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# JUSTITIA

## Re-entry v. Regs: Hurdles to be Jumped

By Susan Porter & Victoria Kushner, AmeriCorps

**A key component** of the Judicial Process Commission's mission is to assist people coming out of jail or prison find employment and successfully re-enter our community. Daily, I am reminded of the numerous barriers faced by the over 2,500 returnees to the Monroe County area. Weekly, customers report that employers tell them they won't or can't hire them due to their felonies. JPC customers report problems even obtaining the photo ID needed for work, finding it difficult to come up with the proof of identity now required by the State. The cost of ID now totals \$40. Post September 11 rules for a non-drivers license are ludicrous for those that have nothing but the clothes on their backs.

Recently a customer was denied entrance to the Federal Building Social Security Office without a photo ID - another post 9-11 change that borders on insanity. He was trying to get in to reactivate his social security, his only means for survival. These obstacles weigh heavily upon the already weak frame of the criminal justice system, which seems to have failed in keeping its promise of liberty and justice for all. People of color are treated more punitively, police are arresting people of color more frequently, and judges/juries are convicting and sentencing more harshly. It is easier to get in jail and harder to get out of jail for people of color. The US Department of Justice Bureau of Justice Statistics findings on jail and incarceration rates from 1990-2004 by race and ethnicity reveal the severity of these disparities: Blacks were two times more likely than

Hispanics and five times more likely than whites to be in jail.

On the employment front, things are not any better. A Dec. 9, 2005 *Democrat and Chronicle* article noted the following Gallup Poll findings: one in six workers claim they were discriminated against at work in the last year. The article reported that women were more likely to claim bias over hiring and pay. It went on to say that Asians and Blacks led the pack, with 31 and 26 percent respectively, alleging unfair treatment. The confusing new Department of Health Regulations that ban for life, or for a ten-year time span, persons convicted of at least 124 specific crimes have essentially etched these discriminatory practices into standard operating procedure among employers in the nursing home industry.

The regulations are just another example of discriminatory policies designed by our society to "protect us." The philosophy of rehabilitation and forgiveness, and the opportunity for personal change after making mistakes, are musts for a fair and compassionate society. Addiction is an illness that many can overcome. Sadly, a recovered addict may not be able to ever work in a nursing home or home care setting again.

Believe me, I favor safety, especially for our most vulnerable populations, but we have taken many of these measures to an extreme. A family member has Alzheimer's and is in a nursing home where he is cared for by some exceptional caregivers. Proper training and management of workers may be a more evenhanded way to protect patients from abuse.

On April 21, 2005, the New York State Department of Health adopted regulatory requirements directing that all prospective non-licensed nursing home and home care staff providing direct patient care, whether employed directly at a facility or home care provider or indirectly by a temporary agency, undergo a criminal history check. In addition, the regulations ban for life all those persons with an A felony. All those with any

B or C felony and those with specific D or E felonies are banned for 10 years from their conviction. It is a bit unclear if the regulations apply to all B and C felons, or just those listed in the Appendix A Disqualifying Offenses, March 31, 2005.

A felonies include the following: conspiracy in the first degree, murder in the first or second degree, criminal sale of a controlled substance in the first and second degree, arson in the first degree, criminal possession of a controlled substance in the first or second degree, criminal possession of a chemical or biological weapon in the first degree, and criminal use of chemical or biological weapons in the first or second degree. I don't know if this is an all-inclusive list.

**BCDE felons are banned** for 10 years beginning with the conviction date. Any B and C felony is cause for a ten-year ban. All D and E felonies listed in Appendix A are part of the 10-year ban. Without naming the entire list of convictions, some of the most notable B felonies include: manslaughter in the first degree, rape in the first degree, burglary in the first degree, arson in the second degree, grand larceny in the first degree, criminal sale of a controlled substance in the third degree, criminal possession of stolen property in the first degree, welfare fraud in the first degree, insurance fraud in the first degree.

Some of the less serious convictions include drug-related crimes. For example, criminal possession of marijuana in the first degree is a Class C felony. Class D felonies include: criminal possession of marijuana in the second degree and criminally using drug paraphernalia. A Class E felony includes menacing in the first degree. There are many more serious crimes, including sex crimes, which are Class B, C, D, or E felonies.

Nursing homes and home care agencies include the following facilities: residential health care facilities, licensed home care agencies, certified home health agencies, long-term home health care programs, personal care service agencies or Aids home care programs. The CHRC regulations don't apply to hospitals. They also don't apply to Title VIII workers such as doctors, physician assistants, chiropractors, nurses, physical therapists and their assistants, psychologists, mental health practitioners, clinical laboratory technologists, and roughly 24 other licensed professionals. These regulations target individuals with limited job opportunities who are willing to work for modest wages as home-care workers, while those mentioned above are unaffected.

**Several interesting questions** were addressed in the Frequently Asked Questions I and II and from the Department of Health Guidelines for the CHRC Program and Appendix A (Disqualifying Offenses). Are the students providing care to nursing home residents or home care agencies required to follow the CHRC requirements? No, unless they are being paid by the

facility. What about staff that provide services by contract to nursing homes or home care settings? No, they are not required to follow the CHRC regulations. The list includes phlebotomists, cardiopulmonary techs, x-ray techs, and radiation techs, a list that is far from complete. Additional workers not required to follow the regulations are limited permit nurses (GPN), these individuals have finished their education but are waiting the licensing exam or awaiting test results. Residents of nursing homes that hire their own companions are not required to follow the CHRC regulations. Hospice workers are not required to follow CHRC regulations. Workers that only have contact with patients in common areas are not required to follow the CHRC regulations. For example: maintenance workers, cooks, clerical admissions and office staff and dietary aides.

