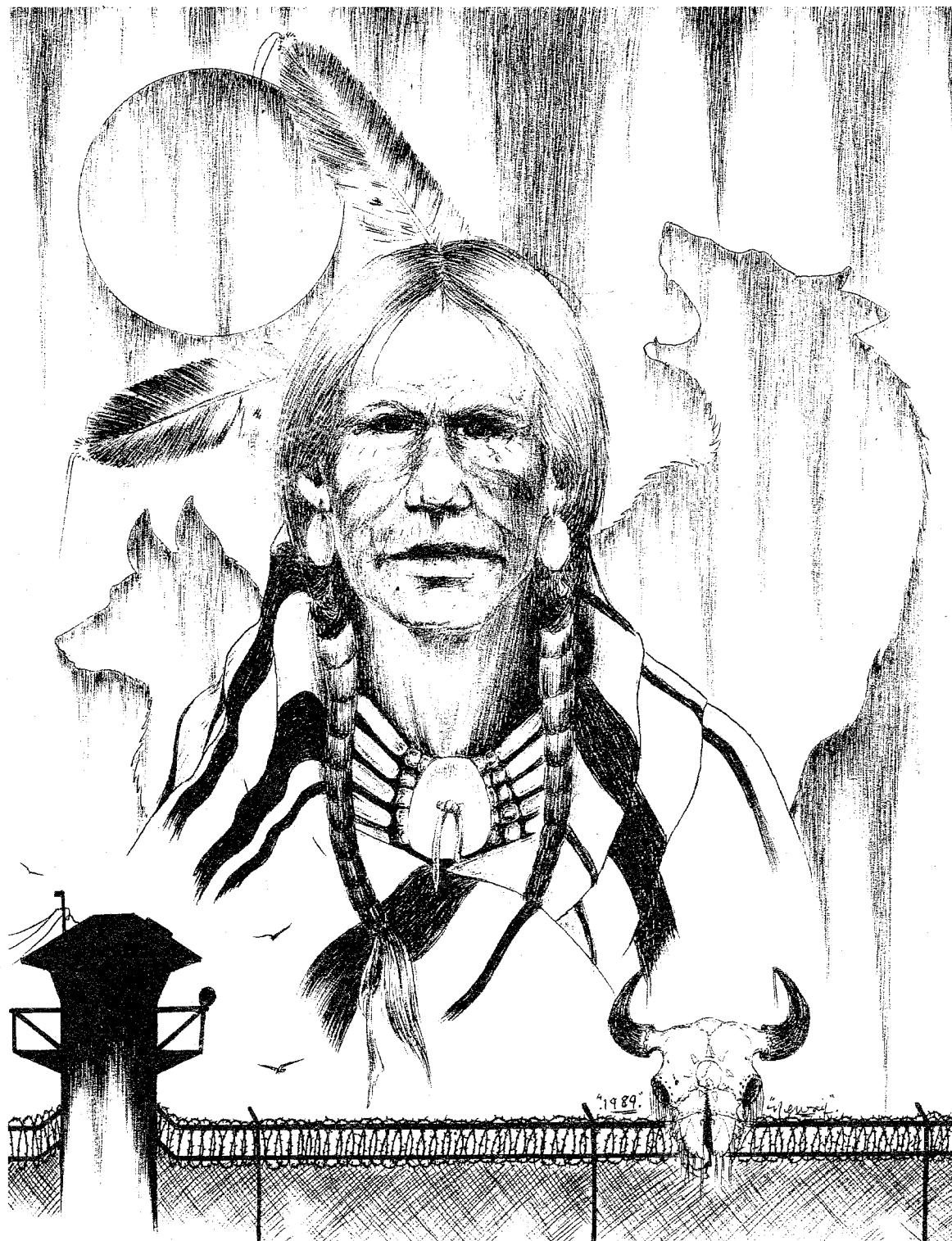


The American Indian in the White Man's Prisons: A Story of Genocide



**A Collective Statement
by
Native American Prisoners, Former Prisoners
and Spiritual Leaders of North America**

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and Spiritual Leaders
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Compiled and edited by Little Rock Reed

UnCompromising Books
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First edition.

