-Cour published his *Letters from an American Farmer.* In that volume, he described what it meant to be an American. "We have no princes, for whom we toil, starve and bleed: we are the most perfect society now existing in the world. Here man is free as he ought to be; nor is this pleasing quality so transitory as others are" (Quoted in Lunsford, 1994). This idyllic description sounds terribly trite today, but the foundations upon which Crève-Cour’s analysis rested remain as valid as they were over 200 years ago because, precisely because, the same protections this French émigré enjoyed are the same ones guarding every citizen of this country. They are not “technicalities” that free guilty felons; neither can they be subdivided into distinct classes. They are constitutional rights that must be extended in the face of inept investigations and even apparent guilt, because if those rights become preferentially enforced, then no one’s rights are secure.

Should victims be compensated for their losses where possible? By all means, including fines and assessments against the perpetrators of the crimes. Should they be allowed to enter testimony at penalty phases regarding their loss and anguish? Should they be permitted to witness the execution of the individual responsible for killing their loved ones? Again, I would argue in favour of such measures, but this does not require a finding of a new set of rights. By applying existing law, or by availing themselves of possible remedies, victims can sue felons for compensation and damages, and virtually every jurisdiction permits victim-impact statements. These are fundamental civil rights, not victims’ or criminals’ rights.

In the last years of the 20th century, it should never have been necessary to codify separate guarantees for the protection of the rights of women, gays, and ethnic minorities. Yet it is. Victims of crimes, however, have not experienced systematic discrimination except at the hands of the most insensitive public officials. As difficult as their lives have been made by criminal activity, they have never abrogated their rights or had them denied as a matter of law. To rectify any slight, all that is necessary is to be aware of those rights and exercise them.

Oklahomans, for example, obviously feel that the verdict in Terry Nichols’s trial was unfair, at least in the penalty phase. The attorney general has therefore vowed to bring Nichols back to Oklahoma, try him for the other homicides, and sentence him to death. Timothy McVeigh will likely precede him. Citizens have no right to enhance Nichols’ punishment, but current law does permit them to try him separately for
state and federal crimes arising out of the same incident. This is a perfectly lawful exercise of their rights that concomitantly protects the rights of the accused and is vastly superior to the unseemly lynch-mob mentality that initially heaped scorn on the same jury system that had convicted McVeigh.

No equitable way exists to create a system that protects the rights of one class and dispenses of them at will for another. The tendentious claims of politicians and advocates with personal axes to grind ignore the underlying need for nonbiased application of the laws, one that ensures equality for everyone. As Thomas Jefferson described to Colonel Carrington in 1788, universal rights are "so much the interest of all to have, that I conceive [they] must be yielded" (Koch and Peden, 1993).

The specious separation of rights into criminal, victim, and civil disparages Jefferson’s and Madison’s original intent to protect every citizen and plays to the natural sentiment described by Machiavelli. It subverts the Constitution by creating class divisions within society and encouraging discrimination for personal agendas. Moreover, it reduces the Republic to a three-legged stool, each leg being a separate set of rights. When one leg becomes shorter than its fellows, the stool tilts and ultimately topples over. Legs equal in length and equidistant from each other provide the strongest support. This is the underlying strength of the Republic.

There is one law that applies to all, and until something else comes along, commentators and politicians would better serve the people by following that law instead of playing to the fears, desperation, and tragedy endured by the victims of crime. Victims, like society itself, deserve the right to see justice done, to be safe from harm, and to reach some sort of closure. Finally, is that not what punishment, whether restitution, incarceration, or death is all about?

REFERENCES

The epitome of power is the right to kill, to kill under the colour of law. "The decisive means of politics is violence" (Genovese, 1972, p. 25), and capital punishment is the graphic use of that violence.

At the close of 1997, the United States had executed 431 human beings in the Modern Era (1976 - present) of capital punishment. If the rate of executions continue unabated, as they did in 1997, the United States will execute its 500th human being before the close of 1998. The argument over whether Texas should execute Karla Faye Tucker, who would be only the second woman executed in the Modern Era, and the first woman executed in Texas since 1863, is simply the latest controversy. Karla Faye Tucker was denied clemency and executed by Texas on February 3, 1998.

The debate over the viability of death as punishment has continued since the time of Hammurabi (1792 - 1750 B.C.) who first codified capital punishment in the ancient laws of the Amorites. Sectarian and secular rulers freely employed capital punishment to control and punish those they ruled throughout history. The Spanish Conquistadores following in the wake of Columbus, as well as the early English settlers, brought capital punishment to America and used it frequently, under the guise of God’s will. The Ruling Council of Jamestown probably hung the first white man (1609) on the eastern seaboard just months after landing on the American shore.

The death penalty was the punishment of choice for a myriad of crimes: adultery, sodomy, theft, murder, rape, witchcraft, assault, robbery, infanticide and others, in colonial America. Even religious dissenters [Quakers] were subject to death by the authorities of Massachusetts Bay Colony (Friedman, 1993, p. 42). These early Christian colonies seemed to rely on the Old Testament scriptures as their authority to kill, in ignorance of Christ’s law of mercy proclaimed in the Sermon on the Mount. Favourite passages from Genesis (9:6), Leviticus (24:17), Exodus (21:23-25) and Deuteronomy (19:19-21) were often heralded as the Biblical right to kill. [Similar arguments rage on today as the ‘Christians’ of America struggle to justify their support for capital punishment]. At the same time the ‘Benefit of Clergy’ often saved a condemned person from execution (Schwarz, p. 128; Friedman, p. 43). Early 17th century records indicate that the Puritans of Massachusetts enacted death penalty statutes based on the Mosaic (Old Testament) model for “blasphemy, bestiality,
conspiracy, rebellion, cursing a parent and ravishing a maid,” (Rantoul, 1836). Capital punishment was freely applied to control slaves in early Virginia; special courts [segregated] of oyer and terminer (Tate, p. 93-96) were set up to deal with crimes committed by slaves, including capital crimes. There is even evidence that an attempt to speed up executions, such as the recent Anti-Terrorism and Effective Death Penalty Act of 1996 has a legal forbearer in The 1692 Act for more Speedy Prosecution of Slaves Committing Capital Crimes (Hening, p. 102-103; Billings, 1981, p. 577). Capital punishment has long been the prize of the poor and minority in America (Ainsworth, 1997).

The American record for mass execution was carried out by military tribunal on December 26, 1862, at the behest of Abraham Lincoln who ordered the hanging of 39 Lakotas Souix at Mankato, Minnesota (Fingle, 1992, p. 347-351). The use of capital punishment to put down dissent (or rebellion) has a long history in America. It was utilized in controlling and ending a rebellion of poor whites and slaves in 1676 known as ‘Bacon’s Rebellion’ (Zinn, 1992, p. 90-94), and again in 1786 to quell ‘Shay’s Rebellion’ (Zinn, 1992, p. 167). Throughout pre-Civil War America, capital punishment was employed to control the poor white, Indian and slave populations, culminating in the hanging of the abolitionist John Brown in 1859 (Sutler, p. 6-9).

Throughout the period between 1609 and the Civil War (1861-65), the use of capital punishment as a criminal sanction became limited to fewer and fewer crimes, although it was still in force and mostly the province of the poor, ill-educated and racial minority. It was never abolished despite the early abolition efforts of people such as Dr. Benjamin Rush (1745-1813), who published the first proposal to abolish capital punishment in 1787 (O’Sullivan, p. 104-105). Rush following in the footsteps of Beccaria (Wormer, 1949, p. 225) advised the Founding Fathers that “the power over human life is the sole prerogative of Him who gave it. Human laws, therefore, rise in rebellion against this prerogative, when they transfer to human hands” (Rush, 1787). This early movement to abolish capital punishment did have some effect in the United States by the mid-19th century. A hundred years after Beccaria’s Treatise (Beccaria, 1764) against the death penalty, the movement for abolition had borne fruit, capital punishment was abolished in Michigan (1847), Rhode Island (1852), and Wisconsin (1853).

The Civil War quashed this early effort, but matters, at least from an accused citizen’s perspective, did improve after the Civil War, through the
expanded rights granted U.S. citizens of the several states by the Civil War Amendments (1868) to our Constitution, and subsequent Federal Court decisions (Bedau, 1997, p. 183) which at least gave some civil rights protection to those being tried for capital crimes, or so it appeared.

Although the Fourteenth Amendment required the States to abide by the Fifth Amendment’s due process provision and guaranteed equal protection of the laws, both of these requirements “slippery-open ended concepts” (Friedman, 1993, p. 298) and their application may be questionable in at least two capital cases [and many more] of the early 20th century; Nicola Sacco and Bartholomew Vanzetti (executed in 1927) (Zinn, 1992, 367), and the legal machinations surrounding the Ethel and Julius Rosenberg’s trial, appeal and execution in 1953 (Zinn, 1992, p. 424-428).

The Eighth Amendments provision forbidding cruel and unusual punishment also came into play in the litigation war waged against capital punishment. Public sentiment for “limbing” [as in the ‘Life and Limb provision of the Fifth Amendment] waned early on (Schwarz, p. 145), and the last vestige of this particular cruel and unusual punishment (castration) survived into the late antebellum period (Genovese, 1972, p. 34). It has since been replaced in the modern era by chemical means. However, since the Civil War, hanging, firing squad, electrocution, and lethal gas were all employed as methods of execution, and all were challenged to no avail (Bedau, 1997, p. 183). These methods were joined by lethal injection in the modern era and all five methods have been used in the present decade, all of which have been held to be constitutional by the U.S. Supreme Court, although some questions are still unanswered as to lethal gas.

The horrors of World War II seemed to bring a new sense to the populace concerning the value of human life, and in the post-World War II era public sentiment seemed to turn from its former bloodthirst. The new prosperity and educational opportunities in the 1950’s and 1960’s, as well as a strong civil rights movement, brought a new sensitivity to race and individual rights into the debate concerning criminal justice and capital punishment. Consequently, the pendulum of punishment swung from the brutality and harshness of the pre-World War II era to a more humane system of rehabilitation after the war.

This movement may have reached its zenith with the Furman (Furman v. Georgia, 1972, p. 238) decision in 1972. Racism, oppression of the poor, due process, equal justice, cruel and unusual punishment and
public sentiment were all addressed in the *Furman* decision opinion(s). Justice Brennan’s opinion in *Furman* brought a new test to determine what was cruel and unusual punishment as forbidden by the Eighth Amendment. The principles of Brennan’s test were cumulative:

... if a punishment is unusually severe, if there is a strong possibility that it is inflicted arbitrarily, if it is substantially rejected by contemporary society, and if there is no reason to believe that it serves any penal purpose more effectively then some less severe punishment, then the continued infliction of that punishment violates the command of the clause ... (Bedau, 1997, p. 190).

The *Furman* court had found a way to conquer the troublesome ‘and’ in the clause. While judicial homicide certainly was not unusual in the U.S., no one can argue that killing a viable human being is not cruel!. The new test in Brennan’s opinion found that all of its principles were being violated by Georgia’s statutes [and by inference by all jurisdictions then employing capital punishment] in their application of capital punishment.

The immediate effect of *Furman* was to abrogate the power to kill of the state and federal governments. The *Furman* relief was short lived. While it and the debate leading up to it forestalled any actual executions from taking place for a decade (1967-1977), the immediate response in the following months by various legislative bodies soon circumvented the holdings in *Furman* and new and improved (umph!) death penalty statutes were enacted. *Furman* came up short, as it did not rule out the possibility of there being a constitutionally protected right to kill that could be employed by the powers that be.

Supposedly, these new statutes were in response to a new public vigour for the death penalty, possibly as a backlash to the 1960’s liberalism, reaction to the urban riots of the era, the political assassinations and world-wide publicity surrounding the Manson Murders of 1969. Who knows? The public perception of crime (Hall, 1996, p. 545), as distorted by politicians clamouring for a reinstatement of their political means of violence, and the fear fanned by the media prohibited the nation from taking a breath and giving capital punishment a closer look. Crime statistics indicate the murder rate per 100,000 was 9.4 in 1973, rose to a high of 10.2 in 1980, and was 9.2 in 1992, a total
fluctuation of 0.8 percent. One might question the public’s perception of its need to kill its fellow citizens.

_Furman_ also had some impact on the number of crimes that are punishable by death. While the issue is not completely settled, I do not believe any has been put to death in the modern era (1976 - present) for a crime in which some sort of homicide was not involved. In the wake of _Furman_, the court ruled death was “grossly disproportionate and excessive” (_Coker v. Georgia_, 1977) for the crime of rape. There are statutes in some jurisdictions providing capital punishment for non-homicide crimes that have yet to be challenged and California gubernatorial candidate, Al Checchi, was advocating the death penalty for serial rapists and child molesters in his 1997-98 television campaign ads. It remains to be seen what the Rehnquist Court or a subsequent court will do with this issue.

The _Gregg_ decision [428 U.S. 153] in 1976, reinstated capital punishment in the U.S. by approving the procedural changes in their capital crime statutes. Georgia had, in the eyes of a majority (7-2) of the Supreme Court, met constitutional muster and could once again kill under the colour of law. Ostensibly, these new procedures met the evolving standards of decency within U.S. society.

Other states and the federal government joined Georgia in pushing the trundel to the killing ground. However, a companion case to _Gregg_ eliminated mandatory death sentences (_Woodson v. North Carolina_), and the _Gregg_ court opted to recognize that “one of the most important functions any jury can perform ... a selection [between life in prison and death in a capital case] is to maintain a link between contemporary community values and the penal system” (Bedau, 1997, p. 199), and this became the new norm in death penalty cases. The jury either actually chooses the punishment or recommends it. I might note here that while in California the trial judge can reduce a jury verdict of death to life without parole (LWOP), he/she cannot elevate a LWOP verdict to death. This is not the case in some jurisdictions where the jury recommends a sentence. In several of the southeastern states, a recommendation of life by a jury has been elevated by the trial judge to death, a procedure the Rehnquist Court has ruled constitutional. To me, this is a sinister use of power and a slap to the jury system!

The new and improved _Gregg_ procedures actually gave capital defendants more issues to appeal and acted in part to lengthen the appeal process. Both _Furman_ and _Gregg_ did away with most general challenges.
to capital punishment, and the majority of challenges today are limited to individual case issues. In my opinion, only the words have changed from pre-\textit{Furman} to post-\textit{Gregg} and in actual application of the death penalty, it remains the province of the minority and the prize of the poor.

Neither \textit{Furman} nor \textit{Gregg} addressed the issue of who is charged with a capital offense. This diabolical choice is made by a county prosecutor in most jurisdictions, an elected official, who may pick and choose those accused for capital prosecution. A choice that may be, and often is, based on his/her political aspirations and bias.

Capital crimes are so political that winning becomes far more important for the average District Attorney, we are not talking about being competitive, we’re talking about winning at all costs. Deliberately deceiving the Court, withholding favourable evidence, arguing things they know are not true, harassing defence witnesses, concealing deals they make with their witnesses, winning means a death sentence ... (Le Boeuf, 1998, p. 58).

The ability of the defendant to defend himself/herself, the race, gender or wealth and position of the victim, the county locale, and the race of the defendant more often decide who is capitally prosecuted than the nature of the offence. This seems contradictory to the tenet that the obligation of the prosecution is to accomplish justice, not just get a conviction.

The last post-\textit{Gregg} attempt to address the race issue that has been inherent in the use of capital punishment from the beginning, was dealt with by the Rehnquist Court surreptitiously. They chose to ignore the fact that the petitioner \textit{McClesky} (\textit{McClesky v. Kemp}, 1987) had shown “a discrepancy that appears to correlate with race” (Friedman, 1993, p. 319) in Georgia’s application of sentencing, but he (\textit{McClesky}) failed to prove that race had any bearing on his own trial, conviction and condemnation (McClesky was black and the victim was white). Had the Court recognized the racism in \textit{McClesky}, it’s ruling would have seriously impaired the power to judicially kill in the U.S., if not eliminating capital punishment entirely.

Ironically, Justice Blackmun, who participated in all three cases [\textit{Furman}, \textit{Gregg} and \textit{McClesky}], voting in the minority in \textit{Furman}, and with the majority in \textit{Gregg} and \textit{McClesky}, as well as Justice Powell who took part in the latter two cases, voting in the majority in both, had, after
twenty plus years on the high bench, changed their minds about the
constitutionality of capital punishment. Blackmun, just before retiring,
declared capital punishment a failure, unconstitutional, and that he “would
no longer tinker with the machinery of death” (Callins v. Collins, 1996).
In a biography of Powell, after his retirement, he said that the only vote
he regretted and would change if he could was his vote in McClesky in
1987, a case decided by a 5-4 majority. Changes of mind and heart
certainly did not aid the 431 human beings executed from 1977 through
1997.

