

July-August, 2006

JUSTICIA

Fred Weichel Asks: "Whatever Happened To Truth And Justice?"

By Joel Freedman

Fred Weichel was convicted of a Braintree, Massachusetts, murder. In 1981, he was sentenced to life imprisonment without possibility of parole. Shortly after beginning his sentence, he wrote to me to proclaim his innocence. We have been corresponding for 24 years.

In his book *Brutal: The Untold Story Of My Life Inside Whitey Bulger's Irish Mob*, Kevin Weeks describes how Weichel operated on the fringe of Bulger's South Boston criminal gang during the months prior to Weichel's arrest for the 1980 murder of Robert LaMonica. Weichel and Billy Shea approached Bulger "to ask if it was all right if they started grabbing all the marijuana dealers in town and put them in line. From then on, wherever these dealers might be buying marijuana, they would be working for the two of them. Now drug dealers would have to buy their marijuana from Billy and Freddie, who would be giving Bulger a large percentage of their profits. Billy and Freddie had only been in business a matter of months when Freddie got pinched for a murder he didn't commit."

The Norfolk County jury that convicted Weichel did so based primarily on the testimony of 21-year old John Foley, who admitted he was under the influence of alcohol and caught only a split-second glimpse of the face of the fleeing killer from a distance of at least 180 feet, on a dark side street. When police took Foley in a van to drive around South Boston, supposedly in hopes he

might spot the man who killed LaMonica, Foley was placed in the back of the van with LaMonica's brothers. At the time, police had reportedly been told by a "reliable informant" that Weichel was the killer, and the police had conveyed this information to the LaMonica family.

Several months after Weichel's conviction, Thomas Barrett wrote to Weichel's mother that it was Barrett who killed LaMonica. "I haven't had a good night's sleep in almost a year because I know Fred did not kill Bobby LaMonica. I did!!"

In October 2004, Massachusetts Superior Court Judge Isaac Borenstein granted Weichel's motion for a new trial. As to why two decades passed before Weichel presented evidence of Barrett's confessions, Borenstein ruled that Weichel was justifiably afraid of Bulger, who warned Weichel not to implicate Barrett. Bulger was a friend of Barrett's mother. It was only after Bulger's flight from Boston that Weichel disclosed Barrett's letter. (Bulger's current whereabouts are unknown and, after Osama Bin Laden, Bulger's name tops the FBI's most wanted list.) Weichel believes that Bulger was the "reliable informant" who advised police to focus on Weichel and not on Barrett. The Norfolk County DA's Office appealed Borenstein's decision to the Massachusetts Supreme Judicial Court. (See the January-February 2002 and November-December 2004 issues of *Justicia* for further details on Weichel's case.)

On May 22, Massachusetts' highest court vacated Borenstein's decision. The court decided that Barrett's admissions to Mrs. Weichel and to a girlfriend, Sherri Robb, were not newly discovered, lacked trustworthiness, and were not sufficiently corroborated. The court also found that any fear Weichel may have had of retaliation by Bulger is

"not legally relevant". Shortly after the court's decision, Weichel wrote me, "There aren't any words at all that can tell you how disappointed I am. I'm heartbroken. Whatever happened to truth and justice?"

Is an innocent man destined to die in prison? My own assessment of Weichel's case has focused on two questions. Did Weichel shoot LaMonica? If not, did Weichel drive the getaway car?

I believe Foley's eyewitness identification of Weichel was unreliable. I also believe placing Foley alone with LaMonica's brothers was done so the brothers could recognize Weichel and perhaps intimidate Foley into "identifying" Weichel. The police focus on Weichel alone raises concerns that the homicide investigation was biased and shoddy. Although Barrett was initially a prime suspect, his photograph was not shown to eyewitnesses to the crime.

Barrett and Weichel were friends. Weichel has always been protective, evenly overly protective, of his friends. Barrett and Weichel were also part of a criminal subculture. But does all this mean that Weichel would shoot LaMonica or drive the getaway car? It was Barrett, not Weichel, who apparently regarded LaMonica as a dangerous foe. Weichel had been on friendly terms with LaMonica in the past, and had even corresponded with LaMonica's father while LaMonica's father was in prison.

During a 24-year correspondence with Weichel, he and I have discussed many things besides his innocence claim. I have come to know Weichel as a person, not just as a prisoner claiming innocence. Weichel has made his share of wrong choices. But Weichel also has a code of honor that he cherishes. I am not certain what prompted Barrett to write to Weichel's mother, but I disagree with the DA's assertion that "it is not at all implausible that Barrett, thinking himself secure in California, at Weichel's request and upon Weichel's promise to protect him, might send Gloria Weichel a letter to ease her pain by falsely exonerating her son." (Judge Borenstein rejected this assertion.) I am reasonably certain that Weichel would never ask anyone else to admit to a crime if Weichel had actually committed the crime. I also do not believe Barrett would confess to a murder if he was actually innocent of the crime. Barrett's letter to Mrs. Weichel and his statements to Robb indicate Barrett's conscience was bothered by the fact that Weichel was in prison for something Barrett had

done.