Some of the workers that must follow the regulations are per diem employees being considered for rehire. Some hospitals operate nursing homes in the same building; if an employee is transferred from work at the hospital to the nursing home the worker must follow the CHRC regulations. WEP workers or summer youth program workers will not be required to follow CHRC regulations unless they are paid by the nursing home and they provide direct care to patients. After some horrific crimes occurred in nursing homes in 2000 and 2001, the Nurse Aide Registry was created as an additional safeguard. The Registry makes conviction of a nurse aide for any resident abuse, neglect or mistreatment, theft of patient/resident property or sustained findings of patient neglect, mistreatment or theft available to hiring staff. Persons named on this list are banned from working in a nursing facility in any capacity. Employers are required to check this registry before hiring anyone. This is an important tool that maintains the safety and security of nursing home patients.

Emergency staff may be hired by temporary agencies, but the CHRC fingerprints must be faxed within 24 hours of beginning employment. Workers may begin to work on a provisional basis for up to 60 days as the fingerprints and paper work has begun. A second 60-day period of provisional work may occur under very specific circumstances. As you can imagine, the checks can take a while, i.e. many weeks.

The regulations require employers to use FBI fingerprint cards. Oddly enough, the fingerprint cards do not list the category Hispanic or Latino. Only the codes that are listed on the card may be used. The ethnic groups listed include Black, White, Asian, American Indian, or undeterminable race. White is defined as a person having the origins in any of the original peoples of Europe, North Africa, or the Middle East. Employers would need to indicate White for Hispanic or Latino people. This is a blatant example of unenlightened federal government policy.

There are some protections provided in the regulations. For example, temporary agencies are not

permitted to share criminal background check information with the facility they are sending their employee to. Also, the employer is required to provide the job applicant with the contents of the CHRC report. If the decision is made to not hire based on the criminal record, the employer is required to provide the reason in writing at the applicant's request.

According to a local attorney, defendants' rap sheets are often inaccurate. It will be up to the job applicant to iron out the errors with the FBI, the courts where the individual was sentenced, and the potential employer. It is unknown if or how an appeals process might work. Volume II of Frequently Asked Questions states that the DOH has no appeal process and that problems with the rap sheet must be worked out with the employer and that employer should consult their attorneys on "any applicable appeal process."

A report issued by the National Hire Network proclaims that "Certificates of Rehabilitation are an essential resource states can offer to support the employment of qualified individuals with criminal records and thus promote public safety." Currently, only six states have statutes offering certificates of rehabilitation or other similar means of removing occupational bars arising from a criminal record (Arizona, California, Nevada, New Jersey, New York and Illinois).

I believe that the potential employer should give consideration to the two certificates as proof of rehabilitation, but that does not mean that the employer cannot deny employment if there is a "direct relationship" between previous conviction and job duties. They must consider the certificates as relieving any automatic disqualification from employment unless a statute renders the certificates meaningless for a particular sanction (such as license forfeiture on a DWI). Certificates are especially salient in regards to employment in the Health Care field. Occupational licensing statutes consist of two components: competency and character.

**Many of JPC's customers** are quite capable of meeting and surpassing competency requirements through training, experience, or education. The latter component creates a taller hurdle to jump. Under these regulations and without a certificate, any of our customers possessing an A felony conviction are subject to immediate disqualification. In cases where such certificates are produced, the employer must determine the applicant's suitability for employment in accordance with Article 23-A of the Corrections Law. This law states that the employer must consider whether or not there is a direct relationship between the criminal activity and the position being sought. The Guidelines go on to say that amount of time that has elapsed since the commission of the offense must also be considered. This process is largely subjective.

JPC, Monroe County Legal Assistance Center, and local attorneys will work together to assist with the

process of cleaning up rap sheets, applying for certificates of good conduct and relief from disabilities and answering questions regarding these confusing new regulations. Both organizations are also involved in supporting a platform of bills that help to expand re-entry rights. Both groups also are pressing for pre- and post-case management for all those reentering our community from jail or prison.

I hope that we may work together to make our community fairer and safer.



## The Mentally Ill and the Criminal Justice System

By Clare Regan

**When states closed most** of their mental institutions in the mid-1950s, they failed to provide a sufficient number of clinics and halfway houses to monitor the mentally ill and supervise their medications. The number of hospitalized mentally ill patients dropped from 559,000 in 1955 to 69,000 in 1995.

HMOs restrict coverage, leaving the prisons and jails as the largest treatment centers in the country. And yet, surveys found that over 40 percent of mentally ill persons in prison and 60 percent of those in jail receive no treatment. By mid-year 1998, an estimated 283,800 mentally ill people were locked in the nation's jails and prisons, while 547,800 were on probation. These figures were self-reported, with offenders being asked if they had a mental condition or had stayed overnight in a mental hospital at some time. These figures are probably low since most people are reluctant to admit they have a mental health problem.

The number of incarcerated people diagnosed with schizophrenia, bipolar disorder, and major depression is four times as high as that in the general population. Allen Beck of the Bureau of Justice Statistics estimates 1 in 10 federal and state prisoners is severely mentally ill. In New York prisons, over 6,000 inmates are treated for severe disorders. There are only 5,800

patients in New York public mental hospitals. Some people profit from receiving regular medication but the stress of prison life drives others to despair. A study by the American Journal of Psychiatry found that 85 percent of incarcerated people who commit suicide have a diagnosed mental disorder.

