



**Human Rights**  
for  
**ALL**

**A Booklet About Prisoners' Rights**

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**HUMAN RIGHTS  
FOR  
ALL**

**A Booklet About  
Prisoners' Rights**

**COMPILED BY  
C.E.CYPSER**

*Who will speak if we don't?  
Who will speak so their voice will be heard?  
Who will speak if we don't?*

# HUMAN RIGHTS FOR ALL

## A Booklet About Prisoners' Rights

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# Human Rights for All: A Booklet About Prisoners' Rights

## Prisons and Prisoners

There are approximately two million people incarcerated in the prisons and jails of our country. Just visualize these people for a moment. It is hard to think about two million people all at once. Most of them are men. Some are women or teen age children. These people are human beings. They have human rights. The majority of these human beings in our prisons are citizens of the United States and are protected under *The Bill of Rights of The Constitution of the United States*. How do we justify denial of some of these rights to this body of prisoners, while we allow the implementation of other of these rights as justly due to prisoners?

Our courts and culture usually agree that those who are citizens in a country or a jurisdiction should have voting rights in that country or jurisdiction, but we logically deny this right to children. Perhaps we are considering prisoners in the same category as those who do not have the mental capacity or the judgment that would enable them to exercise the right to vote. We would like to believe that persons can change their behavior, and that those who have offended society can be responsible for their actions, can think about moral and political issues, and can train themselves to be thinking citizens. We also would like to believe that there is a possibility of forgiveness for past irresponsible actions. All offenders are members of our created human order, and assisted by their input, we should plan for their release from prison and a positive relationship with society. We should seriously consider their human rights to decent wages, voting, education, health care, and their right to life.

Many laws are put in place because of our desire to have an orderly and safe society. We declare rights and privileges, but these rights end when we are guilty of destroying another's rights. One person's right to smoke ends where the non-smoker's nose begins. Sometimes it is necessary to curtail rights when there is harm to others. Laws regulating cars and guns are necessary to protect the greater society. However, some laws whose presumed purpose is to make society safer may inadvertently cause harm. Laws denying voting rights to a subset of people may harm the greater

society, as such laws may frustrate that subset into terrorist tactics, when their grievances go unheard.

We have prisons because there are people who are a danger to themselves or others. We restrain such people by placing them under supervision. It has been assumed that putting a person in prison is a good way to keep that person from getting “out of control.” Perhaps these assumptions are incorrect, and the reality may be that prisons lead to greater disruptions of personality in many instances. We have learned that punishing a child by locking him in a closet can do psychological damage to that child. Why should locking up an adult have positive effects? Our present mode of punishment for those who behave in an unsocial manner, may do more harm than good. Wise parents do not subject children to arbitrary and capricious punishment. Psychologists advise us to consult with children as to what their punishment should be. Family group counseling invites participation and discussion between parents and children or other related individuals. Such supervised conversation allows the miscreant a comment or a vote in the future possibilities of his life. It opens up the thought of transformative actions in his life, and also what he might do, if anything, to heal the past. Likewise, those accused of serious wrongdoing should have a say in how they or others are treated in confinement or in regards to restitution.

The state has primary concern for the rights of and the restitution due to the victim of a crime. (See Addendum I, New Jersey’s proposal for victims’ rights.) The state should also have concern for the offender. The state is to give just and considered recommendations for the offender, as a wise parent would for a child. It has the responsibility to rehabilitate and restore to the community, as a wise parent would. The offender must acknowledge his misdeeds, his rights and his responsibilities. Those who recognize both their rights and their responsibilities towards others, and respect the rights of others, are less likely to harm others. Governments may seriously violate the human rights of the offender in their haste to exercise their responsibility to protect the public. Is it possible to run our justice systems and our prison complexes so that they respect the human rights of those who have offended society? Only when we give those governed a voice in their government, will we have a just society. Pope John Paul II, a man experienced in presiding over a large body of people, declared in 1997 that “democracy is only possible on the basis of a correct conception of the human person, which involves the recognition of the right of each person to take an active part in public life.”

Who is looking out for the human rights of those who have offended?

Some rights are respected, because, as human beings ourselves, we all rise from certain cultural and ethical norms. We see something wrong with murdering a person in cold blood. We are offended when someone spits on us. Many rights that some of us assume as common to all humanity, are treated rather haphazardly when people are confined behind bars. Who is making the decisions about which rights are being respected and what responsibilities are to be encouraged? What sub-culture within the greater world culture is making the judgments? Are we, the ordinary people of the world, making the judgments? Are the courts and the legal systems, which often are highly political, respecting all people's rights? Are the judgments being left up to individuals in the departments of correction to use excessive security measures against those who are stereotyped as "violent?" When we call our children offensive names, they often take on that undesirable quality. Grown-ups react likewise. A break-in at a house where there is no one at home, and nothing is taken, has been legally defined as a "violent" crime. Those possessing guns when they commit a minor crime such as shoplifting are considered legally "violent." However, we do not call the many gun owners across the United States "violent" when they take their gun in hand. To use the term "violent" to categorize and stigmatize is psychologically unacceptable, as we are all fallible humans. We are all violent at times, and we are all pleasant and sociable at times. We all have violent tendencies, but with help we can make proper choices and take responsibility for our actions. We can train ourselves to choose the less harmful alternative, when confronted with a situation that has the potential for disaster.

People and institutions are capable of change. However, it is difficult for one person to change another person. Each person must want to change himself or herself. It is likewise difficult for a person to change an institution. The people in that institution must want to change what it is, in that institution that hampers the flow of good to the greater society. They must listen to one another to see what attitudes and actions are causing friction. With knowledge and insight, proper and inspired legislation could help to change the unhealthy thrust to punishment in our prison systems.

There are many questions about how our prisons are being run. Often it is the security arm of the departments of correction that makes the decisions as to what human rights and responsibilities of the human beings under their control, are to be honored. Being a prisoner in one of the prisons in the United States is not a pleasant routine, and many folk justify this unpleasantness as proper punishment for a wrong-doer. Being an officer in a prison in the United States who is to keep such disrespected individuals

secure is a very tough job, which ranges from boredom to life-threatening. There is much fear, anger, and frustration that can take place in the human soul in the prison situation, both for those kept and for their keepers. Correction officials tend to disallow human rights or responsibilities that would have a negative affect on their sense of security.

When considering the cost of prisons, we find there is much unnecessary expense involved in building and operation. We taxpayers are paying for a massive and fairly ineffective system, when our tax monies could be going instead for building up communities and individuals, in order to ensure that our children do not become prison fodder. It is a mistake to put our funds into prison confinement rather than education. Education is a healing tool for a better society. It costs less to educate, than to incarcerate. Job training and drug rehabilitation are better options for people than jailing.

## **Laws and Documents**

Our prisons are run according to laws. Rules and regulations are made by various people in various situations for various purposes. There are laws or regulations put in place by many groups, such as churches, corporations, political bodies, and departments of correction. Bodies of law vary in their content and their purpose. Some laws are made by authoritarian bodies to keep their group pure and to exclude others. Some laws are made to control a subset of the population, such as slaves. Sometimes the laws are detrimental to the population affected by them. What are our laws doing to special groups in our population? Some of our laws may be denying citizen and non-citizen prisoners their human rights. Laws, when put in place by self-interested parties or politicians seeking to retain their office, can influence those oppressed by such laws, into terrorist acts. Law, when it is done well, can restore and rehabilitate, and is a builder of community.

Diverse groups have set down their beliefs as to how people should treat each other. The Parliament of the World's Religions suggests an ethical direction for the family of humankind. "We consider humankind our family. We must strive to be kind and generous. We must not live for ourselves alone, but should also serve others, never forgetting the children, the aged, the poor, the suffering, the disabled, the refugees, and the lonely. No person should ever be considered or treated as a second-class citizen, or be exploited in any way whatsoever."<sup>1</sup> This *Declaration Toward A Global Ethic* does not mention the prisoner as such, but surely, the prisoner is included in the phrase that insists no one is to be treated as second-class. Surely, the prisoner is included among the lonely and the suffering. We are being called to see the prisoner as a fellow humanbeing, worthy of

our concern, rather than as someone to be condemned and tortured, because he has harmed himself or others. Our mindset must become one of restoration rather than of restitution and punishment.

The Catholic Bishops of New York State have compiled a pastoral statement on criminal justice entitled *Restoring All to the Fullness of Life*.<sup>2</sup> This document urges a theology of restoration of the individual as opposed to a theology of retribution. This restorative belief is based on the concept of the inherent dignity of every human being and the sacredness of all human life. Another Christian viewpoint has been expressed in a pamphlet by the New York State Community of Churches called *Doing Justice* by Virginia Mackey which emphasizes the spirit of redemptive community.<sup>3</sup> The Prison Fellowship organized by Charles Colson, speaks for the philosophy of restorative justice in *Beyond Crime and Punishment*. Prison Fellowship believes that “victims, offenders, and communities—not just the government—should be actively involved in the criminal justice process at the earliest point and to the maximum extent possible.”<sup>4</sup>

*The Universal Declaration of Human Rights* was formulated by a group of people associated with the United Nations, one of whom was the American, Eleanor Roosevelt. This document proposes a worldwide set of ethical values, which was agreed to by the majority of member nations. Abstaining (at the signatory date 12/10/48) were Byelorussia, Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukraine, Soviet Union, and Yugoslavia. The document rapidly became a guide for worldwide law. The *United Nations Proclamation of Teheran* provided that “*The Universal Declaration of Human Rights* states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.”<sup>5</sup> Following the adoption of *The Declaration*, the United Nations Commission on Human Rights drafted other covenants enlarging *The Declaration* into legally binding treaty obligations which supply greater detail as to the rights protected. The United Nations has a long supplementary list of treaties and conventions which implement the rights proclaimed in *The Declaration*. These include the punishment of the crime of genocide (1948), the status of refugees (1951), slavery (1956), forced labor (1957), racial discrimination (1966), discrimination against women (1979), degrading punishment (1984), and many others. Some of these documents have not been signed by the United States; some the United States has signed but the Senate has not ratified; some have been *entered into force* (being both signed and ratified) such as *The Political Rights of Women* (1954) and *The Convention on the Abolition of Slavery, the Slave Trade, and Institutions and*

*Practices Similar to Slavery* (1957). State and federal courts in the United States frequently cite *The Universal Declaration*.<sup>6</sup>

The document on racism, which has the formal name of *International Convention on The Elimination of All Forms of Racial Discrimination*, was *entered into force* on January 4, 1969, and commits the United States to the elimination of the evil of racism. Recent events point to some racism present in our present electoral processes. Another related document, *The International Convention on Civil and Political Rights* emphasizes in particular the right for all to participate in elections (both to vote and to stand for election), on the basis of universal and equal suffrage, to take part in the government as well as in the conduct of public affairs at any level, and to have equal access to public service. *Article 25* of this *ICCPR* limits those expansive rights slightly.<sup>7</sup> Many rights in our criminal justice systems and our various departments of corrections follow in the positive directions given in these human rights documents. However, courts have varying perceptions of other rights, such as voting, that should be noted and challenged.

The third paragraph of the *Preamble* of *The Universal Declaration of Human Rights* agreed upon by the United Nations General Assembly in 1948 in order to encourage a peaceful world order states, “Whereas it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”<sup>8</sup> If people are oppressed, they are more likely to strike out with acts of terrorism and violence. Those who desire order and justice for our society and our world, must show kindness and respect to ALL people. The preamble refers to ALL persons; this document is called *The Universal Declaration of Human Rights*. Therefore we can conclude that the *Articles* in this *Universal Declaration of Human Rights* apply to those human beings who are held in prisons.

Are our society and our criminal justice systems violating the innate rights of human beings who have broken the law? Supposedly, those in the prisons of the United States have had their crimes duly processed, but we have seen in foreign countries such as the former Soviet Union, how innocent people were imprisoned and enslaved. In our country those found guilty of an offense likewise may or may not be guilty of the crimes for which they are convicted. It has been documented that even in matters as serious as the death penalty, nine out of twenty of those on death row in the State of Illinois had their convictions overturned.<sup>9</sup> This is a horrendous miscarriage of justice when a person is innocent. Yet even the truly guilty should have their rights respected.