The DA acknowledged the possibility that Barrett shot LaMonica, but if so, the DA also maintained Weichel was Barrett's accomplice. The DA speculated that Barrett could have shot LaMonica while Weichel stood watch, gun in hand, and Barrett could have been faster than Weichel in getting back to the car, leaving Weichel to be the only one positively identified by Foley. Assistant DA James Reidy maintained, "If Barrett were not a scholar of the law of joint venture, he might truthfully say that he killed Bobby LaMonica, and he might truthfully believe that Weichel was 'innocent,' though the law is quite the contrary. Admittedly, this is sheer speculation, but it is consistent with the known facts of the murder, there is nothing to disprove it, and the burden of showing the letter's trustworthiness is the defendant's, not the commonwealth's."

But there is no convincing evidence that Weichel was either the shooter or the driver. I can find no good reasons to doubt Weichel's claim that he was in Boston when LaMonica was shot.

Weichel's attorneys have observed that "the Commonwealth's briefs make no mention of the fact that even though they are so certain that Barrett and Weichel acted in tandem, they were recently compelled to question about his possible involvement in driving the getaway car." (The individual in question was rumored around South Boston to be the getaway car driver for Barrett.)

It was reported that when Foley was initially shown a photograph of Weichel, he picked Weichel's picture as "a pretty good likeness" of the man he saw fleeing the murder scene. Foley was not shown a photograph of Barrett. At the time of the murder, both Weichel and Barrett were 5'7" tall, weighed between 140 and 155 pounds, and both had stocky, athletic builds, and both may have had similar hairstyles.

Jonathan Wells, a Boston Herald staff writer, reported: "Another twist in the case was the involvement of two Boston detectives who, sources said, were close to both Bulger and his FBI handler, John Connolly. The now retired detectives, Edward Walsh and Walter Derby, were veteran cops who spent years working crime cases in and around South Boston. And they played a key role in fingering Weichel for the LaMonica murder, according to a state police report obtained by the 'Herald'. Sources said Walsh and Derby are already being eyed by a special U.S. Department of Justice Task Force probing Bulger's dealings with

Massachusetts law enforcement." The "Boston Herald" also reported information from sources that Whitey Bulger had a romantic relationship with Veronica Barrett, the mother of Thomas Barrett.

If Weichel had really killed LaMonica, my hunch is that he would have accepted an offer to plead guilty to manslaughter.

In making his decision to grant Weichel a new trial, Borenstein had an opportunity to preside over several days of live testimony. Borenstein was thus able to better assess the credibility of witnesses, including Weichel, than the judges of the Massachusetts Supreme Judicial Court.

The Whitey Bulger aspect of this case is also worthy of further consideration. While Weichel may never be able to prove his claim that Bulger threatened to harm Weichel and Weichel's mother if Weichel ever implicated Barrett - Borenstein believed Weichel; the Supreme Judicial Court apparently discredited Weichel's testimony - it is obvious that Bulger did not want anybody to jeopardize Barrett's freedom. Weichel had worked for Bulger and surely realized "your wish is my command" applied to one's dealings with Bulger. Here was somebody you did not mess around with. As Kevin Weeks wrote in his book about Bulger's violent nature: "His unique streak of violence, which had started when he was a kid, was simply part of his nature. He could stab people, shoot them, beat them with his bare hands or anything lying around, strangle them, hit them with his car, do whatever suited his purpose to inflict harm on someone he felt deserved it."

All things considered, I am deeply disappointed that the Massachusetts Supreme Judicial Court reversed Judge Borenstein's decision to give Weichel a new trial. When Borenstein issued his decision, a Boston Herald editorial observed that "Borenstein didn't give Weichel a get-out of jail pass; he granted a new trial. Surely after 23 years in prison Weichel deserves that much." I feel badly for Weichel. I continue to believe that Fred Weichel is a miscarriage of justice victim.

(Freedman reviews prisoners' innocence claims as part of the services offered by the Judicial Process Commission.)



Death Penalty Potpourri

* North Carolina in August 2006 created an eight-member Innocence Inquiry Commission that will review new evidence that was not considered in the trials of convicted prisoners who claim innocence. If a minimum of five of the eight members agree that there is enough evidence that might exonerate the individual, the case is then reviewed by a panel of three Superior Court judges. A unanimous decision of the panel would overturn the conviction. Gov. Mike Easley, who signed the bill into law, was a former prosecutor and attorney general. Several high-profile cases had been overturned recently when the conviction was shown to be in error.

* James Tillman, who was freed after 18 years by DNA evidence of the carjacking, beating and rape of a Connecticut woman who had identified him, has had offers of help from the general public. Connecticut will explore the implementation of a state program of financial compensation and aid for those wrongly convicted. Twenty-one states have such a program. The Innocence Project is recommending the states give \$50,000/year for false imprisonment and \$100,000/year to those who had been sentenced to death. Currently, some states pay \$5,000 to \$50,000/year. California offers \$100/day. Louisiana has a cap of \$150,000. Massachusetts and Montana also offer help with jobs and education.