Slightly more than half of all mentally ill prisoners have committed a violent offense but others are in for minor offenses such as disorderly conduct, illegal entry and burglary. Many of these people had been homeless.

Since many of the mentally ill are unable to follow prison rules or get into fights because they are harassed by other inmates, they wind up in the Special Housing Unit (SHU) where they are further punished. Prisoners write that they can't get individual therapy while in SHU. When therapists do drop by for several minutes, there is no confidentiality. The therapist stands outside the cell and other inmates can hear what is said and later ridicule the patient.

Too often, the treatment mentally ill offenders receive in prison is no better, if not worse, than what people received while living in the old mental hospitals dubbed "snake pits." Certainly, total isolation and sensory deprivation is not conducive to good mental health.

Most of the mentally ill are released to the streets with minimal, if any, treatment and immediate access to medication. Psychiatrist Terry Kupers, an expert witness in prison-conditions suits and author of *Prison Madness*, states, "What they're doing is making these people less competent to make it in society and then releasing them." And then, when the mentally ill kill once released, they are sentenced to death and executed.

**What is needed are more** hospitals for the mentally ill that use both drugs and therapy. Too often patients are released early because of the cost. Larry Robison is one such example. No hospital would admit him once he reached 21 and his parents' health insurance no longer covered him. Although he was severely schizophrenic, it was deemed that he was not a danger to himself or others. Unfortunately, the doctors were mistaken. Robison murdered his roommate, decapitated him and then killed a neighboring family of four. For this, Robison was executed in Texas in January 2000.

Robert Coe was executed in Tennessee in April 2000 although he had a long history of mental illness. Some states argue that a jury of laypersons should decide if a person is sane enough to be executed, not psychiatrists. The criteria for being sane enough is that the person understand the conviction and what the punishment is. It does not matter what the mental state of the person was when the crime was committed. How closely are these standards adhered to? Ricky Ray Rector actually saved his dessert so he could eat it after his execution. Morris Mason challenged his friend Roger Coleman to a game of hoops when he returned from his

execution. Vernal Weeks went willingly to his death because he believed he would return as a giant flying tortoise and rule the universe. And the list goes on.

States have asked that people deemed too insane to be executed be medicated to bring them to the degree of sanity that would allow the execution to proceed. Claude Eric Maturana in Arizona is one such a death row prisoner whose treatment is being disputed between the medical profession and the state. Doctors say their oath to "do no harm" prevents them from complying with the state's request.

Our European friends who have abolished the death penalty must view those of us in "The Land of the Free" as a little less than civilized.



## EXECUTING THE MENTALLY ILL: UNCONSTITUTIONAL?

By Clare Regan

*The theory of deterrence in capital sentencing is predicated upon the notion that the increased severity of the punishment will inhibit criminal actors from carrying out murderous conduct. Yet it is the same cognitive and behavioral impairments that makes these defendants (the mentally retarded) less morally culpable - for example, the diminished ability to understand and process information, to learn from experience, to engage in logical reasoning, or to control impulses - that also make it less likely that they can process the information*

*of the possibility of execution as a penalty and, as a result, control their conduct based on that information.*  
-U.S. Supreme Court in *Atkins v. Virginia*

The US Supreme Court recognized in 2002 that it was unconstitutional to execute mentally retarded offenders because they had a lesser degree of culpability because of their mental impairments. In 2005 they ruled it was unconstitutional to execute children who committed crimes while not yet 18 because the brain is not fully developed until the early 20s. Dr. Jay Giedd of the National Institute of Mental Health, using magnetic resonance imaging (MRI), found that the prefrontal cortex, the seat for planning, setting priorities, organizing thoughts, suppressing impulses, and weighing consequences for one's actions, is the last to develop.

It would follow logically that it would be unconstitutional to exact the most extreme sanction from the brain damaged or those mentally ill when they committed their crimes. A study, released in January 2006 by Amnesty International entitled "USA: The execution of mentally ill offenders," found that 100 of the first 1000 executed since 1977 suffered from schizophrenia, bipolar disorders, severe depression, multiple personalities, post traumatic stress disorder (PTSD), brain damage or organic brain syndrome. The 190-page report is available on the internet at <http://web.amnesty.org/library/Index/ENGAM510032006>.

Eight of the 100 cited suffered PTSD as a result of their wartime experiences in Vietnam and another diagnosed with PTSD had served in Grenada and Desert Storm/Desert Shield. An article in the March 1, 2006 issue of the *Journal of the American Medical Association* detailed a study of more than 300,000 Army soldiers and Marines during the first year after return from overseas duty. Thirty-five percent of Iraq war veterans sought mental health services. The rate of serious mental problems in Iraq veterans was much higher than in Afghanistan, Bosnia or Kosovo veterans. Already an increasing number of Iraq vets suffering from PTSD are joining the ranks of the 200,000 homeless vets of all wars.

More Iraq vets also suffered brain damage because of the IEDs used to blow up vehicles, most of which had insufficient protective armor. Brain damage can affect reasoning, behavior, memory, intellect, vision, speech or movement. People with such damage can exhibit uncontrolled violent rages over minor incidents. It has been found that anticonvulsants, antidepressants, or antihypertensive medications have been useful in controlling the rages. Many of those on death row have

had severe brain injuries, often because of childhood abuse. Arthur Shawcross, who is not on death row but is serving a 125 year to life sentence for killing 10 Rochester women, has a cyst pressing on a temporal lobe and scarring in both frontal lobes. He had been hit on the head with a sledgehammer and a discus and had fallen on his head from a 40-foot ladder.