We propose the question of genocide to you, and we propose three modes of commission: physical, biological and cultural, taken from considerations of the United Nations in some of their earlier debates on the crime of genocide. And we add to that a fourth mode: spiritual.

What follows here are some extracts from some of those debates:

- 1) *The planned disintegration of the political, social and economic structure of a group or nation.*
- 2) *The systematic moral debasement of a group, people, or nation.*

Genocide has two phases:

- 1) *The destruction of the natural pattern of the oppressed group.*
- 2) *The imposition of the natural pattern of the oppressor by a synchronized attack on the life ways of the captive people.*

Cultural genocide is effected by the destruction of the specific characteristics of a group; by forced transfer of children to another human group; by forced and systematic exile of individuals representing the culture of a group; the prohibition of the use of religious or historical documents or monuments, or their diversion to alien uses.

A culture's destruction is a very serious matter because a healthy culture is all-encompassing of human lives. If a people lose their "prime symbol," that which gives their lives purpose and meaning, they quickly become disoriented and lose hope, and social disintegration follows.

It is this burden that we lay on your shoulders, cultural and spiritual genocide, which you practiced on our parents and on our grandparents and on us.

We have cried for justice in this land but there is none....

We do not come to you with our hats in our hands, humbly asking for favors.

We come to you in our own right as women and men of vision, as human beings, demanding that you act in a Christian, human way, on our behalf, as you are able and when opportunities arise, to intercede with governments and in favor of truth and justice in this land.

We give you this document today in the knowledge that never in this world or in the next will you be able to say *WE DIDN'T KNOW.*

-- excerpt from an address to
Christian Churches,
from the North
American Indian Movement, 1975

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INTRODUCTION

Our spiritual advisor, Art Solomon, wrote the following poem and delivered it to the world community at Vancouver during a vigil in memory of the bombing of Hiroshima and Nagasaki:

THE WHEELS OF INJUSTICE

They say that
The wheels of "Justice,"
They grind slowly.

Yes we know.

But they grind
And they grind
And they grind
And they grind.

It seems like they grind
Forever.

And what they grind
Is Human Beings,
And how they grind.

They grind away
The humanity

Of the victims
Who get caught
In its jaws.

Oh God protect us
From a "law-abiding society."

Have pity on us
Who are its victims,
Protect us Oh God
From those who say
"We are Christians,"
Because we know
That if Christ
Walked visibly among them today
They'd throw him in jail tomorrow.
Oh God protect us
from law-abiding citizens.

The wheels of injustice
They grind forever,
But they have nothing
at all
to do with justice
Because
The
Name
Of
The
Game
Is Vengeance.

Oh God protect us
From
The game called
Justice,
Where the rich get richer
And the poor
They go to jail.

Yes the wheels of
injustice
They grind so slowly.

And human sacrifice
Is their meat.
They grind the hopes
And the dreams
of some
While the parasites live
in their homes of plush.
Oh God we are poor,
Have pity on us
And protect us
From the Law-Abiding
Citizens
Who turn the wheels
Of Injustice.

These words speak the sentiments of the many Indian people whose voices are crying out for justice in the pages of this book. The Native American segment of the population of people who are caught in the jaws of the criminal justice system is the forgotten segment; the segment that is so small in comparison to other racial and ethnic groups warehoused in America's prisons that it is insignificant to those who are vested with the responsibility for administering "justice" in North America.

But how insignificant, really, is the Native American segment, when considered in light of the fact that every American Indian is more than three times as likely to wind up in prison as the average

Black person in North America? How insignificant is the Native American segment of the prison population when we consider that a great number of American Indian prisoners are in fact political prisoners, as is demonstrated in the pages of this book? How insignificant is the Native American segment of the prison population in North America when we consider that in the past twenty years the taxpayers have spent more money for the cost of lawsuits filed by Indian prisoners for religious persecution by prison officials than it would cost to feed every hungry child on the planet three square meals a day for several years?