“When the laws hurt and harm, rather than help and heal, it is time to

change the laws.”<sup>10</sup> Do laws such as the Rockefeller Laws and confinement in prisons with degrading Special Housing Units help to heal the damage done to our society by drugs, guns, and offenders? People in prison are human beings and deserve the rights that go with their being human. In order to make clearer judgments on rights of prisoners and violations of those rights, we will conduct an article by article perusal of the *30 Articles of The Universal Declaration of Human Rights* so that we can think more concisely about human rights and responsibilities regarding prisoners and the prison system in the United States.

### **The Declaration of Human Rights Applied to Prisoners**

*The Universal Declaration of Human Rights, Article 1 - All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.* This *Article* proclaims a spirit of brotherhood and equality. Some prosecutors, in their hurry to get a conviction, are not treating the accused as an equal. The accused is stripped of his dignity and self-respect. There is no recognition of the brotherhood of all humanity.

The *Constitution of the United States* includes a *Bill of Rights* setting forth additional rights and responsibilities for its citizens beyond the intentions in the original *Constitution*. These amendments back up *Human Rights Article 1* by establishing freedom of religion, speech, press, assembly, and petition. They support a well directed militia, and the right of people to be secure in their persons, houses, papers, and against unreasonable searches. They guarantee a speedy and public trial by jury, the right to know the nature of an accusation, the confrontation of witnesses, and the right to counsel. They prohibit cruel and unusual punishment. One would think that these rights would encourage the spirit of brotherhood, build individual dignity and worth, and be applicable to all citizens, including those in prison.

As prisoners are human beings, other human beings are obliged to respect their human rights and to assist them in positive directions as participants of substantially the same genetic coding. Prisoners are to be encouraged to take responsible actions that aid in their fulfillment and the building up of society.

*Article 2 - Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the*

*country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.* We find many of the forbidden distinctions mentioned in *Article 2* being exercised in our prisons and in our justice system. Discriminations rampant in the system are those of race, culture, religion, and language. Three instances are given below:

(1) Racial disparity is found in all steps of the system, in arrest, arraignment, pretrial release, adjudication and sentencing, probation and community supervision, incarceration and parole decisions. Some recent instances of the disparities are easily seen from the following: A report released November 27, 2000 found that 80 percent of automobile searches on the New Jersey Turnpike were of vehicles driven by Black or Hispanic drivers. In 70 percent of the stops, no contraband was found (The U.S. Supreme Court on November 28 struck down random police roadblocks used to catch drug traffickers.)

(2) In Illinois, over the last year, 393 Cook County youths arrested for serious crimes were automatically transferred from juvenile to adult court. Only three of the youths were white. Two-thirds were charged with non-violent drug offenses; 61 percent had no juvenile record.

(3) Laws passed at all levels of government influence who gets criminalized. An example is the disparate penalties for crack and powder cocaine. One solution would consist of requiring impact analysis which would identify probable disproportionate racial impacts and the fiscal costs of any law passed. This should slow the rush to harsher and harsher punishments.”<sup>11</sup>

The United States agreed to the United Nations’ *Convention on Racial Discrimination*, but it is often guilty of shutting its eyes to violations. “The racially disproportionate nature of the war on drugs is not just devastating to Black Americans. It contradicts faith in the principles of justice and equal protection of the laws that should be the bedrock of any constitutional democracy; it exposes and deepens the racial fault lines that continue to weaken the country and belies its promise as a land of equal opportunity; and it undermines faith among all races in the fairness and efficacy of the criminal justice system.”<sup>12</sup>

*Article 3 - Everyone has the right to life, liberty and security of person.* How is the prisoner’s right to life upheld? In California’s Corcoran Prison between 1988 and 1994 seven inmates were shot dead and others wounded at the whim of officers. Clearly, the inmates’ right to life and security were violated.<sup>13</sup> Those states that exercise the death penalty clearly violate the right to life of those they have condemned to “death row.” From January 18, 1995 to July 15, 2000, those in control in the State of Texas using the guidance of Texas laws, executed 135 men and 2 women. Some of those executed were very probably innocent; some were mentally ill; some were underage when the crime was

committed; and some whose crime was the result of drug use, had transformed their life style. Often quoted for justification of the death penalty is the biblical verse (Genesis 9:6), "He who sheds man's blood, shall have his blood shed by man." Who is responsible for this state-sponsored murder? Those who glibly quote this verse do not see that persons who carry out such a sentence should logically also receive the death penalty, *ad infinitum*, until all those who do state killings have killed each other off. Further along in the Bible (John 8:8 ), certain qualifications are placed on all those who were anxious to implement the death sentence by stoning. They were to be "without sin." To stop those who were about to self-righteously murder a woman taken in adultery, Jesus announced, "Let he who is without sin among you, cast the first stone." To enforce the death penalty in Texas and still follow this admonition, it would be necessary to find a politician or hatchet-man without sin.

On the question of liberty, *Article 3* does not ensure liberty when an offender's term has been served, and he is no longer considered a threat to society. Legislation in Michigan almost ensures recidivism. An offender returning home needs to pay a parole oversight fee of from \$50 to \$150 per month. Then there is legislation that forbids ex-offenders to take jobs such as those in health care, child care, or care of the aged. Paying for one's parole officer when one is ineligible for many jobs is a road back to recidivism. The Bureau of Justice statistics nationwide show that returned parolees often are drug abusers, have not completed highschool, are unemployed, and often homeless. Others are mentally ill, infected with the AIDS virus, or carriers of tuberculosis.<sup>14</sup> What programs could be put in place during their prison time, to assist persons with such drawbacks?

*Article 3* also speaks of the right to security of person. Those placed in our prisons are guaranteed very little of such security. They run the daily risk of being abused or raped by fellow inmates or even by guarding officers. Those under the sentence of death, can expect to undergo that sentence. Recently, there has been the window of DNA testing that has freed 10 death row inmates and some 80 total convicts across the country. "26% of all rape/homicide suspects are cleared through DNA testing."<sup>15</sup> It is sad that our courts are so conviction-directed that those charged with rape can only prove their innocence by chemical means.

*Article 4 - No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.* The prisons and laws of the United States allow for and encourage both slavery and servitude in our prisons. Chain gangs, once outlawed, have come back into acceptance in

some states. Pay far below the minimum wage allowed, is given for prison labor, and freedom is unreasonably restricted in Special Housing Units (or SHUs). Such solitary confinement in SHUs with their twenty three hour imprisonment in small cages prompts thoughts of the Tiger Cages of MyLai in the Vietnam War. A prisoner writes from Texas, “We,[who are] enslaved prisoners, their families and supporters, demand equal protection of international law as set forth in *The Universal Declaration of Human Rights*. We, slaves in a nation where no slavery should exist, seek only that which we have been due – the end of all slavery and fair compensation for our diligent labor.”<sup>16</sup> When one segment of society makes the laws that control another non-voting segment of society, that is a type of slavery!

*Article 5 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* Torture and degrading punishments have not been shown to prevent further violence. Enlightened restoration of both victims and offenders increases order and public safety. Prisoners in United States’ prisons can be unnecessarily strip-searched, have body orifices probed, or be assaulted by multiple guards while their hands are chained behind their backs. Then there are the lesser insults of verbal put-downs, cancelled visits, denied health care, and deprivation of education and job training. The mission of any Department of Correctional Services is not to be seen as the incarceration of inmates; the Department is being trusted with the incarceration of human beings. Their mission is not simply warehousing, but should entail a certain dedication to aid in the transformation of offenders to becoming fulfilled individuals. If only DOCS could see their mission to heal people rather than to keep them secured! To live together profitably as human beings, we need more than law and order and punishment. We need respect and empathy. We need to extend our vision to include the quality of forgiveness.

Cruel and unusual punishment is shown in corrections’ latest fascination with control units or supermax confinement. Inmates are locked down for 23 hours a day and are denied congregate dining, group exercise, work opportunities, and corporate religious services. Access to programs, job training, social services and visits is limited.<sup>17</sup> Along with this heavily restricted celling, the use of stun-guns by members of our justice systems is also on the increase. “Strapped around the inmate’s waist, the stun gun delivers a shock that can cause involuntary defecation and urination. Electroshock devices are dangerous, because electrical impulses travel through the nervous system, and go directly to the heart and brain.”<sup>18</sup> These devices go against the standards of harm reduction and least-restrictive

environments that have been proposed by professionals in mental health institutions. Both stun-guns and Special Housing Units (SHUs) are far from the principle of using the least harmful treatment of human beings. Unfortunately, special housing facilities have been over built, so there is pressure to fill the cells, and thus a trend to harsher penalties for disciplinary infractions.

There are 6000 New York State prisoners in some form of 23 hour confinement, 1900 of them for more than 1 year, 200 for more than 5 years. There is no time limit on 23 hour confinement in New York State!<sup>19</sup> There are 10,000 persons with mental illness in the New York State prisons. Those inmates who degenerate or are problems in the SHUs may be placed in observation cells where they are stripped naked, and put under suicide watch. Outside experts in psychiatric medicine should be brought in to monitor the mistreatment that takes place in these special housing units.<sup>20</sup>

*Article 6 - Everyone has the right to recognition everywhere as a person before the law.* Pope Leo XIII in *Rerum Novarum (On The Condition of The Workingman)* believes that the state cannot take away rights that humans have had since before the state existed. If the state cannot take away one's human rights, then one individual may not take away another's rights either, including human dignity and the respect such dignity commands. Even though one is a condemned offender behind bars, one should be given the rights of other humans. People behind bars are still people. We often treat caged animals with more sympathy. *The Declaration* calls for human rights for ALL.

*Article 7 - All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.* This Article 7 again utilizes the word ALL. We know that money makes for inequalities. A rich White man can be convicted of drug or alcohol violations in his youth and have no problem running 15 years later for political office. A poor Black man can be put into prison for 15 years to life for a similar action. The Black man may never get the opportunity to vote, let alone run for public office. Laws that encourage this sort of discrimination, such as the Rockefeller Laws, should be repealed, and the repeal should be retroactive. Our legal system does not give equal protection in plea bargaining and in choice of lawyers. Stiff penalties are given out more often to Black men than to White men, who have a similar offense. "... the death penalty is imposed not upon those who commit the worst crimes, but upon those ... who have the misfortune to be assigned the worst lawyers."<sup>21</sup> When plea bargaining is used, and one offender accuses

another in order to get a lesser sentence, how can we be sure that the truth is being told? “When this plea bargaining takes place in a capital offense with the end result being that one life is taken and the other is spared, true justice is not being served.”<sup>22</sup>

An example of the unequal justice doled out to Black people is seen in racial profiling. This is not limited to driving on the highway. Police often concentrate their drug details in the poorer Black and Hispanic neighborhoods, while ignoring the drug deals that take place in White suburban homes and in high rise office buildings. This, in spite of the fact that there are more White drug users and dealers, than people of color. This police selectivity fills our prisons with Blacks and Hispanics.

*Article 8 - Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.* At the New York State Correctional Facility in Attica back in 1971 prisoners asked for remedies when they felt their rights were being violated. Their requests were stated in *Twenty-eight Points* that former State Correction Commissioner Russell G. Oswald said he would accept. To date, inmates have not received effective remedies for most of the items on the list. The *Twenty-eight Points* are given in **Addendum VI** of this booklet. They contains recommendations for adequate health care, the ending of censorship of literature, and the establishment of an inmate grievance commission. Instead of remedies, the unarmed inmates were attacked by the guns of the State Police and the National Guard, even though they had treated their hostages with concern.

*Article 9 - No one shall be subjected to arbitrary arrest, detention or exile.* There have been several instances where those with mental disabilities were arrested without proper investigation. A Californian, Kerry Sanders, spent several years of “exile” in New York State’s Greenhaven Prison because he was thought to be the escapee, Robert Sanders, to whom he bore no resemblance and was no relation. The New York State Department of Correctional Services apologized to Kerry for the inconvenience. He suffered many indignities including rape.

*Article 10 - Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.* There may be many fair trials in many of the Court Houses in our country, but there are also inconsistencies that have gradually worked their way into our culture in many of our pre-trial and court proceedings. Jury selection has degenerated

from having a jury of your peers, to having a jury selected by lawyers who choose to exclude anyone who may have a positive opinion about either the offender or the victim. The victim is not given a chance to relate to the offender, but may be forced to give testimony which may be misinterpreted or misunderstood. The jury is charged with honoring the judge's decision, and is seldom instructed in the privileges of jury nullification which gives jurors the right to protest laws they feel are non-productive or that give severe sentences. Clay Conrad questions, "Should juries nullify laws they consider unjust or excessively punitive?" His answer is, "Yes: Juries can and should correct the overly broad use of criminal sanctions. A just society has to have just rules. Juries, by refusing to enforce unjust rules, can help improve the law and the society that it governs. ... If a particular law frequently is nullified, the legislature should bring the law into conformity with the judgment of the community."<sup>23</sup> If juries were informed about jury nullification, and jurors were made up of the peers of the defendant, the New York State Rockefeller Drug Laws might have been discarded twenty years ago.