The "evolving standards of decency that mark the progress in a maturing society" was cited in the Supreme Court decision in *Ford v. Wainwright* in 1986 forbidding the execution of those insane at the time of execution. No standard for such insanity was given. Justice Lewis Powell opined that the person must be minimally aware of the punishment they are about to suffer and why they are to suffer it.

This has not always been true. One man saved his dessert to eat after the execution and another told another inmate that he would beat him at hoops the next day. Another believed he would become a giant tortoise and rule over the seven layers of the universe. In the case of Charles Singleton, who was totally out of touch with reality, the Supreme Court refused to stop the state from medicating him in order to bring him to the low level of competency necessary for execution so they could proceed with his execution. People may question the "standard of decency" demonstrated in such a case. Since the Supreme Court let the individual states determine the standards for mental retardation, even if they ruled that the execution of a person who was mentally ill or brain damaged at the time of the crime was unconstitutional, they would be unlikely to set guidelines.

Some obvious ways to determine such disabilities would be to mandate a PET scan or MRI and an evaluation by an independent panel of psychiatrists appointed by a group with no ties to the criminal justice system before a person could be charged with capital murder. People with a previous history of treatment for mental illness should also be excluded. This does not mean that the mentally ill or brain damaged people would not be held responsible, but that they could not be killed by the state no matter how heinous the crime. Many would profit from the treatment too often denied them before the crime.

If all these safeguards would be too expensive for the states, they could opt instead to abolish capital punishment and spend the money on treatment for those who would profit from it before they committed violent acts. The goal of all of us is a safe society.

# DON'T EXECUTE MENTALLY DISTURBED KILLERS

By Michael Ross\*

"The death penalty is an absolute punishment. If it is to be imposed at all, it should be imposed on people whose sense of responsibility and judgment is such that they fully appreciated the seriousness of what they were doing."

These words by David Bruck, a lawyer who has represented many capital defendants, were printed in the International Herald Tribune on June 23, 1987. Many people believe that only the most cunning and culpable of criminals are executed in this country today. Far too often, they are wrong.

Supporters of Capital punishment should be able to agree that, if we are to continue to use the death penalty in this country today, that we should limit its use to the most culpable offenders. Therefore we should explicitly exclude the mentally disadvantaged - mentally ill and mentally retarded - criminals from this group.

As things now stand, mentally disadvantaged defendants often have to rely on a defense referred to as "diminished capacity." This simply means that such defendants may have known right from wrong but did not have full control over their actions, resulting in an inability to refrain from acts that people of average abilities would not commit.

Two basic problems face capital defendants trying to prove "diminished capacity" in court. The first is the skepticism with which most people view such a defense. All people are assumed to be normal and fully responsible for their actions, so it is the defendant's burden to prove otherwise.

**Many people mistakenly** believe that they can just look at defendants and tell if they have a significant mental disorder. Even when a competent psychiatrist has diagnosed a mental illness or mental retardation, juries tend to dismiss the diagnosis if the defendant looks "normal."

There are several reasons for this. First, there is a general lack of confidence in psychiatric testimony. Second, there is a pervasive feeling that psychiatrists testifying for the defense will give whatever diagnosis is desired - and that psychiatrists testifying for the state are somehow more credible and less likely to be "bought." Third, it is generally assumed that a man whose life is on the line will feign a mental disorder and be able to fool even the best trained psychiatrists. And finally, even if the defendant is proven to be mentally disturbed, it is often felt that he is somehow "getting away" with the crime. These feelings present formidable obstacles for any mentally disadvantaged defendant to overcome.

The second basic problem has to do with the nature of the crimes themselves. Often capital crimes are

terrible crimes of a disturbing and heinous nature, and the trials can become extremely emotionally charged, leading many juries to ignore even clear cases of mental disorder.

The U.S. Supreme Court has mandated that mental disorders are mitigating factors, but this has not prevented mentally disadvantaged people from ending up on death row. It is estimated that 10 percent of all current death row inmates are mentally ill and another 10 percent are mentally retarded. That translates to more than 600 mentally disadvantaged defendants currently under sentence of death in this country today. Some have already been executed.

Varnell Weeks was executed in Alabama for murder. Weeks had been diagnosed as being severely mentally ill and suffering from a "longstanding paranoid schizophrenia." Psychiatrists testifying for both the defense and prosecution agreed that he suffered from pervasive and bizarre religious delusions. Weeks believed that he was God, that his execution was part of a millennial religious scheme to destroy mankind, and that he would not die but rather would be transformed into a giant tortoise and reign over the universe. An Alabama judge acknowledged that Weeks believed that he was God in various manifestations, and that he was a paranoid schizophrenic who suffered delusions. The judge's ruling went on to say that Weeks was "insane" according to "the dictionary generic definition of insanity" and what "the average person on the street would regard to be insane." However, the judge ruled that the electrocution could proceed because Weeks' ability to answer a few limited questions about his execution proved that he was legally "competent."

Morris Mason was executed in Virginia for murdering an elderly woman during an alcoholic rage. She was burned to death after Mason raped her, nailed her to a chair by the palms of her hands, and set the house on fire. Mason had a long history of mental illness and, prior to his arrest, had spent time in three state mental hospitals where he was diagnosed as mentally retarded and suffering from paranoid schizophrenia. In the week before the killing, he had twice sought help from his parole officer for his uncontrollable drinking and drug abuse. The day before the crime he had asked to be placed in a halfway house but no openings were available.

Johnny Frank Garrett was executed in Texas for the rape and murder of an elderly nun. He was chronically psychotic and brain-damaged. One psychiatrist who examined him described him as "one of the most psychiatrically impaired inmates" she had ever examined. Another said he had "one of the most virulent histories of abuse and neglect...encountered in over 28 years of practice."