In many states, such as Montana, South Dakota, North Dakota, Nebraska, and in most of the prisons in Canada, there is at least one Indian prisoner for every three non-Indian prisoners, which is grossly disproportionate to the Indian/non-Indian population ratio in the free world. However, precise statistics on the proportion or number of Indians in the white man's prisons are impossible to obtain because of the classification system that exists in the majority of the prisons in the United States. According to that classification system, Indians must be "white," "black" or "other." This broadly used system itself indicates that those vested with the responsibility for administering "justice" are in general agreement that the Indian (and other non-White and non-Black prisoners) are insignificant insofar as "justice" is concerned.

Although the precise statistics on the proportion or number of Indians in the white man's prisons are impossible to obtain, there has been one study conducted which comes close. That study and its resulting report, *The Inequality of Justice: A Report on Crime and the Administration of Justice in the Minority Community* (1982), prepared by the National Minority Advisory Council on Criminal Justice and funded by the now defunct Law Enforcement Assistance Administration, begins with a line which describes it as "a body of scholarship and analysis that portrays the disproportionate and adverse impact of crime and the criminal justice system on this nation's minority people," and as "probably the most comprehensive study of crime and criminal justice ever conducted from a minority perspective."

Dr. David Hilligoss, who has now been documenting these conditions for well over thirty years, explains that "although the [above] report was completed in 1980, it had not yet been printed when the Reagan administration took office." Dr. Hilligoss tells us:

Once the Reagan Justice Department took office, the report was immediately suppressed, and not until after a professional outcry from scholars and criminal justice administrators were 500 copies printed (not even enough for members of Congress). To this day, the report does not have a Government Printing Office number and is not available from that office. It is published by my university, Sangamon State University, and used as a text in legal studies (Hilligoss, 1982).

Dr. Hilligoss cites just a few of the report's findings in a position paper he prepared entitled "Racism, Cultural Genocide and the Case of Native American Religious Freedom: Oklahoma State Penitentiary -- 1987":

1. "American Indians have an astoundingly high arrest rate. It is three times that of blacks and ten times that of whites. The arrest rate for American Indians in urban settings is thirteen times that of whites and four times that of whites in rural areas."
2. "The council found that most American Indian defendants will simply plead guilty to avoid a confrontation.... This raises the question of the right to plead not guilty as an important constitutional right for criminal defendants."
3. "The situation of the American Indian is, in effect, a crude microcosm of the total picture of American society in which racial polarizations have become the norm rather than the exception."
4. "More than 125,000 American Indians in Oklahoma, the old Indian territory, live in a situation in which reservation boundaries were eliminated and land opened to white settlement under the Allotment Act, and it was here that some of the most disturbing testimony was gathered by the Council."
5. Arrest rates by race computed per 100,000 population 14 years and older for each race taken from the U.S. Census of Population for 1976-78 alone....:

| YEAR | WHITE | BLACK | AMERICAN INDIAN |
|------|-------|--------|-----------------|
| 1976 | 2,943 | 10,958 | 33,278 |
| 1977 | 3,210 | 12,180 | 37,239 |
| 1978 | 3,271 | 12,256 | 36,584 |

6. Indians comprise approximately 4% of the total population of Oklahoma, and yet at [the Oklahoma State Penitentiary] the Indian inmate population stays around 9-10% [and these disporportionate figures are not nearly as drastic as in some states, such as Montana and South Dakota].

7. "When an Indian defendant walks into court, he faces almost an entirely white system. Communication, even with his own counsel, often poses great obstacles."

8. "Once an American Indian has been jailed, he or she will serve, on the average, 35 percent more time before parole than a non-Indian for a similar offense. This is because (1) Indian offenders receive, on the average, longer sentences than do non-Indians and (2) an Indian offender serves a longer time before he [or she] is paroled."