While Justice Brennan points out in Furman that an executed person
has “lost their right to have rights” (Bedau, 1997, p. 191), and Bedau
makes reference to the “Universal Declaration of Human Rights” (1948)
(ibid, p. 191), in which the right to life is recognized as the most basic
human right of all, the United States has consistently ignored the fact, that
all rights stem from the right to life. As long as it exercises its power to
commit judicial homicide, all human rights in the United States are hollow
and at risk.

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The situation was not right and just about everybody knew it, but it represented "the system," complete with its susceptibility to advantageous exploitation. Susceptible for everyone, especially the victims of crime who were the ones being exploited. Life is cruel and deliberate, in the belly of the Criminal Justice System (CJS), especially for victims when they become unwitting pawns in the shameful game of Trial Delay.

Keep in mind, by design the CJS affords criminal defendants only one of two possible choices: plead guilty to the crime(s) charged or not guilty and chance the outcome of a criminal trial. Of course, the incentive is on pleading guilty to receive only a fraction of the prison time that a judge or jury might impose in the event of a judicial finding of guilt. However, circumstances in the 1970's and 1980's worked a perverted change into the system, which ultimately led to providing defendants with a third less tolerable outcome.

This change refers to the accepted practice of criminal defense attorneys and prosecutors routinely requesting and judges routinely granting a continuance of virtually all types of courtroom proceedings. It soon became the norm for criminal trials and hearings to be repeatedly postponed and rescheduled often resulting in years of trial delay. In many cases a successful prosecution requires the victim-witnesses testimony so it did not take long for defendants to realize that the more often a trial was continued, the more likely it was that a victim-witness would finally fail to appear in court to testify. This could result in the dismissal of charges and the creation of a convenient means of avoiding prosecution. So now, instead of either pleading guilty or facing a jury, defendants could opt to stall until charges were dismissed.

Facilitating this tactic was the prosecutors' and judges' habit of securing continuances of their own as the excessive caseloads of the times precipitated frequent scheduling conflicts. It is important to keep in mind a defendant's stalling tactic only succeeds if his defense counsel agrees to request an excess of continuances; the prosecutor does not challenge these continuances; and the judge grants them all. While the motivations of prosecutors and judges to participate in this tactical balking game are unclear, what is certain is that defendants in the 1970's and 1980's were repeatedly granted continuances, which in the end worked to their advantage and to the disadvantage of their victims.

To understand the great injustice of this stalling tactic, you must consider the frustration, anguish, anxiety, and even fear, victim-witnesses...
often experience and need to overcome in order to present themselves in a public courtroom to testify about the intimate details of their victimization. Then consider the crash of these emotions after being informed their cases have been postponed to accommodate someone else’s schedule and they are callously instructed to brave yet another emotionally charged march to the courtroom door. Finally, consider the hardship of having to suffer this emotional roller coaster ride a half dozen times or more over a period of years as continuance after continuance is granted.

Combine this emotional pain with the great physical and financial hardships continuances impose upon victim-witnesses, as each scheduled court appearance requires these witnesses to arrive at the courthouse early in the morning so they can sit in a large, stuffy and uncomfortable prosecution-witnesses room - often overcrowded with prosecution witnesses of other cases - to wait for their turn to testify in court. Victims-witnesses who work must take the day off to appear in court and so additionally suffer the loss of a day’s pay. Those who care for young children must provide for daycare or bear the burden of bringing the children with them to the courthouse. Meanwhile, the costs for transportation, food, beverages and any other incidental expenses resulting from this day in court are all borne by the witness.

A system that would allow the imposition of such cruelty upon the innocent victims of crime is ripe for reform, and the Victims’ Rights Movement soon rose to bring about this needed reform - with a vengeance! Nationwide, victims’ rights advocates and organizations have quickly proliferated to champion the cause of victims’ rights in the arena of the CJS and to bring about swift and certain change.

Certainly, an aggressive Victims’ Rights Movement was (and still is) needed to combat the many injustices suffered by victims caught in the CJS, but reform is an imperfect process and it can easily be manipulated to bring about more unfairness and harm than it was originally intended to remedy. This has certainly been the case with the passage of recent victims’ rights legislation.

Most victims can vote, while most defendants cannot, and this fact has not escaped notice by politicians who have decided to politicize the Victims’ Rights Movement and use it. Their goal is not to end the Delay game or right any other wrong in the CJS, but rather to instigate votes by pandering to voting-victims’ uncontrollable urge to wreak vengeance upon the despised and politically powerless defendants. The result has been a nationwide glut
of victims’ rights legislation that does nothing more than change the beneficiaries of the injustice within the CJS.

In particular, consider the recent collection of legislations sponsored by various victims’ rights organizations which allows the victims of crime to give crime-impact testimony prior to sentencing and during parole hearings. These laws are specifically designed to afford victims of crime a say in these matters. In fact, in my state of Pennsylvania, victims’ rights advocates and organizations have gone so far as to gain victims the right to give their approval or disapproval to allowing convicts entry into any work-release or halfway house programs which operation WITHIN the prison system.

While at first blush, allowing victims of crime to bare testimony about their particular losses before a tribunal charged with determining the proper degree and scope of retribution might seem appropriate and fair, a closer, more dispassionate, examination of this practice will reveal its potential for great harm. Not intangible, spiritual or moral harm, based on subjective notions of right and wrong, but real harm being suffered by the CJS, innocent citizens and the victims themselves.

To better understand the substance of this harm requires, first, the honest acknowledgment of the obvious, that is, whenever a victim is allowed to influence the duration and nature of punishment a convicted defendant might receive, a system of “revenge” is being introduced. Any system which measures the fairness of punishment by using a scale of the anger and hurt of injured victims can be considered no fairer than a system which allows criminals to determine their own punishment.

Realistically, if the outcome of a victim’s revenge were borne only by the offender, then perhaps such an injustice could be tolerated if not overlooked. But this is not the case here. Weighting the degree and nature of punishment to the testimony of the victim, regarding victim-impact, renders a criminal justice system arbitrary because it needlessly relies on the whim of a victim’s emotions, temperament, standing in the community, wealth, race, appearance, demeanor, ability to verbalize and willingness to testify, to make important determinations. For example, a defendant who is sentenced after the court receives victim-impact testimony from an emotional victim is likely to receive a harsher sentence than a similarly situated defendant whose victim has chosen not to give such testimony. Or how about racial differences? Are there any doubts that victim-impact testimony from a white victim will result in a longer sentence than victim-impact testimony from a black victim, especially if the offender is black?
How about wealth or notoriety? Would victim-impact testimony from a rich and/or famous victim not result in a harsher sentence than in a similar case where victim - impact testimony comes from a poor and common victim?

As demonstrated, allowing a victim’s victim-impact testimony to guide the severity of punishment is, in reality, encouraging disparate treatment of offenders. This, in turn, makes room for the evils of bias and prejudice to afflict the CJS. In addition, corruption, bribery and intimidation becomes more tempting as offenders or other interested parties discover a benefit to influencing the content or availability of victim-impact testimony. This kind of arbitrariness, disparate treatment and corruptibility undermines confidence and respect for our system of justice and engenders more anger, hostility and lawlessness than it can ever hope to deter.

But the most compelling argument against institutionalizing the practice of encouraging and enabling “revenge” through the use of victim-impact testimony is that it puts victims at risk of harm. Placing the victim in open and direct opposition to the criminal at every stage of prosecution, sentencing and incarceration, increases the likelihood of intimidation and violence against victims and their family, as offenders are given more reasons to respond to revenge in kind. If criminals know that living victims can perpetually extend the amount of time they will spend in custody, what reason is there to keep any victims alive?

Long ago it was painfully learned by those who were apparently much wiser than us that it is in the best interests of society to keep offenders and victims as non-confrontational as possible. To this end, our system of justice is based on the principle that it is the state that prosecutes and sentences criminals, not the victim. Politicians and CJS reformers perform a great disservice when they choose to forget this and encourage citizens to abandon the long honoured principles of blind and evenhanded justice.

If victims’ rights organizations wish to enhance the nature and duration of criminal punishment, then let them campaign for changes in sentencing laws that will apply to ALL defendants at ALL times. If they want to change the laws/rules governing parole eligibility, then let those changes apply to everyone ALWAYS. And if they truly want to deter crime and properly serve victims and citizenry alike, then they must be prepared to resist the practice of seeking “revenge” even when it appears so well deserved and easy to impose: The evil of seeking revenge is always greatest in those who are aware of this evil.
We all accept that there are many different kinds of abuse in our Canadian society, including sexual, social, physical, emotional, psychological, financial, drugs/alcohol and more that we as individuals put ourselves and others through in the course of our lives. We also accept that where there is an abuse victim there is the very real danger that the victim will, in all likelihood, make victims of others over time if interventions do not take place. Abuse has that kind of long-lasting, far-reaching effect on the lives of people who have suffered it. We have learned from written accounts that victims try to find solace in drugs, alcohol, promiscuity, and solace in the act of abusing others after they have suffered. The victim suffers long after the event(s) of abuse and consequently, sometimes there arises a feeling that it is now their turn to do to others what has been done to them. For it seems through abusing someone else some of their lost self esteem, self worth, and human dignity is somehow restored. This distorted form of thinking and feeling leads abuse victims to act out destructive behaviour in various ways. Many find themselves placed in prison at a young age, and, once so placed, they find themselves released only to return, again and again. Although there have been reasons advanced for this cycle of criminal behaviour, most of the reasoning has been focused on the cycle itself as indicative and demonstrative evidence of the individual's inability to change. The focus of the public today has taken the form of condemning the individual law breaker as being wholly and innately criminal, and therefore wholly responsible for his actions. In this perspective the criminalized should be locked up for the duration of their sentences.

In my opinion the advocates of the 'lock'em up throw away the key' philosophy have no real idea of what prison does to the hearts, minds, and souls of the prisoners. There has been little information gathered on the long term effects of the prison environment on the people (prisoners and staff) involved in the punishment process; daily prison life remains as mysterious as if it were life on the dark side of the moon. Therefore there is even considerable doubt in the public mind whether prisons actually punish offenders. The focus of my argument is that contrary to public opinion, prisons are not only places of punishment, but also serve to victimize both prisoners undergoing punishment and staff members delivering that punishment. This writer further suggests that a close
examination of prison environments across the nation should be carried out to ascertain the extent of their detrimental effects.

People who believe prisoners are not being punished, point with disdain to a colour television set and a ghettoblaster in a prison cell to support their arguments. To them, it appears that physical, emotional and psychological pain that one can see with the naked eye is the only real form of punishment. Likewise, there are parents who punish their children by physical beatings because they believe anything short of physical pain will not be effective. I suggest the same applies to some guards in their daily treatment of prisoners. If the prisoner is not in obvious pain and anguish, if he is not being made to visibly suffer, punishment is not being properly administered. Still, any person who has suffered long-term emotional and psychological abuse would be horrified that anyone would be so lacking in insight and understanding that they would point to radios, television sets, and a soft bed as evidence that real punishment under the law is not being carried out.

Under a close examination of a prisoner’s daily life an argument could be advanced that putting the prisoner through daily, superficial contact with those things he holds most dear is, in fact, punishment. Television is one subtle way of allowing prisoners to see the world outside the walls and fences which, while constantly reminding the prisoner of the freedom he has lost, remains just out of his reach for years. Contact visits and private family visits are a major source of subtle punishment. Even in the pleasure of the contact lies the knowledge that soon that contact must inevitably end. In the ending of the contact lies the pain and the punishment of the separation.

The Greeks used Sisyphus as an example of a punishment that goes on forever, but even as he rolls his own rock up his own hill he believes he will, this time, be successful in getting it to balance once he reaches the top. He fails, and as the rock rolls back down he pauses in disappointment, but in a moment he begins another attempt. He climbs and pushes his uphill burden and according to the myth he will do so forever. The prisoner, like Sisyphus, feels compelled to put himself through the psychological and emotional pain of the visiting-separation cycle. The prisoner and his family embrace, and for a short time life is close to normal, but too soon the hands of the prison clock move and the visit is at its end. The prisoner must return to his cell and his family must return home, and both the prisoner and the family focus now on the pain of the separation. The prisoner watches helplessly while the people he
L. Wayne Carlson

loves suffer and his own punishment is compounded. In addition the prisoner is reminded daily that he must carry the responsibility, through his acts, for his family’s suffering.

The conversations of the older prisoners reflect the idea that open visits and socials’ where the prisoners are allowed to have full contact with their families is a greater form of punishment today than what they had to endure years ago.

“My daughter doesn’t understand why I can’t go home with her,” says the young con. He sits in the yard with an older man and has been explaining how difficult it is to re-adjust to the prison environment following a private family visit.

“The only way to do time is to do time,” suggests an older con.

“What do you mean?” asks the young man.

“In the old days we had few visits, no television sets, no radios in the cells, we didn’t have to go through the emotional bullshit we go through today, and it was easier,” he answers.

“I love my kids,” defends the younger man.

“Sure you do,” says the older prisoner, “but you go through this pain of separation each time you see them.”

“You mean if it’s not in front of your face all the time it’s easier to do without?”

“That’s it kid, if it’s not in front of your face all the time it’s easier to do without. People don’t understand that. Today doing time is like being buried up to the neck in the middle of the street; we can see life flow around us but we can’t get up to take part in it.”

However, punishment is not abuse per se. It is when the people who are charged with administering punishment go beyond their mandate that they become abusers. It is here that the punishment itself becomes abusive, and it is here too that prisoners become victims and the line between punishment and abuse is a thin one.

Prisons have a mandate to keep the prisoner confined and protect society, and in Canada today it is in the act of the confinement itself that punishment occurs. Most people, particularly parents, recognize confinement (the loss of freedom to move about), as punishment, and
many of them choose this form of discipline for their children. So, too, do some of the rational and sensible members of the legal community, the prison community, and the community at large. Many others do not and they believe that physical, emotional, and psychological pain must be administered in conjunction with the confinement to be effective and just.

"I haven’t seen you in the Unit for a month, where have you been?" a prisoner asks a female staff member. She is sitting in an office with the door open adjacent to the security bubble.

"I’ve been working in the hole," she answers.

"Yeah?"

"I don’t like it."

"I’m not surprised - it’s been a beautiful summer."

"They got it easy down there."

"Easy?" the prisoner answers, surprised. He thought she meant she didn’t like working in the hole because she didn’t like to see the suffering of the men.

"Yes -- easy. They’re there for punishment, not for a good time."

"But they have nothing there, no TVs, no radios, they just sit in those cells."

"They get out of their cells too much."

"An hour a day?"

"Yeah an hour a day is too much."

One can easily imagine that she would have a difficult time being fair minded to those under her care and control.

The fact that physical punishment is currently outlawed means there are emotional and psychological ways to injure (looks, body language, and tone of voice) and these are adopted by staff. In the penitentiary there is a constant personal exchange between prisoners and staff and both groups have members who are very adept at using this method to abuse one another. The men and women who are serving time, or working in the penitentiary environment, do so for many years.

The system itself recognizes the danger of Correctional Service of Canada (CSC) staff abusing prisoners under their care and control, and it has incorporated strict rules and guidelines in its Mission Statement, including a CSC code of ethics which governs the behaviour of staff. However, experience has shown that one or two abusive staff members on a shift of eight will bring a negative change in the behaviour of their colleagues. Then, too, seldom will a staff member support a prisoner’s claim against a staff member. Peer pressure works on everyone in a prison
environment and this includes staff members. Of course prisoners themselves, many of whom are caught like helpless flies in their personal web of abuse, play their role in perpetuating the cycle of prison abuse.

It has become clear that in general, people have difficulty sympathizing or empathizing with prisoners, unless of course they are being punished for a crime they did not commit, which does happen. Likewise, on the whole prisoners are generally insensitive to the way their victims feel. If they are made victims themselves the retribution is swift, and brutal. An example of this is the manner in which jail-house thieves are dealt with in the prison system.