Occasionally, in our court system, when there is a likelihood of difficulty in getting a conviction, prosecutors convince the accused to plead to a lesser charge. The accused will agree out of fear of huge punishments. Thus the accused may unwittingly convict themselves. At other times prosecutors use another offender to incriminate the accused, giving the incriminator a lower sentence as a reward. It is in the informant's self-interest to lie. Prosecutors are committing bribery when they use witnesses who have been paid money or given reduced prison sentences in return for testifying in criminal trials. A Denver Appeals Court has ruled that it is illegal for paid informants to testify during a trial. More than 86% of 300 federal criminal cases in Texas between 1995 and 1997 involved the use of informants and co-conspirators who received deals from prosecutors in return for testimony. Federal bribery laws prohibit the offering or promising anything of value to a witness in exchange for testimony. Those so prosecuted are undergoing a violation of their human rights. These violations work their way insidiously into our culture and must be exposed for what they are.

Victims who have suffered at the hands of offenders frequently are ignored by our legal system. Law courts are often tilted in the direction of handing out time in prison as punishment for harm done and requiring compensation paid to the state rather than to the victim. Such punitive justice asks, "What law has been broken; who broke the law; and what should be the punishment?" Does excessive time in prison for the act of drug possession, serve as compensation for a possible victim (who may be the addict himself or his family)? A more innovative form of justice, practiced by

indigenous tribes, and often referred to as Restorative Justice, asks, “What harm has been done, to whom; what can be done to repair the harm, by whom; and how can we prevent the harm from re-occurring?” There are alternative forms of coming to just community decisions being developed, such as Family Conferencing, Drug Courts, Circle Sentencing, and Mediation. These means of justice encourage compensation for the victim, and accountability by the offender, with emphasis on the offender’s rehabilitation and return to the community as a useful citizen. Many improvements could be made in our jury and justice systems that would help in restoration of both the victim and the offender, thus making more peaceful communities possible.

*Article 11 - (1) Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.* Public trials have frequently turned into private prosecutions with the District Attorney’s office deciding what portion of drug law is applicable. Before any trial, and behind closed doors, a prosecutor can confront the drug law offender, and through bargaining or condemning, be the decision maker on that particular case.

Other misguided regulations have come into being in New York State and other states as a result of federal sentencing guidelines. A person sentenced to a minimum/maximum prison term expecting to be released at the minimum because of a good inmate record while in prison, is now held further into the maximum range because of federal “Truth in Sentencing” laws. His expectations of what his sentence would be, at the time of his sentencing, has been changed drastically. The majority of offenders are suddenly expected to serve the longest part of their sentence. When the high end of the sentence is life, many addicted drug law offenders are now confronted with the possibility of spending life in prison because they have a drug related offense. There is a noticeable lack of impartiality and empathy in the parole board hearings for the release of such offenders. Supposedly, those parole officers sitting in judgment are to make decisions about the offender’s release, based on what the offender has accomplished in his confinement; they are not to solely look back to the reason for his original conviction. They are not to suddenly make him serve the high end of his sentence. How-

ever, the members of New York State parole boards are political appointees of the governor, and receive a good salary for their services. Naturally, they comply with the governor's wishes to deny parole for the offenders who are stereotyped as those deserving life sentences and legally labeled as *violent*. The governor has his reasons for going along with the federal regulations. "The Federal Truth in Sentencing guidelines require inmates to do 85% of their sentence. States are forced to adopt this guideline in order to receive prison construction aid. These new sentencing laws and guidelines are the reason why more prisons are being built."<sup>24</sup> Thus, obedience to these federal laws persuades the states to comply by giving them money for new prison construction. With this money, New York State builds more prisons, and fills these prisons with the inmates that it is detaining for longer periods. This is economically unsound, when such inmates could be given positive programs and released to their communities as useful citizens. Some states resisted this temptation and did not accept the federal government's money, realizing that it was better financially and socially to rehabilitate offenders than to incarcerate them.

These federal sentencing laws came into effect a long time after the original sentence, and reverse the assumptions that were in place at the time of the original sentence. This type of additional sentence is applying a heavier penalty than was assumed at the offender's original sentencing, so contradicts *Article 11*. The state is being influenced by the federal government at inmate expense. The unfeeling attitude on the part of the parole board promoted by the promise of federal funds, is also against *Article 1* which asks for brotherhood and respect of those incarcerated. Such denial of their hope-filled expectations of release leads to despondency on the part of those incarcerated. New York State Department of Corrections personnel encountered much inmate unrest from the incarcerated who had hoped to be paroled, and sent many inmates to Special Housing Units to quell possible riots, further violating their human rights. Rebellions and suspicions of possible rebellion occur when laws are tyrannical and human hopes and expectations are disregarded. The United States might benefit from the recent experience of South Africa in their treatment of those incarcerated, where a set of "Truth" and Reconciliation techniques quite different from the techniques imbedded in the United States "Truth" in Sentencing were employed in justice proceedings.

*Article 12 - No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against*

*such interference or attacks.* Besides daily assaults on their honour and reputation reminding them of the thoughtless actions in their past, prisoners suffer daily putdowns as the hands of guarding officers. There are instances when inmates have had their correspondence curtailed. They are allowed to have only a certain number of people on their phone list. Outside family members can have difficulty making contact with their loved ones in prison. Those who volunteer as program assistants in the New York State prisons cannot write to inmates that they see in their programs. The language used by guarding officers can radically lower the self-esteem of an inmate. Further destroying the reputation of the incarcerated, the Department of Correctional Services in New York State publishes an inmate list publicized on internet describing the crime and confinement information of all state inmates. It neglects to describe what any inmate has done to improve himself and his situation while in confinement. It seems that an inmate is frozen in time with the crime he committed. This freezing by DOCS officials appears as a denial that people can change for the better. There is the attitude that people are forever locked into their worst moment. We would find it highly objectionable and against human rights, if we were frozen at the moment we did a wrong deed, and remembered ever afterwards for only that instant of imperfection.

*Article 13 - (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.* It may be difficult to fully implement all rights for all persons. If someone is a danger to himself or others, they may need constant monitoring and guidance. Sometimes it is necessary to curtail rights, but as we seek to use the least harmful alternatives, we try not to curtail unless there is the possibility of harm to self or others. Persons should have the right to freedom of movement, as long as their movements do not harm other persons. For the prisoner, there should be a certain amount of freedom of movement in the confines of his correctional situation, so that he can learn to exercise proper judgment and responsibility. Some offenders may have mental or physical problems that need constant observation and overseeing. For those in confinement, there should be programs that challenge and activities that make an individual feel useful. Inmates can be given choices to teach other inmates, to have educational programs, or to learn new trades. The rights described in this *Article 13* may have to be reasonably curtailed or reserved for the future. The use of electronic monitoring could increase secure mobility. In the period of correction when confinement is the mode of operation, people in the prison situation could be informed and educated by modern technology, as also

should be possible for people in the disadvantaged countries of the world. “People living in Central Asia, Latin America, or Africa need not be cut off from the ideas that are changing the rest of the world... The capacity of the Internet—yet to be fully imagined—to eliminate the knowledge gap between rich and poor countries may be the single most important determinant of what our world will look like in 50 years.”<sup>25</sup> Education possibilities which can be imagined for the people in third world countries are likewise possible for inmates in U.S. prisons. There should be choices available with mentors to assist, so that curtailed individuals can lead fulfilled lives.

*Article 14 - (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.* If oppressed citizens from other countries seek political asylum in our country, they should not be subjected to further persecution in our prison system or internment camps. Those prisoners who are imprisoned in the United States under immigration law suffer a further unjust curtailing of their rights when secret evidence is used against them. *The Sixth Amendment to the Constitution* prohibits the use of secret evidence against both citizens and non-citizens. *The Classified Information Procedures Act (CIPA)* forbids the use of information that cannot be used by both parties in a dispute. *The Immigration and Naturalization Act (INA)* permits the use of secret evidence without disclosing it to the accused. Americans complain about this method when used against our citizens who are accused in foreign countries. Amnesty International considers several of the victims of this type of trial in the United States to be political prisoners as they are being denied their human rights. Supreme Court Justice Jackson in *Knauff v. Shaughnessy* writes, “The plea that evidence of guilt must be secret is abhorrent to free men, because it provides a cloak for the malevolent, the misinformed, the meddling, and the corrupt to play the role of informer undetected and uncorrected.”<sup>26</sup>

If there is political persecution of American indigenous people or racial profiling, those so persecuted should not be imprisoned for opposing unjust governmental structures or laws. They also can be considered as political prisoners. In South Africa, political persecution with race as its basis, led to the imprisonment of many people. The solution in the case of South Africa was “non-violent opposition, persuasion rather than coercion, respect of the opponent rather than the force of weaponry.”<sup>27</sup>

*Article 15 - (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his*

*nationality*. Former political prisoners from foreign countries may be endangered if forced to return to their home country. Such persons should be able to refuse extradition from a nation where they have fled for protection, and to be enabled to become citizens of a state that will protect their rights. Some practices of our immigrant detention centers do not reflect the positive message of *Article 15*.

*Article 16 - (1) Men and women of full age, without any limitations due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.* Marriages undergo much stress when one or both of the spouses is incarcerated. Prisoners are subjected to sexual abuse by other prisoners, and sometimes by guarding officers. While the performance of a marriage is possible in the prison context, being incarcerated is a drawback to a successful venture. Prisoners are often placed in far away states where family visits are difficult because of travel time and expense. 1.5 million U.S. children have a parent in prison. Many children of prisoners are put in foster care, and do not get to develop good relationships with incarcerated parents. Parenting courses and family visits should be encouraged, so that inmates can develop responsible family ties. The experienced prisoner Nelson Mandela said, "Communication with one's family is a human right; it should not be restricted by the artificial gradations of a prison system."

When mothers get put in prison, their children often face a crisis situation. Of the 3500 women in the New York State prison system, 77% are mothers. Some of their children live with relatives; others are in foster care. One of the duties of law is to protect the best interests of these children. There should be a thorough assessment of needs of such bereaved children, supervision of child placement, guardian monitoring, planned visitation with the incarcerated parent, intensive juvenile supervision when needed, and reporting from schools to concerned agencies. Parenting programs should be available for those inmates in the transition from prison to home.

The Rockefeller Drug Laws of New York State dole out such long sentences that they affect another law pertaining to foster care of children. Children are put into permanent foster care if they have no one who is able to care for them for a long period of time. Children of a woman prisoner who has a short sentence are put into temporary foster care, and she can usually get her children back when she is released. Those children placed in perma-

ment foster care due to the overlong sentence of their parent, are legally required to stay with their foster parents.

When the children of the incarcerated are not a daily presence to us, we find it easy to dismiss them as leading relatively peaceful lives. Suddenly, they become teenagers, and may get involved with drugs or guns. They do not have the stability of a healthy family to help them through these crisis years. A child whose parent is incarcerated is 5 times more likely than other children to serve time in prison. It is mandatory to assure all children and teens access to after-school, weekend, and summer youth development programs to shut down the “prime time for juvenile crime.” We need progressive communities with just laws to show love and concern for children in order to overcome the negative effects of the low morals portrayed by video and the fear induced by a gun-toting, drug infested society.

*Article 17 - (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.* Observing property rights of prisoners should be a high priority with departments of correction. In a confined situation, the mishandling of someone’s property or privileges can be inflammatory. One instance of deprivation is the non-payment of Social Security funds to prisoners while they are incarcerated, when those people worked for this entitlement and deserve to receive this compensation. These checks could be directed to needy family members or payments to victims. They could be put in a nest-egg account for the inmate, which might help to prevent his future recidivism. Another instance of deprivation is the unnecessarily high phone rates charged to inmates’ families by telephone companies.

*Article 18 - Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.* Prison is a place where one may experience religious renewal, and this change in attitude should be encouraged whenever possible. However, some religious observances are hampered by the enforcement of overzealous security regulations. The needed privacy for Catholic confession is difficult to produce in the Supermax housing situation. In less restrictive prison settings, special times and diets for religious observances such as Ramadan are sometimes ignored. Chapel services may be interrupted by guarding officers who feel that inmates may be taking the worship opportunity to deal in drugs.