The Council's Report, as it relates to the prison system itself, reveals findings which Dr. Hilligoss describes as "most disturbing and very reflective of the situation" at the Oklahoma State Penitentiary:

1. "The perceived weakness and relatively small number of Indian inmates often cause them to be prime targets of harassment by prison staff and other inmates."
2. "Members of prison staffs are often insensitive to the special problems facing American Indians, and few make any effort to positively reinforce an Indian inmate's cultural identity."
3. "In many cases, Indian cultural/religious groups that are initiated by the inmates are actively suppressed by prison authorities. The groups often find their mail censored or their mailing privileges suspended. Further examples of harassment include Indian inmates not being allowed to wear beaded headbands and being forbidden to speak Native languages or to play Native music. Many Indian inmates have been subjected to disciplinary action for refusing to cut their hair."
4. "...[M]ost state and federal programs fail to rehabilitate Indian offenders because correctional officials [refuse to] recognize that American Indians suffer from cultural conflict."
5. "The lack of [culturally sensitive] rehabilitation programs, and the lack of a cultural identity within the prison setting all contribute to the recidivism rate, which sometimes reaches 54 percent among Indian offenders."

If you are wondering why the Reagan (and later the Bush) Justice Department would want to suppress such a report from the public, your questions will probably be answered by the time you have finished this book.

This book demonstrates that the story of the American Indian in the White Man's prisons is a story of genocide indeed. In order to correct the genocidal policies and practices displayed throughout the forthcoming pages, it is necessary that legislation be passed and enforced which will safeguard the cultural and spiritual rights of American Indians throughout the prisons of North America.

I began writing this book in 1988 after struggling unsuccessfully for several years to be permitted to practice my Lakota religious beliefs in the Ohio Department of Corrections. When the federal court refused to issue any kind of order stating that American Indians should be permitted to have our spiritual leaders enter the walls to conduct religious ceremonies just as the

Christians, Muslims and Jews are permitted to, I realized that there was a need for some protective legislation. But at the same time, I realized that the state of Ohio is no different than the other states with respect to the view that religious freedom should not exist for American Indian prisoners, so I asked American Indians from around the country to join me in this project so that this book will show that the struggle is not limited to just a few states, but rather is a national problem faced by Indian prisoners everywhere in the prisons of the United States, the resulting destruction having devastating effects on the Native American population as a whole.

There were times during this project that I thought I would collapse with fatigue and despair. My incoming and outgoing mail was interfered with by prison officials determined to sabotage this book project. On numerous occasions my cell was ransacked by guards who intentionally destroyed my files containing important chapter materials. The list goes on.

But each time I thought I would break down with despair, someone would come forward and pick me up with their encouragement. I want to thank all of those people now, including some who are no longer around to see how this project has turned out. I feel awkward doing this, because I don't want to give the impression that this book is only *my* work, because it really isn't. I only came up with the idea and contributed in my own way, just as each of these people have: Claudia Aylor, Karen Basurto, Kermit and Laura Redeagle-Belgarde, Ann Hill-Beuf, Nakonia Bourdo Bear, Hunter Campbell, Larry Carlston, Janine Courtereille, Dancing Bear, Vine Deloria, Jr., Delores Duncan, Roger Flittie, Rick Herrin, Darrell and Colleen Gardner, Dee Harris, Bill and Naone Kama, Lance Kramer, Marc LaFountain, Sharon Land, Dedi Larsen, David Madera, Bernadette Santa Maria, Brandy Weeasayha Meyers, Miyakhota, Christina Starklint, Jose Manuel Pepin Monsanto, Hal Pepinski, Les Pewo, David Pigg, Perry Picotte, Linda Rave, Dale Smith, Art Solomon, Standing Bear, Rita and Lola Summers, James Wolf, Ginger Wright, Rik Yellowbird, and each of the brothers and sisters who have contributed as authors and artists* of the book, and to those who have participated in the *Iron House Drum*, the newsletter of the Native American Prisoners' Rehabilitation Research Project. I thank all of you from my heart, with love, for doing what you have done to make this project possible.