Stealing from another prisoner is dealt with harshly, there are no second chances, and there are no excuses for ripping somebody off. Though we ask for and hope for forgiveness for our crimes, if we become victims ourselves we do not readily forgive, nor do we forget. As perpetrators we expect our victims to understand our rationalizations and accept us in their midst, sometimes again and again. To be able to bridge the gap between those in the community who cry for blood, and those among us who think they should be instantly forgiven for the harm they cause, would be a serious accomplishment indeed.

Many prisoners do not feel their victims are in fact victims at all. They appear to instead believe the community owes them something. Prisoners and offenders seem able to convince themselves that when they commit a crime they are simply taking what they are rightfully due. On one hand it is altruism (prisoners appear altruistic when talking about how others should treat them), and it is egoism on the other (how they should be allowed to treat others around them).

Recently I was sitting on a bench in one of those waiting rooms where prisoners wait to see someone in management about committee or group business. In my case I was there waiting for a signature on a disbursement to buy paper for my job. Sitting beside me was a man who has been here for some time, and though we are not friends we are acquaintances and generally cordial when we meet. He is in his forties, he’s a bright man, and he is serving a life sentence for second degree murder. From previous encounters I knew he was about to either go in front of the parole board or had already been there. I was aware that he had been looking for an unescorted temporary absence (UTA) program which would lead him into to a day parole situation. The last time I talked to him I suggested his chances were quite good. Today I initiated the conversation.
“You must be almost out the door,” I offered.
“Yes, I’m on UTAs.” He was curt in his response. Like he was having a bad day.
“So you made it?”
“Yeah, finally.”
“I remember saying last time we talked that I thought you’re chances were good.”
“I was on escorted temporary absences’ (ETA’s) for a year and a half - you and everybody else thought it was good.” He was upset about something, but I didn’t take it to be me.
“Well, you seemed to have done alright.”
“Alright? Alright!? I’ve been waiting for a year and half - they made me do a year and a half of ETAs!” It was his attitude that got me going, like he truly deserved something, because he was special.
“How much time have you got in?” I kept my voice neutral, but it wasn’t easy.
“Eight years,” he replied.
“Eight years on life ten?”
“Yeah.”
“Well, from what I see in the newspapers and on the television news they are trying to keep lifers in prison for a lot longer than that - it could be worse,” I reasoned.
“That’s only rapists and child molesters” he said. There was an arrogant air about him, and now there was underlying contempt in his tone of voice. I didn’t like it.
“No, that’s not true. I know men who have served more time than you for bank robbery, and even property offences. If there were a couple of people carrying signs with your name on them in front of the parole office, you might be doing more time as well.” I admit to being a little angry with the man.
“Signs?”
“Oh, yes, it’s happening all over. The victims’ families are coming forward to demand longer periods of punishment for the ones they lost.” He was called by the receptionist into one of the offices and I never had an opportunity to finish telling him that I thought he was a fortunate man.

He was soon released on his parole. One day I noticed I had not seen him for some time, then someone I was walking with commented that he was in a halfway house. But I did not miss him at all.
My point is the man no doubt has some good qualities (why else would the parole board release him so early?) but his attitude made it difficult for me to feel anything for him. He gave the distinct impression he deserved to be free, after eight years. He was important, he was different, and he was hard-done by (as if he was the victim); pay no mind to the life he took, ignore the grief and anguish of the family of the victim, and give no thought to other men around him (in his mind if other men did more time than he it was because they somehow deserved it). Furthermore, if a prisoner is unable to feel gratitude for the kindness shown him (and to be released on life parole for murder is surely an act of kindness on the part of the parole system), he can easily be defined as immoral and undeserving.

Statistics compiled by CSC suggest that almost all staff members initially believe they can help people when they join the correctional service. This was suggested in a comprehensive survey *Attitudes of Correctional Officers Towards Offenders*, Research Division, Correctional Services Canada, (1996), by Michel Lariviere and David Robinson. “There is evidence in the literature suggesting that attitudes change rather quickly in a CO’s career. At nine months after induction training, CSC CO’s had become more punishment oriented and less supportive of prisoners rights. There was increased agreement with items such as “physical punishment is necessary in dealing with criminals,” “harsher punishments will deter people from committing crimes,” and “federal prisoners do not deserve any civil rights.” During a second follow-up study nine months later, the researchers found that attitudes had stabilized at these more negative levels (see also, Plecas and Maxim, 1987). I suggest it follows that there is something in their short, nine months of experience which brings about a change of opinion. Again, I suggest abuse is at the core of this change of heart and it is the prison and prisoners themselves who must certainly bear some of the responsibility for it.

Prisoners who are caught in the cycle of abuse will abuse others, including their families and even the most open, well intentioned and productive staff members are not seen as such by abusive prisoners. Guards are guards and prisoners are prisoners and there is very little, if any, common ground between these two groups of people. A staff member who extends his hand quickly learns that he may well pull back a bloody stump and, as a consequence, over a brief period of time he or she is not only less likely to extend a helping hand in future, but the once burned and
twice shy staff member will remember the pain. The natural human reaction is to dislike and distrust those we perceive as wanting to do the same to us again. New staff are simultaneously socialized into a staff viewpoint and cultural attitude that encourages defining such unpleasant prisoner-staff encounters as representative of all prisoners and all prisoner-staff relations. That staff need to justify their involvement in penal practices that brutalize and dehumanize prisoners, is evident in their negative, all encompassing stereotype of prisoners as worthless and deserving of harsh punitive treatment. The cycle of abuse and violence is reproduced amongst staff as well as prisoners.

While it is true the prisoners have the current grievance procedures to right the wrongs they feel are done them, there are only a handful of prisoners with the writing skills to properly utilize these grievance procedures. An abusive prison situation, like an abusive family situation, relies on threats, intimidation and on a cloak of secrecy to shield the abuser from scrutiny and accountability. Abused family members live within the family structure for many, many years and though the abused do have access to telephones, to self help groups, and others in the community who would gladly help them, in many instances the abused members do not come forward. Many prisoners lack either the ability to express their grievances or, if they do have the ability and the skills to express and act, they choose not do so out of fear of retaliation. A prisoner quickly comes to understand that a prison consists of men and women who have worked together within it for many years. There are husbands and wives, fathers and sons and siblings who not only work together, but also socialize together, sometimes for generations; they are the prison staff community.

If one accepts the statistics that a great many prisoners are uneducated, one can accept that the abused prisoner does not have the conventional tools to stand up for himself. Some prisoners feel compelled to do something, but the only thing that appears open to them is shouts, curses, and sometimes even violence to make their points. The abusive guard uses this to good advantage, as he or she can abuse at will, and if and when the abused prisoner reacts it will be in an unacceptable fashion that results in further punishment to the prisoner himself. For the abusers (prisoner and staff) prison is the most perfect situation: staff can abuse people daily for years and not be held accountable for their actions; prisoners can abuse staff and each other and receive positive feedback from other abusers with a like mind.
Any writer who attempts to place responsibility on either penitentiary staff or prisoner will find themselves embroiled in the age-old argument of 'What came first, the chicken or the egg'? However, if one looks at the whole, and sees the chicken and the egg as one entity, it may well emerge, as this writer suggests, that the cycle of prison abuse is a natural human reaction in both the keeper and the kept. Until such time that the effects of prison life are thoroughly examined and clearly understood, prisons will continue to reinforce and perpetuate victimization and the community will continue to suffer the effects.

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The Samaritan Prisoner Befriending Program in Canada is a member of Befrienders International, the umbrella organization of 350 befriending centres in 41 countries, worldwide. The administration of the Drumheller Institution was the first to embark on this progressive new program in suicide prevention, because incarcerated individuals are identified as high risk for suicide.

Supported by The Suicide Prevention Society of The Samaritans of Southern Alberta (a volunteer organization operating a 24 hour crisis line throughout southern Alberta), the volunteer inmates, (SAMS) have undergone a comprehensive training program emphasizing confidential, non-judgmental listening skills, depression, grief and loss, substance abuse, and suicide prevention strategies. This training is similar to that of a telephone crisis line volunteer.

A component of the program is a collaboration of The Samaritans, prison staff, health care professionals and the SAMS who, together, develop strategies in caring for the depressed and suicidal in custody. This wholistic approach to suicide prevention also seeks to alleviate the stressful impact on other prisoners, and staff in dealing with distressed, despairing, and suicidal inmates. The trained SAMS are available to provide emotional support, suicide prevention and also provide referral to their Contacts of existing professional care services offered by the institution.
As a member of the underclass, having spent more than 30 years in juvenile institutions, adult prisons and impoverished neighbourhoods, I have been both victim and victimizer. I have been officially classified by the criminal (in)justice system as a career criminal. Over the years I have given a great deal of thought to the subject of victimization.

Years ago, I reflected on my criminal behaviour and through this self-analysis, I recognized that I am guilty of harming society. Although I never physically harmed anyone directly, I had to acknowledge that through my thievery and drug dealing I caused much suffering and financial loss in the community. The degree of guilt and shame experienced through this admission was tremendous and I desperately needed to make amends and pay restitution for the harm I caused. I quickly learnt that the criminal justice system is not designed to facilitate restorative justice. There would be no amends made and no restitution paid.

In the eyes of society, I am condemned forever to the underclass, to sub-citizenship. I will carry the stigma of a convicted career criminal for the rest of my life - never to be accepted by society as a person worthy of any meaningful degree of respect or dignity. The weight of shame and guilt is too great a burden to carry with me forever. Slowly, the depth and nature of my punishment became clear to me and I realized that certain elements of my punishment and stigmatization will follow me back into society and remain in place as long as I live. There will be no forgiveness.

I have been victimized by my burglaries, robberies and assaults myself. I never felt anywhere near as traumatized as the victims seen on T.V. I may be callous in this regard but, I wonder if some crime victims do not dramatize their victimization?

When I was victimized, I wanted revenge, but, I had no desire to see the offender incarcerated. I knew first hand that incarceration is out of proportion and would exceed the crime. There is no justice in that. When my apartment was broken into, I wanted the broken door fixed and my property replaced. Sending the person to prison for 10 to 15 years would not help me get the door fixed or replace my property. I know the offender is more likely to come out of prison worse. I have no illusions concerning the prospects of rehabilitation, nor the deterrent effect of imprisonment.

Prisons have the ability to turn out “hardened criminals.” A petty thief may come out of prison as a cold hearted killer. Few criminals are
“hardened” when they enter the prison system since the majority of prisoners start out as non-violent offenders. We become inured to the degradation and punishment handed down by the criminal justice system. It is the system itself which hardens a criminal in most cases. The hardened offender becomes increasingly indifferent to the suffering and loss inflicted upon the victim, which enables an offender to commit even more serious and harmful offenses. It is important to understand this apathy because it is the shield that criminals use to avoid facing the pain or loss inflicted on their victims. Where does this inducive attitude come from? It is an intricate part of our socialization? The ability to ignore and be indifferent to the plight of the less fortunate is all too obvious in our society. It is the same shield we all use to avoid facing the pain and loss our actions (or inactions) inflict on others.

For instance, a few years ago it became public knowledge that guards at the maximum security prison in Lucasville, Ohio, were handcuffing prisoners to the cell bars and beating them with steel batons. It was established in a court of law that this is a standard method of controlling prisoners deemed by guards to be “macho.” There was no out-cry from the general public protesting this torture, but the U.S. condemns this behaviour in other countries. The public is indifferent to the suffering brought about by our government and uses the apathetic shield of self-righteousness. What ever happens within these prisons is considered a part of our just desserts. So, the beatings continue and criminals become “hardened.”

As society condemns the criminal, so too does the criminal condemn society to his/her hatred and indifference. The ability to cause harm to society is greatly increased as a result of social apathy. It is a vicious cycle that is spiralling out of control. To slow down or possibly reverse this trend we need to understand the thought processes which enable us to victimize others through our actions or our inactions.

I can clearly remember a point in time when I came to the realization that my punishment was exceeding my crime. I made a conscious effort to sever whatever moral and psychological restraints I had which would hinder me from letting society feel the full weight of my hate and anger. I wanted to share my pain and suffering with society at large. During this process I felt some ties holding me back from the dark abyss of utter lawlessness and extreme violence.

I examined the restraints and discovered these ties which hindered me were the result of the few acts of kindness and love experienced in the
course of my life. It was this emotional bond to humanity that I was trying to disregard and sever to enable me to be completely indifferent to the suffering I intended to inflict on others through violence. Luckily, I was able to break this bond. To do so would be to repay those acts of kindness with hate and violence and I could not bring myself to do that. In this manner I stumbled onto my humanity, unexpectedly.

The punishment should never exceed the offense. The news media and politicians have actually added to the problem with false or misleading rhetoric and have focused public hysteria on 'street crime' and often link it to violent crime. Primarily, street crime is committed by members of the underclass; the poor and minorities. Most of the offenses committed by the underclass are drug related. Roughly two-thirds of those imprisoned are non-violent offenders whose punishment has been escalated far beyond the harm which resulted from the crime. For instance, when a person burglarizes a house, it is considered a violent offense and the offender is given a harsh sentence as if great physical harm resulted from the offense, when in fact, no physical harm took place. Law makers justify these harsh sentences by what might have happened if someone had been at home and as if physical harm had actually occurred. This is the rhetoric used to increase the length of sentences.

Sentencing is out of control and even some of the victims have protested excessively harsh sentences handed down to their victimizers. However, these victims who see the injustice and speak out against exceedingly harsh sentences are ignored by the news media, the legislature and the parole board authority. The government and victims’ rights advocates give a great deal of lip service to being sensitive to the victim - as long as the victim is screaming for harsher retribution. The government and victim’s rights groups completely ignore the concept of victim/offender reconciliation because it involves forgiveness and this is out of character with the current trend of vindictiveness.

Presently, I have heard of some efforts to establish restitution programs, but there is no mention of reconciliation. We desperately need restorative justice that includes both restitution and reconciliation. I do not pretend to have all the answers. However, I believe a part of the final solution to victimization would be to replace apathy with empathy on a national level. It becomes much harder to victimize someone if we are forced to face the harm we cause. A dialogue between victim and offender is long overdue and a reconciliation program would be a step in the right direction. It is time to try restorative justice.
Monochromes From Over a Prison’s Edge
Victor Hassine

GOOD OLD CHEROKEE

When was the last time you gave any thought to going crazy, living crazy or dying crazy? Chances are, you have never thought of these things at all, insanity being something that happens to other people. That was pretty much how I thought about it, that is, until I landed in prison. Even after I had been in prison for sometime, I never considered my mental health at risk, as I had focused all my attention and efforts on keeping myself physically intact. Only after having overcome the physical level of prison survival did I discover the next more challenging issue, that of maintaining sanity. This part of the American prison experience involves overcoming the effects of a forced and steady march toward insanity.

Most convicts ultimately avoid the final destruction of this involuntary journey, but the journey itself leaves scars on those prisoners fortunate enough to survive the physical dangers, only to be thrust into a continuous struggle to keep all of one’s wits. As I reflect upon this harsh reality of contemporary prisons, I find it odd that any nation which, on the one hand, applauds the mental achievements of its people, operates a criminal justice system designed, in the end, to drive every citizen who is confined in prison crazy.

My first encounter with prison induced insanity came when I first met Cherokee, who, at the time, was Graterford’s most esteemed prisoner. As I was beginning my life sentence in 1981, Cherokee had already served more than 40 years of his. Sometime during this extraordinarily long period of incarceration, the staff at Graterford had ceased seeing him as a prisoner and had, in their eyes, elevated him to something akin to a mascot. To the other prisoners he was not a convict, but a part of the prison like the bricks and mortar. Mascot or fixture, neither seems a fitting way to treat another human being who was doing nothing more than what the State demanded of him.

The first time I met Cherokee, he was swinging the upper half of his body up and out of a large stuffed prison trash can. He had been scavenging in the refuse and was now surfacing with a handful of treasure. It just so happened at the same time I was standing directly in front of him with only the dirty container between us. Having lived in New York, the sight of a man mining in garbage was hardly shocking, and I do not
believe I paid him much attention but, I guess, in Cherokee’s mind I was paying attention.

This old man with his hands gripping a load of garbage instantly produced a genuine smile that was overflowing with sincerity. He quickly placed his valuables into a large plastic bag that was made to stand at his side by the collection of junk that had been stacked in its enclosure. I then found myself engaged in a conversation.


Cherokee stood over six feet tall and sported a pot belly which pushed forcefully against his tight and dirty prison uniform. His hair was a dingy yellow and white, which had the appearance of straw standing up and being blown away from the head that hopelessly anchored it. His teeth matched the colour of his hair and were fully displayed by his smile. Despite this unappetizing appearance, the friendliness and gentility he exuded, obliged a courteous response.