*Article 19 - Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.* Prisons are notorious for withholding newspapers and other literature, and for obstructing free dissemination of information. If untoward incidents such as shooting of inmates by guards takes place, this information does not readily get out to the general public. With the proliferation of internet information, it is of serious concern that New York State Department of Corrections does not allow any internet material or papers with internet headings to enter its prisons. Special investigations are needed to pry out the truth of scenes like the revolt of inmates at the New York State Correctional Facility at Attica in 1971. Often prison families are afraid that their loved one in prison will suffer further punishment if they register complaints about his treatment. The Long Termers Committee, a group of men imprisoned at Woodbourne Correctional Facility, in New York State, produced *The Politics of Parole* to educate the public about the negative impact the recent parole release policy is having on the rehabilitated, their families, and communities. The document was declared contraband, and the editor was punished with confinement in the Special Housing Unit unable to express his thoughts, ideas, or grievances. This violation of one of the few remaining *First Amendment* rights of prisoners is further evidence that many prisons are rapidly becoming closed institutions operating without public scrutiny. Furthermore, a growing number of prisoner rights advocates are being barred from the prisons without explanation. Fear of officer retaliation against an inmate is a very real issue. It stands in the way of reform for inmates and inmate well being, as family members do not report these human rights violations, for worrying that something worse will happen to their loved one.<sup>28</sup>

*Article 20 - (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.* In the prison situation, judgments made by officers on inmates, inmates' visitors, or volunteers running programs in the prisons, are often not subject to open review. An inmate or a visitor can have a visit cancelled without anyone giving them a reason for cancellation. Those given such a reprimand or punishment deserve an explanation and a chance to argue for their innocence or their rights. Restrictions on inmates to have visits should be no greater than necessary. An inmate may rightly be expected to serve a reasonable time to which he is sentenced by a court, but he should not be deprived of his human rights to see his loved ones who come from outside the prison.

Prisoners are compelled to participate in the prison community, to per-

form tasks in that community, to undergo searches in that community, and if guarding officers feel that inmates are a threat, inmates can be sent to Special Housing Units, and deprived of further rights. If groups of inmates are wrongfully determined to be a threat to the general prison population, they are disbanded. Petitions are forbidden as threatening to the prison administration. If participants in inmate organizations are unjustly accused of being gang leaders, they can be sent to Special Housing Units in distant prisons. Those exiled are not given an explanation for their transfer. In New York State one inmate subjected unjustly to such a transfer, protested by undergoing a 40 day fast. Due to publicity given to this in outside newspapers, the Department of Correctional Services changed his sentence and transferred him to a less harsh prison environment. Inmate organizations can invite only persons approved by the prison administration to speak at inmate meetings, and if approval is not given, the administration is under no obligation to give a hearing to the person thus excluded or to explain their actions. Such harsh and dehumanizing regulations and punishments are often described as necessary to ensure security in the prison situation. As participants in the prison community, inmates should be consulted about these regulations and given opportunity to express themselves as to the justice of them. A more reliable system for handling grievances should be in place, and retaliation should not be taken against the inmate or his family when he or they report a grievance or injustice.

*Article 21 - (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.* Denial of the right to vote to inmates arises out of a punishment mode of justice. *The International Covenant on Civil and Political Rights* (a supplementary document to *The Declaration*) provides that prisoners should be able to vote. This occurs in most first world countries. The United States has signed this *ICCPR*, but only two states out of 50 allow their prisoners the right to vote. In many states prisoner voting by inmates is not allowed, but prisoner registration may be allowed, which then prompts the voting registrar to make a decision as to whether or not the applicant is legally eligible to vote. Emphasis on registration of prisoners to vote might call attention to the fact that perhaps all citizen prisoners should be allowed to vote. Certainly, it might be a prisoner's duty as a responsible citizen to register, particularly if there is no

law against registering. A campaign for voter registration of all prisoners might assist us in our thinking about the possibilities of prisoner registration and the human rights of all prisoners. It becomes our duty as responsible citizens to assist at the registration of all those incarcerated until those with legal authority (or those appointed by the voters of the state to serve as decision makers) decide whether or not those so incarcerated are being illegally deprived of their right and responsibility to vote. Florida is one of thirteen states that denies the vote to ex-offenders who have fully served their sentence. Just think of the year 2000 election in Florida where 436,900 potential voters who had fully served their time (1998 figures), were excluded from the polls. Add to this the 210,100 presently incarcerated, on parole, and on probation, and there were approximately 647,000 Floridians denied their rights because of a connection to the justice system.<sup>29</sup>

Calvin Robinson-Bey, incarcerated in the State of Maryland, wants his state to set up an absentee ballot system for inmates awaiting trial and for jailed misdemeanor offenders, as well as for incarcerated felons. "With an estimated ... one in seven Black men of voting age -- disenfranchised nationally, the loss of a large number of potential Black voters is a very significant issue," said Malcolm Young, executive director of the Sentencing Project, a Washington nonprofit think tank that promotes alternatives to incarceration. The organization estimated that 4.2 million people of all races are barred from voting because of convictions. While Blacks make up about 14 percent of the national population, they represent about a third of those ineligible to vote because of convictions.<sup>30</sup> This is a racial calamity as well as a problem of disenfranchisement.

Case law and interpretations of the Constitution have built up a questionable set of voting procedures and exclusions. As citizens of the United States, we uphold *The Constitution of the United States*. More research is needed as to the intent and consequences of Amendments to the Constitution. We are very dependent on our courts and justice system for wise and appropriate interpretations. Congresswoman Sue Kelly gives an up-to-date interpretation regarding the rights of convicted felons: "While our *Constitution* provides every American citizen over the age of 18 the right to vote and forbids any jurisdiction from impeding upon this right, it does not forbid the deprivation of liberty after the accused has received due process of law." Does temporary deprivation of liberty necessitate deprivation of the right to vote? Three sections of *The Constitution of The United States* are relevant to voting by prisoners:

*Amendment XIII, Section 1 - Neither slavery or involuntary servitude,*

*except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

*Amendment XIV, Section 1 - All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

*Amendment XV, Section 1 - The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.*

The first issue to be investigated in regards to voting by inmates, is the intent of *Amendments XIII through XV*. Post Civil War amendments caused voting rights to be put under Federal oversight. *Amendment XIII-1* of the *Constitution* allows slavery to exist as a punishment for a crime. It does not mandate slavery, but allows it in certain circumstances. Slavery is not necessary or officially acceptable, but may be useful in desperate situations to ensure the safety of general society. Pre-Civil War slaves were the property of their owners. They were denied their freedom and required to do forced labor. Some slave owners were benevolent, and taught their slaves to read and write. Other slave owners had the right to cut off ears or hang their slaves if they got unruly. Are prisoners property of the state, and thus slaves of the state? Does *Amendment XIII-1* give permission to the correction officials to do as they will with inmates? *Amendment XIII-1* does not give specific directions as to how these “slaves” of the state who are being legally punished for their crimes, should be treated. It does not say that slaves shall be denied the right to vote. Note the inconsistency that prisons are places subject to the jurisdiction of the United States. Thus those in prison as citizens of the United States, should vote in this, their country, and no state jurisdiction should abridge this right.

*Amendment XIV-1* requires all states to uniformly respect voting rights of citizens, which in theory may include citizen prisoners and should include ex-cons who have completed sentences (including parole and probation time). *Amendment XV-1* seems to allow no exceptions to the privilege of voting, if one omitted the word “previous.” One can play with words and conclude that a “present” condition of servitude means inmates cannot vote. If inmates are considered to be slaves or in a present condition of servitude, then inmates may be restricted from voting. One conclusion from combining these three sections of *The Constitution* might be that convicts cannot vote,

even when on parole. Another conclusion might arise from asking the question, “Which crimes are heinous enough to deny a person the right to vote?” Another conclusion might be that the phrase, “previous condition of servitude,” refers to those held in slavery before the Civil War, and is not intended to refer to those in prison in the present (who are citizens, and thus eligible to vote).

While appearing to frown upon slavery, *Amendment XIII* also appears to give free rein to slavery under certain conditions. As we all have done wrong, and have consciences that duly convict us, a strict reading of *The Constitution* might lead us finally to conclude that we all deserve enslavement. *Amendment XIII* causes us to ask whether this questionable affirmation of slavery gives prison authorities or state officials the right to abuse or kill those committed to their care. Rather a gentler and more positive interpretation of *Amendments XIII through XV* could assume that such slavery or servitude would be for the purpose of encouraging rehabilitation and responsibility in those so committed. These amendments should be thoroughly researched, for the purpose of discovering their least restrictive applications.

A second issue concerning voting by inmates is that the implementation of many of the drug laws that imprison, displays a racial bias. In New York State the Rockefeller Laws are keeping many Afro-American and Hispanic people from their right and responsibility to vote. White offenders are more likely to be sent to drug treatment, and not lose their voting privilege. Implementation of the Rockefeller Laws by placing heavy police surveillance in urban areas, while allowing unsupervised sale and distribution of drugs in suburban homes and offices, means that a disproportionate number of citizens of color are imprisoned, thus causing an imbalance in the electoral process. As Afro-Americans and Hispanics are often held prisoner in rural areas, their vote in those rural areas would certainly change the outcome of local political contests.<sup>31</sup>

A third issue about inmate voting has to do with the relationship between the 2000 census count and voting rights. Early census counts in the United States allowed every 5 slaves to be counted as 3 persons. If those legally held in servitude in our prisons are counted as 3/5 of a person, then their status as slaves is confirmed. If they are counted as full persons, then they are not slaves, and should be allowed to vote. As *Amendment XIV* requires all states to respect voting rights of citizens, when the federal government then counts inmates as full citizens in the Census of 2000, it is telling the states that inmates are citizens; as citizens, inmates have voting rights that are to be respected. The location where inmates are counted as

people in the census, should be the location where those citizen inmates are eligible to vote.

A fourth issue has to do with funds that are apportioned according to the census count. Certain poorer communities are being deprived of funding benefits for their populations. “Any benefit that a rural community may gain from the census count comes at the expense of urban neighborhoods whose residents represent a substantial proportion of the prisoners housed in rural prisons. As rural communities gain prisoner populations, the localities are eligible for state and federal funds, and political clout is raised through formulas tied to population. Prisoners from urban areas may be disproportionately composed of low-income minorities. Thus, the urban communities hit hardest by both crime and criminal justice policies may have the additional disadvantage of losing funding and political influence through the reapportionment process.”<sup>32</sup> There is a grave inconsistency in counting prisoners as persons in a census and not allowing them to vote as persons in that community where they have been counted.

If inmates had the right to vote, then perhaps they would be able to obtain the other human rights. They could vote for legislators who were “smart on crime” instead of those who were “tough on crime” whose laws lead to distress for the offender and his family. If inmates had a say in the programs that affect them, higher education would not have been removed from our correctional systems. One of the building blocks of a peaceful world is education. Depriving the incarcerated of positive programs lessens public safety.

*Article 21* also advocates equal access to public service. It is obvious that some forms of community service are possible for prisoners. With electronic monitoring, *trustee* prisoners could be given increasingly responsible community service assignments. This graduated responsibility would contribute to a fuller re-integration back into society.

*Article 22 - Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.* All people should have the possibilities for fulfillment, including those who are disabled or disadvantaged. Prisoners are one category of disadvantaged people. Many of those in prison are disabled with reading handicaps such as Attention Deficit Disorder or Dyslexia. Many are disabled through difficult childhoods and sub-standard schools. Many inmates commit their crimes or turn to drugs because

of low self-esteem due to their inability to be competitive in the job market. Prisoners should be allowed to participate in higher education, through correspondence courses, internet, TV, or college-in-prison programs. If they or their families cannot afford such expense, the inmates could either pay for their education through fair-wage prison work or through student loans or scholarships. Such tuition reimbursement could also apply to job training programs, as long as inmates were given fair wages for prison labor. Thus, they would be better able to compete in society upon their release and become fulfilled and responsible individuals.

*Article 23 - (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.* If one works, as many inmates most certainly do, one should receive a just and favorable wage. Inmates do not receive equal pay for equal work. They are excluded from trade unions. There is often no one to take their side in an unfair work situation. As a result of forced prison labor on asbestos where inmates were given no protective clothing to wear, many became sick from asbestos poisoning. Inmates are not allowed to organize, because those in authority fear insurrection. Thus even reasonable needs go unheard, and frustration mounts. The prison situation does little to encourage responsibility or growth in human dignity. Our justice system often seems intent on implementing the slavery that is questionably allowed in *Constitutional Amendment XIII-1* as a punishment for a crime.

