

Justicia

On the 75th Anniversary of the Repeal of Prohibition, Reformers Ponder the Past and Look to the Future

From the *Drug War Chronicle*

[Editor's note: The late Clare Regan, Justicia's longtime, highly respected editor, argued strenuously for much-needed reforms of drug policy and the criminal justice system. Where many people urge only the obvious – more humane prison conditions, less draconian sentencing, and so forth – Regan pushed for radical change, including a turn away from criminalization and toward transitional models like harm reduction and alternatives to incarceration. It's in her memory, and hopefully with some of her spirit, that we offer the following article, which marks a historic milepost.]

Today (December 5, 2008) marks the 75th anniversary of the repeal of alcohol Prohibition, when Utah -- Utah!-- became the 38th state to ratify the 21st Amendment to the Constitution, repealing the 18th Amendment and the Volstead Act and drawing the curtain on America's failed experiment with social engineering. Repeal of Prohibition

seemed unthinkable in 1930, but three years later it was history. Perhaps there are lessons to be learned as we commemorate that day.



Prohibition-era beer raid, Washington, DC (Library of Congress)

Prohibition engendered many of the same ills identified as plaguing drug prohibition today - huge economic costs of enforcement, the criminalization of otherwise law-abiding citizens, the growth of criminal trafficking groups, corruption, deleterious public health consequences (bathtub gin, anyone?) - and its repeal may be instructive for people working to end the drug war now. It is certainly an occasion worthy of note by anti-prohibitionists, and at least two groups, LEAP (Law

Enforcement Against Prohibition) and the Criminal Justice Policy Foundation, used the anniversary to call this week for an end to drug prohibition.

At a Tuesday press conference in Washington, DC, LEAP unveiled a new project, *We Can Do It Again!*, where people are invited to send the anti-prohibitionist message to their federal representatives, and a report with the same title detailing and comparing the ills of Prohibition and current day drug prohibition. In its recommendations to policymakers, the report called for a national commission to study the true costs of drug prohibition, called on state and local legislatures and executive branches to reevaluate drug war spending, and urged "incremental reforms" and harm reduction measures in the short-term.

"In 1932, a majority of Congress realized that prohibition was ineffective," recalled Eric Sterling, head of the Criminal Justice Policy Foundation, at the press conference. "In 1933, more than two thirds of Congress sent prohibition repeal to the States for ratification. We ended prohibition's ineffective approach to alcohol control then, and we can do it again for drug prohibition now."

The parallels between Prohibition and today's drug prohibition are many, said Sterling. "Congress embraced the term 'war on drugs' in the early 1980s as the Colombians drove the Cubans out of control of the cocaine traffic with machine gun battles on South Florida streets and shopping malls. The violence mimicked the street battles to dominate the beer and liquor trade in American cities in the 1920s, exemplified by the 1929 Valentine's Day massacre in Chicago," he noted. "In 1929 the ruthless violence of Al Capone was fueled by alcohol prohibition profits. Maintaining our current approach, in 2009, the violence of al Qaeda will be financed by drug prohibition profits. We have to stop this violence, as we did 75 years ago. In Colombia, for more than two decades, I have observed drug prohibition finance terror - by both the enemies and the allies of the government - that undermines the institutions of their society. Seventy-five years ago, we ended the violence of alcohol prohibition, and we must do it again. We can do it again."

"We believe there are significant similarities between alcohol Prohibition and the drug war prohibition we have going on right now," Richard Van Winkler, LEAP member and superintendent of a New Hampshire correctional facility, told the Chronicle Thursday. "Prohibition doesn't stop Americans from using any substance they choose to. We tried that in the 1920s, and it failed, and now we are trying it again. We advocate for drug legalization not because we advocate for drug use, but because as those drugs are prohibited, we will continue to fund a significant criminal element that is getting larger and more powerful every day."

Sterling and LEAP weren't the only people musing about the end of Prohibition this week. "There are significant parallels, but also dissimilarities," said

Dale Gieringer, head of California NORML (National Organization for the Reform of Marijuana Laws). "Both Prohibition and drug prohibition are products of the same Progressive Era, an era of intense temperance agitation on all levels, with a lot of religious fervor behind it. One lasted 13 years, the other is with us still."

Long-time marijuana activist Dana Beal of Cures Not Wars saw little reason for optimism in the end of Prohibition. "I think you're dreaming if you think you can apply to marijuana the experience of repeal of prohibition of the psychoactive sacrament of the Catholic Church," he said. "Think outside the box. The end of alcohol prohibition has almost zero lessons for how we get out of pot prohibition."

But his was a decidedly minority view. "One lesson we can draw from Prohibition is that it did not work very well," said Aaron Houston, director of government relations for the Marijuana Policy Project, "and we're seeing parallels to that today. In Mexico, the drug trade violence is spectacularly awful and increasingly vicious. Heads are rolling onto playgrounds there, and the cartels are coming to the US and kidnapping American citizens. By maintaining prohibition, we are giving our money to some very, very bad people, and there is a lesson there for our current prohibition policy; I call it the Al Capone lesson," he said.

"I think what many people don't realize is that what gave the Prohibition repeal movement muscle in 1930 was the Great Depression," said Houston. "Federal income tax revenues were declining significantly. Now, we are seeing similar economic problems. I think reformers should focus on the cost of marijuana prohibition. We have 13 states that are spending more than a billion dollars a year each on prisons, and what's the payoff?"