* Daryl Mack was executed on April 26, 2006 at Nevada State Prison for the 1988 murder of Betty Jane May, a 55-year-old Reno mother of three. Mack was serving a life sentence for the 1994 murder of Kim Parks when DNA evidence linked him to the May killing. Mark refused appeals, saying he did not want to live on Death Row. He was the 12th man executed in Nevada since the death penalty was restored in 1976. Mark was also the first African-American to be executed in the state and the first to be executed solely on DNA evidence.



Southern Discomfort: Georgia Justice

by John Cole Vodicka
(printed with permission from FREEDOMWAYS)

In 1998, The Prison & Jail Project (P&JP), based in Americus, Georgia, began monitoring the courtrooms of southwest Georgia. In that time we've paid close attention to the happenings in dozens of rural Superior, State, Magistrate, Probate and Municipal courts. We've challenged abusive behavior by judges, prosecutors, police and probation officers, and have pushed hard to introduce due process into courtrooms that systematically ignored the constitutional rights of defendants.

As a result of our "courtwatching," the P&JP has removed three judges - two tyrannical, the other incompetent - from the bench; exposed one municipality that allowed its court proceedings to be held behind closed doors; challenged a prosecutor who routinely belittled defendants and their families; filed Bar complaints against lawyers who misrepresented and neglected their indigent clients; assisted in filing of a lawsuit that led to major reforms in a State Court; and stopped a probation officer from taking defendants' pleas before the judge even entered the courtroom! The P&JP also became a leading player in the successful effort two years ago to establish a statewide public defender's system; and it has helped convince many municipalities that it is important to provide lawyers to indigent misdemeanor defendants who face the possibility of incarceration or probation.

One thing we discovered in our courtwatching experience is that one must be very creative and persistent when attempting to challenge and change the behavior of southwest Georgia's courtroom officials. It's been a rarity to find a judge or prosecutor or defense lawyer willing to make immediate changes in their courtroom policies and practices. Some resist any change

* According to the Federal Death Penalty Counsel Project, since the federal capital statute was authorized in 1988, New York with 37 federal cases stands second to only Virginia with 50. Nationwide, there have been 385. Of New York's 37, 14 were resolved before trial. None of the 13 cases that went to trial resulted in a death sentence even when the defendant was convicted of a capital offense. Ten have yet to go to trial. There are an additional 52 capital-eligible cases in New York in which the US Attorney General has yet to decide whether to seek a death sentence. Nationally, 161 cases have gone to trial resulting in 95 life sentences and 51 death sentences. In 15 cases, the defendant was found not guilty of any capital charges. There have been three federal executions.

* Philippine President Gloria Macapagal-Arroyo on May 4, 2006, commuted the sentences of 76 death row inmates to life terms. The Philippine Supreme Court had made final rulings in each of the cases.

* Ritualized Killing: Fadly Kasim, a flyweight boxer in Indonesia, on June 20, 2006 became the 11th ring fatality in Indonesia since 2000, the 25th in Indonesia history. Over 1000 boxers worldwide have died because of ring injuries in the last 100 years. Major medical associations have called for a ban on boxing because of needless deaths, injuries and brain damage, leading to such illnesses as Parkinson's disease. The aim of boxing is to hurt the opponent badly enough to knock him/her unconscious. TV coverage provides most to the money to boxers.

* Since lawyers in capital cases in Ohio must have taken legal classes and demonstrated their ability to handle death penalty defenses, and since 61 percent of death penalty cases there are overturned due to ineffective counsel, the US Circuit Court of Appeals has concluded that there is a possibility that the attorneys are being enticed to provide a weak defense. According to Chief Judge Danny Boggs, "To put it bluntly, it might well appear to a disinterested observer that the most incompetent and ineffective counsel that can be provided to a convicted death-eligible defendant is a fully investigated and competent penalty-defense under the precedents of the Supreme Court and of our court."

whatsoever, unwilling to admit that what they do is unethical, racist, or unconstitutional; others are simply reluctant to change behavior patterns that place expediency ahead of justice. Our efforts are often met with open resistance. I've been threatened with contempt of court by a hostile judge; been sued (unsuccessfully) by an incompetent defense attorney; attempts have been made to lock us out of courtrooms; a district attorney once accused me of trying to practice law without a license (I responded by telling her I would rather be accused of practicing law without a license than to have a Bar card and do nothing with it!).

Despite these occasional efforts to intimidate or discredit our courtwatching efforts, the P&JP's persistent presence has ultimately brought about some positive - and we hope lasting - change in many places we monitor regularly.