Inmates are further degraded by being given an insultingly low hourly wage, which in many instances averages out to about \$3 a week. Work-release which raises self-esteem and helps in the reintegration back into society, is denied to those who are stereotyped as “violent” offenders. “Mass incarceration is not a solution to unemployment, nor is it a solution to the vast array of social problems that are hidden away in a rapidly growing network of prisons and jails. ... Although prison labor - which ultimately is compensated at a rate far below minimum wage - is hugely profitable for the private companies that use it, the penal system as a whole does not produce wealth. It devours the social wealth that could be used to subsidize housing for the homeless, to ameliorate public education for poor and racially marginalized communities, to open free drug rehabilitation programs for

people who wish to kick their habits, to create a national health care system, to expand programs to combat HIV, to eradicate domestic abuse - and in the process, to create well-paying jobs for the unemployed.”<sup>33</sup>

*Article 24 - Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.* It is hard to see how *Article 24* could be applied to prisons. Proper rest is hard to come by in the prison situation. There is always noise and light. The principle of vacation pay is foreign to the prison situation. This right might possibly be fulfilled in the trailer visit which allows the inmate private time with family members. For those who have no supportive family, the institution might arrange an “Inmate of The Day” event. They might even design birthday celebrations. This is not such a far out idea. When New York State Correctional Facility at Fishkill had an Elderly Unit, the staff purchased a cake for a long termer’s birthday. Prisons could be friendlier places. They do not have to be places of fear and distrust.

*Article 25 - (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.* So often, imprisonment for drug violations destroys families and family resources. When inmates leave prison, they need special assistance from social services. Some may need immediate HIV medicine. Some need housing. To not supply these needs for released prisoners returning to their communities, is to assure that they recidivate.

The state has been using urban housing money to build prisons, thus by-passing the need to have voters approve prison construction through the referendum process. Constructing prisons by dipping into housing funding cuts down on the amount of money available for decent urban housing, which further contributes to slums, which increases the likelihood of criminality. When Martin Luther King, Jr. marched for proper housing, he surely didn’t have prison housing in mind.

It seems a bit over-reactive to protest about the medical care of inmates, when the whole health care system in the United States is in such disarray, but it should be emphasized that general health care in most prisons is very frustrating for inmates. The gravest health care problem is that associated

with mental health. The whole prison system would be much safer for both inmates and officers if greater focus were put on the mental health of inmates. Specially trained counselors could help greatly in this situation, acting as mentors and recommending worthwhile programs and activities. However, counselors are seriously overburdened. Recommended case loads for counselors allow up to 80 inmates. Many counselors are attempting to handle more than twice that amount. Clinical record keeping of so many clients is therefore quite deficient. If more worthwhile programs were in the budget, then there would be less need for a high budget for security. If there were better transitional planning for all inmates from the moment of incarceration through the moment of release from parole, there would be less expense connected with court costs, recidivism and future crime. Frank Headly, Deputy Commissioner of Programs for New York State Department of Corrections recommends, "From the day in, to the day out, we ought to be giving transitional services."<sup>34</sup>

When we consider the mentally ill, we have the benefit of a Texas class action law suit, *Ruiz vs. Estelle*, that defines what is minimally acceptable for an in-prison mental health treatment system. There should be:

1. A systematic screening procedure.
2. Treatment that entails more than segregation and supervision.
3. Treatment that involves a sufficient number of mental health professionals to adequately provide services to all prisoners suffering from serious mental disorders.
4. Maintenance of adequate and confidential clinical records.
5. A program for identifying and treating suicidal inmates.
6. A ban on prescribing potentially dangerous medications with-out adequate monitoring.<sup>35</sup>

In order to come to consensus on how to improve the mental health of prisoners, the following three recommendations for improving prisons given by Dr. Terry Kupers should be seriously considered:

- I. Correctional mental health services and psychiatric rehabilitation programs must be upgraded. Ten essentials of an upgraded program include: (1)comprehensive levels of care, such as inpatient psychiatric wards, outpatient clinics, emergency services, day treatment programs, case management, halfway houses, supported living in the community,

vocational training programs, etc.; (2) staff trained in suicide prevention; (3) group therapy and counseling focused on special problems; (4) psychiatric rehabilitation programs focusing on goals; (5) mental health programs for disturbed disruptive prisoners; (6) peer review and monitoring of the professional workers; (7) continuity of care; (8) confidentiality and access to outside professionals; (9) separation of mental health and disciplinary issues; (10) cross-training including cultural sensitivities for correctional officers.<sup>36</sup>

II. There is a need to change the prisons as institutions, including revitalizing general rehabilitation programs and ending the use of supermaximum security units (SHUs). (1) All prison staff need to undergo extensive training in diversity issues and cultural sensitivity. Correctional officers need a firm foundation in the principles of psychiatry. (2) Bolster rehabilitation and educational programs in the entire prison system. (3) Improve visitation possibilities, and keep inmates near their homes. (4) Attend to prisoners rights. (5) End Supermax security! (6) Create smaller facilities.<sup>37</sup>

III. Finally, changes are needed at a societal level. We have to put an end to racial disparities in sentencing and imprisonment. We need to create alternatives to sending nonviolent drug offenders and mentally disordered felons into prison. We need to upgrade the public mental health system substantially, and to use model programs to help rehabilitate young offenders.<sup>38</sup>

With so much good advice from psychiatrists, why are politicians and corrections personnel allowing procedures that cause increased violence, psychiatric breakdown and suicide? Dr. Kupers concludes, “We know that well-designed rehabilitation programs help prisoners prepare for going straight, whereas idleness leads to violence and emotional disability.”<sup>39</sup>

In all this planning for the health of mentally ill offenders, we are not to forget sex offenders and their particular mental health problems. The New York State Department of Corrections should be commended for the programs that are in place, but sex offenders face particularly difficult problems upon release, and need specialized support organizations, to ensure the safety of society and their own personal fulfillment.

Preventive health care for control of epidemics such as Hepatitis C should be a part of good health care management. Food supplements that can build up the immune system would be an assist to overall inmate health. This is particularly important for those in overcrowded prisons where diseases spread more rapidly. In a recent Assembly briefing, it was revealed that of New York State’s 70,000 prisoners, 20% have the potentially liver-

killing Hepatitis C. Another 6,000 to 7,000 New York prisoners suffer from HIV, the virus that can lead to AIDS.

*Article 26 - (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.* Knowledge increases mercy and tolerance which makes for a better world. ALL people have the right to an education that helps to promote friendship among peoples and nations. Educational courses in peace keeping and alternatives to violence would help make prisons safer for both those kept and their keepers.

The mission of the New York State Department of Education is to increase the knowledge, skill and opportunity of ALL the people in New York. This includes the people in prison. The intersection of the right to education and the prison system in New York State again raises the question of racial bias. Judge Leland DeGrasse of State Supreme Court in Manhattan found New York State's method of financing public schools to be illegal, as it deprives New York City students of the sound basic education guaranteed by the *State Constitution*. The financing system also violates federal civil rights laws because it disproportionately hurts minority students.<sup>40</sup> Those minority students coming from this deficient city educational system who find themselves incarcerated, certainly are due to receive that education of which they have been deprived.

Many of those incarcerated in New York State suffered disabilities during their educational years, and this is a primary cause for them not learning, having low self-esteem, and ending up in prison. Those under 21 are mandated to education through the federal *Rights for Persons with Disabilities Act* and *Sections 200 and 201 of the New York State Commissioner of Education*. Consideration of human rights articles and disability directives suggests that all those so disabled and neglected over age 21, be given similar education and support to those under 21 in order to give them a chance to catch up and become whole persons. These disabilities include autism, deafness, Downs Syndrome, emotional instability, social disability,

expressing inappropriate feelings, depression, alcohol or drug abuse, hearing impairment, dyslexia, Attention Deficit Disorder, mental retardation, orthopedic impairment, environmental or allergic reactions, and traumatic brain injury. A recently named eye condition affecting reading called scotopic sensitivity syndrome (SSS) is also included.<sup>41</sup> The Department of Corrections has the same obligation as the ordinary New York State school district to provide all those under 21 with a certain level of education, in the Least Restrictive Environment (LRE). In the community this placement should be preceded by friendly observation and non-threatening testing. The student is then issued an Individualized Educational Program (IEP) which will need to be approved by a parent, guardian, or advocate. Ideally, if they do not approve, a hearing or a mediation is to be held where concerned parties try by the consensus process to come up with a program that will enable the student to live an optimally fulfilled life for his capabilities. The same rights and respect should be given to those under 21 entering the correctional system, and also to those over 21 who are the products of poor schooling. When these who were uneducated in their youth are finally released from prison, society will still be in danger from their low self-esteem and lack of job skills, unless they have been given rehabilitative programs while incarcerated. Special services and programs could include computer learning and correspondence courses, and salaries and transportation money for tutors to travel to the offender's place of incarceration.

Many offenders are disabled by alcohol or drug abuse. A high percentage have physical, mental, hearing, seeing, learning, or social disabilities. As we become more familiar with the disabilities that hinder a child from becoming an optimum student, we look back over time and see that there are many persons who had these disabilities that went undiagnosed. Many of these as children may have been told that they were stupid, worthless, and violent. What happens to the student whose teacher has not been trained to recognize Attention Deficit Disorder, and whose parents don't know about Special Education possibilities. He is labeled as a trouble-maker, falls behind in school, gets low grades, gets left back, has low social skills, becomes bored, and drops out of school. He may go on drugs, and find his way into a youth detention center or prison. Why can't we reach these children before they are wasted? Disability laws and regulations should be universally applied and considered from the viewpoint of childhood deprivations. All persons in the prison system should be given specialized testing to discover the extent of their educational deficits, and then be able to have counselors help them formulate an appropriate Individualized Educational Program, which might include courses via internet. As a side issue, counselors

should be available who are not overburdened with heavy case loads and who are trained in distinguishing educational disabilities.

Our education of prisoners (and also of students in our public schools) would be improved by a course in ethics. Theodore Roosevelt said, "It is dangerous for society to educate a person in mind, but not in morals." Perhaps that is why we have our present society. In our haste to keep religion out of our political and governmental spheres, we have also excluded ethics and morals. Consequently, our youth have learned that materialism is what counts. We are prisoners of our materialistic beliefs. Our gods and religions are power and money. When we misuse our freedom, and it becomes our license to choose greed, we become prisoners of our greed.

It is poor planning psychologically to use punishment instead of restoration as a tool to improve society. Some states and their correctional facilities see the value of educating their citizens who are imprisoned. The Maryland State Department of Education's Correctional Education Program has been awarded a grant of almost \$1 million over a three-year period to provide post secondary education online to their incarcerated students.<sup>42</sup>

*Article 27 - (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.* The dignity of the individual is further enhanced by inmate participation in social and cultural activities, such as the arts, writing programs, music, and religious training. These are very important aspects of every day life, and should not be denied to prison populations. Displays of inmate art work show great talent and increase inmate self-esteem. Prisoners who participate in drama or poetry programs deserve to be commended for their perseverance and their talent.

*Article 28 - Everyone is entitled to a social and international order in which the rights and freedoms set forth in this **Declaration** can be fully realized.* No program is perfect, and no individual is irredeemable. In this imperfect world, societies and organizations search for ways and means to keep order by proper use of authorities and laws, but unless respect is given to the needs of all people, those governing or maintaining order will continue to be opposed by terrorism and disruptions. The social order of a prison system is often built on fear, oppression, and punishment. ALL people deserve a social and international order which is built on the principles of restorative justice and community empowerment, and which encourages the fulfillment of every

individual. Prisons should be models of restoration and transformation. There will never be the perfect government or the perfect prison system, but our aspirations should aim in the direction of fulfillment for every individual.

*Article 29 - (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.* A person may be confined within a prison if he is a serious threat to others, to himself, or to public order. His confinement within the walls of an institution should contribute to his ability to perform in an acceptable manner outside those walls. While incarcerated, his rights as a human being should be respected, so that he will learn to respect others' rights. He should become aware of his responsibilities to others. For every right that he is afforded, he should acknowledge the comparable right possessed by others, and his responsibility to perform so that others' rights are upheld.