**The late U.S. Supreme Court** Justice Thurgood Marshall once wrote: "At a time in our history when the streets of the nation's cities inspire fear and despair,

rather than pride and hope, it is difficult to maintain objectivity and concern for our fellow citizens. But the measure of a country's greatness is its ability to retain compassion in times of crises."

If the death penalty is to be maintained, it should clearly be limited to the most vicious, premeditated crimes. The acts of mentally disadvantaged criminals clearly do not qualify. This distinction can be recognized by introducing verdicts of "guilty, but mentally ill" and "guilty, but mentally retarded," which would prohibit the death penalty and automatically impose sentences of life without the possibility of parole. This would offer some measure of protection to the mentally disadvantaged while retaining the death penalty for the most culpable criminals. This is clearly the most logical and compassionate thing to do.

[\* Reprinted from a previous issue of *Justicia*. JPC does not believe any execution is justified. Michael Ross was on death row in Connecticut since 1987 and was executed in May 2005.]

## People Convicted of Sex Crimes Are Not All Alike

By Joel Freedman

**Alfred Blanche** was recently released from prison after 18 years of incarceration. Blanche was convicted of raping a 10-year-old Fresh Air Program girl hosted in his household. At that time, Blanche, a Vietnam veteran, managed a small farm in Washington County.

Blanche was convicted mostly on the girl's testimony. All the physical evidence, some of which was not examined at trial, was either inconclusive or exculpatory. The jury was not informed that Blanche passed a polygraph test, or that former hosts of the child were not permitted to testify that the girl often made false accusations. Physicians and nurses who examined the girl shortly after her accusation observed no physical or emotional trauma and reported they were "unsure if the assault was real or imaginative." And after Blanche was convicted, he received an unsigned letter that said if he would fork over some money, the girl would recant.

Usually, parole boards won't parole convicted sex offenders until they are legally required to do so. Six years ago, however, a parole board looked at the above information and granted Blanche parole, contingent on his finding an approved residence. But because Blanche would not participate in sexual offender treatment that required admission of guilt, parole staff dragged their heels for several years before finally releasing him this year.

Blanche's nightmare is not over. He is stigmatized and isolated and has been unable to find a decent job or a permanent place to live. Now a senior citizen with health problems, he continues his uphill fight to clear his

name.

While many elected officials advocate degrading restrictions for parolees who were convicted of sexual offenses, they show little inclination to help people like Blanche. And in formulating policies for the majority of offenders who are truly guilty, we should be more careful to separate truly dangerous predators from those who are remorseful, and who are now motivated to be productive, law-abiding citizens. Only a small minority of released sex offenders require draconian measures such as electronic monitoring or prohibitions against going near places where children may be present.

**Last year I watched** a local TV station's "exposé" of former sex offenders living near Rochester children's day-care centers. The reporter, after knocking on their doors, shoved cameras in their faces to reveal their identities to viewers. The TV station probably succeeded in humiliating a few elderly people leading law-abiding lives. The news story never explained how these people could pose a threat to children in a supervised day-care center they had no access to.

Should certain convicted sex offenders be subject to civil commitment after they have completed their prison sentences? If a civil-commitment law is enacted, I am concerned that people like Blanche could be committed to psychiatric facilities because they refuse to admit guilt. I am also concerned that guilty offenders who are no longer a danger to society may sometimes be unnecessarily detained beyond their maximum prison sentence.

There are many offenders, including some who committed sex crimes, who require prolonged imprisonment, sometimes for their entire lives. Judges are usually not reluctant to impose harsh punishments for such offenders. As for those who will return to society, however, let's keep in mind the words of US Supreme Court Justice Anthony Kennedy: "A decent and free society, founded on respect for the individual, ought not to run a system with a sign at the entrance for inmates saying 'abandon all hope, ye who enter here.'"

## US Court of Appeals Overturns Murder Conviction of Texas Death Row Inmate Anthony Graves

By Joel Freedman

On March 8 Anthony Graves, a Texas death row inmate, wrote to me: "I don't know if you've heard, but the courts have overturned my conviction, and ordered the state to retry me or turn me loose. I'm totally speechless for the past several days. I've never prepared myself for a favorable ruling because I've been so used

to receiving negative ones. But they have finally gotten it right. And the opinion that they've written speaks volumes about the prosecution's conduct. I can't believe it. My attorney said that the opinion is pretty much air tight and there's not way the courts would ever accept an appeal from the state to review it. This is so mind boggling! It's like a dream that I'm afraid to wake up to."

On an August night in 1992, in Somerville, Texas, six people including five children were beaten, stabbed, shot and left to die in a burning house. One of the children was the son of Robert Earl Carter. Four days earlier, Carter learned the child's mother had filed a patrimony suit against him. The police investigation focused on Carter after he attended the victims' funerals with bandages on his ears, face and hand, all concealing burns.

After failing a polygraph test, Carter admitted guilt. Not wanting to implicate his wife – who had a burn on her neck immediately after the fire – and pressed to name an accomplice by police who did not believe Carter committed the crime alone, Carter said Anthony Graves, his wife's cousin, had helped him.

Carter, Graves and Carter's wife were all indicted. Shortly before Graves' trial, police had Carter undergo another polygraph test. Afterwards, Carter told the district attorney that his wife was his accomplice and Graves was not involved. Nevertheless, Carter was warned that if he refused to testify against Graves, his wife would be tried for murder. The withholding of this information by prosecutors is what prompted the US Court of Appeals to overturn Graves' conviction and to conclude that Graves would likely have been acquitted had the jury been given this information.