“My name is Victor,” is all I could think to say.

His puffy cheeks swelled almost breaking out of his round face as his lips spread wider to extend the smile. “You don’t get many Victors in here,” he said melodiously, the voice matching the smile. “You look like such a nice young fellow. You don’t look like you belong in here.” At this point he had made me a friend for life.

Cherokee looked down at his bag of junk which seemed as dishevelled and well fed as he. Then he said, “You’d be surprised how much good stuff I find around here, like cups and shoes and socks. Why, once I found me a pretty good coat. Wasn’t nothing wrong with it. I gave it to another young fellow who didn’t have one to wear.” Then he chuckled, “You young folks today seem to like to throw things away.”

I wanted to say something but I did not know what so I just nodded and he continued to speak. “I give a lot of stuff away to anyone who needs it. You know how fellows can get down on their luck. So if you got anything you want to throw out, you be sure to let old Cherokee know. And you don’t have to worry about me, I’m okay. Everybody knows me. Just ask anyone about Cherokee.”

After saying this, he picked up his bag and began to lumber off in the direction of another trash can which was also overflowing with garbage. After taking a few steps, he stopped, turned around and said, “Oh, did I tell you I collect stamps? If you get any, I hope you’ll give them to me. I’ll stop around your cell.” With that, the man and his garbage moved on.
Throughout my stay at Graterford, I often saw Cherokee. Usually he was digging his way into a trash can or dumpster, but sometimes he would stop by my cell and ask if I had any stamps he could have. I would give him all the cancelled stamps from the letters I had received, and this seemed to make him very happy. Once in a while I offered him some cigarettes, candy or coffee, but he refused to accept anything as if I had insulted him simply by making an offer. What I ended up doing was putting some commissary items in a brown bag, then when he would come by my cell I would give him the bag to “throw out for me.” He would always take the bag and never say a word. His smile was all that needed to be said.

There was no doubt that Cherokee had lost his senses and might not have even been aware that he was in prison. But it was not Cherokee’s odd behaviour which made him noteworthy, it was the way the prison administration treated him. Cherokee stood out in a prison world of misfits because his keepers wanted him to stand out.

Cherokee was allowed free run of the prison to forage anywhere at anytime. The only requirement being to return to his cell for the 9:00 p.m. count. He needed no pass to get anywhere in the prison and his cell was only locked at 9:00 p.m. He could eat anything he wanted from the kitchen and staff members would often give him candybars and snacks purchased from a prison vending machine. It was unlikely that any prisoner would say an unkind word or in any way threaten Cherokee because if the guards did not get him, the prisoners certainly would. This treatment of a prisoner in a maximum security prison is extraordinary.

At first I did not give much thought to the special treatment Cherokee was receiving, after all he had spent an un-Godly amount of time in Graterford and his seniority had entitled him to some consideration. Besides, he was a harmless old man who was kind, likeable and not likely to escape even if all of the prison walls were to come tumbling down. The sad reality was that Cherokee’s home was Graterford.

Before long, I became suspicious of the institution’s altruism toward Cherokee, which began when I met other men who had served as much, if not more time in prison than Cherokee. The institution chose to treat these men as they would any other prisoner. There were no special privileges. Naturally, I wondered why Cherokee had been singled out by the prison administration to receive the benefit of their kindness.
The prison administration's motives became more apparent once I realized that tolerance of Cherokee's odd behaviour was not really a form of kindness or humanitarianism. If prison managers wanted to do the decent thing by Cherokee, they should have sent him to a better prison or helped him to get a commutation of his sentence so he could be committed to a nursing home. All these things were possible. Even if they were not, the least that should have been done was to provide Cherokee with adequate mental health care. Somehow, to allow this harmless old man to live out his life bobbing for goodies in prison trash cans does not reflect kindness or decency, but, is in fact, degradation and humiliation, regardless whether Cherokee had the sense to know it or not.

This understanding led to the realization that Cherokee's privileges were not primarily meant to benefit him. These measures were calculated to advance a prison interest, displaying the administration's vision of the model prisoner.

The prison system had invested over 40 years to hammer, bend, fold, shape and, in the end, rehabilitate Cherokee. In their eyes, they had achieved their purpose. The old convict was obedient, functional, low maintenance, harmless, completely dependent and not likely to injure another human being. What more could a prison want? It made no difference that in the process of rehabilitating Cherokee and making him the perfect prisoner, he had become mad. But Cherokee had to be punished for his crime, and forfeiting his sanity was a small price to pay for achieving Graterford's version of redemption.

So what passed for kindness was actually inducements for others to conform to the lifestyle of the model prisoner. Certainly, staff members had grown a fondness for Cherokee and their relationship to him contained an element of affection, but in a prison, fondness always stands a distant second to control. Cherokee was a poor, helpless and unwitting pawn in a prison's endless scheme to control its prisoners.

Understandably, it is difficult for anyone who has not felt the pinch of prison shackles to believe that an American governmental bureaucracy would knowingly induce human beings to abandon their senses and become mindless dependents reduced to searching for their piece of the American Dream somewhere in the dirty darkness of a prison trash can. But, if you were the warden of an overcrowded prison plagued with violence, corruption, drugs, disease and perpetual lack of resources, Cherokee's fat and smiling face, fresh out of a trash can to respectfully greet you might secretly tempt you to pray that every one of your prisoner
charges would somehow become as respectful, obedient and well-behaved as Cherokee.

**I THINK I’M GOING CRAZY**

It is always getting harder to find time alone in a prison’s general population. Overcrowding has seen to that. So whenever I find an opportunity to be by myself, I exploit it. I remember one hot summer day in 1988 when the heat was so oppressive that few prisoners bothered to venture out into the small area of dirt and dust shamelessly designated as the prison recreation yard.

In the early 1980’s, some prisonocrat had developed an ingenious plan to renovate Pennsylvania’s oldest penitentiary in use by building a new 500-cell, 1,000-bed housing unit within its walls. More specifically, the plan called for three phases. The first phase called for building the new housing units in the main recreation yard of Pittsburgh Penitentiary which was also known as Western. The second phase called for shutting down the old housing units at Western and converting them to a massive counselling and work complex. The third and final phase called for the demolition of existing work and counselling building and the construction of a larger recreation yard and field house.

By early 1988, the first phase of the plan was completed and Western had lost its recreation yard and gained 500 new cells. Unfortunately, funding for phases two and three had dried up and the oldest functioning prison in the state now held twice as many prisoners. Western had become the most densely populated prison in the state.

There I was that hot summer day looking for some privacy in a walkway running between the various housing units that the prison administrators of Western had designated “the main yard”. This yard had no grass, no space and no room to exercise. All that remained was a long, crooked concrete walk flanked on both sides by parallel strips of dirt which had a few bleachers intermittently placed wherever they could fit.

Finding any unoccupied space under these circumstances was usually impossible. But this day, because of the stifling heat and burning sun, the yard was completely empty, so I hurried to a remote spot and sat on one of the scorching bleachers. This was a small price to pay for privacy. I closed my eyes and forgot the discomfort as I slowly drifted off into myself.
Before I had a chance to fully appreciate my solitude, I felt a tap on my shoulder accompanied by a voice. "Victor, I need to talk with you," the voice said with urgency.

Normally, I would have ignored the voice until it moved away. But I recognized the voice as belonging to one of the more respected and honourable men in the prison. I had known this man at Graterford before I had been transferred to Western Penitentiary. He was a prison gangster who did not take a lot of nonsense from anyone. But he was also a fair and reasonable man who only challenged those who tried to interfere with his space. His name was Kareem. While I numbered him as one of my friends, I nevertheless made it a point to stay out of his way. Realizing it was Kareem and recognizing the urgency in his voice, my eyes immediately sprung open as my thoughts were instantly refocused on the moment and I felt danger was near.

“What’s going on, Kareem?” I asked fully alert and expecting to learn there was trouble on the way.

Kareem must have detected my concern so he adjusted his voice. “No, it ain’t nothing like that, there ain’t no trouble. I just need to talk with you about something personal,” he said.

My body was still racing with the adrenalin his initial statement had produced. I was too aroused and anticipating to be able to do anything else but listen to what he had to say. Soon Kareem was sitting next to me on the bleachers. We were the only two men foolish enough to brave the yard. The sun had chased the other 2,300 prisoners indoors.

“What can I do for you?” I asked a little annoyed but nevertheless interested. Kareem was not the sort to waste anyone’s time.

“I’m going crazy, Victor, I’m losing my shit,” he blurted out as his eyes hawkishly searched our surroundings.

“What do you mean?” I asked surprised and uncertain about the nature and direction of this conversation.

Kareem’s dark brown eyes were soon on me, wide and piercing as he explained, “I’ve been hearing voices. I know they’re not real, but I hear them anyway.”

What was I to do? I was sitting in a prison yard burning under a hot sun and listening to a man tell me he was hearing voices. Prison life has taught me to be prepared for anything, and so I collected my thoughts as I slowly leaned back to rest against an upper row of bleachers. Then I calmly asked, “What do these voices say?”
Kareem must have detected my look of resignation because he immediately relaxed and allowed his muscles to uncoil. “They tell me to do stupid stuff. You wouldn’t believe it. I don’t do any of them. I just hear the voices,” he said.

My curiosity had been peaked and I realized I had the opportunity to talk to a man who was on the verge of some mental breakdown. For some reason, the mechanics leading to this breakdown interested me. “Yeah, prison will make a man hear voices. It’s a shame what they do to a man in here.”

“Isn’t that the truth?,” he answered sounding relieved that I understood his problem. “I’ve seen lots of old heads lost their shit but I never thought it would happen to me.”

“Well, maybe it’s just a temporary thing and will go away. You’re a strong man. You can beat this,” I suggested with confidence.

“No, man, I don’t think so. I can feel myself flipping in and out. I tried to fight it a couple of times but my mind just keeps snapping - I’m just going crazy,” he chuckled.

Hearing him laugh about his predicament encouraged me to get personal. “What do you think brought this on?” I asked.

“All my life I’ve avoided drinking and doing drugs because I’d seen what it did to other people. Now look at me anyway,” he said in disgust.

“I don’t know what to tell you, Kareem. Sane or insane, these people want their time out of you. You’re going to have to fight this thing,” I told him.

“You know, I’ve done a lot of time in the hole. When I started my bit I didn’t care nothing about going to the hole, but these last few times, they were real rough,” Kareem said as if ignoring what I had just said to him.

“What happened in the hole?” I asked.

“Nothing this last time,” he answered, “but just being down there with these guards messing with you and all that time alone. I think I started slipping while I was in the hole,” he announced.

“Did you hear these voices in the hole?” I asked.
“No. I just started hearing these voices. When I was in the hole, I didn’t hear nothing. I’m not good with reading so I just sat in my cell sleeping and thinking,” he explained.

“You think the hole made you crazy?” I asked.

Kareem thought for a moment. “No. I don’t think it was the hole alone, I think it’s everything put together. You know, doing time ain’t no joke,” he answered.

“No it isn’t,” I agreed.

“And you know what is the most amazing thing about all this?” Kareem asked with the animation of a little child who was eager to share a secret. “The way it just kind of crept up on me. One minute I was normal and then the next minute I was bugging out in my cell talking to myself. I didn’t know going crazy could snatch me from behind like that,” he confessed.

There was then a long silence between us as if neither of us knew the other was there. Both of us had a lot to think about.

“You’re doing a life bit too, aren’t you?” Kareem asked.

“Yeah, I got eight in and that’s killing me. I can imagine how you feel,” I answered.

“No you can’t and you really don’t want to,” he cautioned firmly. “Don’t you worry about any of these motherfuckers messing with you. You just make sure you hold on to your mind. Don’t let these people sneak up behind you and snatch your shit,” he said as he reached out with his hand and made like he was grabbing at something in the air.

“Nobody deserves to be treated like that. They might as well have killed me,” were Kareem’s last words as he got up and left me alone on the bleacher. Suddenly I didn’t feel much like being alone. I realized I would never forget my conversation with Kareem.

IT HAPPENS ALL THE TIME

Tony was my neighbour when I was at Graterford. I met him the first day I entered general population. He was a tall rectangular man who cast an imposing shadow into my cell. His thick black, well-trimmed beard with matching neatly-groomed hair gave his block of a body a crown of sophistication. “If you need to know anything about this joint, just ask me. My name’s Tony and I live a few cells down,” I remember him tell me as I was sorting through my belongings.
There was much I needed to know about my new home and Tony was more than willing to instruct me. He had read about my case in the paper and knew I had knowledge of the law, this is what motivated him to be as helpful to me as possible. Nothing is free in a prison, and the price for Tony’s friendship was my help with some criminal cases he was appealing. You see, Tony was a jailhouse lawyer. Every morning he hung a paper sign up in front of his cell announcing, “LEGAL AID.”

His cell was arranged as much as possible, considering its location, like a small office. The steel desk mounted on one side of his cell had all the necessary office supplies and adornments including a manual typewriter. Alongside his desk was a makeshift chair, assembled out of stacked boxes and old newspapers. The chair stood alongside the entrance to his cell so a client didn’t have to enter too far into his home in order to conduct business. On a shelf above his desk and peppered throughout his cell were big thick law books which completed the statement he was trying to make.

Tony was admittedly no legal wizard, and when asked what he did for a living he would proudly and without hesitation announce, “I rob banks.” Tony explained helping people out with their legal work kept him busy and his cell filled with commissary. He was doing 15 to 30 years so he had plenty of time to occupy.

Tony was an intelligent and a well-disciplined man, so he had managed to teach himself enough about the law to recognize legal issues and fill out appeal forms. However, he lacked the ability to properly litigate an appeal to its end. In most cases, he would read a man’s transcripts, fill out an appropriated appeal form and have the court appoint a real attorney for his client. For these services he would charge what he felt the man could afford; from some cigarettes purchased in the commissary to a couple hundred dollars.

Tony functioned as effectively as any legal secretary I had ever known and he provided a needed service. Many men at Graterford were illiterate and the only way for them to begin the process of appealing their convictions, was by using the services of a jailhouse lawyer. The reality is that most collateral appeals filed on behalf of prisoners are the product of jailhouse lawyers - a poor man’s last hope for justice.

As you can imagine, there are some jailhouse lawyers who are honest and qualified and others who are con-men hoping to jilt prisoners out of money and worse yet, ruin their chances on appeal. Like the streets, the caveat “Buyer Beware” holds true in prison as well.
To his credit, Tony was a reliable man who made up in enthusiasm what he lacked in legal knowledge. Often I would refer minor cases, like parole violations and guilty pleas, to his able office. This spared me a lot of nuisance cases and made Tony very happy. Once I became his neighbour, his clientele doubled and he gained a few pounds from all the commissary cakes and candies he was eating.

Every morning before I went about my business, I would stop at Tony’s cell, sit on his clients’ chair and be treated to a hot cup of instant coffee and some commissary pastry. Tony and I would then chat for a half hour or more about legal issues, the prison and anything else on our minds at the time. It was always a good way to start off a morning. One afternoon while I was working at my assigned prison job as a janitor in the infirmary, I was asked by one of the nurses to escort her to the special needs unit. This unit was a small caged-in portion of the infirmary where the seriously mentally ill were housed. It was a dark and bleak place where men resembling zombies would spend their day sitting or pacing and waiting for their meals or medications to be served. These men were not allowed outdoors for exercise and some had spent years inside this forgotten limbo.

Female nurses liked to take a prisoner janitor with them when they made their rounds in that ward, because it made them feel safer. In turn, janitors liked to make these rounds, despite the unit’s depressing conditions, because it gave them an opportunity to flirt with a woman. After all, men will be men.

As instructed, I gladly carried a tray of medication, complete with little paper cups filled with water, behind the nurse as we headed toward the special needs unit, also called D-Rear. The guard assigned to D-Rear unlocked a wire mesh gate and allowed us entry into the dark, dirty and fowl-smelling unit.

Ghoulishly assembled around a large table were about twenty men eagerly waiting for the nurse to hand them their medicine. Men of all colours, sizes and shapes stared with wide-eyed expectation for the nurse to call out their name. Whenever a prisoner was called, he would slowly shuffle over to the nurse who would hand him his medication. Then I would give the man a cup of water, he would take his medication and move away somewhere into the darkness to wait for the drugs to take him away.