What rights does a person relinquish when he is convicted of a criminal offense? *Article 29 (2)* says that *in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.* This idea of using the least harmful alternative is well stated in *The Humane Principle* which says:

**The infliction of suffering is wrong and must be avoided unless it is an inseparable and unpreventable consequence of an action that is honestly meant as the most humane alternative that the situation presents, giving due regard to the interests of everyone affected.**<sup>43</sup>

The convicted offender as a person deserving of having his human rights respected, should be treated in the most humane manner. He can be subjected to confinement when his actions infringe upon the rights and freedoms of others. **The right for prisoners to vote does not infringe on the rights and freedoms of others.** Therefore, prisoners should have the right and responsibility to vote.

*Article 30 - Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.* The prison systems in the United States are empowered to uphold the rights, freedoms, and responsibilities of the individuals within their jurisdictions. As voting is upheld by *Article 21* of this *Declaration*, our prisons and departments of correction should find ways to implement this right for their clients. The prison systems in the United States are not just holding-pens, but are places that have possibilities for healing and transformation of those in their custody.

### **Changes in The Law Could Help**

As stated earlier:— When the laws hurt and harm, rather than help and heal, it is time to change the laws.<sup>44</sup> Now that we have considered drug laws, supermax prison cells, correctional education, and transitional services against the backdrop of *The Universal Declaration of Human Rights*, I would like to suggest how we might change the laws so that they help and heal. We like to think that the year 2001 signifies the first year of a new era. How would we want to have offenders and victims treated in a new era? The reader is invited to participate in this search for a transformed justice system.

Like Martin Luther King, Jr., we should have a dream. In an imperfect world full of imperfect people, we will not achieve a perfect justice system. We need a mission statement that leads us in positive and ethical directions. When a crime is committed, such a mission statement should inspire us to legislate or pronounce a sentence that would be of the greatest possible fulfillment for the victim, the offender, and the community. If some punishment or restraint is in order for wrongful deeds committed, the least harmful sanctions should be imposed.

For New York State besides repealing the New York Rockefeller Drug Law and the Second Felony Law and making them retroactive, there are three areas where we could institute sweeping change. These three areas are the criminal justice sentencing system, the prison industrial complex, and the individual.

\* The first area: We should change our justice system so that it is more restorative and less punitive. *The Constitution* guarantees each offender a trial by a jury of his peers. It does not say a “trial by judge” or a “trial by District Attorney.” Our present juries seem to be hand-picked to exclude “peers.” Community Mediation Centers, Drug Courts run by peers, Family Conferencing, and Sentencing Circles offer a kinder, gentler form of justice

to lesser offenders that can simultaneously uphold the human rights of the victim, the offender, and the community.

\* The second area of change: Change the prisons. The prisons themselves can have other uses. Special Housing Units encourage mental illness. We must not fall into the trap of thinking, "Once a SHU, always a SHU." We need only change the way we think about SHUs. Instead of two in such small space, restrict such cells to one inmate to minimize possible violence. Instead of 23 hour engagement, let the inmate be secure in his cell for eight hours at night, and then encourage his participation in positive programs during the day, so that he has no time to build up resentment and depression.

A former inmate suggested another change in the prison buildings. Using just-wage prison labor, transform out-dated prisons into unique condos or places of abode for handicapped citizens. If the trend to less incarceration and more alternatives continues, we can change newer prisons into drug-treatment, health-care, or educational facilities. To staff these facilities, state-funded professional education could be given to present correctional personnel so that they would be equipped to hold these advanced positions.

\* The third area of change: Change the offender. It is difficult to change another human being. To transform inmates, it really must be THEIR decision to change. We cannot force them to change. However, there is something we can do. We can treat all parties concerned, with respect. When an offense has been committed, the offender is often as distressed at what he has done, as his victim. In an alcoholic daze, he may not be fully aware of his crime. In the case of a drug addict, the victim may be himself and also his children who may react to a parent in prison by themselves becoming addicts and misfits. Are we treating our offenders like caged animals? To make them into human beings, treat them like human beings. Give them their human rights, as suggested in *The Universal Declaration of Human Rights*. Give them the right to vote, to be responsible citizens. Give them a reasonable ability to move around in their prison situation. Use modern methods of keeping track of their whereabouts such as satellite positioning and electronic monitoring, rather than the cruelty of Supermax confinement and stun guns.

A lack of belief in the individual's ability to change, and perhaps illegal decisions on the part of the parole board are shown when "violent" felons who have changed their ways continue to be sentenced to more time for the same crime they committed 10 or 20 years back. This sorry state of affairs has come to pass because the federal government rewarded the states with money to build prisons if they followed questionable "Truth in Sentencing" guidelines. If we believe that persons are capable of change, the law shows

a certain disrespect when it permanently labels a person as *violent*. We are all violent at one time or another in our lives. We are also non-violent, gentle, capable of great and kind deeds. Call people friends, and they will be friendly. Call people enemies, and they will fight you. Parole boards should encourage their clients and not label them. Much harm has resulted from stereotyping inmates as if they were incapable of change using the “Once an inmate, always an inmate” philosophy.

To further discourage recidivism, when an offender has served his time, and thus paid for his crime, he should be led through a transitional program such as Father Peter Young’s.<sup>45</sup> In New York State the Peter Young Program takes people both as an alternative to prison sentencing and also as a glide-path to recovery when they are discharged. Unfortunately, due to denial of fiscal responsibility in New York State counties, funding is often not available to those who would like to be participants in such programs. It is less expensive to fund offenders in places of rehabilitation such as Peter Young’s Housing/Industry/Treatment (Albany, NY), Delancy Street in California, and the Fortune Society and Community Justice Center (both in New York City), than it is to place them in prison for over \$30,000 per year.

If an offender or those who sentence him, decide a prison term is the best way to pay back society for his errors, he should undergo a thorough classification procedure upon his entry into the prison system. Personality disabilities should be noted. The programs available should be made known to him, and he should be responsible for how he chooses to spend his time. A counselor should be available, to consult with him monthly as to his progress. There should be coordinated counseling and appropriate treatments for all those who pass through the justice system, as they go from prison or alternative sentencing, to the completion of their time of service, or through parole. Those who believe themselves to be innocent should be listened to, and given the necessary legal support. No one should be allowed to slip through the cracks. Offenders must be exposed to transitional services and effective mentoring that will help them to become good citizens and family members. Those who are released successfully can be useful in themselves becoming effective mentors and service providers for still other prisoners coming out.

A vision for a balanced justice system that will promote safety in our communities, includes preventive measures such as: education on non-violent techniques for children and their parents, wise police practices, and recognition of those suffering from mental health problems and other disabilities. If a crime is committed, we can envision a restorative justice system in which community members participate, that will encourage the best possible quality of life for surviving victims of crime, and the implementation of support

systems and mentoring for the hoped-for rehabilitation of the perpetrator of the crime. If it becomes necessary to imprison an offender because he is a danger to himself or others, he should be imprisoned in the least restrictive environment, which would necessitate the transformation of Special Housing Units and Supermax prisons into places of healing and understanding. The world needs laws that help and heal, if we are to become an ethical society. The laws we provide should fit in with our dream for true justice for all in a new era. Our legislators should construct laws that educate and train, and should fund programs that build and restore. If you or those you loved should make a serious error, would you like a trial based on the laws put in place by some religious body, or by the United States Constitutional Law, or by The Declaration of Human Rights? Which type of law speaks most loudly for the development of the individual?

Our present prison system leans heavily on punishment rather than restoration of the individual, and with this mindset, often overrides restorative practice that would rehabilitate offenders. Punishment and retribution are not good for the soul (as described in Addendum III). To further express what we have been discussing about human rights for the offender, a *quasi* statement entitled *Bill of Rights for The Offender*<sup>A6</sup> might help to clarify what would be good psychological practice for department of corrections personnel that would help to make our prisons and our society safer.

### ***Bill of Rights for The Offender***

**Whereas**, many psychiatrists and psychologists have surmised that the overwhelming majority of offenders would be capable of leading full and productive lives were they afforded appropriate treatment combined with the right to enjoy the precious opportunities and freedoms that others take for granted; and

**Whereas**, it has become the stated belief of all the civilized nations of the world that all men and women, without distinction or unreasonable exception, are naturally possessed of equal rights and privileges; and

**Whereas**, the 2 million Americans behind bars and another 4 million on probation or parole, representing as they do about one in every hundred citizens, form a significant portion of our population; and

**Whereas**, archaic or misguided customs, laws, and practices have denied to this mighty body certain rights and privileges which, taken together, contribute immeasurably to the individual dignity and worth of every person; and

**Whereas**, the offender neither seeks or wishes from government or from the people any privilege or exceptional right which may be denied to others, but only those rights which are, or should be granted to all;

**Whereas**, every person and every community benefits proportionally to the opportunities afforded ALL persons to fulfill their own maximum potential;

**Now Therefore Be It Resolved** that those customs, laws, and practices which hinder the ability of the offender to live and work in dignity ought now to be ended, and that those customs, laws, and practices which, if established, would enhance the ability of the offender to fulfill to the maximum his own human potential, thereby benefitting himself, his family, his community, and his nation, ought therefore to be established; and

**Be It Further Resolved** that every offender has certain fundamental rights, derived not from the physical, situational, medical, or societal, but from the **Human Condition**; and that these rights include:

I. The right to enjoy certain freedoms and privileges afforded other citizens, which do not cause or allow endangerment to himself or others;

II. The right to work at employment for which he may be trained or for which he is physically or mentally qualified; for those who have achieved sobriety or control sufficient to permit full time employment, the right to compete equally for such employment without discrimination based on previous history; for those who have not yet obtained full control, the right to work at employment in a protected situation which will permit them to fulfill their individual potential;

III. The right to enjoy the respect of his neighbors, limited only by the extent to which his character may merit such respect, but not limited by his previous lack of judgment, which affliction has either been overcome, or is being treated;

IV. The right to seek and obtain in his own home community or within a reasonable distance therefrom, psychological help and job assistance at a cost that is commensurate with his unburdened ability to pay, and welfare and health assistance if necessary;

V. The right to an education or training to the full extent of his ability to learn, and financial assistance with cost of such education or training if necessary;

VI. The right of an incarcerated offender or ex-offender not to be subjected to **treatment** or **legislation** which automatically categorizes

him as *criminal* or *violent*;

VII. Protection against legal discrimination or abuse in any form because of his previous history.

This *Bill of Rights* was modeled on *The Bill of Rights for The Epileptic*, published by the Epilepsy Society of America in their support for those persons disabled by epilepsy. Many offenders are suffering from drug addiction which is a disease, or poor mental health, also a disease. Such affliction should be considered as a disablement. Thus their rights can be written up in a similar manner as those rights of the epileptic. Drug addiction, sex addiction, mental disorders, and chemical toxicities such as lead concentrations as found in cities, are public health problems; they are diseases that require treatment. You treat a disease; you do not punish the sick person by putting him in a warehouse and withholding treatment. Criminal sanctions often create further problems that the drugs do not create.

Legislators can help their communities by making creative and understanding laws about drug use. The time has passed when politicians excited their constituencies by exposing a notorious criminal who was let out on early parole without adequate mentoring. We know that there is a small percentage of people who have serious problems, and that these people need help from concerned professionals. They may need to have their rights curtailed, but in a manner that carefully considers the possible harm that may be done to society and is also least harmful to the person himself.

When thinking of the rights of the helpless, we should consider *The Rights of The Child in A Situation of Armed Conflict*, produced by the Commission on Human Rights (see Addendum II). Legislators and others who create positive laws keeping the children in mind, will be known as those who protected and enhanced the well-being of our society. Those who succumb to the “tough on crime” philosophy and advocate practices which deprive young people of a fulfilling education may find themselves guilty of crimes against humanity and the environment. One of the greatest environmental wastes of our time is the devastation of our youth. Those who would support children, should also apply the same standard to all helpless people, both victims and offenders. They are all human beings. If we wish to live in a peaceful world, we must take care of each other. Instead of punishment, we are to use encouragement and respect.

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## **Addendum I: State Office of Victim Witness Advocacy**

Trenton, New Jersey.

In considering the prisoners' human rights, it also becomes necessary to mention the victim. If we are to inflict as little harm as possible on the offender, and seek to repair the harm that has been done by his damage to the victim and the community, the first person to be helped should be the victim.

The State of New Jersey has provided its people with a *Crime Victim's Bill of Rights*.