One place where a significant change has occurred, albeit at a snail's pace, is in Americus, Georgia's municipal court. Eight years ago, then-P&JP staff person Tim Mellen started attending Americus city court proceedings on Wednesday mornings. At that time, Americus held city court in the town's federal building in a cavernous courtroom where federal cases were once held. Tim's notes from those court sessions are revealing:

"The courtroom was packed with defendants and their families... probably 100 people, 90 % of them African American... The judge's bench is framed by the U.S. flag on one side and the Georgia flag with the confederate emblem on the other... The police clerk calls defendants' names and defendants go up to a table to sign plea forms and waiver forms... the judge isn't present yet and defendants haven't been advised of their rights... There were 10 defendants in orange jumpsuits - all Black - sitting on a bench reserved for prisoners, cuffed and shackled.

"There are no lawyers in the courtroom, only police officers. The jury box probably was filled with 12-15 police officers. The cops sat with smirks on their faces and some would laugh out loud when defendants tried to explain themselves to the court."

When we first began monitoring Americus City Court, Lawton LeSueur was the judge. We found LeSueur to be generally respectful, but sometimes, particularly towards the end of a long docket (court would start at 9 a.m. and oftentimes not conclude until late afternoon!), the judge would

lose his patience and make a point at a defendant's expense. One time in court LeSueur chided a young Black man whose gold front teeth apparently ticked him off : "With that kind of gold in your mouth I know you can afford to hire your own attorney," LeSueur chided the defendant, much to the delight of the police officers present.

After Tim Mellen's initial visit to Americus City Court, the P&JP decided to continue monitoring the court proceedings and begin to challenge what was so obviously wrong. Having established a regular presence meant that P&JP members were now being recognized by most everyone associated with the court. The judge, the police, the court clerk, the probation officers, the bailiffs, and many of the defendants knew who we were and why we were there. Some changes began to take place. Waiver forms were improved upon. Defendants were made explicitly aware of their rights before they entered pleas or signed waiver forms. The judge treated defendants more respectfully and police officers ceased making rude comments or gestures from the sidelines. We eventually embarrassed the city into removing the confederate flag from the courtroom! But even with these changes, the court still was not operating as the federal and state constitutions would have it do so.

About two years into our courtwatching in Americus, I began to notice that Judge LeSueur seemed to be growing more uncomfortable with the courtroom proceedings. One Wednesday morning he called an unexpected recess and asked from the bench if I would meet him outside in the hallway.

"I need your help, John," the judge told me. "What we're doing here isn't right. These defendants deserve more than this. I'm running a police court here. The police can get away with just about anything they want to. We need lawyers to advise many of these defendants, but the city won't provide funds to hire a public defender."

The judge and I agreed to work together to attempt to force the city to implement an indigent defense system for misdemeanor defendants.

I spoke to the Americus mayor and city council and urged them to hire a public defender. I wrote the city attorney explaining to him that it was illegal for Americus to put poor people in jail who were not first given the chance to consult with an attorney. The city council seemed concerned but took no action claiming budgetary restrictions; the city attorney refused to get involved.

At the same time, Judge LeSueur tried to force the city's hand by deliberately appointing lawyers to represent indigent defendants who appeared before him, even though the city had no public defenders in the courtroom. Once he appointed defendants their non-existing attorneys, LeSueur announced that he would not hear any of the cases until the city provided the defendants with legal counsel. And if the city continued to refuse to budget money for indigent defense, LeSueur said he would either dead-docket or dismiss all of the cases where he felt lawyers were required!

I marveled at how Judge Lawton LeSueur was becoming a just judge. But in the winter of 1999, just months after being diagnosed with cancer, LeSueur died.

Michael Greene was appointed to replace LeSueur in early 2000. From the P&JP's perspective, Greene clearly lacked credentials required of a municipal court judge. He was a bankruptcy lawyer with little experience in criminal law. He was also a product of Americus's segregated private school, Southland Academy. In our judgment, Greene lacked both the legal ability and the sensitivity to operate a fair and just courtroom.

With Judge Greene now on the bench, P&JP staff member Elizabeth Dede began to regularly attend city court proceedings. Elizabeth's initial reaction to Greene's courtroom policies and practices was not promising. She reported that Greene seemed to be all about efficiency at the expense of due process; that he most always deferred to the police-prosecutors in the cases that came before him; and that he sometimes had a smart mouth, particularly toward the young African American defendants. In one case, Elizabeth filed a complaint against Greene with the Georgia Supreme Court after she heard Greene belittle an 11-year-old Black youth who was called as a witness in a misdemeanor case. "Come on up to the microphone," Greene instructed the child. "You might as well get used to this because I'm probably going to see you in this courtroom again in a few years when you're the defendant."

At the same time Greene became judge, the city contracted with a private probation company whose reputation was less than stellar. Its probation officers had a reputation for harassing and threatening misdemeanor probationers, and strong-arming them for money by throwing them in

jail when they were unable to pay the court-imposed fines and fees.