One big difference between Prohibition and drug prohibition is the level of debate, Gieringer said. "There was a huge public debate about Prohibition, it was a dominant issue for years, but there was very little debate about drug prohibition. Even now, drug prohibition is not that much of an issue. There is a lot of very ugly stuff going on in foreign countries, but that's not here. The last time drugs were a big issue here was 20 years ago, with the crack violence in the streets of America, and that got people riled up and not in an anti-prohibitionist way."

Some of the sunnier views of both the status quo and the prospects for change come from California, where the state's loosely-written medical marijuana law has created a sort of de facto personal legalization for anyone with a little initiative and \$150 for a visit to the doctor's office for a recommendation. The state's network of dispensaries, now in the hundreds, has flourished despite the DEA's best efforts, creating a real world vision of what retail marijuana sales could look like. And now, the incoming president has promised to call off the dogs.

"After being involved in this issue since 1994, I think we're seeing a need for a lot of things to shift around to end prohibition, and the perfect storm may have arrived this year," said Jeff Jones, founder of the Oakland Cannabis Buyers Club. "We have the alignment of a Democratic Congress and a Democratic president who has said he has used drugs, both soft and hard, and an economic recession. This could trigger a turn similar to that which we saw with the Great Depression and Prohibition."

Facts on the ground are creating a new reality, Jones said. "An end to prohibition is knocking at the door. There are new tax revenue streams being identified here, and public officials are starting to rethink this whole issue. And the Supreme Court's refusal to overturn the *Kha* case (in which a California appeals court ruled that state and local police need not enforce federal drug laws) means it's over. We won with no fanfare. We don't get a badge or a checkered flag, but by default, we have won this week. It doesn't matter what the feds do. We're going to create infrastructure, jobs, and tax dollars, and we're going to change minds. The medicalization of cannabis has changed things forever, and there's no going back now," Jones prophesied.



Speakeasy photo, with flappers (courtesy arbizu.org)

"I think with marijuana prohibition, developments on the ground can drive the lawmakers faster than anything else," said Gieringer. "We had medical marijuana in California before we ever passed Proposition 215, thanks to people like Dennis Peron. And now you have Oaksterdam [a part of Oakland, CA, known for tolerance a la Amsterdam] and the efforts to promote that. Although that is still in embryonic form, the more we have it out there on the ground, the more people will come to accept it."

Coming out of the closet is both desirable and necessary, said Gieringer. "Most people are happy as long as drugs stay out of sight and mind, but as we've seen with the LA cannabis clubs, people have learned to be comfortable having them around. We need more of

this. Drugs in general need more public visibility to gain more public acceptance," Gieringer argued. "People need to know the world isn't going to collapse, because they've forgotten what it was like a hundred years ago, when our 19th Century legal drug market worked very well."

"With alcohol Prohibition, people had living memories of life before Prohibition," agreed LEAP's Van Wickler. "The generation taking power now doesn't know life without drug prohibition. That makes the paradigm shift all the more difficult."

But even with what's going on in California, there is a long way to go, said Gieringer. Federal legalization of marijuana is unlikely, he said, and thus, so is outright legalization in the states. "I don't see any state passing legalization, in part because of the harsh federal response to medical marijuana. What we need to do is first create *de facto*, on the ground legalization," as is arguably or partially the case in Gieringer's home state. The United States has pinned itself to perpetual prohibition through the UN Single Convention, Gieringer noted. Federal legalization would require modifying the convention, and that would require a two-thirds vote in the Senate. "That's a major project, given that we don't have even one senator who even supports medical marijuana, much less decriminalization," he noted dryly.

If the federal government appears unmovable in the near term, then it is going to be up to the states to push the envelope, despite the obstacles. "I think the end of marijuana prohibition is going to come with the states taking action first," said Dr. Mitch Earleywine, a leading academic marijuana expert and editor of *Pot Politics*. "As a number of states not only have good experiences, but also start bringing in the tax revenues, the cogs will begin to turn at the federal level. We're already seeing this in California, where the rough economic times are being buffered by medical marijuana cash."

But despite all the cautious prognostications, there is one final lesson of Prohibition that may warm reformers hearts. "One of the most cheering things about Prohibition was that even though it looked impossible to end for so long, it collapsed so quickly," Gieringer said. "In 1930, the prohibitionists said there was as much chance of ending it as a bird flying to the moon with the Washington monument tied to its tail, but within three years it was gone. The conventional wisdom of 1930 about Prohibition is the same as the conventional wisdom about repealing the drug laws now, but as we saw, things can happen very quickly."

So, tonight, toss down a cold one as you commemorate Repeal Day and hope we don't have to wait another 75 years to celebrate the end of drug prohibition. How about 7.5 years instead?

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A message from Troy Anthony Davis, Nov. 2008

[Note: When the last issue of *Justicia* went to press, Troy Davis was facing imminent execution in Georgia, having been convicted in 1991 of killing a Savannah (GA) police officer. On Dec. 9 the 11th U.S. Circuit Court of Appeals (Atlanta) heard new arguments in the case, which is under review after calls worldwide for reconsideration. For more information, go to www.troyanthonydavis.org, from which this message is taken.]

"I want to thank all of you for your efforts and dedication to Human Rights and Human Kindness; in the past year I have experienced such emotion, joy, sadness and never ending faith. It is because of all of you that I am alive today; as I look at my sister Martina I am marveled by the love she has for me and of course I worry about her and her health, but as she tells me she is the eldest and she will not back down from this fight to save my life and prove to the world that I am innocent of this terrible crime.