Although at trial Carter testified that Graves was his accomplice, Carter told many people before and after Graves' trial that Graves was innocent. He said he testified against Graves to protect his wife, and because he was afraid the police would hurt him if he did not cooperate. In his final statement just before he was executed six years ago, Carter said, "Anthony Graves had nothing to do with it. I lied on him in court."

Carter's wife was not put on trial. Graves was convicted and sentenced to death.

It was later shown that wounds the prosecutors claimed were inflicted by a knife like one owned by Graves, could have come from any single-edged knife. Also, investigation by Graves' appellate lawyers cast doubt on the credibility of jailhouse informants and employees who testified they overheard Graves make inculpatory statements to Carter.

Graves' prosecutors offered no plausible motive for Graves' participation in the murders. An alibi witness from Graves did not testify at Graves' trial. She has since explained she received a threat that she would be prosecuted as an accomplice if she testified on Graves' behalf.

**My own review of this case** revealed that Graves

consented to a lie detector test shortly after his arrest. Years later, the Bureson County district attorney denied he was given this polygraph test. Later the DA acknowledged that Graves took the test and failed it. But authorities refused to give the polygraph charts of Graves or Carter to Graves' attorneys. Warren Holmes, a highly respected criminologist and polygraph expert, offered to evaluate these charts after I apprised him of Graves' case. I believe the most plausible explanation for the unwillingness of Texas officials to relinquish the polygraph charts is their concern that the charts could support Graves' claim of actual innocence.

In his book *Executed on a Technicality*, David Dow writes: "The Texas Innocence Network, which I direct, has been working with Graves' lawyers to establish his innocence. The dogged team of students is led by Nicole Casarez, a lawyer and journalism professor." Their efforts probably saved Graves from being executed. I have had several phone conversations with Casarez, who shared with me the trials and tribulations of her endeavors to help Graves and, most recently, her joy with the Court of Appeals decision.

Prior to this court action, in one of his letters Graves asked me to help get his case more national media attention: "I want this case of injustice exposed on a national stage to bring attention to the serious flaws with the death penalty. I feel very strongly... that this is why I've been chosen to experience such injustice."

Beyond the issues raised in Graves' case, David Dow ponders larger questions in *Executed on a Technicality*: "How many people on death row are innocent? How many innocent people have been executed? These questions are impossible to answer. What we can say with certainty is that people are convicted on the basis of fallible testimony. And people are sentenced to death on the basis of baseless predictions."

## **Update: New York v. Martin Tankleff: Justice Denied**

By Joel Freedman

In the May-June 2005 *Justicia*, I expressed my belief in the innocence of Martin Tankleff, who has been imprisoned since 1990, following his conviction for the murder of his adoptive parents. Tankleff, who I believe was convicted on the basis of a false confession, has been seeking a new trial based on newly discovered evidence that the murders were actually committed by two career criminals, Joseph Creedon and Peter Kent, with the assistance of Jerry Steuerman, the business partner of Tankleff's father.

At an evidentiary hearing conducted by Suffolk County Judge Stephen Braslow in December, Creedon's 17-year-old son testified his father told him he choked and beat Seymour Tankleff while Kent stabbed the

latter's wife to death. Creedon's son also testified his father told him he bribed Suffolk County Detective James McCreedy "to keep his name out of it."

Steuerman owed Seymour Tankleff \$350,000. Steuerman told police he was the last person to leave the Tankleff home the night of the murders. A week after the death of Arlene Tankleff, while Seymour Tankleff remained comatose, Steuerman disappeared. Detectives found him two weeks later living under an alias in California. Nevertheless, McCreedy, the lead homicide detective in the case, showed little interest in investigating Steuerman.

Glenn Harris said in an affidavit that he drove Creedon and Kent to the Tankleff home to commit what he thought would be a burglary. When Creedon and Kent returned to the car, however, they had no proceeds of a burglary. They were very tense. Harris later watched Kent burn his clothes. Tankleff's defense investigator Jay Salpeter arranged for Harris to have a polygraph test, which Harris passed. Martin Tankleff also passed a lie detector test in support of his innocence claim.

Tankleff's attorneys have said that Harris had repeatedly threatened because of his affidavit. Harris has not been heard from since November.

Harris's affidavit mentioned Creedon had gloves with him at the time of the murders. There were glove-like prints found in the Tankleff home, but there was no mention of gloves in Tankleff's alleged confession. At a series of evidentiary hearings, other witnesses testified that Creedon and Steuerman told him of their involvement in the murders. William Ram testified Creedon unsuccessfully attempted to recruit him as an accomplice. Creedon reportedly told Ram that he (Creedon) was working for someone (Steuerman) who had a partner in the bagel business who needed to be roughed up. Tankleff's attorneys later charged that an investigator for Suffolk County District Attorney Thomas Spoto offered to help Ram get less prison time in an unrelated case if Ram would claim he was bribed for his testimony on behalf of Tankleff. Ram refused the offer.

**In a 19-page decision** issued on March 17, Judge Braslow opined that Martin Tankleff killed his parents, and that Tankleff's witnesses were "nefarious scoundrels" unworthy of any credibility. Braslow's refusal to overturn Tankleff's conviction was applauded by Assistant DA Leonard Lato. Less than a week after Braslow's decision, Tankleff's lawyers filed a new motion to set aside the conviction after three new witnesses offered to provide testimony on Tankleff's behalf.