It seemed like the "reforms" Judge LeSueur had attempted to implement had gone to the grave with him. Elizabeth observed countless defendants - some mentally ill, many illiterate, others obviously victims of racial profiling and otherwise aggressive police behavior - routinely go to jail or be sentenced to a year's probation and hefty fines. Despite the fact that these defendants were forced to represent themselves because the court provided no lawyer, Judge Greene had no problem throwing mostly young African Americans to the curb.

We tried everything we could to encourage Judge Greene and the city to bring the court up to snuff. We found a lawyer to take one case pro bono so that the defendant could argue his innocence and present evidence that the police had acted abusively when he was arrested. Fearing that they'd have to testify and actually be cross-examined by a competent defense attorney, the police dismissed the charges!

In another case involving a brain-damaged defendant not represented by counsel and who spent weeks in the Sumter County jail, Elizabeth actually wrote out on note cards key issues the defendant needed to raise for the record to preserve his rights. Elizabeth slipped the note cards to the defendant as his case was being called and, using the cards, the defendant was able to convince Judge Greene that he could not function without legal representation.

Then in May 2002, the U.S. Supreme Court handed down a significant decision in the case of *Alabama v. Shelton*. The Court ruled that even misdemeanor defendants were entitled to legal counsel if their liberty was at risk. This not only included defendants who faced jail time upon conviction, but also who faced probation, since there was always a likelihood that probation sentences could be revoked and defendants could wind up in jail.

Soon afterwards, the Georgia Municipal Association's attorney sent a memo to every Georgia municipality informing them that it was now imperative that cities provide public defenders in their courtrooms.

Many southwest Georgia municipalities complied with the U.S. Supreme Court's edict and began making lawyers available to indigent defendants. Americus, however, resisted. In an effort to get around the law of the land, Judge Greene adopted a semantic change to his

courtroom policies and instead of sentencing defendants to jail or probation, he announced that they would henceforth be sentenced to "supervision of the Court." Anyone who violated the terms of "supervision" would be brought back before him on contempt charges. Defendants would no longer be probationers and those who disregarded the terms of his sentences would not have their probation revoked, but would be held in contempt of court. Immediately, the private probation officers became "supervisors." This, Judge Greene reasoned, would allow him to skirt the Alabama v. Shelton ruling!



During the next two years, Judge Greene sentenced hundreds of Americus residents to terms of "supervision." Elizabeth discovered that despite the semantic changes Greene had implemented to defy the Supreme Court, indigent misdemeanor defendants who were not represented by lawyers, were still winding up - illegally - in jail. Oftentimes the supervision officers would take warrants out on defendants who were allegedly not paying their supervision fines, and these defendants would be arrested and sometimes languish in jail for weeks before Judge Greene would hold contempt hearings.

We complained about this to Judge Greene and the city's administrator, as well as to the mayor and council. We demanded once again that city court defendants be afforded their due process rights, including their 6th Amendment right to counsel. We threatened legal action if changes were not forthcoming.

The City continued to resist our call for reform and no public defender system was implemented. To his credit, though, Judge Greene began introducing new procedures to his court's arraignment sessions. Forms were made available to every defendant that thoroughly explained their rights and advised them on the dangers of

proceeding without legal representation. Greene was now spending a good deal of time verbally informing defendants on courtroom procedures and constitutional rights. A Spanish-speaking interpreter was present in the courtroom. Defendants who wished to contest their charges were allowed continuances up to a month in order to prepare for a bench trial. And he allowed the Prison & Jail Project to begin disseminating its Rule of Law booklet, a handbook that guides defendants through the court process in southwest Georgia.

"Judge Greene seems to be trying to do what's right," Elizabeth told me one day late last year. "He's different. He's beginning to understand how important it is to operate a court where defendants are presumed innocent until proven guilty."

Then in January 2006, after the P&JP and a number of citizens complained, the Americus city council fired the oppressive private probation company and brought on a new probation outfit that promised to treat probationers respectfully and fairly. And in April of this year, the city finally agreed to hire a full-time public defender to be present during all city court proceedings! We know this lawyer well and, while he is young and relatively inexperienced, we have been impressed with his knowledge of the law and his willingness to be an advocate for those he is appointed to represent.

Things are getting better in the Municipal Court of Americus, Georgia. We hope this is not simply a blip on the radar screen but will be a permanent reality, and that Judge Greene will strive to make his court a model courtroom that dispenses equal justice under the law. We will NOT go away.