"As I look at my mail from across the globe, from places I have never ever dreamed I would know about and people speaking languages and expressing cultures and religions I could only hope to one day see first hand, I am humbled by the emotion that fills my heart with overwhelming, overflowing Joy. I can't even explain the insurgence of emotion I feel when I try to express the strength I draw from you all, it compounds my faith and it shows me yet again that this is not a case about the death penalty, this is not a case about Troy Davis, this is a case about Justice and the Human Spirit to see Justice prevail.

"I cannot answer all of your letters but I do read them all, I cannot see you all but I can imagine your faces, I cannot hear you speak but your letters take me to the far reaches of the world, I cannot touch you physically but I feel your warmth every day I exist.

"So Thank you and remember I am in a place where execution can only destroy your physical form, but because of my faith in God, my family and all of you I have been spiritually free for some time; and no matter what happens in the days, weeks to come, this Movement to end the death penalty, to seek true justice, to expose a system that fails to protect the innocent must be accelerated. There are so many more Troy Davises. This fight to end the death penalty is not won or lost through me but through our strength to move forward and save every innocent person in captivity around the globe.

"I want you to know that the trauma placed on me and my family as I have now faced execution and the death chamber three times is more punishment than most can bear; yet as I face this state-sanctioned terror, I realize one constant: my faith is unwavering, the love of my family and friends is massive and the fight for justice and against injustice by activists worldwide has ignited a fire that is raging for Human Rights and Human Dignity. You inspire me, you honor me and as I pray for strength and guidance for my family and loved ones, for the victim's family and loved ones, I share with you this struggle, I share with you our triumphs, knowing that you add to my strength, my courage and because of that, I share with you my life.

"We must Dismantle this Unjust system city by city, state by state and country by country. I can't wait to Stand with you, no matter if that is in physical or spiritual form, I will one day be announcing, 'I AM TROY DAVIS, and I AM FREE!' Never Stop Fighting for Justice and We will Win!"

New Solutions Needed To Prevent Nursing Home Abuses

By Joel Freedman

In September 2008, at a time when the financial crisis on Wall Street and presidential election politics dominated the news, little attention was paid to a report on nursing home conditions that was released by the US Department of Health and Human Services. The report indicated that more than 90 percent of nursing homes in our country were cited last year for violations of federal health and safety standards. Daniel Levinson, the Department's inspector general, said 94 percent of for-profit nursing homes – about two-thirds of all nursing homes – were cited for deficiencies, compared with 88 percent of nonprofit nursing homes and 91 percent of government-operated nursing homes.

The inspector general said there are many cases in which nursing homes billed Medicare and Medicaid for services that "were not provided, or were so wholly deficient that they amounted to no care at all." Levinson also said many nursing homes improperly classified residents or overstated the severity of their disabilities so the facilities could claim larger government payments.

In December, the Department plans to establish a five-star system to describe the overall quality of care. The best nursing homes will get five stars, the worst homes only one star. These rankings will be published on a federal web site. But this one reform by itself will not do much to correct a continuing deteriorating situation in our nursing homes, a situation that has existed for many decades.

Prior to the Great Depression of the 1930s, the only form of public support available to the destitute elderly was in the almshouse or poorhouse. These places were usually managed by farm families in agricultural areas while, in the cities, larger facilities and staffs were in evidence. Conditions were usually deplorable. A 1925 U.S. Department of Labor report noted that "dilapidation, inadequacy, and even indecency are the outstanding physical features of many of our small almshouses. Ignorance, unfitness, and a complete lack of comprehension of the social element involved in the conduct of a public institution are characteristic of a large part of their managing personnel."

The enactment of the Social Security Act of 1935 created the for-profit system of proprietary nursing homes. Because of the strong public reaction to conditions in public almshouses, Congress prohibited federal old age assistance to individuals housed in them. The effect of this policy was the creation of privately

owned boarding homes which, with the addition of nurses to the staff to care for those who were chronically ill and in need of assistance with activities of daily living, called themselves "nursing homes". President Franklin D. Roosevelt strongly supported such developments. As Governor of New York, Roosevelt in 1930 had appointed a commission to abolish the almshouses. During the next two decades, almshouses faded away or were converted into city or county administered nursing homes. Today, these government operated facilities, as do private nursing homes, bill Medicaid, Medicare or private paying residents for their services.

By the mid-1950s, the number of nursing homes had grown substantially. The major reason for this was the increased life expectancy of Americans. Nursing homes changed from family enterprises to big business enterprises during the 1960s, with the advent of Medicare and Medicaid which paid most of the costs of nursing home care and the elimination of requirements that adults were financially responsible for the needs of their dependent parents. In 1960, there were 9,582 nursing homes in the United States, with 290,000 residents and 100,000 employees. By 1976, 23,000 nursing homes (most of them privately owned) were populated by 1,000,000 residents and staffed by 650,000 employees.

Although Medicaid was the primary means of paying for extended nursing home care, the federal government's policy was to leave responsibility for protecting the rights of nursing home residents to the states, since Medicaid was to be administered by the states. By 1967, however, following hearings by the U.S. Senate Committee on Aging that revealed shoddy state licensing standards, Congressional concern arose over conditions of confinement in America's nursing homes. Senator Frank Moss of Utah, Edward Kennedy of Massachusetts, Charles Percy of Illinois, and others began to call for federal standards to improve nursing homes receiving federal funds under Medicaid. The Moss Amendments to Title XIX of the Social Security Act, passed in 1967, included better standards for nursing homes but these amendments, which were signed into law on January 2, 1968, were not even published in the *Federal Register* until April 29, 1970.