James Moore contacted one of Tankleff's attorneys, Bruce Barket, with information that his former co-worker, Peter Kent, twice admitted to Moore his role in the death of Martin Tankleff's parents. Another witness, William Sullivan, used to manage a nightclub where he said he saw Steuerman socializing with Detective McCreedy as far back as 1986. McCreedy has always denied any relationship with Steuerman.

Even without all the post-conviction, newly-discovered evidence, the case against Tankleff was replete with doubt. There was no physical evidence linking him to the murders. If Tankleff was really guilty, why did he take steps to prevent his father from bleeding to death? Wouldn't Tankleff have made sure his father was dead before dialing 911 if he himself had been the actual killer? Although it was clear that Arlene Tankleff had fought with her attacker, Martin Tankleff had no cuts or bruises when he was examined that day.

Tankleff's attorneys will appeal Braslow's March 17 decision, and any future decisions by Braslow that reject exculpatory evidence. Tankleff (a *Justicia* subscriber) wrote me: "Now we must move onward and upward. The fight for justice will be a long and hard battle."

**In *The Innocents***, a book about people who have been wrongly convicted of crime, Edward Radin explains why it is often difficult to correct miscarriages of justice, even when new, credible exonerating evidence surfaces after a conviction. "Once the machinery of legal prosecution has been put into motion, it resembles some giant, unfeeling robot device that rolls endlessly on, overpowering everything and anybody in its way. Unlike electronic computers, the legal machinery has no convenient stop switch or plug that one can pull from a wall to bring it to a halt. It requires real effort and sometimes ingenuity to force it to a standstill and extricate an unfortunate caught in its clutches."

An attorney representing Tankleff said that what has happened to Tankleff "creates the impression that Suffolk County justice is a train wreck." By continuing their efforts to keep Tankleff in prison and to disregard evidence that Creedon Kent and Steuerman are the ones responsible for the deaths of Tankleff's parents, the judicial and prosecutorial powers-that-be in Suffolk County have betrayed the cause of justice. The Tankleff case should be of concern to everyone interested in common decency, justice, and the safeguarding of the most basic rights of citizens.

## ***DRUG WAR FACTOIDS***

\* Three doctors convicted of overprescribing medications were granted new sentencing hearings after a three-judge U.S. Circuit Court of Appeals panel threw out the mandatory guidelines because of the Supreme Court's rulings in the Booker and Fan Fan cases. Doctors Deborah Bordeaux, Richard Alleri and Michael Jackson of the Comprehensive Care and Pain Management Center in Myrtle Beach, SC had been prescribing Oxycontin for severely ill chronic pain patients in large doses but which met contemporary medical standards. U.S. District Judge Weston Houck reduced their respective sentences of 8, 19 and 24 years

to 2, 2 and 2 ½ years.

\* The use in Iraq of opium and heroin from Afghanistan has increased dramatically in the last year. The number of registered addicts in Baghdad has more than doubled and in Kerbala has tripled. Drugs are being used to relieve the trauma of war. The security forces are too busy fighting insurgency to confront drug use.

\* Mark Souder, a House Republican, has called for aerial spraying of Afghan poppy fields. Nearly 90 percent of the world's opium now comes from Afghanistan. The United Nations estimates the crop nets \$2 billion for traffickers and \$600,000 for the peasant growers. By all accounts, both parliamentarians and warlords inside the Afghan government are involved. Massive spraying would drive the farmers into the hands of the Taliban and Al Qaeda, it is feared.

\* The Texas League of Women Voters (LWV), after a year-long study, backed the use of medical marijuana, needle exchanges, and preventive education programs for children and public education for adults. The Arkansas LWV supports medical marijuana, the decriminalization of marijuana, the use of drug courts and good preventive education. They oppose mandatory minimum sentencing and prison sentences for drug offenders.

\* Gov. Arnold Schwarzenegger's proposed budget gives \$18 million less than that spent on drug treatment last year and up to \$63.9 million less than needed to give adequate treatment, support services, and criminal justice supervision to the thousands served under California's Proposition 36 which prohibits jail sanctions and calls for treatment instead of incarceration. So far, 125,000 drug users have been helped...



## REPEAL ROCKEFELLER DRUG LAWS

By the Correctional Association of NY

Enacted in 1973, when Nelson Rockefeller was Governor of New York, the Rockefeller Drug Laws require harsh prison terms for the possession or sale of relatively small amounts of drugs. The penalties apply without regard to the circumstances of the offense or the individual's character or background. Whether the person is a first-time or repeat offender, for instance, is irrelevant.

Despite the fanfare, changes to the laws passed in December 2004 and August 2005 do not amount to real reform. The severe aspects of these laws are still on

the books: Mandatory sentencing provisions remain intact, meaning that judges do not have discretion in deciding whether to send someone to prison or to an appropriate alternative-to-incarceration. Prison terms, though reduced, remain unduly long - for example, under the new system, instead of 15 years to life, the most serious provision of the drug laws carries a determinate (or flat) sentence of between eight to 20 years for offenders. And the main criterion for guilt remains the amount of drugs in a person's possession at arrest and not a person's actual role in the drug transaction, meaning that the major profiteers who rarely carry drugs will continue to escape the laws' sanctions.

### Relevant Points

#### 1. At great expense to the taxpayer, these laws fill our prisons with low-level, non-violent offenders.

\* Notwithstanding recent drug law modifications, more people were sent to state prison for non-violent drug offenses in 2005 than in 2004, **5,835** versus **5,657**.

\* There are nearly **14,250** drug offenders locked up in NYS prisons. It cost the state over **\$1.5 billion** to construct the prisons to house drug offenders. And the operating expense for confining them comes to about **\$460 million** per year.