(The Prison & Jail Project is a 501-c-3 organization. Donations: Prison & Jail Project, %Oakhurst Presbyterian Church, P.O. Box 6749, Americus, GA 31709)

PRISON ABUSES MUST BE ADDRESSED

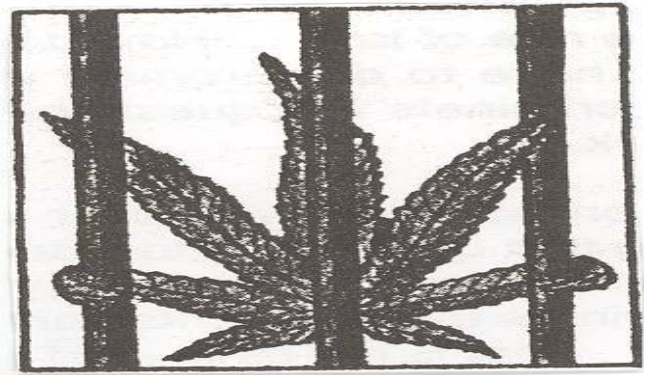
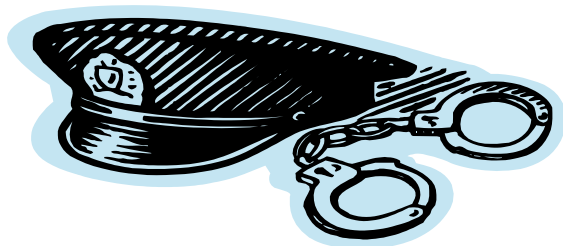
During the past year, JPC has received complaints from inmates of a New York State medium security prison, alleging unprovoked physical abuse and humiliating taunting by some corrections officers, denial of privileges to which inmates were entitled, and retaliation when inmates file grievances.

One inmate wrote: "During weekends, the officers move around like gangs, looking to intimidate people. In my many years in prison I have never seen or experienced so much abuse by the staff, and that includes my times in maximum security prisons." According to another inmate, an officer told Muslim inmates: "Since we cannot catch Bin Laden, we are content with taking it out on you sons of bitches."

Justicia writer Joel Freedman has phoned the superintendent of this prison, but the superintendent declined to discuss with him specifics of any investigations of alleged abuse of inmates by officers. In a letter to JPC Coordinator Susan Porter, the superintendent refuted allegations of a Muslim inmate regarding special diets and religious services, but the superintendent's letter did not delve into the more serious charges of officer misconduct, including beatings of inmates and telling Muslim inmates they were "desert Arab camel butt f-----." (Muslim inmates are usually Black Americans imprisoned for non-terrorist related crimes.)

The Correctional Association of New York, which has authority from the state legislature to monitor New York's prison, told us they have also received several complaints of abuse from this prison.

JPC believes there should be thorough and impartial investigations of these kinds of allegations – along with effective corrective actions when allegations of abuse have been substantiated. We will continue to do all we can to help assure that our prisons maintain safe and decent conditions of confinement that protect prisoners, and prison staff, from harm.



DRUG WAR FACTOIDS

* The July 2006 World Drug Report of the United Nations Office on Drugs and Crime notes that 162 million people worldwide use marijuana, 35 million are addicted to methamphetamines, 16 million to heroin, and 13 million to cocaine. This year there have been more than 1000 murders linked to drug trafficking in the United States.

The opium crop in Afghanistan accounts for nearly half of that nation's economy. Much of the increased fighting in Afghanistan is thought to be due to the drugs lords (some of whom are members of the government) siding with the Taliban. Last year, 129 US and NATO troops were killed there. Just in May-July of this year, 58 US and NATO fatalities were recorded. Prime Minister Karzai has joined with the US and other NATO countries in opposing any growing of poppies, even for use in developing countries where there is a scarcity of opioid pain medications. This year's drought and the lack of roads has caused farmers, who had switched to crops other than poppies, to return to poppy growing in order to feed their families. Some politicians in England (both Conservative and Labor Party members) and also in Italy are calling for adoption of the Senlis proposal. Last October, the growing of poppies in Afghanistan for medicinal purposes was proposed.

* The amount of cocaine produced in Colombia has been greatly underestimated, according to a report recently released by the Colombian government. The previous 2005 estimate by the Colombian police was 497 tons; by the US, 545 tons; and the UN, 640 tons. The new study showed the actual amount to be 776 tons. Investigators had visited 1,400 coca growers and had run tests at 400

plantations. Better growing techniques had increased the coca harvests from four to six crops a year. Despite massive seizures, the price of cocaine hasn't fluctuated. The US has spent about \$5 billion trying to control cocaine production

* In late July 2006, in the midst of the "civil war" in Iraq, with the total number of US deaths there approaching 2600 and the number seriously wounded nearly 20,000 and an estimated 100 Iraqis killed each day, the 172nd Stryker Brigade Combat Team seized and destroyed a bumper crop of marijuana plants grown at one farm in northern Iraq. The value of the crop was estimated to be \$2 million. As reported in the May-June issue of *Justicia*, dexabinol, a mirror of THC without the psychoactive effects, administered to mice soon after exposure to nerve gas or brain trauma, greatly reduced the degree of permanent damage.

* During the fentanyl-laced heroin epidemic this spring which resulted in nearly 400 overdose deaths, Prevention Point Philadelphia, along with a compassionate physician, distributed naloxone to addicts, a medication that could save a person's life if used soon enough. A person could die in the time it would take a paramedic to arrive. The office of the drug czar, John Walters, criticized the distribution because it would be "disinhibiting" to the objective of getting addicts to stop using drugs if they believed there "was a safe way to use heroin." Apparently, having addicts die would send the message that drugs kill.