In 1970, then US Representative David Pryor became a crusader for nursing home reform after he worked as an aide at one of these facilities. Here are excerpts from letters received by Pryor from nursing home residents, their families, nursing home employees and inspectors: "I have witnessed aides throwing patients' food down the toilet - The aide pushed a patient down and broke her hip - The fear in the eyes of stroke victims when certain aides care for them is proof enough - It was a prank for one shift to load the patients with laxatives so the next shift would have to work cleaning them up - I have known old ladies of eighty to sit in the same wheelchairs from 9:00 in the morning until 8:00 at

night without being taken to the bathroom; one old lady had her buttocks covered with blisters from sitting too long - I have seen patients who could walk when they came in lose all ability to walk - Nurses turned off the call system since many of the nurses and aides sleep on the evening and night shifts - The visits by the doctor on Sunday were the only ones he ever made and all he did was look at the charts and leave."

State nursing home inspectors told Pryor that they were prevented from adequately policing nursing homes because of the political clout of nursing home entrepreneurs. In a Congressional speech in 1970, Pryor said that "we have turned over the sickest, the most helpless and the most vulnerable patient group in the medical care system to the most loosely controlled and the least responsible faction of that system." Pryor did not turn over the complaints he received to the United States Department of Health, Education and Welfare (HEW), explaining that:

I think there is such a close relationship between the various levels of the bureaucracy on the local, on the state, and on the federal level – there is such a close relationship, personal and political, to the nursing home owners, to the nursing home industry, and to the nursing home associations. There is such intertwinement here of people, and the relationships are so close that I think I might be jeopardizing the positions of the patients and the relatives who have written me and complained.

In the U.S. Senate, Senator Frank Moss had since 1967 attempted to tighten federal regulation of nursing homes and to require HEW to establish minimal standards that nursing homes would have to meet in order to qualify for Medicaid payments. The Moss amendments were eventually adopted but had been evaded or ignored by HEW. As he opened a subcommittee hearing on May 7, 1970, Moss remarked:

We say to our young people that a citizen may not choose which laws he will obey and which he will not. As I review the performance of the Department of Health, Education and Welfare on implementing these provisions of law designed for the protection of nursing home patients, the question is inescapable: Are government officials asserting the right to choose which laws they will obey? Evidence of government lawlessness is not lost on our young people whom we admonish about law and order.

In 1971, President Richard Nixon devoted a major address to nursing home issues. He set forth a plan that included an expansion of federal programs for training state nursing home inspectors and for federal responsibility for financing the costs of state inspections

of nursing homes. The federal government would assist states to improve their inspections. Medicare and Medicaid funds would be cut off to substandard nursing homes.

But nursing home organizations remained powerful. President Gerald Ford in 1976 told the Texas Nursing Home Association that “there is an overzealous interference attempted by those regulations, and I hope we can do something affirmatively to change them.”

Five years later, the Department of Health and Human Services (HHS) proposed to repeal many regulations, including requirements that nursing homes must provide “a safe and sanitary environment” and treat their residents “with consideration, respect and full recognition of their dignity and individuality.”

In 1982, the Reagan administration, responding to various pressures, rescinded its plans to relax such protections, but HHS did little to enforce them. In 1980 Congress had ordered HHS to withhold federal reimbursements to nursing home operators who mistreat residents. Six years later, columnist Jack Anderson reported that this mandate “has yet to be issued in final form – an inexcusable delay that no one seems able to explain.”

The Senate Aging Committee released a study in 1986 which concluded that at least one third of America’s nursing homes “are grossly inadequate, resulting in humiliation, suffering and premature deaths.” The report also cited “an alarming increase” in nursing home violations.

The 1990s witnessed a continued deterioration. Shortly before Bill Clinton left the Arkansas governor’s mansion, an undercover investigation of nursing homes by the Arkansas attorney general found “a host of problems including under-staffing, improperly trained staff, infestation of mice and roaches, residents left unattended and covered in urine and feces, linen shortages, falsified charts, infections, bedsores, physical abuse and rape.”

Although Congress in 1987 had enacted legislation requiring nursing home owners to pay stiffer fines for violations of health and safety standards, the nursing home industry’s lobbying efforts succeeded in a delay of five years before the new rules were even announced.

On January 20, 1995, millions of television viewers observed thefts, neglect and brutality recorded by hidden cameras at several nursing homes investigated by *20/20*.

But six months later, then-Senate Majority Leader Robert Dole assured nursing home owners that Congress would ease up on nursing home regulations. Shortly thereafter, the House of Representatives voted to eliminate nursing home standards from Medicaid and Medicare (the measure did not get Senate approval, however.)

All this at a time when states were also neglecting their responsibilities. Here in New York, Gov. George Pataki and state lawmakers agreed in 1995 to cut about \$3.8 million out of the budget for nursing home inspections. The Pataki Administration also drastically curtailed the practice of levying fines against negligent nursing home operators.

On July 21, President Bill Clinton announced plans of the federal government to upgrade our nation’s nursing homes. These plans include posting on the Internet inspection reports for each of America’s 16,700 nursing homes, establishing a national registry of nursing home workers who have been convicted of abuse, and requiring nursing homes to run criminal background checks on job applicants.

Additionally, Clinton proposed to conduct more unannounced nursing home inspections, to impose substantial fines on facilities with serious deficiencies and to end federal funding for inspections by states that have poor records of enforcement.

The problem is that while federal officials have been promising nursing home reforms for several decades, these reforms never seem to be implemented.

Since the new century, the ever-present nursing home mess has persisted in our country, as evidenced by the recent US Department of Health and Human Services report (formerly the US Department of Health Education and Welfare).