It was such a sad sight. I could not wait to get out of there. I did not want to be reminded that places like this existed. When the nurse finished
calling all the names on her list, she told me to follow her to a patient who was not able to walk. Reluctantly, I trailed the nurse deeper into the bowels of D-Rear. Somewhere in a far corner of a common area sat a lone man obscured by shadows. Everyone else was slowly walking a tedious circle around the ward getting some recreation for the day. Here, it was too dark for me to be able to identify the man.

Looking away at the ceiling as the nurse gave the man his medication, I heard myself being asked to bring some water. I walked over and reached out with a small cup of water only to be shocked by the sight of Tony sitting motionless with drool oozing from his mouth.

"Tony, that can't be you," I called out in complete astonishment. I had had my usual morning coffee and chat with the man less than eight hours earlier. "This must be some kind of mistake," I told myself.

The nurse saw my alarm as I attempted to awaken Tony. "He can't hear you, Victor. He's on too much medication. Is he a friend of yours?" she asked with genuine concern.

I wanted to tell her about Tony, what a smart guy he was, the little office he had in the cell, and the way he never took advantage of people, but I could not. All I could do was stare at this shell of a man who sat silently in front of me. "Yes, he is," was all I could say.

The nurse gently swung me around with her arm and began to herd me out of the unit, but while my body turned my eyes remained on Tony.

"Look, there's nothing you can do for him. He's really out there right now," the nurse comforted as we finally exited D-Rear.

"What happened?" I finally thought to ask.

"No one really knows. I got a call to report to the block to pick up a prisoner and take him to the infirmary. When I got there, your friend was laying on the bed in his cell mumbling gibberish and repeating that he couldn't do the time. He wasn't violent or anything. He was pretty much like you saw him. Do you know if he got some bad news about anything?" she asked.

"No," I immediately answered, despite the fact that I had no way of knowing. "What's going to happen to him? What can I do?" I asked in a delayed panic.

"Calm down, Victor. There's nothing you can do. The doctors will treat him. And soon he'll be back out in population. He'll probably have to stay on some kind of medication. There's lots of guys who go through this and they come around eventually. It happens all the time," the nurse told me and then walked away.
In 1983 I filed a class action lawsuit against Graterford and the Department of Corrections challenging, among other things, the conditions in D-Rear. A Federal judge, after inspecting D-Rear, declared it an unfit place for human beings. Shortly thereafter, the D-Rear was discontinued and a licensed mental health group operated an independent special needs unit inside Graterford.

When the new mental health unit finally went into operation, I said a little prayer for my friend Tony and all the others.

**FAST WALK**

"Why do you think so many people become insane after being in prison a while?" I asked while I tried to keep up with my exercise partner’s pace as we fast walked around the yard.

"You’re writing some more stuff?" he asked as he quickened his stride.

"Yeah," I huffed. "I wanted to do something on madness, like what it is about prison that drives people crazy."

"Why do you say prison drives people insane? My experience is that a lot of people come into prison half crazy already," he said, his voice without a hint of physical effort. I thought to myself that if he didn’t slow down I might not be able to finish this discussion.

"What do you mean?" I asked trying hard to ease my breathing.

"Well, most guys coming into prison have some kind of drug addiction or alcohol addiction. They’ve lived hard on the streets and by the time they come to prison, their madness just catches up with them," he answered slowing just a bit.

"So you think drugs cause all the insanity we see in here?" I asked with a little disbelief.

"No. It’s not only drugs and alcohol, but it’s mostly that these guys are just weak individuals who crack under stress. It just so happened that they got the stress in prison so these weak people lose their mind," he clarified.

"So prison does have a part in driving men insane because of the stress?" I countered.

"No. Listen to what I say. These people are weak individuals and while the stress from prison might have taken them over the edge, it really could have happened anywhere. If they were out on the streets walking somewhere, the job stress might have driven them crazy. If you’re weak
in prison, you'll go crazy in here," he explained picking up the pace once more.

"I don't know if I buy that. I mean I've seen some pretty tough guys go crazy in here," I countered, my disbelief giving me the extra strength to keep up.

"How tough could a person be if he went crazy? When I first came to prison over twenty years ago, one of my old heads told me that prison will either build a man's character or break him down to a fool. Those were the truest words I've ever heard. If a man isn't strong enough to deal with prison, it will crush him," he explained.

"But then what you're saying is prison drives people crazy - but it's only weak people or people who are partially crazy already."

"Well, I'm not sure I'd put it like that, but yes, prison don't make you crazy, your weakness does," he tried to explain.

At this point I was pretty confused and I was not sure whether it was because I was out of breath or because I was not sure if he actually did agree with me. I stopped walking and watched as he continued to speed walk down the track. He never said a word. I decided to get a drink of water from the fountain.

As I caught my breath I thought about what he had said. Certainly, some of it was true, but I think he placed too high a standard on human beings. Certainly, there were conditions that could drive the strongest man crazy - and in my thinking, prison fostered those conditions.

By the time I reached the fountain I began to wonder if prison had made him a little crazy and I knew that he thought the same about me.

**TOMORROW'S MODEL PRISONER**

While the prison in the past dispensed justice by testing the extent of human physical endurance, a more enlightened modern society required prison managers to develop a less physical means of punishing law breakers, one which would leave the body unbruised and intact. But this enlightenment did not require a humane limit to punishment, but only sought to bring about a change in the way punishment was dispensed.

In response to this enlightenment, prison managers relied less on punishing the body and more on punishing the mind. Gone were nightsticks, leather straps, whips, chains and unrestrained acts of brutality and cruelty. In came psychologists, counsellors, medication, electric shock and solitary confinement. Behavioural modification, à la B. F. Skinner,
became the new bible of prison salvation and redemption. Prisons became Skinner boxes complete with mazes, bells, whistles, carrots and the occasional stick.

As behaviouralism swept through the criminal justice community, rehabilitation became a glorious end as prison managers hoped to find utopia in the promise of behavioural science. After all, if Skinner could teach a chicken to play Tic-Tac-Toe, then certainly prisons could teach human beings how to be law-abiding citizens. Unfortunately, humans proved to be less responsive to conditioning than were chickens and laboratory rats.

Thus, rehabilitation was foolishly tied to a mistaken belief that people could be conditioned into conformity, regardless of their own desires. This doomed arranged marriage of the ideal of human rehabilitation and the stern “science” of behaviouralism was, in my opinion, the cause of the criminal justice system’s current state of ruin and absence of meaningful purpose.

This unfortunate state of affairs has been motivated by the assumption that the shortcomings of behaviouralism has proved that rehabilitation is not possible. The ends of rehabilitation should stand independent of whatever failed means might be employed. Therefore, abandonment of behaviourism should not have included the rejection of a belief in human rehabilitation. But it did.

The criminal justice system has placed itself in a holding pattern until such time as another model can rise up out of the ashes of discarded behaviouralism and once again provide some meaningful purpose to achieve. This state of limbo has left prison managers with only a single strategy adopted by default: warehousing and controlling prisoners.

The rise in the use of super max prisons, “no perk” prisons, solitary confinement cells and mind-altering drugs clearly reveals the end product envisioned by prison managers. They are limited to creating prisoners who have suffered punishment and become obedient under supervision. The question of whether that convict can or cannot be rehabilitated is no longer a consideration. However, since concerns over humane treatment still prevail, prisons have been forced to rely on medicine and psychology to punish and control its multitude of unredeemable prisoners without breaking the skin.

Unfortunately, because psychological and chemical inducements leave no visible scars or physical damage, prison managers are able to inflict more punishment on their wards, in the form of psychological and
emotional distress, than they were in the past when using physical force. Since mental and emotional pain and suffering have not been determined to be legitimate grounds for complaint by prisoners, prisons have not been inclined to develop some means of controlling the amount of pain and suffering they might inflict.

I am not suggesting that some plot or conspiracy exists aimed at mind control and psychological servitude, I simply believe that a lack of purpose has led the criminal justice community to focus entirely on the management and economics of the system to the exclusion of any notions of rehabilitation. A person entering prison today will find himself required to do nothing more than obey all of the volumes of rules. The ends of this prison machine being limited to ensuring obedience and conformity.

Convicts have always been subject to the nightmare of becoming "stir crazy." This condition is a natural byproduct of institutionalization. Contemporary prison management has accelerated this process by venturing into the business of applied psychology and psychiatric medication to induce population conformity. This abandonment of rehabilitation has left every prisoner in danger of becoming nothing more than a bitter prisoner. Whether being a bitter prisoner ultimately proves to be a form of insanity, society will have to make that determination at some point in the future.

Until then, I will be left to remember Cherokee, Kareem and Tony and pray for the realization that human beings are redeemable so I may be spared the fate of becoming tomorrow's model prisoner.
In the fall of 1991, at the maximum security Indiana State Reformatory (ISR), a series of events culminated in an unprecedented display of solidarity by the prisoner population. This, in turn, was followed by an unprecedented wave of repression by the Department of Corrections (DOC). Years in the making, days in the protest, and months in the punishment, the actions of the fall and winter of that year have consumed seasons of contemplation comprehending all that transpired.

To understand the forces that created the event, we must look ten years into the past from those halcyon days. At the beginning of the 1980's, ISR was largely populated by men sentenced to indeterminate terms.\textsuperscript{1} The turnover of the population was slow but constant. The parole board and its flickering flame of hope a distinct presence in their lives. The way one did time then was to establish a pattern of aggressive rebelliousness early in one's term, followed by a gradual mellowing out towards the years of parole eligibility. That way one could demonstrate "rehabilitation" or "a maturing mindset" to the Parole Board. Depending where one was along the continuum of his sentence, the individual's reaction to any particular situation could be generally ascertained. The joint, while occasionally manifesting individual violence, possessed a stable and predictable air.

As those under indeterminate sentences were gradually replaced by those with determinate sentences, the relative quality of life began to change. Men with essentially longer sentences and less to lose\textsuperscript{2} responded to the maddening frustration of doing time in the same aggressive, anti-social ways that landed most of them in the penitentiary in the first place. Coupled with understaffing, violent encounters between prisoners, and between prisoners and staff, increased.

As the environment became more unstable and unpredictable, various factions of the staff formed clandestine extra-judicial units (i.e., "guard gangs"). Organized beatings with wooden, ball bearing tipped, riot batons of men in lockup units became routine orchestrations. Prisoners were strapped naked to metal bed frames in open-windowed, unheated isolation cells in the dead of winter for hours on end. Brutal drenchings by firehoses were common experiences for those unlucky enough to be thrown into the hole.

In a period of two years, in the early 1980's, a series of major prisoner clashes took place between housing unit groups,\textsuperscript{3} with custody
staff at times joining the fray, armed with their own previously stashed shanks, on the side of their housing unit’s prisoner faction. Symbolizing the near-anarchy of the period, one cell house had “Dodge City” scrawled above the doorway. After these mini-riots the institution would be locked down for a few days and the involved units a few weeks, undergoing thorough shakedowns.

The situation grew so out of control; sparked by the intense beating of an prisoner activist, a handful of his followers conducted a running battle, attacking previously selected officers and those that unluckily happened to get in the way. Eventually seven officers were stabbed, three taken hostage, and a cell house with approximately one-hundred offenders was seized. The DOC reacted with an inadequately trained emergency response unit hastily assembled from other prisons across the state. After 12 hours, with death threats from both sides and on-site negotiations with state legislators, the hostages were released unharmed and the standoff ended peacefully. The result was a one-month lock down for the entire reformatory, and a ninety-day lock down for the housing unit involved.

Both sides had been scared by the near multiple-death event. Several sociological factors changed, affecting the milieu of the penitentiary. While security policies and procedures were tightened, draconian abuses were curtailed. In the latter half of the decade, personal appliances ranging from crock pots to radios and eventually televisions, were sold on the commissary, improving the quality of life in the spartan, cold water tap cells.

Overall, the staff, with a few notable exceptions, seemed to adopt a live and let live philosophy and did not go out of their way to hassle the prisoners. A measure of respect, and fear of the violent potential of each side, had been realized. This mediated the need for displays of extreme machismo, reducing tensions and the flow of testosterone. During this period, because of the reduction in parole-induced turnovers as more and more men were sentenced to determinate terms, the population began to age. The average age rose from mid-twenties at the beginning of the decade to early-thirties by the end. With the parole of almost all those serving indeterminate sentences, and the lower turnover in the population, a period of peaceful stabilization seemed to exist.

In 1988, post-secondary education became a no-cost program opportunity. Enrollment grew from 30 full-time students in 1987 to 150 by 1990, or 15 percent of the main line population. The ISR-Ball State
University college extension program was the largest single prisoner assignment/employer in any of the state’s prisons.

Fights were not altogether uncommon, while serious blood spilling was. Disturbances involving more than a few men were random and isolated. In a sense, the population had matured. They remembered the turmoil and horrors earlier in the decade, seeing no value in returning to those times.

By the turn of the decade however, the environment had already begun to change. Young bloods; teenagers and young adults from harder times and meaner streets began to arrive. The beginning of a new generation gap developed: R & B met Rap; album rock clashed with acid head bangers. The young bloods came from a different America than the older convicts had. Life was starker and tougher on the streets. Crack, even worse poverty, and the widely held perception of the futility of the situation ever improving had devastated a generation of young men who quite readily expected to die before they turned 30. These prisoners were even more poorly educated than the previous generation, their understanding of others less, and their desire to comprehend a situation beyond their own limited perspective nearly non-existent.

The newer prisoners were also more angry and antagonistic towards the powers that were. Assaults on staff (though still relatively rare) and even more so between prisoners increased. A few rotten apples in uniform geeked the hot heads, creating minor dramas for no other reason than they had the power to do so. More unsettling was the amount of time the new fish were bringing with them. These boys, and they largely were boys, were routinely laden down with 60, 90, 120, even 200 year bits. Essentially they had no future beyond the walls, with nothing to lose by lashing out to kill momentary anger, boredom, or frustration. The stability of the old ways was disrupted and an air of uncertainty settled over the prison.

In the fall of 1991, a virulent rumour of the impending shipment of all the reformatory’s lockup unit prisoners to the state’s new maximum restraint unit spread throughout the population. The young bloods, with many of their cohort in the lockup unit, seeking drama in their lives and angry at the perceived unfairness of the mass transfer, wanted to riot, take hostages, and “burn the mother fucker down”!

The older convicts, who had survived the turmoil and mass violence of the mid-1980’s, suspected such an action would play into the hands of the DOC, and moreover change nothing for the better. It was known that
the DOC had quietly, though not secretly, invested considerable effort in revamping their emergency response strategies and units. A repeat of the “February Takeover” of years past, it was feared, would result in a bloodbath - predominantly prisoner blood.11

As in most penal settings a substantial number of the older prisoners were respected, and had measurable influence with the younger offenders. Many of these penitentiary role models were by now also college students or even graduates of the liberal arts associate and baccalaureate degree programs. Knowing the destructive and ultimately futile action of riot, these men began to persuade the hot heads to cool their agitation, seeking a different means of response to their anger.

Inspired by readings from Thoreau’s *Civil Disobedience*, as well as the tactics and the effect of Ghandi and King, a handful of college students reasoned a unique (at least for the penitentiary) though potent response. Beginning on a Friday in late October, taking place only during the first of the evening’s three sequential recreation lines and toward the end of the recreation period, men of all races and creeds commenced their demonstration. Approximately 300 men stopped their various personal activities and quietly, with dignity, assembled on their own volition and marched in rough formation around the large drill ground, completing the circuit by shaking hands and embracing each other. Then, without threat or rancour towards the guards, they quietly returned to their previous pursuits.

The custody staff naturally grew nervous over the unprecedented and apparently organized peaceful behaviour. Even more unsettling, as the men returned to their housing units, barely a word was said during the usually raucous line movement. The convicts were as nervous and unsure of the “screws”’ reactions, as the guards were of the prisoners’. With the superintendent out of the state for the weekend, the shift captain ordered the cautionary locking down of the participating units; the rest of the institution remained on regular schedule.