* Delaware recently passed a needle exchange bill, leaving New Jersey as the only state that does not authorize needle exchange. The Delaware bill would provide a van that would frequent areas of high drug use. Participants would be offered HIV testing, counseling and referral to drug treatment programs. Massachusetts Governor Mitt Romney vetoed a bill that would allow the sale of syringes without a prescription although it was expected the veto would be overturned by the legislature.

VIOLENCE OF POWER XIII

By Clare Regan

* According to both Families USA and AARP, wholesale prices of brand-name pharmaceutical

drugs rose four times the rate of inflation in the first three months of 2006. The price increases in the Medicare Part D drug plans were identical in many cases to the jump in wholesale prices. Some common drugs used by the elderly went up even more dramatically - Ambien up 13.3 percent and Lipitor, 4.7 to 6.5 percent, depending on the dosage. While Medicaid can negotiate the price of drugs, it was written into the Medicare Part D bill (that passed by one vote after extending the normal voting time from 15 minutes to nearly three hours) that no negotiation was permitted. The elderly and disabled would have paid 25 to 30 percent less if they had been allowed to remain under Medicaid. The Department of Veteran Affairs, which can also negotiate prices with pharmaceutical companies, pays 46 percent less for popular brands than Medicare Part D. **Violence of Power**

* Dr. Jawad Al-Ali, director of oncology at the hospital in Basra, Iraq, spoke at a 2003 conference in Japan concerning cancers in his patients. He had been finding two and three different cancers in single patients i.e. leukemia and stomach cancer. There has also been a clustering of cancers in families. More than 58 families have multiple members with cancer, including nine cases in his wife's family. Al-Ali felt this was due to depleted uranium (DU) which the US used in both the Gulf War and present Iraq War. Because DU is very dense, the US uses it for armor-piercing bullets and tank shells, as well as a protective shield around tanks. Upon impact, DU pulverizes into a fine dust which can be inhaled or which seeps into the soil. Children are particularly susceptible to DU effects.

During the Gulf War, the US used nearly 660,000 pounds of DU as munitions. So far, about half that amount has been used in the present conflict. Despite resistance from the Department of Defense, the US House of Representatives passed an amendment to the Defense Authorization bill that called for a comprehensive study of the effects of DU on American troops and their families. Connecticut and Louisiana have already passed such bills in order to protect their families. Even though there is strong evidence that troops exposed to DU in the Gulf War have an increased rate of cancer and neurological problems, with their children having more birth deformities, the government continues to use depleted uranium for military purposes. **Violence of Power**

* Both House and Senate versions of the 2007 Defense Authorization bills cut the amount of money for the Veterans Brain Injury Center to \$7 million, one half the amount given last year. Traumatic brain injury is the signature injury of the war on terrorism, largely caused by bomb blasts. Up to 20 percent of front line infantry troops suffer concussions, leaving them with headaches, disturbed sleep, memory loss and behavior issues once they return stateside. The House passed its version on June 20 but it has yet to pass in the Senate. The spokeswoman for the Senate Appropriation Committee said, "Honestly, they would have loved to fund it, but there were just so many priorities. They didn't have the flexibility in such a tight fiscal year." However, Congress continues to press for repeal of the estate tax and tax cuts which affect mostly the wealthy. **Violence of Power**

* Chuck Hamel, a renowned environmental activist who is credited with exposing loose pollution controls in Valdez in the 1980s, was contacted in 2001 by British Petroleum (BP) Prudhoe Bay employees after their complaints had been ignored for two years by officials in London, Juneau and Washington. The letter stated that "we are concerned about BP's cost-cutting efforts undermining our ability to respond to emergencies, and reducing the reliability of critical safety systems. We are concerned about the lack of preventative maintenance on our equipment. We had suffered a major fire, which burned a well pad module to the ground, and nearly cost one of our operators his life." A letter discussing the problems had been sent to BP president Lord John Browne. When that elicited no response, a copy of the letter was sent to President Bush. This also had been ignored.

Last winter, 260,000 gallons of crude oil leaked from a corroded BP pipeline. It was one of the largest oil spills in the history of Alaska's North Slope. Glen Plumlee, a senior financial analyst with the trans-Alaska pipeline system of which BP is the majority owner, complained that he had suffered retaliation after he had cooperated with the Environmental Protection Agency's criminal investigation of the oil spill. Plumlee also said he had been asked, and refused, to change the amount of money - from \$26 million to \$46 million - that BP had spent on pipeline corrosion. It has

been disclosed that the thickness of the pipes varied from 0.33 " to 0.04". Other high employees who had drawn attention to pipeline defects had suffered a similar fate to Plumlee. **Violence of Power**

ACLU on City Curfew

27 July 2006

(Editor's note: The following statement was delivered by Barbara de Leeuw, executive director of the Genesee Valley Chapter, New York Civil Liberties Union, at a recent hearing in Rochester City Council chambers on proposed legislation.