During the past 10 years, 32 congressional reports have documented continuing maltreatment at thousands of America’s nursing homes, including deaths and injuries caused by physical abuse, medical and nursing malpractices, understaffing, excessive psychiatric drugging, preventable pressure sores, malnutrition, dehydration and inadequate fire prevention.

The latest data from the Bureau of Labor Statistics show that in 2002, 79,000 nursing assistants were injured on the job – 91 percent were women who “predominantly suffered sprains and strains to their trunk (typically their back), due to over-exertion related to lifting or moving patients.” A nursing home caregiver is more likely to be injured on the job than a police officer, construction worker, carpenter, mechanic or steamfitter. Most of these injuries could be prevented if understaffing was eliminated.

Some elected officials are attentive to nursing home shortcomings, but most are not. This year, while other health care issues were raised, nursing home reform was conspicuous by its absence from the McCain-Obama debates and from other election campaigns for Congress or the state legislature.

In Arkansas, county coroners are now required to investigate all nursing home deaths. A US Justice Department study concludes that deaths from neglect have dropped significantly in Arkansas since nursing home managers learned that every death would be scrutinized. New Mexico has begun to train investigators

to go into nursing homes undercover, posing as residents. Investigators are given detailed cover stories and are taught how to pose as Alzheimer's patients or to pretend to have other disabilities, thus providing them opportunities to detect wrongdoing that would otherwise go undetected.

Such reforms, along with camera surveillance monitoring, mandated resident/staff ratios and harsher penalties for negligent nursing home owners are needed to help assure good care of residents and good work conditions for care providers. Far too many nursing homes in our country have been found to provide residents with substandard care.

A nursing home can be in anyone's future. The American Association of Homes and Services for the Aging recently reported that one-half of all women and one-third of all men in our country will spend time as nursing home residents.

At a time when surveillance cameras are being used to detect and to deter unlawful behavior at schools, offices and stores, lawmakers in four states have proposed legislation that would require nursing homes to permit residents or their families to install cameras in nursing home rooms.

But Adam Kane, public policy director for the Mid-Atlantic Non-Profit Health and Housing Association, says that, "Other businesses are monitored but it's a management tool. In this case, management never even sees the tape. What we're afraid of is the tape goes straight from someone's room to a law firm."

Kane's comments beg the question: Why won't nursing homes do their own camera monitoring? I would like to see the federal and state governments require the camera monitoring of all nursing homes. State institutions for the mentally ill and the developmentally disabled and the long-term care units of VA medical centers should also be camera-monitored.

Some time ago, a team of sociologists from the University of New Hampshire surveyed 577 staff members in 31 nursing homes to study the extent of intentional abuse of nursing home residents by their caretakers. The respondents were promised anonymity.

The study revealed that 10 percent of direct care staff admitted to physically abusing residents; 40 percent acknowledged they had psychologically abused residents. There was little variation in abuse patterns from one nursing home to another. A subsequent federal study concluded with similar findings.

Whenever the news media or government agencies conduct covert camera monitoring in nursing homes, VA hospitals or state institutions, the most outrageous violations of people's rights are revealed. A state police officer, who worked undercover on a building housing mentally retarded children, witnessed an attendant brutally kick a 4-year old boy in the face among numerous other assaults. In his career, the trooper had "seen it all but this was the worst."

Knowing that their actions are being camera monitored, caregivers would be encouraged to provide quality care at all times. Mentally competent patients could waive camera monitoring of their rooms. Privacy would not, however, be an issue for the more regressed patients, who are the most likely targets for maltreatment. Because they require assistance in all activities of daily living, people who are severely brain damaged have already lost privacy.

Institutional administrators also argue that camera monitoring would be demoralizing to staff. Obviously, callous and negligent care providers would resent camera surveillance, but staff members who are hardworking and compassionate would have nothing to hide.

More often than not, a conscientious care provider who witnesses wrongdoing by a co-worker will not report the abuse. Fear of reprisals, sometimes violent ones, are realities which further suggest that camera monitoring is needed to help prevent the occurrence of abuse and neglect.

Protecting our most vulnerable and defenseless citizens from harm should be the primary consideration in any society that considers itself humanistic.

In 2002, after the U.S. Senate Committee on Aging concluded that physical and sexual abuse of nursing home residents is widespread and usually unpunished, I was prompted to write to the committee's chairman, Senator John Breaux (D-Louisiana). I shared with Breaux the findings of the nursing home abuse study conducted by the University of New Hampshire. I also advised Breaux about a subsequent federal study that concluded with similar findings. Breaux replied that "the lack of coordination amongst the myriad of agencies involved in overseeing nursing home care must be addressed." Breaux added that "too many police departments do not have abuse of seniors in nursing homes anywhere on their radar screen. We have much work to do to ensure that law enforcement officers are better trained and sensitized to crimes against seniors in institutions."

Legislation enacted in 1979 gives the U.S. Justice Department authority to protect institutionalized citizens, including nursing home residents, but the Department of Justice has been too reluctant to use this authority.

Prior to the 1960s, lynchings and other acts of violence, voting restrictions and other injustices against black people were commonplace in the southern states. The "New South" emerged only after the federal government, under President Lyndon Baines Johnson, directed its full resources to challenge the status quo south of the Mason-Dixon line. This is the kind of action needed now to protect current and future nursing home residents in all 50 states.