If the reasoning behind the partial lock down order was to dissuade any further demonstrations, the failure of that strategy became apparent the next evening. During the first recreation line on Saturday,12 towards the end of the period the men, more than the usual number who went to recreation, repeated the now-called “unity walk” around the drill ground. Returning to their housing units, the same silence permeated the air. In accordance with the previous day’s decision, the shift captain ordered these units locked down along with the first two. On Sunday evening, the
same events transpired, with nearly every resident of the last two non-locked down housing units participating in the units’ walk.13

By Monday morning, the superintendent returned to the prison to find it locked down. Not for violent altercations, but rather because the prisoners had walked in peaceful unit formations around the drill ground during the assigned recreation periods. Technically not a single DOC rule had been violated. The prisoners had issued no threats, demands, or continued any other action. Other than what informants might have told the administration, no official or organized explanation of what exactly the demonstration was in reference to was communicated. By lunch on Monday, the superintendent lifted the lock down, and the reformatory returned to its normal schedule.

At lunch on Tuesday however, the entire camp was once again locked down. This time it was to last for seven long, hard, punishing months. It was to become, at the time, the longest continuous lock down in the history of the prison and entire Indiana Department of Corrections. Only later, would we learn, that the punitive lock down was ordered by the DOC commissioner of the period.14

The official reason for the lock down was initially to investigate the peaceful demonstration. For two weeks, nothing happened. The population was confined to their cells and dorms, allowed no visits or phone calls, and fed three brown bag meals a day. Then the most exhaustive shakedown of the reformatory in 15 years was conducted. The month-long search culminated in a media dog and pony show by the DOC dramatically displaying some 50 “weapons” confiscated during the shake-down of the prison. Part of the problem with this “cache of confiscated weapons” was that a third of them were not weapons at all, but rather tattoo guns, scissors taken from teachers’ desks, and screwdrivers removed from housing units’ maintenance lockers. Another problem with the haul was that a third of the weapons had been confiscated months if not years before the massive shakedown occurred. Thus, after four weeks of the most extensive search of the 1,500-man maximum security prison in anyone’s memory all the DOC had to truthfully show for their efforts was an odd assortment of 15 to 20 shanks, pipes and razors. Reality be damned, the shakedown had become the reason for the lock down and the confiscated items visual justification for the cessation of all prisoner activities.

As the Thanksgiving holiday came and went, and the penitentiary was still locked down, the DOC declared the continued action was “for the
protection of the staff and offenders.” Protection from what was never explained, much less questioned by the docile media. After the passing of the Christmas holiday season with no visits, phone calls, or canteen purchases, with the prisoners continuing to eat brown bag meals, the new year commenced with yet another rationale for the lock down.

The action was now to allow the administration to “identify and isolate prison predators.” Why these predators were not identified during the previous two and a half months was not asked or explained. Nor was it questioned how the alleged predators could be identified at this juncture in time when no contact between offenders had been possible for the previous weeks. All the media did was dutifully report the DOC pablum and dropped the story until the next press release.

Even a superficial check of the state’s main newspaper would have revealed some incongruities with the prison predator myth. Between 1984-1989, not a single employee had been killed in the state’s prisons. Moreover, less than a week before the lock down, the governor’s press secretary emphatically stated that “our incidence (of injuries in prison) is much below the national average. We do not have unusual problems.” These statistics indicate that in a period in which levels of violence in prisons had decreased (by half) nationally, rates in Indiana were still “below the national average.” What they reveal is a period of relative docility and peacefulness.

By mid-February, half of a 300-cell unit had been caged off into a separate unit and filled with questionably identified “predators.” Many of those so tagged were the very same college educated older convicts who had averted a potentially bloody, costly and violent riot with their persuasive reasoning for the unity walk. All the while the hot headed young bloods that agitated for anarchy were left in the general population. If the administration’s intelligence network could identify the peaceful organizers, they could also assuredly know of the agitators.

As winter bloomed into spring, the punishing lock down continued. By now, the media had completely abdicated any pretense in reporting on the story. Thousands of letters from the prisoners and their families had been sent to the papers, as well as hundreds of phone calls by concerned outsiders to television stations questioning the lock down and lack of coverage. All to no avail.

During the lock down, with only 12 percent of the state’s penal population, the reformatory had experienced six illness and suicide related deaths. When compared to 1989’s total of seven male deaths from all
causes in the entire Indiana Department of Corrections, the reformatory was only one death shy in a seven month period of equaling all the deaths occurring in the state just three years before. All of which was information not reported by the Fourth Estate.

The first of June began with tentative easing of the lock down, as one hot meal a day was served in the chow hall. By the middle of the month, the lock down had been lifted and the shell shocked survivors emerged from their concrete caves and brick caverns into the light of day and fresh air, returning to their industry jobs, vocational and educational classes, and sparse therapeutic programs. Psychologically numbed by the overwhelming repressiveness of the punitive lock down, the population was in no mind to rebel further. The consensus of prisoners was that "we walked the drill ground and shook hands, and they locked us down for seven months. Hell, if we riot, they'll just walk down the ranges and execute us."

Interestingly, whether actually planned or not, the transfer of the lock up unit offenders never occurred.

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In retrospect it is amazing how much we accomplished. Not so much in what the unity walk prevented the DOC from doing, but in that the effort forced the DOC to overreact. Clearly if their intention had been to transfer the lockup unit offenders to the super maximum prison or elsewhere, they could have done so during the lock down with total impunity from reaction.

No, what the men of the reformatory accomplished was to terrify the DOC into gross over reaction to a situation for which they had no established contingency plan. Administration officials had never imagined that a majority of the diverse population could organize and carry out a continuous peaceful demonstration of their disquietude with the impending transfers. The DOC's efforts since the 1985 takeover hostage situation had been to refine their emergency response (SWAT-type) unit to react to violent situations. Nowhere in their arsenal was there a weapon to deal with a peaceful mass demonstration. As such tactics brought the British Empire to its' knees in India, the unity walk caught the DOC without a plan.

The assessment of the success or failure of the unity walk depends upon how encompassing a goal one projects for the action.
The effort was both a success and failure from the viewpoint of the prisoners. It was a success in that the unity walk was organized and carried out for three continuous days. To be fair, the unity walk was a failure in that nothing was accomplished to change conditions, with a seven-month lock down endured by the men, and by extension their families and friends. The sense of power from the unification of purpose permeated the population. For the first time the men felt they had some control, some say in the way their environment was run. They not only chose to be defiant, but chose a creative act that befuddled the powers that minutely controlled their lives. Such a feeling, however fleeting, was exhilarating.

Elements that contributed to the success of the unity walk were the critical mass of the experienced intelligentsia, no visible leadership, and simplicity of action chosen. Perhaps the most important element in the success of the unity walk as an alternative to rioting, was the older, penitentiary experienced, liberal arts educated convicts who crafted and advocated for the demonstration chosen. These men, no more than 30, with an active central core of half a dozen, used their convict reputations to garner respect of the youngbloods, searched and debated their “collective educational experience” to craft an alternative effort, and utilized a mixture of street rap and speech communication skills to advance their alternative action.

By composing a loose collective to form an alternative to riot, no visible leadership was created. Spread throughout the housing units, the intelligentsia (for lack of a more definitive term) met, debated and resolved a synthesis of ideas at recreation, meals, and work assignments. Without a centralized plan, other than to avert a riot, this constantly merging and diverging group, developed by consensus the idea of the unity walk. By not establishing a hierarchical leadership, it became much more difficult for the administration to take preventative action by isolating the “leadership.” Such a designation of individuals was too elusive to determine.

The action chosen of forming a totally participatory, loose formation during the recreation period to walk around the drill ground was a plan of genius given the circumstances and limitations of the situation. Since each housing unit group sent to recreation would be the only units participating at a given time, the need for wider coordination was not required. This also simplified the organization of the march within the unit, with only a few persuasive individuals in each unit needed to start forming the action.
By choosing the end of the recreation period to walk, when most of the unit had completed whatever activities in which they participated, the greatest number of idle individuals could be persuaded by motive, reason, or peer pressure to participate.

These elements of a loosely formed core group of experienced, reasoning individuals, forming no visible leadership, choosing an easily enacted demonstration were critical to the success of the action. What is still debated was the lack of a manifesto of goals or demands. Should a collective list of desired changes or grievances have been presented to the administration? Perhaps so if any long-term change was the goal. By doing so, however, a vulnerable leadership would have been exposed to isolation if not retaliation.

With the only discussed goal being to avert riot while making a noticeable demonstration, the unity walk succeeded beyond the dreams of those orchestrating the action.

Finally, the success of the unity walk can be gauged by the reaction of the DOC. The initial befuddlement of the custody staff as to what was transpiring is understandable. The action taken by the population occurred without forewarning, transpired during recreation, and was followed by a reduced level of activity during line movement. The “rolling lock down” too is understandable as a precautionary measure until an ascertaining of the situation was made. The prolonged lock down, however, was not predictable given past actions, nor was it justifiable, especially with the constantly changing litany of “reasons” for the lock down.

The purpose of the continued lock down was to break the “spirit” of the population, to destroy the feeling of emancipatory power that the peaceful unified action had given the men. To this extend, the Department of Corrections succeeded. To the extent the prisoners of the Indiana State Reformatory shook to its foundation the administrative complacence of the DOC, the men succeeded beyond their wildest expectations.

**ENDNOTES**

1. In 1978, Indiana adopted a determinate sentencing penal code, dictating a range of set terms for offenses. The “goodtime” provisions in the code provided day for day, or more euphemistically called “two-for-one,” time credits. Thus, for example, barring major disciplinary violations, an offender sentenced to a 20-year term would serve 10 years irrespective of “rehabilitation” efforts or lack of them, or “nature and circumstances of offense.” The Parole Board gradually evolved into the Clemency Board. Clemency, the only earlier release mechanism currently available, was a joke
with less than one percent, and later under a democrat governor zero percent, of those applying receiving a commutation.

2. When the legislature adopted the determinate sentencing scheme, the term lengths for various offenses remained basically the same as before. With the two-for-one goodtime formula, however, prisoners served half the numerical value of their imprisoned terms, instead of the previous usual one-third of sentence under the indeterminate structure. Sentences for the same offenses were longer and without the possibility of good behavior paroles, thus that controlling safety mechanism no longer positively influenced behavior.

3. “Groups” is the appropriate term since, although superficially similar to, the organized and highly antagonistic gang culture of the “crips” and “bloods,” that phenomena had yet to be imported to the prison to any significant extent.

4. Within this unit one could easily find two or three breweries, cat houses, gambling dens, tattoo parlours, and shooting galleries, a dozen stores and hot sandwich shops, out of the various 300 one-man cells.

5. Or gang leader depending on your perspective. His exact words shouted down the hallway were: “Go ahead and do your thing brothers, they are beating me to death.”

6. The event was a national story covered by the networks, making the cover of a newsweekly, which labelled the Indiana State Reformatory the most violent prison in America. In actuality, while a dangerous place, the Reformatory was no more violent, and in some cases less so, than other prisons across the country. But media hype sells the sizzle of a story rather than the reality of the situation.

7. Several years later, various correctional officers were convicted of federal civil rights violations, and officially credited with causing the riot.

8. In 1987, an prisoner class action lawsuit resulted in prisoners being declared eligible to receive state-funded higher education grants. Coupled with federal higher education (Pell) grants, post-secondary education enrollment became a fully subsidized opportunity.

9. The Maximum Restraint Unit (MRU) at Westfield, Indiana, is only the second prison in the United States, other than California’s notorious Pelican Bay facility, to be “condemned” by Amnesty International. During this period, in protest of the extreme conditions of the MRU, two prisoners cut off fingers, and attempted to mail them to U.S. Senators. Thus the fear of unwarranted transfer to the MRU added intensity to the concern over this issue.

10. Approximately 100 prisoners.

11. Some months after this period, at a new prison, a mile from the 70 year-old Indiana State Reformatory, a staff member was taken hostage by a shank wielding prisoner.
Within hours, the prisoner was negotiated to a position where he was killed by a strategically placed sniper, affirming the efficiency and lethality of the DOC’s emergency response unit.

12. The reason the first line was chosen was that at this time of the year, the large drill ground was closed for the later second and third recreation lines due to the season’s early darkness. To give all the units equitable access to the large drill ground and its facilities, the three recreation lines, composed of two housing units each, were rotated everyday. Thus once every three days a housing unit’s residents had access during first line to the large drill ground.

13. On most occasions, only about half of a unit’s residents would attend every recreation.

14. Ironically, this information came to light when the DOC commissioner received an award from some correctional association for the long lock downs he instituted first at the reformatory and then at the state prison.

15. There were four reported suicide attempts in addition to the successful suicide.
[Editor’s Note: This brief was originally written in 1995 by seven women members of The Alliance of Prisoners’ Families. In my correspondence with Amy Friedman Fraser, I inquired as to whether or not the original seven names should be attributed authorship. Her response to this question perfectly illustrates the dire situation of federal prisoners’ families in Canada.

As far as the names listed, let’s use just two, Amy Friedman Fraser & Arlene Leigh Squiers. The reason for this will also be clear as you read on. I haven’t been in touch with the other women listed, and I don’t know precisely how to contact them at this point. I know they won’t be offended to be left off the list, and I fear adding their names at this juncture since I don’t know what their situations are like at the moment. Again, this “fear” should be clear as you read on.

Sometime in 1994, Amy and Arlene met through a mutual friend. They were wary of each other. While prisoners’ family members share many experiences, each one of us is an individual; despite efforts to stereotype both prisoners and their families, we are as different and as disparate from each other as are all individuals. Sadly, because we are often punished for our “associations,” we most often feel a need to isolate ourselves in an effort to ensure our safety and our loved ones’ safety. Fear of association with others in similar situations naturally leads to further isolation, alienation, sadness, hurt.

Still, one day in a tiny restaurant in Kingston, Ontario, Amy and Arlene sat down over coffee. Seven hours later, the seeds of the Alliance of Prisoners’ Families and the brief to the SCJLA were born. Over the years -- through the anguish of involuntary transfers, gruelling parole board hearings, mounting phone and travel bills, and through sometimes aching loneliness and the exhaustion born of prison -- Amy and Arlene developed a deep respect for each other, and a friendship. Together they created The Alliance. The brief stands as the group’s mission statement. Others joined, but many hesitate to put their names and/or faces to a document which might engender dire repercussions for themselves and/or for their loved ones in prison. Many, however, belong in spirit, and we believe that it is just that spirit -- a deep commitment to justice, integrity, honesty, and the strength of love and commitment in healing .. that will, ultimately, serve to keep at bay a
desire for pure punishment and that will give a different, more accurate face to prisoners' families who embrace the notion of true justice.

Without the knowledge, commitment, energy, devotion, kindness, and supreme belief in justice offered us by both Claire Culhane and Graham Stewart, and by our husbands and other family members, we might have long ago given up in our struggles to endure the often debilitating concentration of misery and frustration that is prison. And so we thank Claire and Graham and our families, and we welcome others to join The Alliance of Prisoners' Families. (Contact through: The Alliance of Prisoners' Families, c/o Graham Stewart, The John Howard Society, 771 Montreal Street, Kingston, Ontario, K7K 3J4) [Correspondence to B. Gaucher: July 27, 1998]

INTRODUCTION

This brief is submitted with several purposes in mind. First, we want to bring to your attention the experience of families of prisoners in our attempts to maintain our ties and relationships with family who are incarcerated in our prisons. Second, we want to ask you to consider the reasons that the proper treatment of families and the support for our constructive relationships with our prisoners are of critical importance in the development of a correctional system that wishes to see its prisoners succeed after release. Third, we want to persuade you that the possibility exists that the practices of the Correctional Service of Canada (CSC) are often, indeed almost consistently, in contradiction to the spirit of its own mission statement, values and directives. Finally, we would like to ask you to consider implementing some modest proposals which would address the concerns we have brought forward.

We must open with a caveat. The Brief you are about to read may seem, to some of you, a bending of the truth, an exaggeration, perhaps even a lie. We can only say that we present the truth as closely as we are able to express it in words. We wish to speak to you about the very real operation of the CSC from our perspective. Ours are voices you seldom hear. We are prisoners' family members. While we cannot begin to speak for every prisoners' family member, we know that those most closely associated with prisoners must be heard, that our voices are a critical, if often ignored, component of any criminal justice system which hopes to succeed in any measure.

Our mission is, and has always been to encourage, promote, and foster successful rehabilitation and successful reintegration, to encourage,
promote and foster justice and nonviolence. Few stand to lose more than we if our loved ones do leave prison only to reoffend. We are not only human beings who have, like Victims’ Rights members, suffered severe loss (in some cases inside the prisons, in some cases outside as well), but we are human beings who, if the current system as it is practised prevails, will suffer greater harm and more loss. We are also law-abiding citizens of this country who rail, if silently, against the immense sums of money wasted in our prisons today and against the nonsensical decisions sometimes made by the National Parole Board.