Under a concept proposed by Rochester city councilmember Adam McFadden, Rochester city police would be authorized to stop youths under age 18 if the latter are on the streets without adequate explanation during late night and early morning hours. Curfew violators would be taken to a community agency for processing.

McFadden and other proponents have looked to curfews in other cities, particularly Minneapolis, for models.)

The ACLU opposes curfews including those for minors.

The Mayor's proposal to establish a nighttime curfew for minors gives the police discretionary power to criminalize otherwise lawful behavior, raises significant privacy issues and is potentially discriminatory.

Crime reduction among youth is a worthy goal that our entire community should and must embrace, but imposing a curfew is not the best remedy. However well-intentioned, the Mayor's proposal is a band-aid approach to stopping street violence, gang wars and drug trafficking. The real problems are just covered over. Current laws already provide the police with the obligation and the tools needed to prevent crime.

This curfew would allow police officers to stop, question and detain any youth under 18 for being out after curfew. The commission of a crime or suspicion of a crime is not necessary. No "probable cause" not even "reasonable suspicion" is needed; the individual only has to be underage.

For individuals over 18, there must be a "reasonable suspicion" that an individual has committed a crime for a police stop. Police *cannot* stop an adult for being "old". This raises issues of equal protection and discrimination by age. The rights and privacy of the 86% of law abiding young

people must be protected.

The ACLU has deep concerns about PRIVACY. Again, minors have constitutionally protected privacy rights just like adults. During a curfew stop, there may be no arrest, BUT there WILL be a police record created, perhaps even something like a FIF (“field interview form”) that are generally used for information gathering by police. Our questions...

What kind of information will be collected? Where will the data be stored? Who will have access to these records? How long will they be kept? How will it be used?

RIT professor Dr. John Klofas, in a report 4 years ago on racial profiling, indicated that statistically, individuals that had FIF’s were more likely to be stopped by the police over and over again. And each stop gathered more and more information about the individual. Will a curfew stop, which remember is not a CRIMINAL stop, increase police information gathering for certain young people? Will a curfew record be integrated into other police databases? Much of the recent news should alert each of us to the troubling concerns about data collection. The Constitution protects everyone, including young people, from this kind of government intrusion.

As we have seen in other localities, curfews have a high potential for “profiling” and discrimination. “High crime” areas will be targeted by the police. In Rochester, the residential areas with high concentrations of people of color and / or lower income individuals overlap the areas of high crime. Will people of color and poor people represent a disproportionate percentage of those stopped, questioned and detained and a record created? Likely so.

If the goal is to “help” young people and make the safe, then there are well over 30 youth service providers in our community who are better prepared to intervene and connect youth in distress to helpful services. This is not police work. A city curfew does not address the real problems faced by young people in our community.

The ACLU believes this curfew proposal runs counter to the protections afforded in the U.S. Constitution by stopping, questioning, and “patting down” law youthful members of our community without adequate justification. We believe it creates privacy issues and infringes on the rights of law abiding young people to engage in lawful activities.

Curfews like other tough-sounding anti- crime strategies divert the public’s attention away from real crime prevention programs and deny parent’s the right to control and direct their children.

Finally, it should be remembered that curfews are traditionally imposed under martial law.



WORK RELEASE APPEAL

The Governmental Education Organization (GEO), operated by inmates and based at the Mid-Orange Correctional Facility in Warwick, NY, calls on us to help inmates’ voices to be heard on ways to reform the criminal justice system. In particular, the group is pushing for reform of policies regarding work release for violent offenders. In the current political climate, such programs often are under attack.

On Saturday, October 21, says the GEO, a Family Empowerment Day will be held in New York City (Middle Collegiate Church) to discuss relevant aspects of parole policy. The event will feature speakers, discussion groups, and the development of a plan of action. (Info: 212-477-0666.)

GEO is trying to involve state legislators who may be supportive: These include: Assemblymembers Luis Diaz, Adam T. Bradley, William F. Boyland Jr.; and State Senators Ruben Diaz, John A. DeFrancisco, and Velmanette Montgomery. The group is also urging readers to contact these legislators and urge they attend the Empowerment Day and otherwise support fair parole policies. (Go to the following websites for information on how to contact state legislators: <http://assembly.state.ny.us/> and <http://www.senate.state.ny.us/>)

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- Mentors' Roundtable
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Tuesday, September 12

- Health Issues, HIV, TB, and Diabetes
- Building a Trusting Relationship, Listening and Giving Feedback
- Criminal Justice Processes at the County, State & Federal Levels

Attendance is required for both evenings, reservations required by Sept. 8 at noon. Call: 325-7727. Email: info@rocjpc.org. *Endorsed by:* 16 faith communities, criminal justice agencies including New York State Parole and Federal Probation and Cephas, Judicial Process Commission and the Women's Coffee Connection.