- a. To be treated with dignity and compassion by the criminal justice system;
- b. To be informed about the criminal justice process;
- c. To be free from intimidation;
- d. To have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible;
- e. To make at least one telephone call provided the call is reasonable in both length and location called;

- f. To medical assistance if, in the judgement of the law enforcement agency, medical assistance appears necessary;
- g. To be notified if presence in court is not needed;
- h. To be informed about available remedies, financial assistance and social services;
- i. To be compensated for their loss whenever possible;
- j. To be provided a secure, but not necessarily separate, waiting area during court proceedings;
- k. To be advised of case progress and final disposition;
- l. To the prompt return of property when no longer needed as evidence;
- m. To submit a written statement about the impact of the crime to a representative of the county prosecutor's office which shall be considered prior to the prosecutor's final decision concerning whether formal criminal charges will be filed; and
- n. To make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime.

\* \* \* \* \*

*Editorial Comment: Although the New Jersey State Constitution provides that a victim of crime is to be treated with fairness, compassion, and respect, this Bill of Rights sounds very cold and heartless. To allow one phone call, for a victim to acquire psychological help and support, does not sound like the victim is being treated with fairness. Picture an automobile accident where a Black victim who has been sideswiped by a White driver is surrounded by White policemen. How could restorative justice be brought into this situation? Are the police equipped to hear both sides of the story? An accident victim may be unable to present his side of the story.*

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**Addendum II: *Rights of The Child, Commission on Human Rights*, 56<sup>th</sup> Session, Agenda Item 13, January 2000.**

*The Rights of The Child in A Situation of Armed Conflict*

*(a) The rights and protection of children must be explicitly incorporated into the mandates of relevant United Nations field operations that promote peace and resolve conflict and implement peace agreements ("peace operations").*

*(b) Child protection advisors should be appointed to such missions to ensure the implementation of the child protection dimension of peace operation mandates.*

*(c) Training should be provided on the rights and protection of children to all peacekeeping personnel.*

The international community should redirect its energies from the juridical task of development of norms to the political project of ensuring their application. Recommendations for action that will further the concern for all helpless peoples include:

1 - We must mobilize all our resources and social networks to promote and strengthen local value systems that have traditionally provided for the protection of children within societies.

2 - The international business community must assume its social and corporate responsibility in the context of the systematic brutalization of children amidst armed conflict, by refraining from engaging in business that fuels war machines in such situations and by developing voluntary codes of conduct within their own industries to address this serious issue.

3 - The time has come for the international community to develop a more systematic response and framework for providing protection and practical support to internally displaced persons in countries affected by conflict, the vast majority of whom are women and children.

4 - Much more needs to be done by the donor community, multilateral agencies and international non-governmental organizations to provide support to strengthen the capacities of national institutions, local non-governmental organizations, and civil society organizations for protection and advocacy for children affected by armed conflict.

5 - In order to maintain credibility and solidarity, it is critical for the international community to be seen to be responding with similar levels of concern wherever children are in need of protection and support.

6 - Ultimately, the best way to protect children is to prevent conflicts before they occur or to resolve them before they assume destructive proportions. Both national and international actors have a responsibility to take political, economic and social measures to address fundamental issues of structural imbalance and exclusion, poverty, and despair, manipulation of diversity and prolonged denial of democratic governance, all of which contribute significantly to generating conflicts.

\* \* \* \* \*

### **Addendum III: Kobutsu Malone Zenji - Rinzai Zen Buddhist Priest**

The following view on punishment is from internet communication (kobutsu@engaged-zen.org)

Punishment involves the deliberate infliction of physical or emotional pain or injury, on a being, by another person or persons who exercise a ‘power-over’ dynamic toward that being. ... The net result of any kind of punishment is internalized oppression, humiliation and degradation for both the giver and the receiver of the punishment. It is difficult indeed to really see the profound depth of this truth because we as individuals and collectively as a society live within an oppressive and coercive environment. Our vision is completely blocked to the truth by materialism in the physical, psychological and spiritual aspects of our lives. Arrogance and aggression permeate our society, our history, our religious traditions, our so-called “judicial system” to the point that we cannot dare to even question the premise of punishment without drawing shocked response from our fellow citizens. We live in a nation surrounded by violence, we worship violence and the infliction of pain in our entertainment, in our day-to-day interrelationships with each other. We forget that this is a legacy of hatred and oppression that we have inherited from our parents and they from theirs. We forget that our country was founded on the violent conquest of indigenous peoples. We forget that our religious traditions have been used to justify the perpetuation of genocide and slaughter on indigenous people in the name of ‘civilization.’

\* \* \* \* \*

*Editorial Comment: If punishment is the wrong psychology for children, it is also the wrong psychology for adults.*

\* \* \* \* \*

#### **Addendum IV: The Relationship Between Offender Disenfranchisement and Black and Latino Political Aspirations - Kenneth Bazil, 1997.**

America's jails and prisons are filled with 1.5 million individuals (1997 figure). One-half of those persons are of African ancestry. However, Blacks account for only 12 percent of the American population. Similarly, Latinos are 6 percent of the American population but account for 14 percent of the prison population. Justice Department figures for 1995 show that 5.1 million persons were under the control of the criminal justice system. Seventy-five percent (3.8million) of those persons are on probation and parole.

Forty-seven of the 50 United States deny offenders the right to vote. Maine, Massachusetts, and Vermont are the only states which allow imprisoned offenders to vote. Some states, like Virginia, disenfranchise offenders for life, unless the privilege is restored by an act of the governor; the result being that parolees and probationers are unable to vote, although no longer imprisoned.

What does this mean for the Black and Latino Population? On a voting day there are millions of votes lost as a result of persons being incarcerated, on parole, or on probation. This is not considering those who are no longer under criminal justice supervision but are, nevertheless, disenfranchised as a result of having once been in such a position. That would be the result for someone in Virginia, for example.

Given the apathetic nature of the Black and Latino electorate, the automatic and sometimes irrevocable loss of potential ballots undermines the ability of Blacks and Latinos to elect officials who share their concerns.

A good case in point is the 1993 Mayoral Election in New York City. Voting in the election was polarized along racial lines. The Black incumbent (David Dinkins), lost to the white challenger (Rudolph Guiliani) by 44,243 votes.

In 1993, New York had 64,569 prisoners. About 75 percent of those prisoners were from New York City. Blacks and Latinos--those most likely to have supported Dinkins--accounted for 85 percent of the state's prison population. If the demographics hold true, then New York's prison population could have provided Dinkins with approximately 41,000 votes. Moreover, Dinkins could have received thousands of votes from disenfranchised Black and Latino parolees and probationers, which would have been enough to defeat Rudolph Guiliani.

Thus it is evident that the common practice of disenfranchising offenders has an adverse effect on Black and Latino voting strength.

In June 1993, several prisoners from New York's Green Haven Prison filed civil rights complaints in the United States District Court for the Southern District of New York. The prisoners asserted that the enforcement of New York's Law disenfranchising offenders (N.Y. Election Law § 5-106) resulted in a dilution of Black and Latino Voting Strength; a violation of § 2 of the Voting Rights Act and its amendments (42 USC § 1973 et seq.), as well as the Fourteenth and Fifteenth Amendments of the United States Constitution.

The prisoners' claims were based on these essential facts:

1. New York disenfranchises felons sentenced to prison, while allowing felons receiving non-prison sentences, e.g., probation, to vote.
2. New York's 1988 Commission on the Judiciary found that when Blacks and Whites are guilty of similar offenses, Blacks are more likely to receive sentences of imprisonment.
3. Although Blacks and Latinos combined are 25% of the state's population, they account for 85% of the state's 70,000 prisoners.
4. About 75% of the state's prisoners come from New York City.

The Voting Rights Act and its amendments prohibit the enforcement of any voting law or prerequisite that has the effect of diluting minority voting strength. The Prisoners' Voting Rights claim was premised on the fact that the disenfranchisement of offenders results in a significant loss of votes in New York's Black and Latino Communities.

The Fourteenth Amendment guarantees all persons the equal protection and application of the laws, and prohibits discrimination based on race. The prisoners' Fourteenth Amendment claim was premised on the absence of any "rational basis," for New York's practice of allowing offenders not sentenced to prison to vote, while disenfranchising offenders unfortunate enough to have received prison sentences.

The Fifteenth Amendment prohibits the abridgement of the right to vote for reasons based upon race.

The prisoners' Fifteenth Amendment claim was premised on that amendment's prohibition against vote denial. In order to succeed on the Fourteenth and Fifteenth Amendment claims, the prisoners would have had to prove an intent to discriminate in denying them the right to vote.

However, the prisoners would have succeeded on the Voting Rights claim by simply proving that the practice of disenfranchising prisoners, diluted Black and Latino voting strength.

In response to the prisoners' law suit, the District Court issued a memorandum and order requiring the prisoners to articulate grounds for relief, or risk dismissal of their claims. In response, the prisoners filed an amended

complaint and memorandum of law. Nevertheless, in an order of February 1994, the District Court dismissed the prisoners' complaints, without requiring the state to file an answer. See *Baker v. Cuomo*, 842 F. Supp. 781 (S.D.N.Y. 1994).

The prisoners appealed the District Court's decision to the Second Circuit Court of Appeals. The Court of Appeals reversed the District Court's decision and ordered the District Court to hear the prisoners' claims. *Baker v. Cuomo*, 58 F.3d 814 (1995).

The Court of Appeals noted that the prisoners, as persons already disenfranchised, may not have standing to claim vote dilution. However, **persons from Black and Latino communities may claim vote dilution based upon the disenfranchisement of offenders**. The court's final analysis was that, given the factors involved, the prisoners' claims may be valid or in the least, required consideration.

New York's Attorney General requested a rehearing before the Circuit's original panel, and also a rehearing before the full Second Circuit (Rehearing En Banc). The request for rehearing was denied (58 F.3d 824-825).

The Attorney General then filed a Petition for Certiorari, requesting that the Supreme Court review the Second Circuit's decision. The Supreme Court denied the petition (116 S.Ct. 488).

However, in the interim the Second Circuit granted a Rehearing En Banc (67 F.3d 39). The En Banc hearing was held on December 20, 1995. Brett Dignam of Yale University's Jerome N. Frank Legal Services Organization represented the prisoners. Students from Yale University, The NAACP Legal Defense Fund, The Puerto Rican Legal Defense Fund, and Professor Pam Karlan of the University of Virginia Law School aided with the prisoners' arguments.

The central issue at the En Banc hearing was whether the Voting Rights Act's prohibition against vote dilution was applicable to felon disenfranchisement, since such a law would tend to usurp the state's power under the Fourteenth Amendment to disenfranchise felons.

In a decision issued May 30, 1996, the En Banc panel split; with five (5) judges concluding that the Voting Rights Act applied to prisoner disenfranchisement, and five (5) judges holding that it did not. The consequence of the split was that the order of the original Second Circuit Panel (58 F.3d 814) was vacated, and the part of the District Court's decision (842 F. Supp 781) dismissing the prisoners' Voting Rights claims was affirmed. The En Banc decision left the prisoners the option of pursuing their XIV<sup>th</sup> and XV<sup>th</sup> Amendment claims in the District Court. (*Baker v. Pataki*, 85 F.3d 919).

Faced with the prospect of appealing their case to a conservative Su-

preme Court, or pursuing their Fourteenth and Fifteenth Amendment claims in the District Court--where they would have to prove intentional discrimination--the prisoners decided to abandon the lawsuit.

It is the prisoners' belief that a similar claim can be made by members of the Black and Latino Community, and that such a group of plaintiffs may find more favor with the courts.

The poll tax and literacy test were former techniques used to deny minorities the vote. After decades of struggle, such practices were outlawed by the Federal Voting Rights Act of 1965, and its amendments. However, the disenfranchisement of offenders is a more insidious means by which Black and Latino voting strength is diluted.

The disenfranchisement of offenders as a tool of political suppression, is nothing new. In 1901, the Alabama Legislature tailored the state constitution to disenfranchise persons convicted of crimes the legislatures considered most likely to be committed by Blacks. Alabama's law remained on the books until 1985, when the United States Supreme Court determined that it was enacted with the purpose of disenfranchising Blacks and diluting the Black vote. See *Hunter v. Underwood*, 471 U.S. 222, 105 S.Ct. 1916 (1985).

Given the historical opposition waged against minority voting rights, Blacks and Latinos must question the validity of laws that disenfranchise offenders. If Blacks and Latinos fail to question the practice of offender disenfranchisement their attempts at empowerment will remain futile.