As prisoners’ family members, we live half of our lives behind those bars, in those cages, subject to the same whims of authority as are prisoners. We are constantly and consistently under siege by the Correctional Service in its Drug Strategy which effectively strips away our civil rights by presuming our guilt, using family access for punitive purposes, and punishing without giving an opportunity to challenge the accuser or the evidence. What few have considered is this: in general we are, without question, the members of this society with the strongest determination and deepest reasons to seek and strive for successful rehabilitation and reintegration of prisoners. We are your hope in large measure, and yet, we are treated as the very opposite.

We seek your political will. Our nation does, indeed, have in place policies, procedures and legislation which should go a long way towards creating prisons which heal rather than destroy. We hope you will recognize, however, that for us, many of our present policies, procedures and legislation are, in fact, failing. Any and all rewriting of legislation will continue to fail unless or until political will backs those documents. We attribute the current failures of the system to a lack of understanding and knowledge on the part of not only our legislators but of the nation as a whole. It is our hope to enlighten and to encourage you, as members of a Committee who will indeed impact this nation’s legislators, to address the problems as they currently exist.

We ask you to remember that the vast majority of those individuals who have been incarcerated in this nation’s prisons have also successfully returned to society to live crime-free, productive lives. Indeed, almost thirteen percent (2.6 million) of the adult population in Canada has a criminal record. Less than two percent of this group is incarcerated. The Service seldom refers to these “success” stories; the media almost never does. More importantly, perhaps, many of the successes are due not to the practices engaged in our prisons but to the will of individual human
beings, oftentimes with the support of families. We can, we believe, increase that success and thereby better all of our lives.

We ask you to acknowledge that our voices and our stories join those of the Victims’ Rights group members whose aim is sometimes, we believe, to better our system of justice. Victims’ Rights groups however, often call for longer, harsher sentencing in the belief that this will decrease crime in this nation and increase the slippery, ill-defined notion of “public safety.” It is our belief and experience that longer, harsher sentencing in general will go a long way towards leading this nation on the path the U.S.A. has taken, with the same results: a prison population that is exploding while an exceptionally high crime rate by all international standards prevails.

We wish to speak not only of prisoners whose crimes are said to be non-violent but of those whose crimes were. While there appears to be at present some political will to seek alternative measures to incarceration for nonviolent offenders, there appears to be, on the other hand, an increasing will to toss away the key that locks the cages of all those individuals who have, or are said to have, committed violent acts in their lives.

**THE BRIEF**

Oscar Wilde, while in prison, wrote: “Prison life makes one see people and things as they really are. That is why it turns one to stone.”

The violence expressed by so many members of the public in their support of the will to punish those convicted of violent offenses more harshly and for longer periods; and the violence expressed by those who applauded the Emergency Response Team’s (ERT) violent, humiliating action at the Prison for Women (P4W) in April 1994, turned us to stone for many months, convincing us not to appeal to the Committee back in 1994 and 1995, and on into 1996 and 1997, despite our having composed this Brief for review. We have long been silent due to lessons learned: that “official stories” are the acceptable stories, the stories both the general public and our politicians wish to hear about how our prisons in fact function, and that the “horror” stories such as the P4W event, Robert Gentles’ death, Guy Paul Morin’s conviction, are exceptions rather than the rule.
Many of us have been silent for fear that our attempts to speak and/or write the truth would, as they have in the past, result in further degradation and loss through threats to ourselves, our children and punishment for our loved ones who are in prison. Alone, and sometimes with each other, we weep and rage about the way in which the Canadian people seem to accept as justifiable any and all acts taken against Canadian prisoners and their families. You must try to understand that if lawfulness and justice had played a part in many of the actions taken against our families, perhaps some of the psychological and physical assaults, financial exploitation, lies, censoring, threats and intimidation (in CSC’s own terms these are “criminal acts”) taken against us might have been easier to bear.

Some prison officials with whom we have talked have assured us that we will never garner public or political support for prisoners or for ourselves in our never-ceasing attempts to seek justice. Prison officials have taunted us with their stalwart assurance that our desires and efforts to be seen as we truly are - individuals committed to living and promoting and supporting just, humane, sane, productive, nonviolent, noncriminal lives - will fail because the public cannot and will not distinguish between one prisoner and another, that the public will despise us because we are related to, care for, love a prisoner. The violence expressed by those who applauded the ERT’s actions and by those who continue to support both the ERT’s actions and the subsequent coverup of those actions by higher officials, has led us to believe this may indeed be true. It has made us hesitant and deeply fearful of stepping forward to speak with you. We have attempted to address these issues with the Correctional Service itself, but in 1994 we were informed by Mr. John Rama, of the Commissioner’s Office, that there is “no perceived need on the part of Senior Administrators to meet with families of prisoners.” Since that time, individuals among us have attempted to discuss individual issues. Seldom are we successful in obtaining even an interview or return phone call. Many (if not most) of our letters are disregarded.

The crimes committed by those we know and love in prison are crimes with which they will live forever, forever feel pain. The prison sentence was supposed to be the punishment for that crime - the reason for our laws, judges, juries, crowns, defence lawyers, police. But in our experience, the sentence all too often becomes instead, a license granted to those officials who choose to live their lives exploiting their own power.
over not only prisoners but over their loved ones and over society as a whole, causing pain and destruction.

At present, family members have no formal grievance procedure (beyond federal court which in most instances is far too costly and sometimes, when pursued, results in severe repercussions). We have few sources for reliable and informed information, little access to government officials except as rerouted through CSC officials who have expressed their disinterest in speaking with us. Even the lines of communication between prisoners and their loved ones are, in effect, subject to being whimsically cut off at any time (suspicions, Emergency Involuntary Transfers, lockdowns, being a few of the purported “reasons”). Prisoners, it must be remembered, live in daily peril and have no union, minuscule income, few official allies. Prisoners live in cages, sometimes for up to 23 hours a day, and in many instances these cages are far from their loved ones.

In 1995 CSC issued a booklet containing advice to prisoners’ families, in particular to spouses and children of prisoners. The booklet is designed to address the need to recognize abuse and the necessity of stopping the abuse cycle, first by recognition and then by the reporting of abuse. The booklet is, of course, aimed at those spouses who have been in the past/continue to be/or feel that they are being abused by their incarcerated spouses.

We read the booklet and realized that we have indeed been abused, have indeed suffered what CSC describes as “criminal abuse.” But we have suffered this abuse by actions taken not by our loved ones but by the Correctional Service itself. This abuse has included but is not limited to:

- threat and intimidation of our loved ones and ourselves
- financial exploitation
- physical abuse (due to the method and manner by which CSC determines to engage in and engages in searches of visitors)
- attempts to halt our marriages
- our visits cut off with no legal cause
- illegal Emergency Involuntary Transfers (and subsequent false security ratings)
- sudden separation from the family and community support
- attempts to destroy our careers
- verbal abuse towards our children and interference in our children’s ability to visit
Amy Friedman Fraser and Arlene Leigh Squiers

- attempt to halt legal work and to destroy legal businesses
- theft of work
- theft of money and other personal belongings
- tire slashings
- improper strip searches
- breach of Commissioner’s Directives
- lies and distortions of paperwork (in particular by the IPSO, CSC’s own secret police)
- administrative coverup of malice, abuse, negligence and incompetence

We recognize that it is your role to maintain a “neutral” stance in addressing issues that are brought to your attention, but we ask that you acknowledge that in order to be truly neutral, any halting of your ability to hear our stories will skew your perceptions and will help you to create a system that perpetuates the abuse cycle as it currently exists.

Our Justice Minister, our Solicitor General, our Prime Minister, our Commissioner speak of reason, public safety and justice. In our cases, in every instance of abuse levelled towards our husbands, ourselves, our children, the “excuse” offered us has been this. At some point our loved ones committed crimes for which they were sentenced to serve time in prison. We are told again and again, “the Service does not act without reason.” If you accept these assertions, you will be unable to serve as “neutral” observers. If any and all reasons provided by the Correctional Service are adequate, any and all injustices will forever be hidden.

Some of us have responded to abuse by writing to administrators at the individual prisons, to Regional Headquarters officials, to the Correctional Service Commissioner, to the Correctional Investigator, to Citizens Advisory Committee members, to individual MPs. In most instances, our letters are ultimately responded to by an individual who, on occasion, apologizes for those infractions which are vividly evident and always reiterates the Correctional Service’s Mission. These responses sit, largely unnoticed, in our own files. In some cases, the official response has gone beyond these letters. Some of us have read our own Correctional Service files - files compiled about those who are not prisoners. Large numbers of pages are blacked out in these files - information compiled about us but which we are forbidden knowledge.

It should by now be obvious, owing to the P4W incident at least, that administrators will make every effort to justify the actions taken by their
employees and colleagues. Self-justification often stems from highly suspect information and continues to result in death, despair, poverty, murder, suicide, drug and alcohol abuse, anger, and frustration inside and outside our prisons. Please note that the suicide rate inside our prisons is over seven times that found outside of prison. It is 3.5 times the rate for young males aged 15-24 in the general Canadian population. The homicide rate inside prisons is fifteen times that within the Canadian population and eight times that of 18-39 year old males in the community. It is this kind of violence which our prisons foster. And it is this kind of violence which does, and will continue to impact upon society as a whole.

We have come forward because we realize that our silence will ensure the continuation of the current abuse cycle. Remaining silent despite all we know—that abuse is everyday fare for most prisoners and their families—flies in the face of our efforts at ensuring justice for all exists in this nation.

SOME MODEST PROPOSALS

Although our concerns are substantial, our proposals are modest. We recognize that substantial change is unlikely on the basis of this submission. We do not think that you will be entirely persuaded by our claims that serious problems are at the root of the operation of our prisons. We hope, however that our testimony might raise in you mind the possibility that these problems do exist. That alone should be troubling. We have, therefore, tried to identify a few proposals that should not be controversial but which have the potential to address this possibility, make important changes that will help us succeed in our lives and thereby create a greater likelihood of our nation as a whole becoming safe, sane, more democratic.

1. **The Correctional Investigator's (CI) Office**

Under current legislation, the CI's function is as follows:

*It is the function of the Correctional Investigator to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner or any person under the control and management of, performing services for or on behalf of the Commissioner that affect offenders either individually or as a group.* [emphasis added]
Unfortunately, the CI’s Office is understaffed and underfunded and unable, therefore, to attend to the vast numbers of decisions, recommendations, acts, and omissions on the part of the Commissioner and those under his control and management. Representatives of the Investigator’s Office are located far from the prisons themselves and are only able to get to each prison infrequently (approximately every four months). Access to the Investigator, and the ability of the Investigator to obtain vital information, is thereby inhibited. The CI’s Office is mandated to address family concerns as well, though few families are aware of this mandate, and CI officials seldom have contact with family members.

We propose:

a. that you seek a hearing with the Correctional Investigator to better understand the nature of the issues requiring that office’s attention; and,

b. that the CI’s office recognize that decisions, recommendations, acts and omissions on the part of CSC staff and administrators towards family members do indeed impact offenders and are, thereby, within that office’s mandate to investigate and address.

2. **Family input into Correctional Service Policy Making**

Any policy decisions made and actions taken which directly impact upon us, will be ineffective and will inevitably fail, if we are not involved. Please remember, it is against us that these sanctions are imposed. Effective democratic systems require the participation of representatives of those parties directly involved.

We propose:

a. that before policies such as the most recent Drug Strategy (and CSC’s “Best Practices”) are adopted, representative family members of prisoners (from at least each Region) be consulted.

3. **Establishing Positive Accountability**

It is currently presumed that prisoners alone must be accountable and must somehow prove their innocence when accused of any and all wrongdoings (beyond the crime for which he or she is sentenced). This presumption of guilt of prisoners (and their visitors) is in direct contradiction to all principles of democracy.
Public perception of prisoners and their families, fostered by media stories provided by Administrators at CSC continues to promote the notion that all prisoners are guilty of all acts for which they are accused, even beyond those acts for which they have been sentenced to serve time. This image persists despite overwhelming evidence to the contrary (particularly regarding the post release success of Lifers\(^3\)). All prisoners, nonetheless, are perceived and represented as forever dangerous to society at large.

It is our view that CSC is held to account for negative events such as escapes and decisions to release prisoners who subsequently reoffend but is seldom asked to demonstrate its effectiveness at rehabilitation. It is because of this one-sided accountability that families can be viewed as a nuisance to CSC, when in fact, they should be seen as a major asset to its mission.

**We propose:**

a. that the Correctional Service prepare an annual report to be submitted to Parliament and reviewed by the Correctional Investigator which details: how the Service has met its rehabilitative goals; contributed to successful earliest possible reintegration of prisoners into the community; has addressed citizen and prisoner complaints about unfair practices and previous recommendations made by the Correctional Investigator. These reports should be made available to the public.

4. **Input to the Committee from Prisoners and Family Members**

Family members and those men and women sentenced to serve long sentences can tell Committee Members precisely how their efforts at rehabilitation have succeeded and/or failed and the part that CSC practices have played in this success or failure. We are confident that most Lifers' Groups, for instance, would welcome Committee Members.

**We propose:**

a. that members of the Justice and Legal Affairs Committee visit prisons and speak with those unable to appear before the Committee so that legislation recommended address the realities of prison life and prisoners themselves.
ENDNOTES

2. Correctional Investigator, Mandate, Canada: Solicitor General

CIRCLE OF HOPE
WOMEN’S GROUP

Circle of Hope is a program of Justus, a spiritually based non-profit charitable organization in Toronto. Justus works to eliminate fear and prejudice by creating relationships among inmates, ex-inmates, their families and the larger community. The coordinator, Maria Karajovanova can be reached at:

Emmanuel-Howard Park Phone: (416) 534-9133
United Church Fax: (416) 534-3355
214 Wright Avenue
Toronto, ON M6R 1L3

Circle of Hope is a group for women who are currently supporting (or have in the past) a loved one in prison. We offer the opportunity to share our experiences, practical advice, information and resources. We encourage a spirit of self-care and self-empowerment in a safe and friendly atmosphere. Be part of a support network of women you can relate to and trust.

As women supporting a loved one in prison, we are in a very unique situation. The daily pressures and stresses placed on us are many. We tend to take on a nurturing role even more so than usual and often find it difficult to remember that we need to take care of ourselves. We are frequently isolated from our friends, families, co-workers and society as well as those behind bars: our situation makes it difficult to relate to others who don’t share our experiences and the circumstances do not
ALLOW FOR NATURALLY CREATED BONDS AMONG US IN WHICH WE CAN SUPPORT AND BE SUPPORTED BY ONE ANOTHER.

The women's group provides a forum where women who share the experiences of supporting a prisoner can meet to express concerns and needs and pool resources and information surrounding this circumstance. Sharing the commonality of their experience, women are able to offer compassionate insight and practical assistance to others who have had or now have loved ones who are incarcerated. Our group offers an opportunity for further volunteer involvement for those who wish to study or work on aspects of advocacy and public education with respect to the Canadian penal system.
Two Kinds of Victims: Meeting Their Needs

Ruth Morris

For some years I have included in my standard lectures on penal abolition or creative alternatives, a section on victims and their needs. I culled this from the standard literature on victim needs. When I first read it, I was astounded to see that revenge was not generally found to be a primary need of victims. The five primary needs all victims share are as follows.

1. **Answers:**
   All victims instinctively want answers to a whole variety of questions, including the universal “WHY ME”? Although this is in part a spiritual question, it is one which the particular offender can partially answer, assuring the victim that they were not picked on deliberately (if that is the case). Most other questions can only be answered by the offender in the case:
   - why did you smash the basement window?
   - Can you return my ID which is of no value to you but a lot to me?

   Many of these questions seem trivial or frivolous, but they can obsess victims. The reason is logical when we think about it. The nature of being a victim is that one’s life space is invaded, and the power to control one’s little area of safety is violated. Getting answers to these questions helps victims to regain a sense of understanding, essential to regaining a sense of control and safety.

   Howard Zehr has said that victims have to “retell their stories of violation to friendly ears until they have reconstructed their understanding of who they are with this tragedy included in it.” Getting answers from offenders helps victims do that.