Additionally, I want to thank Duane Champagne, Bob Gaucher, Ann Hill-Beuf, Doug Conley, Francis T. Cullen, Howard Davidson, Vine Deloria, Jr., Bernie Elm, Lenny Foster, Elizabeth Grobsmith, Albert Kai-Toh, Lisa Morgan, Annette Rosensteil, Bernadette Santa Maria, Linda Rave, Dale Smith, C. Matthew Snipp, Harvey Snow, Art

*Some very beautiful artwork was done by various Indian prisoners around the country which will accompany the chapters in the next printing of this book (which will be produced around January 1994). Unfortunately, we were unable to include them in this first edition due to the lack of funds for the costs of printing. For this reason we also had to leave out photographs of contributors and various Native brothers and sisters in prisons around the country, but hope, as well, to include them in the next printing, which will also contain an index.

Solomon and James Wolf for having read previous drafts of some of the chapters and for offering their critical input and/or editorial comments, which have been invaluable. And I particularly wish to thank Deborah Garlin, the true editor of this book, for all the time she spent organizing the material into something that flows magnificently.

And I want to thank Claudia Aylor and Linda Rave who volunteered to do the typing, and the re-typing, and the re-re-typing of the manuscript, until we got it right! How you women could ever put up with me I'll never know, but thanks, 'cause if it was up to me, I'd still be typing.

Now, let's pick up our medicine and go....

-- Little Rock Reed
Fall 1993

PROLOGUE

by

Arthur Solomon
Anishnabe Spiritual Teacher/Elder

If there is No Justice There will be No Peace*

~ ~ ~

Today, the world has motion
but no direction.
Passion, but no compassion.
Production,
but no equitable distribution.
Religion, but no faith.
Laws, but no justice.
Goods, but no God.

Each new economic advance
Gives birth to a new moral pain;
Each new technological discovery
to new fears
From the seas as much as from the skies.

~ ~ ~

Our people were given many prophecies
Before the strangers came across the oceans
to this sacred land with their strange ways;
There were none of our people in prison.
There simply were no prisons,
Because we had a better way.

We were called savages and pagans
And, like all people everywhere,
We were less than perfect, but we had no prisons then,
And we have no need of them now.

We know how the history books were written to make us out

*First presented at the 1989 Criminal Justice Congress, Halifax, Nova Scotia, June 27, 1989.

As less than humans, and we know that even today
in the prisons our people are called wagon burners
and every despicable name that can be used.
It is hatred in its vilest form.

Our people were told long ago
that a strange people would come to this sacred land.
The first ones would have hair like fire (Norsemen),
but they wouldn't stay long.
Then later would come other people with white faces and white skin;
They would have two faces:
One would be the face of brotherhood
And one would be a face of anger.

-- they came with the face of brotherhood everything would be okay.
-- they came with the face of anger
it would be very hard for us.

It is very clear to us which face they were wearing when they came.
It was also told that these white-skinned strangers
would have no eyes and no ears.
And it has become very clear what that meant for us,
because of the desecration of the earth and the people.

Somewhere back in history those strangers had dispensed with
the fundamental laws of Creation and made their own laws
out of which came the chaos of prisons and wars and
oppression of all life on this planet.

The fundamental laws of Creation were established by the Creator
God
So that all things would work in harmony and balance for all time.

Having dispensed with the natural laws of Creation,
the God of Worship became the God of Materialism;
And to the God of Creation, lip service only was given.

How long can we laugh in the face of God, while we mindlessly
And deliberately destroy what God has created?

What differentiates Native people in North America
from the strangers who came to this sacred land is
a difference in philosophy;
The philosophy is based on a false principle and
that principle is materialism.

The principle that our people lived by was based on the power
and the beauty and the sacredness and
the harmony of Creation.

Our people always understood very clearly that we could not own
what belongs to the Creator of all things in the Universe.

Our purpose was to live in harmony with the rest of Creation;
Not to possess what belongs to God.

For that, we were called savages and pagans and
We are still seen that way
Today by the vast majority of people in this society.

In contrast to the principle on which our philosophy was based

There came a people with a philosophy based on ownership;
They could own anything regardless of how they got it,
Whether by violence or by deception.