*Editorial comment: Are white upstate voting districts approving of laws that are tailored to prevent minorities from voting where they are census counted?*

\* \* \* \* \*

### **Addendum V: The Forgotten Man - Jon Marc Taylor**

(#503273) Crossroads Correctional Ctr., Cameron, MO 64429, Oct. '00.

*Injustice anywhere is a threat to justice everywhere.*

Martin Luther King, Jr.

Twenty years ago, I cast my first and only vote. What a ruckus that caused! The local prosecutor idiotically twitting for the cameras, alluding to dastardly skullduggery, accused others and myself of voter fraud. By casting our absentee ballots—which the jailers had handed us through the bars—after our convictions, we had been inducted into the final group of mentally competent (at least the court had so declared us!) Americans excluded from the ballot box.

In this coming election over four million citizens are barred from sub-

mitting their votes for the presidency to governorships, and yes, even local prosecutors.<sup>1</sup> These individuals are convicted felons serving prison time, those released on parole, others supervised on probation, and over one million souls having paid their full “debt to society” disenfranchised for life by the happenstance of geography.<sup>2</sup>

Where one lives in America dictates the most basic constitutive act of citizenship in a democracy: The right to vote. Forty-six states deny the right to vote to all imprisoned offenders. Thirty-two states also disenfranchise those on parole. Twenty-nine disenfranchise those on probation as well. And enforcing laws unique in the world, fourteen states permanently exclude from the polling booth anyone ever convicted of anything.<sup>3</sup>

A despicable vestige of medieval times, re-enacted as a new form of Poll Tax in post-Civil War southern constitutions,<sup>4</sup> such voting restrictions serve no discernible, defensible legitimate purpose. As Jamie Fellner of Human Rights Watch and Marc Mauer of The Sentencing Project comment, “No other democratic country in the world denies as many people (in absolute or proportional terms) the right to vote because of felony convictions.”<sup>5</sup>

Countries as diverse as Romania, Israel, Japan, Kenya, Peru to France and Zimbabwe permit prisoners to vote.<sup>6</sup> In Denmark politicians conduct debates in prisons to solicit votes, as opposed to in America where candidates tour death rows “demonstrating their support for executions.<sup>7</sup> Moreover, in Germany—a country haunted by the recent legacy of disenfranchisement—the law requires wardens to encourage and assist prisoners in the casting of their ballots.<sup>8</sup>

In yet another land experienced in the legacy of denied political franchise, the New South African Constitution guarantees the nation’s 146,000 prisoners the right to vote. Upon lingering apartheid challenge, the Constitutional Court ruled: “Universal adult suffrage is one of the foundational values of our constitutional order. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, everybody counts.”<sup>9</sup>

\* \* \* \* \*

So, too, there are illuminating exceptions in the United States. Until recently, five states permitted universal suffrage in their commonwealths. Perhaps not surprisingly, they all were founded by politically excluded settlers seeking freedom from repression. In New England, Maine, Massachusetts, New Hampshire and Vermont allowed their prisoners to vote.<sup>10</sup> As a constituency, Maine presented the highest voter turnout of all fifty states in the '96 elections; a coincidence?<sup>11</sup>

The enlightenment of Mormon Utah, created from desert by the perse-

cutted Saints chased for two thousand miles by the intolerant Protestant majority, waved the comprehension of their own history and rescinded their prisoners' right to vote two years ago. Massachusetts, meanwhile, as the cradle of the revolution against political disenfranchisement, in this 2000 election has voted to strip their prisoners of this essential right, because the incarcerated had the temerity to form a political action committee to advocate for their interests.<sup>12</sup> Thus at the birth of the 21<sup>st</sup> century, fewer Americans will have the basic right of suffrage, than had the quintessential American franchise at the beginning of the 20<sup>th</sup>.<sup>13</sup>

Today in our nation two-percent of the eligible voting population is currently or permanently disenfranchised, and in six states it's more than four-percent. Florida and Texas each disenfranchised more than 600,000 people. Three-quarters of the disenfranchised are not even in prison, with one million excluded voters never having seen the inside of a cell.<sup>14</sup>

Racially close to half of the disenfranchised are people of color.<sup>15</sup> In Alabama and Florida, nearly one-third of all black men are permanently banned from voting. And in Virginia more black men are forever barred from the voting booth than are registered to vote!<sup>16</sup> At present rates, largely fueled by the discriminatorily executed War-On-Drugs,<sup>17</sup> forty percent of the next generation of minorities will likely lose their right to vote. Overall, one in twenty of today's children (white, black, red, brown, and yellow) will be convicted of an offense, thus disenfranchised for at least a period of their lifetime.<sup>18</sup>

\* \* \* \* \*

Voter turnout this election was low as usual. Pundits far and wide have lamented this apparent electorate apathy. The greatest proportional voter participation in our history was in the decades after the Civil War,<sup>19</sup> before economic and racial constrictions were once again "legislatively" reapplied after Reconstruction.<sup>20</sup> Presently, columnist Janice Ellis wonders, "How will our democratic process survive if this downward spiral of nonvoting continues?"<sup>21</sup>

In a country that constructed as many prison cells last year as built public housing units the entire previous decade,<sup>22</sup> the structural exclusion of a group of citizens from the polling booth is a hypocritical act betraying the spirit of our system of government. The elimination of procedurally needless and politically disgraceful prisoner disenfranchisement would be a major step in moving the United States closer to the evolving national ideal, the aim of our ancestors who founded this country, in their escape from the tyranny of oppression. To our shame, the majority of the world is now surpassing us.

*Article 21 of the Universal Declaration of Human Rights, of which the*

United States is a signatory, declares everyone has the right to participate in the government of their country, this right specifically expressed as “universal suffrage.” The Supreme Court of our northern neighbor has determined that voting is not an earned privilege, but the right of all Canadians. Justice Strayer, in rejecting the Solicitor General’s objections to honoring the nation’s *Charter of Rights*, emphatically declared: “The electorate chooses the government; the government does not choose the electorate.”<sup>23</sup>

In America is it different.

Jon Marc Taylor, a “non-voting” Missouri prisoner, is a past recipient of *The Nation* and *Robert F. Kennedy Journalism Awards*.

### Footnotes for Addendum V

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- 4 D. Oshinsky, *Worse Than Slavery: Parchman Farm and The Ordeal of Jim Crow Laws*, Free Press, 1996.
- 5 Fellner & Maurer, *Ibid.*
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- 9 *LOS ANGELES TIMES*, “South African Court Gives Prisoners The Right to Vote,” 4/10/99.
- 10 D. Cole, “Denying Felons Hurts Them, Society,” *USA TODAY*, 2/3/00.
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- 12 A.P., “Criminal Past Keeps More Black Men from Polls,” 9/22/00.
- 13 R. Willing, “Ex-convicts Hope to Regain Right to Vote,” *USA TODAY*, 3/6/00.
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- 20 A. Keyessar, “Class-skewed Voters: Illness in The Body Politic,” *USA TODAY*, 10/26/00.
- 21 J. Ellis, “Democracy Requires Participation,” *KANSAS CITY STAR*, 10/17/00.
- 22 D. Wickham, “Homeless Receive Little Attention from Candidates,” *USA TODAY*, 10/24/00.
- 23 R. Rowbothan, “Canadian Prisoners Win Right to Vote,” *PRISON LIFE*, 5/95.

## **Addendum VI: The Twenty-eight Points - Attica Inmates**

The Inmates at Attica Correctional Facility, 1971, listed the following items in their request for settlement of the correctional facility takeover by prisoners. Further information is in *A Bill of No Rights: Attica and The American Prison System* by Herman Badillo, Outerbridge and Lazard, 1972.

*Following are the proposals that State Correction Commissioner Russell G. Oswald has said he will accept:*

1. Provide adequate food, water and shelter for all inmates.
2. Inmates shall be permitted to return to their cells or to other suitable accommodations or shelter under their power. The observer committee shall monitor the implementation of this operation.
3. Grant complete administrative amnesty to all persons associated with this matter. By administrative amnesty the state agrees:
  - A. Not to take any adverse parole actions, administrative proceedings, physical punishment or other type of harassment, such as holding inmates incommunicado, segregating inmates, or keeping them in isolation or in 24-hour lockup.
  - B. The state will grant legal amnesty in regard to all civil actions that could arise from this matter.
  - C. It is agreed that the State of New York and all its departments, divisions, and subdivisions, including the State Department of Corrections and the Attica Correctional Facility and its employees and agents, shall not file or initiate any criminal complaint or act as complainant in any criminal action of any kind or nature relating to property damage or property-related crimes arising out of the incidents at the Attica Correctional Facility during Sept. 9, 10 and 11, 1971.
4. Recommend the application of the New York State Minimum Wage Law standards to all work done by inmates. Every effort will be made to make the records of payments available to inmates.
5. Establish by Oct. 1 a permanent ombudsman service for the facility, staffed by appropriate persons from the neighboring communities.
6. Allow all New York State prisoners to be politically active without intimidation or reprisal.
7. Allow true religious freedom.
8. End all censorship of newspapers, magazines and other publications from publishers, unless it is determined by qualified authority which includes the ombudsman, that the literature in question presents a clear and present danger

to the safety and security of the institution. Institution spot-censoring only of letters.

9. Allow all inmates at their own expense to communicate with anyone they please.

10. Institute realistic, effective rehabilitation programs for all inmates according to their offense and personal needs.

11. Modernize the inmate education system, including the establishment of a [Spanish-language] library.

12. Provide an effective narcotics treatment program for all prisoners requesting such treatment.

13. Provide or allow adequate legal assistance to all inmates requesting it, or permit them to use inmate legal assistance of their choice in any proceeding whatsoever. In all such proceedings inmates shall be entitled to appropriate due process of law.

14. Reduce cell time, increase recreation time and provide better recreation facilities and equipment, hopefully by Nov. 1, 1971.

15. Provide a healthy diet, reduce the number of pork dishes, increase fresh fruit daily.

16. Provide adequate medical treatment for every inmate. Engage either a Spanish-speaking doctor or interpreters who will accompany Spanish-speaking inmates to medical interviews.

17. Institute a program for the recruitment and employment of a significant number of Black and Spanish-speaking officers.

18. Establish an inmate grievance commission, comprised of one elected inmate from each company, which is authorized to speak to the administration concerning grievances and develop other procedures for inmate participation in the operation and decision-making processes of the institution.

19. Investigate the alleged expropriation of inmate funds and the use of profits from the metal and other shops.

20. The State Commissioner of Correctional Services will recommend that the penal law be changed to cease administrative resentencing of inmates returned for parole violation.

21. Recommend that Menenchino hearings be held promptly and fairly. [This concerns the right of prisoners to be represented legally on parole-violation charges.]

22. Recommend necessary legislation and more adequate funds to expand work relief programs.

23. End approved lists for correspondents and visitors.

24. Remove visitation screens as soon as possible.

25. Institute a 30-day maximum for segregation arising out of any one

offense. Every effort should be geared towards restoring the individual to regular housing as soon as possible, consistent with safety regulations.

26. Paroled inmates shall not be charged with parole violations, for moving traffic violations or driving without a license unconnected with any other crimes.

27. Permit access to outside dentists and doctors at the inmates' own expense within the institution where possible and consistent with scheduling problems, medical diagnosis and health needs.

28. It is expressly understood that members of the observer committee will be permitted into the institution on a reasonable basis to determine whether all of the above provisions are being effectively carried out. If questions of adequacy are raised, the matter will be brought to the attention of the Commissioner of Correctional Services for clearance.

\* \* \* \* \*

## *Everyone*

*is to be treated with RESPECT.  
Even if you have made a serious mistake  
you are to be treated with RESPECT.*

*Prisoners are to be treated with RESPECT.  
They are human beings  
similar to all other people in the world.*

*All of us have made mistakes,  
have made errors in judgment,  
have made errors under the influence of passion.*

*Some of us have done crazy things while intoxicated.  
Others of us have mental aberrations.  
But we all deserve to be treated with RESPECT  
because we are human beings.*

*The converse is also true:  
Because we are human beings  
it is our RESPONSIBILITY  
to treat others with RESPECT and KINDNESS.*

*All prisoners are to treat those who imprison them  
with RESPECT.*

*We are to treat those who govern us  
and those who run for public office with RESPECT.*

*We are all fellow human beings,  
offspring of the same*

*Creative Process.*

*C.E.C.*