Since September 11, 2001, dealing with international terrorism has been a national priority. But

terrorism has many faces, and certainly for those who are mistreated at nursing homes, nursing home abuse is one of them. Our newly elected president, Barack Obama, owes it to the American people to give a televised address to the nation on nursing home problems, and to make nursing home reform a domestic affairs priority. I also believe that the most severely handicapped patients at state psychiatric and mental retardation facilities and at VA Medical Centers need and deserve similar consideration.

Considering the vulnerability of these often forgotten American citizens, and the thoroughly documented accounts of several decades of governmental negligence in protecting them, we must keep the spotlight on the Obama Administration to be sure that meaningful reforms become permanent realities.



One Can Make a Difference: How Simple Actions Can Change the World, by Ingrid E. Newkirk

A Review by Joel Freedman

Ingrid Newkirk introduces readers to Cheryl Ward-Kaiser, who she regards as one of “the strongest of victims” of violent crime.

There is a very personal reason that Cheryl Ward-Kaiser sits on the California Juvenile Justice Commission, speaks to youth in detention centers, campaigns for political candidates who will forward the rights of victims of crimes, and supports the Juvenile and

Reconciliation project. One night, five young people broke into her bedroom and woke her up not only out of sleep but out of any sense of security she might have had. She witnessed her daughter being raped and her husband’s murder.

Since that time, Cheryl has worked hard to forgive the perpetrators, all of whom were identified and arrested and are serving or have served time in jail. She asked to and did meet the driver of the getaway car and the man who kept his foot on her back that night. She not only believes that victims have the right to question those who have interrupted their lives, but also feels strongly that she has something to offer that may affect or prevent future crimes. If anyone belongs in this book, it is a person who works to stop violence, and I believe that Cheryl does just that.

Ward-Kaiser tells her heartfelt account of her life after her traumatic experience. Although she successfully fought for a life sentence without possibility of parole for the perpetrator who raped her daughter with the shotgun, after the trial Ward-Kaiser also learned about restorative justice, the concept of bringing victims and offenders together with the goal of accountability and forgiveness. Ward-Kaiser befriended one of the perpetrators.

I met with John, the man who held the shotgun to my head. It was extremely moving. I knew he was sorry. I knew he was sorry as it was happening. I shared with him my experience of that evening and he cried. I told him, “Lying on the floor, I named you ‘The Nice One’ because you tried to calm the others down, because you kept telling them not to rape my daughter.” He couldn’t stop crying. We’ve remained in touch ever since, and I’ve promised him that I will work for his rehabilitation and support his release...I don’t believe in monsters, but in human beings who do monstrous things. I also believe in consequences, not vengeance; I believe in the ability for people to change.

Newkirk, who is founder and president of People For the Ethical Treatment of Animals (PETA), has spent the last 25 years traveling constantly and meeting people from all walks of life, but her “most cherished encounters are with people who have social concerns, caring people who want to contribute to a better world”. Newkirk believes that “everyone cares about something bigger than themselves, and everyone can make that cause a vital part of their lives no matter who they are. Someone ‘ordinary’ was the first to step up to the plate and champion rights for blacks, for orphans, for people

with disabilities, for animals, for women, for prisoners, and for humanity". Newkirk introduces us to over 50 people, ranging from the famous to more "ordinary" people, and all these individuals, invited to do so by Newkirk, tell us in their own words the meaning of an ancient Chinese proverb – "Virtue is not knowing, but doing."

In the Fall 2008 issue of *PETA's Animal Times*, Newkirk wrote about her new book:

Of course, we've all heard of people like His Holiness The Dalai Lama, Sir Paul McCartney, Brigitte Bardot, Ravi Shankar, Oliver Stone, Willie Nelson, and the other famous people whose personal essays appear in the book, but it is the "ordinary" people's stories that I think will inspire you even more. Among them is the story of a woman who was born without feet and, despite being deeply embarrassed by her condition, helped develop an artificial leg that allows her to run marathons; a man who tinkered with a dime-store fan to help him perfect a device that saved the lives of thousands of soldiers injured in war; a woman who took it upon herself to dismantle a bricked-up chimney to rescue a cat trapped inside – despite being laughed at by everyone she had asked for help. You will also meet a man who, as a boy, hid under a bed during the Tiananmen Square Massacre and now works to stop the slaughter of seals on Canada's ice floes; an elderly man who collects discarded shoes for the barefoot children he encountered on a trip to South America; a BBC videographer who saw island birds and turtles choking on plastic bags and revolutionized the way that grocery stores think about packaging; and so many more.

Brigitte Bardot, during her late teens, 20s and 30s, was the epitome of the fantasy female. As an actress whose movies were the talk of the Western world, particularly her role in "And God Created Woman," Bardot surprised the world with her announcement, at age 40, that she would never again appear on the screen. Instead, Bardot followed her heart and established the Brigitte Bardot Foundation for animals (located at 28 rue Vineuse, 76116 Paris, France; www.fondationbrigittebardot.fr), that specializes in rescuing animals, campaigning to increase spay/neuter efforts, prosecuting cruelty to animal cases, and creating safe havens for animals around the world.

Although Bardot's career in film was "busy and exotic," Bardot tells us "it was never very fulfilling. I was often depressed by that way of life." The animals in her films helped Bardot to overcome some of her sadness. She loved them so much that "I couldn't let them go and would keep them." When Bardot was eighteen, she married French film director Roger Vadim and they

began to make movies together. It was Vadim who told Bardot about the abuse of animals for experimentation. "He told me of how animals suffer in laboratories, in their cages. I found it shocking that humans could be so horribly cruel. Bardot had an affinity for all animals, including "little birds kept in cages so that they cannot stretch their wings and fly, rabbits who are killed to be eaten. The thought of how to help them began to consume my life."