\* In 2005, nearly **36%** of the people sent to state prison were drug offenders. In 1980, the figure was only **11%**.

\* Over **38%** of these drug offenders, more than **5,450** people, were locked up for drug possession, as opposed to drug selling. It costs nearly **\$180 million per year to keep them in prison**.

\* **Of all drug offenders sent to NYS prisons in 1999**, nearly **80%** were never convicted of a violent felony.

\* Nearly **55%** of the drug offenders in NYS prisons were convicted of the three lowest level felonies - Class C, D, or E - which involve only minute drug amounts. For example, only **½ gram** of cocaine is required for conviction of Class D felony possession, and **1,355** people are locked up for that offense.

#### 2. These laws are marked by racial bias.

\* Studies have shown that the majority of people who use and sell drugs in NYS and the nation are white.

\* African Americans and Latinos comprise over **91%** of the drug offenders in NYS prisons; African Americans, **56.5%**, Latinos, **35%**, whereas white make up only **7.3%**.

#### 3. Alternatives [can] save money and cut crime.

\* A 1997 study by RAND's Drug Policy Research Center concluded that treatment is the most effective tool to fight against drug abuse. The RAND study found that treatment reduces **15** times more serious crime than mandatory minimum sentences.

\* Studies, including several sponsored by the National Institute on Drug Abuse, have shown that drug treatment programs, on the whole, are successful in reducing the levels of drug abuse and crime rates among participants and in increasing their ability to hold a job.

\* The cost of keeping an inmate in NYS prison for one year is about **\$32,000**. In comparison, the cost of most

drug-free outpatient care runs between **\$2,700-\$4,500** per person per year; and the cost of residential drug treatment is **\$17,000-\$21,000** per participant per year.

**4. By wide margins, the public shows support for drug law reform.** Cf. a recent Zogby International poll:

\* **64%** of the public do not consider a legislator who votes for drug law reform "soft on drugs;" more than double those who do (**31%**).

\* **51%** are more likely to vote for a legislator who supports a bill to reduce drug sentences; **5%** are less likely.

\* **74%** chose treatment over jail/prison for those convicted of drug possession, whereas only **19%** chose jail/prison.

\* According to an October 2002 *New York Times* poll: **79%** of New Yorkers favor restoring sentencing discretion to judges in drug cases.



## For Tookie Williams

By Jack Bradigan Spula

(Stanley Tookie Williams III, imprisoned former - and much reformed - gang member who was executed in California last December. A CNN story detailed Williams' last moments: "Death did not come quickly for Stanley Tookie Williams, the co-founder of the violent Crips street gang who was executed by lethal injection early Tuesday for the 1979 robbery murders of four people in Los Angeles. Witnesses and prison officials said Williams appeared to grow impatient as prison staffers searched for several minutes for a vein in his muscular left arm. Authorities began the process to administer the lethal injection at 12:01 a.m. (3:01 a.m. ET 12/13/05) in the execution chamber at San Quentin. His death was announced 34 minutes later... "He did seem frustrated that it didn't go as quickly as he thought it might," said San Quentin State Prison Warden Steven Ornoski. Williams, 51, acknowledged a violent past but maintained

he was innocent of the slayings. He became an anti-gang crusader while on death row. It was the second execution in California this year, and the 12th since the death penalty was reinstated in the 1970s.")

### *Portland, OR.*

Leave it to the western sky  
to steal a scrap from the absolute,  
then make good with a display  
of soaked evergreens and moss.  
No use. For me, these bladed ridgelines  
won't cut cleanly again  
till the warmer months.

Days ago to the south,  
a governor performed offstage,  
and for this a good man,  
not pure, but good enough, finally  
so unexceptional, was strapped  
down and subjected,  
as an unbiased source  
put it, to a "medical procedure."  
I thought of Socrates' "beverage,"  
and how sacrifice  
comes to the table brewed  
so strong it must be  
taken at once, and in full.  
But one man's sentence  
is another's crime.

The cycles of time  
and its shadow, history, turn  
toward collisions, then turn away.  
The apparatus of information  
harvests more and more dead weight  
till the hungry ones drag it  
onto a barren field where  
it rusts more with every sunset.  
What you hear finally  
is a question  
skittering past the wreck.

Imagine how it was  
when the words gave out,  
and the governor's men  
boxed the decent man  
and finally discharged him.  
That's when I started hearing  
metal against metal  
and footsteps growing louder,  
and why I'm newly  
afraid of echoes.

Judicial Process Commission, Inc.  
121 N. Fitzhugh Street  
Rochester, New York 14614  
585-325-7727  
[info@rocjpc.org](mailto:info@rocjpc.org)

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### ◆ ◆ Attend Mentor Training ◆ ◆

**Monday, May 8<sup>th</sup> (tentative schedule)**

**5:00 Dinner**

**5:15-5:45 Customer Views on the Mentoring Process**

**5:45-6:15 Policy and Procedures for Mentors**

**6:15-6:45 Mentors' Roundtable**

**7:00-8:00 Understanding Addictions**

**8:00-9:00 Temporary Assistance**

**Tuesday, May 9<sup>th</sup>**

**5:00-6:00 Dinner and Health Issues, HIV, TB, and Diabetes**

**6:00-7:30 Building a Trusting Relationship, Listening and Giving Feedback  
plus other topics**

**Friends Meeting House, 84 Scio Street. Free soup and sandwiches provided.**

**Attendance is required for both evenings, reservations required by May 3.**

**Call: 325-7727. Email: [info@rocjpc.org](mailto:info@rocjpc.org) Faith Community Adult Mentoring Project**