2. **Recognition of their Wrong.**
   Probably the most powerful need of victims is to have their wrong recognized as a significant wrong, not something they brought on themselves, or something trivial to be passed over lightly. Of course courts do just the opposite: much of the court process, especially any defence mustered for the accused, shows the victim to be somehow at fault, weak, neglectful, provocative, or otherwise contributing to their victimhood. The layers on layers of incomprehensible process in which the victim is trivialized and ignored do not convey recognition of their
wrong. Often victims are not even informed of any arrest in their case if they are not needed to testify.

Our society recognizes wrongs very unevenly, at best. Being born poor or black or indigenous and thus experiencing systemic discrimination all one’s life is not considered a wrong to be recognized. Workplace wrongs tend to be blamed on their victims: anyone complaining of their last employer in job interviews is not likely to be hired. On the other hand rape, which used to be blamed on the victim, has recently, thanks to the work of the feminist movement, become recognized as a very significant wrong for which victims are not to be blamed.

3. **Safety.**

A renewed sense of safety is an obvious victim need, yet the court process often fails to provide this. The alienation between offender and victim is widened, which increases fear and anger on both sides. The only real security could be found in a protective, supportive community, but instead our system makes a bogey-man of even mild, nonviolent offenders, and puts victims as well as offenders at the mercy of a powerful “justice system” whose arbitrary processes and decisions provide safety to neither victims nor offenders.

4. **Restitution.**

Restitution is a widely recognized, but often misunderstood victim need. Courts recognize it by making erratically chosen restitution orders. Many crimes are committed in an effort to pay an unrealistic restitution order, which the offender cannot meet. About 60 percent of court-set restitution orders are not paid, not only because many are impossible, but also because since neither victim nor offender are included in setting it, the offender does not feel committed to an order which makes no sense to her/him, and is just another part of a name-calling burdensome system that hates and rejects her/him.

What we mean by restitution is something else: restitution is about restoring to the victim a sense of a community that cares about them. Thus there CAN be restitution even in rape and murder cases, for restitution is not about tit for tat; restitution is about restoring community. When Hurricane Carter called to the front of the first *Association in Defence of the Wrongfully Convicted Conference*, seven people who had served 160 years for crimes they had nothing to do with, that audience
gave each of those people a standing ovation. Tears ran down a lot of faces as Hurricane Carter hugged each one in front of that cheering, applauding, deeply moved audience. Nothing can give those people back the decades spent in prison, the parents whose deathbeds they missed, the children they never saw grow up, but that community tribute was restitution: it was a powerful declaration of community by people who cared deeply about what they had gone through. THAT is restitution.

5. **Significance, or Meaning.**

The last need of victims is in some ways the most beautiful: victims of any kind need to find significance in what they have experienced. We will never have answers to all the big questions in this world: no one else will recognize our wrongs as deeply as we feel them; we never feel quite as safe after a violation of our space; and, restitution of community still cannot give us back what we have lost. Sooner or later mature victims on the healing path realize they have gotten as much of the first four needs met as they are going to get. They cannot turn back the clock and make it unhappen. But, they can resolve to use what happened to them to make the world a better place, a safer place, for someone else, and even prevent someone else suffering what they did.

Thus, a mother whose child drowns in a public pool launches a move for better lifeguard protections. Terry Fox started a run to conquer cancer that still fires the imagination of Canadians. A woman whose bus driver husband was shot by youths in a low income part of an American city launched a fund to provide better recreation for youths in that neighbourhood. Mothers whose children have been killed by drunk drivers have launched a movement that has changed public attitudes toward drinking and driving (MADD).

**Two Kinds of Victims**

The examples given in the preceding section are of victims of all kinds of situations: crimes, accidents, diseases, and systemic injustices. In fact, any trauma that comes unwanted, takes away our power over our own life, and brings us pain, makes us feel a victim. But we will eliminate from further discussion here what are commonly called "Acts of God" (although many believe this title maligns the Divine unnecessarily). The kinds of trauma which we have no way to prevent: cancer, hurricanes,
tidal waves, aneurisms, will not be considered further here. But, this still leaves TWO kinds of victims:
1. Victims of DISTRIBUTIVE INJUSTICE
2. Victims of STREET CRIME

Our corporate dominated media, in their efforts to divert our attention from the overwhelming reality of corporate crime and corporate exploitation, usually define “victim” as a victim of street crime. Yet, the larger number of victims by far are victims of distributive injustice. UNICEF statistics indicate that 40,000 children die each day, 17 million per year, from lack of necessities or exhaustion - surely THIS is a justice issue! Yet our justice system never addresses such questions.

The UN Development Report of 1992 stated that in 1990 the richest 20 percent of the world’s population had 60 times the income of the poorest 20 percent (Goudzwaard & deLange, 1995. pp. 13-14). Distributive or structural injustice victimizes through: higher infant mortality, shorter lifespans, less educational opportunities, poorer housing and nutrition, worse health and health care, less access to jobs, and greater exposure to all kinds of violent risks. Yet we seldom hear the word victim applied to victims of distributive injustice: marginalized people and groups.

So in considering victims, we need to ask WHICH kinds of victims do we mean - victims of distributive injustice, or victims of street crime.

THE POOR ARE VICTIMIZED BY BOTH

Marxist and other social justice analysts harp on victims of distributive injustice, while advocates of the retributive justice system and upholders of the status quo dwell on victims of street crime. Neither group considers that we do not have to choose sides: BOTH are true victimizations, and BOTH are more often visited on the poor and marginalized than on any other group. Both deserve our support, and both have the five victim needs discussed above.

But whereas racism, classism, and sexism harm victims of distributive injustice, street criminals victimize those hurt by street crime. Ironically, most prisoners are major victims of BOTH kinds. Racial minorities and poor people fill prisons everywhere, and the system from start to finish sifts in the marginalized and sifts out the elite. But it is also true that prisoners are probably more often victims of street crimes than
most other groups: many have experienced gang beatings, muggings, rapes and other sexual violence, family violence, police beatings and even torture, theft, extortion - you name it, they are consumers as well as perpetrators of victimization.

This means that poor people and prisoners should be supported in meeting their five healthy victim needs, as defined above. It also means that we do not have to choose between kinds of victims - a healthier society can respond to the healthy victim needs of victims of distributive injustice AND of street crime. Moreover only the newer transformative justice approaches which bring victim, offender, and their communities together, empowering them to find a solution that meets their needs, can respond to the five victim needs effectively. Native healing circles and family group conferences are the best known of these, but some victim-offender processes that include community can meet the five victim needs fully as well.

FREEING VICTIMS

We are a “penaholic” society, and the powers that be, in their cover-up of the corporate thieves that are destroying our economy, our environment, and our civilization, encourage victims of street crimes to remain stuck in a revenge mentality. But despite this, many victims and some victim groups see through the trap, and find peace through healing, transformative processes. Wilma Derkson’s work with the Mennonites in Canada is one example, but the USA has a number of groups working to this end.

Perhaps the most remarkable is a group called MURDER VICTIMS FAMILIES FOR RECONCILIATION. They put out a newsletter, do talks, and frequently organize major walks across large parts of the country. Every one of them has lost a loved one to a brutal murder. Far from holding onto bitterness, their stories all follow the same theme. Many of them, failing to get their healthy needs met in our society, did start down the bitter revenge path. But at some point they realized they were stuck. Often some traumatic moment changed their awareness, but sometimes it was just the emptiness and despair of the revenge path, which was eating them up.

Bill Pelke’s story is typical of these remarkable folk. His wonderful Christian grandmother was knifed to death in her own home by a gang of teenage girls bent on robbery. Bill and his Dad attend the trial of Paula,
the 15 year-old leader of the gang, and wanted the death penalty. But when it came, Paula’s grandmother in the courtroom burst into loud sobs. Suddenly Bill saw in his mind’s eye a painting of his Grandmother they had - and he saw that she was crying. He knew his Grandmother would not want a murder to succeed her murder.

From that moment Bill led the fight to get Paula off death row. American media would not cover it at first, so he took his cause to Europe, and the Italian media feted him, from which the American media picked the story up. Not only did Bill succeed in getting Paula off death row, but today they correspond, and there is a video showing Paula commenting with wonder on this human being who actually wants to meet and help her. She says words to this effect, “I don’t understand how he can want to meet me. I don’t understand him at all. But all I know is this: if there had been a Bill Pelke in my life, before this happened, I don’t think any of it would have happened at all.”

Victims come in all sizes, colours and conditions. We are all victims at some point in our lives. This world is a lonely place unless we learn to support each other in meeting those core needs of all victims: finding answers, recognizing their wrongs, gaining safety, obtaining restitution, and creating meaning out of their personal tragedies. Prisoners, like all of us, are both victims and victimizers. But victims like Bill Pelke are showing us that we can transcend victimhood, and create significance out of any tragedy - and the greater the tragedy, the greater the potential significance.

REFERENCES

During the weeks that followed the July 14, 1998, “Bastille Day” execution of Thomas Thompson, a couple of mainstream media types told me that executions and their attending vigils -- barring a “fresh angle” -- are no longer considered news events. Coverage of executions at San Quentin by the major news media is expected to drop off rapidly and will be limited to San Quentin’s immediate environs and the county of commitment.

This point was underscored in a recent “This Week in Northern California” program on KQED, the Bay Area PBS outlet. When asked if he thought death penalty abolitionists had been given due coverage during past executions, a panelist opined that executions are now routine; if the abolitionists want coverage, they should make news.

While many of us on the row appreciate the execution-eve vigils and realize that an execution is a strong focal point, we also realize that it is too little, too late. Ultimately, it is the State that makes the final point of the night, and the vigilists are disheartened.

Perhaps it is time to change the venue of protest and demonstration.

- The purposes of death penalty abolitionists may be better served by taking their protest to the seats of power rather than to the site of extermination. Why not direct demonstrations against those responsible for the process -- local district attorneys, the legislature, state capital offices, department headquarters, and federal, state, and county courthouses -- and do so more often than on execution days?

- Capital crime trials are going on almost everyday somewhere in this state, prosecuted at the whim and caprice of the local district attorney. Capital crime is also discussed endlessly in the state capital building. Why not make these the focal points for protest and demonstrations?

- California has the largest population of condemned on death row in the nation. It also has a significant foreign tourist industry. Hit-and-run demonstrations at local centres of commerce and tourism may prove newsworthy and beneficial to the abolitionist cause. Why not play up the human rights angle and alert tourists that their tourist dollars translate into tax dollars spent on executions that violate international human rights agreements?
The pro-death forces have the upper hand at the moment, and the pace of executions will likely quicken in the coming years. But it is not the time to give up. It is the time to step up. It is the time to make the minority voice on this issue heard. It is the time to point out that a state willing to take a life belittles and endangers all human rights within its boundaries.

Life -- the most basic human right of all -- should not be subjected to judicial termination.

FREEDOM RAINS ON LITTLE ROCK REED

Little Rock Reed is finally a free man. After spending a decade in the Ohio prison system for two 1982 robberies, he was released in 1992 to serve a one-year parole term. Six weeks prior to his expected discharge, he fled Ohio and was later apprehended in Taos, New Mexico. Following extradition proceedings in Taos, Little Rock was granted refuge by a New Mexico district judge who ruled that Little Rock fled Ohio in fear for his safety and his life at the hands of Ohio government officials, and that Ohio's demand for his extradition was premised on the desire to silence his criticisms of the Ohio prison system in general, and its abuse of Native American prisoners in particular. In September 1997, the New Mexico Supreme Court affirmed the lower court's decision, and said that the evidence conclusively proved that Little Rock was "not a fugitive from justice, but a refugee from injustice."

In June 1998, the United States Supreme Court overturned the New Mexico Supreme Court. While acknowledging that Little Rock's evidence and charges against Ohio were credible and serious, the nation's high court nevertheless decided that evidence of any government wrongdoing, regardless of the sufficiency or credibility of the evidence, is inadmissible in the context of interstate extradition proceedings. In an amicus brief prepared by the Ohio Attorney General and signed by 40 states, Puerto Rico, the Virgin Islands and the District of Columbia, these officials acknowledged that this policy violated international human rights standards, but contended that it is vital to national security; Little Rock calls this "a very sinister form of 'national security' that every freedom-loving man and woman should take a close look at." The high court's decision instantaneously turned Little Rock, once again, into a fugitive.
His wife and infant son went underground with him, so that they could stay together as a family.

After drawing local, national and international attention sufficient to ensure his protection (for which Little Rock credits the American Friends Service Committee and the American Indian Center in Columbus, OH), Little Rock surrendered in November 1998 in Albuquerque. On December 4, he was flown to Ohio and placed in solitary confinement at the prison reception center in Orient, OH. On December 17, the Ohio Adult Parole Authority reinstated the six weeks remaining on his 1992 parole, and released him from prison. At the end of those six weeks, January 31, 1999, Little Rock flew to New Mexico to reunite with his wife, Leanna and their 15-month son, Jasper Cole. "The parole officials are being real nice to me now, but that does not exonerate them for their previous illegal actions against me. They simply got caught in my case. But there are other cases people need to know about," said Little Rock in a recent interview. "John Perotti (currently in Lucasville), for example, is in prison today for his non-violent advocacy for the fundamental rights of prisoners. I urge anyone with a resource to spare to support John and the many others like him who are being tortured today because they made the conscious choice to commit their hearts, minds, spirits, bodies and lives to the advancement of humanity. That's the bottom line."

Little Rock continues to work toward promoting the spiritual and cultural rights of incarcerated Native American people. At this time he is coordinating and developing the Native American program at the privately owned and operated State Prison in New Mexico, where there are 97 Native Americans representing various Tribes.

For more information, contact Little Rock Reed:

P.O. Box 72250, Albuquerque, New Mexico, 87195.
The Buddhist Library

The Buddhist Library is a non-profit service organization which distributes books, catalogues, magazines and other materials on Buddhist teachings and training.

The Library responds to all requests for information, but the majority of its distributions go to inmates of penitentiaries in the United States and Canada.

We welcome correspondence from everyone interested in Buddhist thought. The Library will provide information, and material where possible, and will act as a referral service to other Buddhist sources as appropriate.

The Buddhist Library is sustained by donations from its supporters and does not charge for its services.

Our life is shaped by our mind; we become what we think. Suffering follows an evil thought as the wheels of a cart follow the oxen that draw it.

Our life is shaped by our mind; we become what we think. Joy follows a pure thought like a shadow that never leaves.

"He was angry with me, he attacked me, he defeated me, he robbed me" -- those who dwell on such thoughts will never be free from hatred.

"He was angry with me, he attacked me, he defeated me, he robbed me" -- those who do not dwell on such thoughts will surely become free from hatred.

For hatred can never put an end to hatred; love alone can. This is an unalterable law. People forget that their lives will end soon. For those who remember, quarrels come to an end.

The Dhammapada

For more information contact: Buddhist Library, 440 King Street, P.O. Box 20101, Fredericton, New Brunswick, E3B 6Y8
About The Cover

André Latouche was born in Québec City in 1956. Interested in art since an early age, he has taken various courses while in prison, including design, graphic arts, pastels and air-brush. In 1988, he obtained his D.E.C. in Arts. André’s work has been awarded many prizes in painting and design. His work tends to abstract modernism, with references to surrealism, symbolism and other styles. He works in many mediums, including pencil and ink, oils and air-brush. He is serving a life sentence in Laval.

Lifer’s Dream

I consider this art as a voyage in the symbolism of a dream. The dream of a life sentence. I dream void of all logic and order. A detached imagination, a vision unfurling, confused in time and space. As a whole, giving the feeling like the crying out of a spirit which pours forth its love, its hate, its nightmares, its lost dreams; drowned in the true to life carceral system where the abnormal becomes the normal.

This art demonstrates the negative transformation of the inner self and of the deterioration of a personality by the system.

Lifer’s Dream was awarded the First Prize in Painting by the Prison Arts Foundation in 1997.

Lifer’s Dream
24” x 36”
Air-brush and acrylic on masonite
1997

If you are interested in discussing or acquiring André’s work, he may be contacted at:

Establishment Leclerc
400 Montée St-François
Laval (Québec) H7C 1S7
Daybreak
from PRISON POEMS

It gets inside -- the clash-clang as doors explode, emptying men from nightmare sleeps, stone showers, into lines that scream after bread, smoke, the next shot of mud -- from ear to feet. It gets so cappuccino and latte sound foreign to me, recalling a time before voices -- the ear safe on its pillow, shoulders wide, swinging free. And no fear of dawn -- no speaker going off -- as its warning high on walls instructs me.

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