Bardot had an unhappy childhood, but she had at least one happy childhood memory. When she was ten years old, a little mouse appeared at the dinner table. Bardot's father wanted to kill the mouse but she ran up Bardot's sleeve into her sweater. Later, Bardot released her into the family's garden. "It was my first official animal rescue and one of the most fulfilling moments of my life, although I wasn't aware of it at the time," Bardot explains.

In 1986, Bardot sold most of her material possessions to start her foundation for animals. It was only after Bardot devoted her life to the care and protection of animals that "I blossomed completely. Taking care of them, looking out for them, has given my life true meaning, a meaning I hope future generations can also experience. Young people are always a hope. More of them must realize that the animal is not an object for profit, not a toy for our amusement, not to be hunted for sport, not some thing to be cut up for his fur... We, the animals, the plants, are the whole, and the whole makes a chain, and if we break that chain, all of humanity will pay."

When Bardot observes people eating animal flesh, she tells them she is a vegetarian because "animals are my friends, and I don't eat my friends". Bardot believes that people everywhere "would do well to listen to the words of Leo Tolstoy, words that I believe in. He said, 'As long as there are slaughterhouses, there will be battlefields.' It's formidable and apropos in these frightening times, when we see more and more battlefields and more and more slaughterhouses opening up all over the world."

Bardot tells us she is happy to be surrounded by lots of animals. "These days, I have horses, ponies, donkeys, goats, sheep, chickens, geese, cats, dogs, ducks, and, like George Clooney, I have four domestic pigs. Wild boars come on my property in the south of France and have their young. I have doves and lots of pigeons. And guess what? I have mice! And I don't want them killed." Bardot concludes that "when you love, you devote yourself, body and soul, for the love you have for something; it can be religion, it can be for older people, children, perhaps world hunger, or whatever, but one must do it completely, one cannot do it halfway."

A recent letter I received from an inmate at a maximum security prison conveys an important message. Each of us, in our own way, can make a difference. The prisoner wrote me: "I am feeding yet another baby sparrow. This time a male. He can't fly yet

and won't eat on his own. It took over two hours to get him to trust me enough to finally start eating. I know his father and grandfather, which probably sounds nuts, but the grandfather was a young bird last fall and has a white right wing feather. His first batch this spring produced this one's father, who has two white bars on his shoulders. This one must have fallen out of the nest, and there are still other babies in the nest to be fed. The father comes in my cell and is quite tame for a male. He was still trying to feed this little guy, but I was afraid he would get stepped on, as he was just missed several times when officers walked down the gallery, so I went out and picked him up. I will keep him until he can fly on his own."

Reverend Al Sharpton is another guest essayist in Newkirk's book. "Born to be a rabble-rouser," Sharpton became a Pentecostal Minister and an activist enthralled with the civil rights movement and the social justice movement. Although Sharpton was severely injured when he was stabbed in the chest by an attempted assassin in 1991, he remained on the front lines. He supported Abner Louima, a Haitian immigrant brutalized by some Brooklyn police officers and organized protests after New York City police officers shot Amadou Diallo, who was unarmed, 41 times. (Although I agree that many of the causes Sharpton has championed were meritorious, including the cases noted above, there have been times that Sharpton has recklessly disregarded the truth and disregarded the rights of people who were really innocent of the wrongdoing alleged by Sharpton and others.)

Sharpton tells us: "If you're looking for the easy life, you're not looking to make a point. If you're going to make a real point, you've got to be willing to take the adversity that comes with that because it's like exercise. If I get on the treadmill and run to a speed that doesn't make me sweat, I might do the time but I haven't benefited from the exercise. The same thing with making a point in life; it doesn't count until it requires more out of you than what's normal. And most people are not willing to do that, which is why most people never leave a mark in life."

And as Tenzin Gyatso, the fourteenth Dalai Lama and the spiritual and temporal leader of Tibet, says in his contribution to *One Can Make a Difference*, "Compassion is one of the principal things that makes our lives meaningful. It is the source of all lasting happiness and joy. And it is the foundation of a good heart, the desire to help others. Through kindness, through affection, through honesty, through truth and justice toward everyone else, we also ensure our own benefit. The necessity of love and compassion is the real basis of my religion, my simple faith. To put them into practice within a secular framework we don't need a temple, church, or other building, nor any complicated philosophy. Our own hearts and minds are where we work, while the only doctrine we need is compassion."

It is not easy to stand up for one's beliefs, and

sometimes an individual gives up his or her life to do so. When I finished reading Newkirk's powerful and inspirational book, I thought about the fate of my friend Ted Studebaker, and I was reminded that when the spirit of a person moves him or her to do something that ought to be done, we need not attempt to predict the outcome of our endeavors. Who knows what the future may bring?

Ted's family background and upbringing in the Church of the Brethren had a strong influence on his choosing to become a Conscientious Objector. His draft board told him that his pursuit of a social work career in the United States would satisfy his military obligation. Instead, Ted decided to go to Vietnam as a Church World Service Volunteer - on an allowance of \$75 a month. He left for Vietnam in April 1969, a month after we had received our Master of Social Work degree at Florida State University. We used to correspond with one another, at a time when I was embroiled in efforts to expose the abuse and neglect of patients at the Foxboro, Massachusetts State Hospital, where I had been a summertime ward attendant during my college years. On the other side of the world, Ted was teaching farmers more productive ways to harvest rice - while speaking out against the war through letters published in his hometown newspaper.

I sent Ted copies of my own letters to the editor regarding the situation at Foxboro State Hospital. Ted wrote me, "That's great Joe. Give 'em hell, man! You gotta call 'em like you see 'em, else what's honesty and integrity all about? Yep, I'm in the world's hellhole, Vietnam. I'm working as an agriculturalist with the Montagnard tribe called Koho in the highlands of Central Vietnam. Work here is sometimes successful and rewarding but usually unsuccessful and frustrating as hell. Say, would you be interested in caseworking me back to reality if I ever get back stateside, ol' buddy? Joe, war is hell. I could tell you lots of stories. Maybe if you just read about the terribleness of the My Lai incident, you can understand just a little of the illegal, immoral and self-defeating purposes of this damn war."

Nevertheless, after nearly two years in Vietnam, Ted signed up to remain there because, as his mother later explained, "Ted had become so involved with the project and the people he just didn't feel he could leave yet."

In March 1971, I was invited to, but could not attend, the wedding of Ted and Ven Pak, a Chinese lady working as a child care specialist with Church World Service. "We'll be married in Koho language and somewhat following the tribal custom, only Christianized. Life is great. Yea!!"

I never heard from Ted again. A week after his wedding, he was shot to death by Viet Cong raiders. His church in West Milton, Ohio, held a memorial service on May 3, 1971. In accordance with Ted's beliefs, his body was cremated and his ashes scattered under the willows

of his farm in rural Union, Ohio.

ABC carried a piece about Ted on the Harry Reasoner-Howard K. Smith news. Its concluding statement was, "Ted Studebaker was a man who believed peace was possible. He had his roots in the land and it occurred to him that a land that needed him was a tortured land far away from his farm in Ohio. He went there willingly; now he has come home."

In school, people knew Ted for his warm smile and easygoing manner. He used to like to sing and play his guitar. Some of his favorites were "The Answer Is Blowing in the Wind," "Where Have All the Flowers Gone?" and "Show Me the Prison." Ted was only twenty-five years old when he died.

Ted's compassion and sense of justice are also revealed in the feelings he often expressed about life:

"When we can really live out our religion, when we can honestly love our neighbors as ourselves, then I think things will really begin to pop."

"He who takes a stand is occasionally and even often wrong, but he who never takes a stand is always wrong."

"Keep us ill at ease and restless, God, as long as we can see need in the world. Help us to understand the true meaning of love and brotherhood and give us the strength to say and mean in all sincerity, 'Here am I, Lord, send me.'"

Five years after Ted's death I received a letter from Mrs. Zelma Studebaker, Ted's mother:

"For a long time I have appreciated a little quote that has put a lot of meaning into my life as a mother of eight children. 'Do not be afraid that your life may come to an end. Rather fear that it should have no beginning.' I didn't realize that this idea would someday be put to the test in Ted's death, but now I cherish its meaning all the more.

"After the tragedy we received several hundred letters, many from young men in college, in the military, in prisons, young fellows struggling to make decisions about careers. They wrote to say that Ted's story had made them come to grips with how best to use their lives and talents. Many asked questions about how he began to 'build his courage' – It was an amazing and humbling experience to begin to realize that the social concerns which Ted had tried to spark with just what little he could do in an isolated spot, instead of being suddenly cut off, were somehow spreading and growing."

Ted's belief that love is stronger than hate was evident in the way he lived and died. If our world is ever fundamentally improved, it will be more because of people like Ted Studebaker, and the dozens of heroes (including the book's author) you will meet when you read *One Can Make a Difference*, than anyone else.

One Can Make a Difference: How Simple Actions Can Change the World is published by Adams Media, an F & W Publications Company, 57 Littlefield Street, Avon, MA 02322. 2008. 256 pp. \$16.95. ISBN-10:1-59869-629-7.

The book is also available at PETACatalog.org. (1-800-483-4366)

The JUDICIAL PROCESS COMMISSION

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We welcome your letters and Justicia article submissions by e-mail or postal mail.

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The Judicial Process Commission envisions a society with true justice and equality for all. We understand that in a just society, all institutions will be based on reconciliation and restoration, instead of retribution and violence.

MISSION

The JPC is a grassroots, nonprofit organization that challenges society to create a just, nonviolent community which supports the right of all people to reach their fullest potential. We do this by:

- Providing support services for those involved in the criminal justice system
- Educating the public
- Advocating for changes in public policy.

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Training Topics:

- Local, State and Federal representatives discuss their agencies role in the criminal justice system. Project guidelines and boundaries
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Reservations required in advance by Friday, Jan. 16 th at noon. Call 325-7727 Sue or email info@rocjpc.org. Interested volunteers should have 2 hours a week to give, be willing to commit to 1 year of apprenticeship service, attend some Monday Night Training Workshops and provide written information about the outcomes.

Thank you, we asked and you provided.

- Green thumb needed - in October an anonymous giver installed 4 large boxes (3 x 5) our first ever raised bed gardens of peas, lettuce, carrots, peppers, tomatoes for next summer's enjoyment. Could you help organize and train a small team of gardeners (we have the people) and gather the tools and supplies we need for this effort.
- Focused fundraiser - we are looking for a person to help us raise money for postage. We spend thousands of dollars a year getting information to prisoners coming back to Rochester or to prisoners that face very difficult living conditions or need help with legal problems.
- Head Cook - if cooking and meal planning is your specialty we need your expertise for Monday night dinners at JPC.
- Needed: bus passes, postage, good resume paper, paper, pens, notebooks, warm scarves, hats, used books of all types. All items for Monday Night Information and Support Group.