Both methods were used to the fullest extent possible.
Along with those methods were two other principles and they were
Self-deception and rationalization so that it was possible
To rationalize the most evil deeds right out of existence,
Such as wiping out whole nations of people in the Western
Hemisphere.

And all this was done by people who insisted that they were
Christian and civilized.

These people who came to this land, they came in violence,
They have lived in violence, and they will go in violence
But it will not be the violence of the aboriginal people;
It will be the violence of the one who will re-establish
The right order of Creation again, as it once was.

After more than seventy-five years, I have finally come to
understand

What was meant by the Bible saying that
"The meek shall inherit the earth."

We have never claimed to be the owners of this land
Because we cannot own what belongs to God.

We claim to be the caretakers of this land because
Our bond is with
The Creator and the ones who lived here before us
And those who will come after us.

It is a sacred trust that we hold for all time.

We are totally dependent on Creation for life and health
and well-being,
But Creation is not dependent upon us.

We are responsible to leave this earth in a good way
For those who will come after us,
not to contaminate it or make it uninhabitable.

We have lived on this sacred land for a hundred thousand years.
Our teachings tell us that we were put here by the
One who gave us life.
We did not cross the Bering Strait as the anthropologists say.

We have lived here since long before there was written history
And we had no prisons, we had no police, we had no prison guards,

we had no lawyers and no judges but
that does not mean that we had no laws to live by.
We had strict codes to live by and they still exist today.

The laws of the people were written in the hearts and minds and the
souls of the people.

When justice had to be done it was tempered with mercy,
Something I have never seen in courts of law in Canada
or the U.S.A.

where it seems that the law is more important than the people.
Especially if the people are Native or Black or Dispossessed,
For then the law comes down with full force.

Courts of law are fearful places to go into
Where it is always the State against the individual,
and if the individual has no money then God help him or her
Because the state has no mercy as it is represented by the courts.

We live in a society that blames the victim for being victimized
Where money and possessions are
vastly more important than justice.

There was one case last summer where a young man was convicted
of rape in a court in Sault Saint Marie.
The judge gave him four to six months in prison, which he could
serve on weekends, on the basis that, as the judge said, "He came
from a good family (rich, white people) and they had suffered
enough already."

In contrast to that, two Native women at Kenora broke five
hundred dollars worth of windows, according to a newspaper report,
at a school at White Dog Reserve. One of the women was given nine
years and the other seven to be served at the Prison for Women at
Kingston, Ontario.

Only a massive intervention by Native organizations in Canada
modified those sentences.

What is Justice?

In another case, a young Native man at Kingston Penitentiary was
shot dead at short range by a prison guard.

The prisoner had let go of his hostage and was asking for my
help as a Native spiritual helper.

It is an eight-hour drive from where I live on the French
River. A float plane might have come to pick me up. The
authorities chose to murder that young man instead. I could
have prevented that murder with their help.

"Thou Shalt Not Kill"

Does the state not have to live by the same law of God as others?

He could have been wounded or quickly over-powered. He had no

gun. He had let go of his hostage. Why murder him in cold blood?

Was he killed to put terror in the hearts of other prisoners?

There was an enquiry sometime after that officially sanctioned murder at Kingston Penitentiary. The guard was exonerated.

It was so incredibly absurd and so evil that one friend who was there at the time of the enquiry said,

"I have to go outside and puke.

This is too much for me to stomach."

One commits murder and in an official court it is covered up.
Is that justice?

Prisons are an abomination.

They are a blasphemy in the face of God.

The criminal Just Us System is obscene.

It has nothing to do with Justice.

It has only to do with vengeance and control.

The poor people have to obey the laws
But it's the rich people who make the laws.

They said that piracy on the high seas was abolished
a long time ago,
When all they really did was to bring it
Ashore and make it legal.

Mark Twain once said,

"I don't know which is the bigger crime,
whether to rob a bank or to start a bank."

I cannot come to believe that God ever intended
for any of her children or his children to be locked up
in iron cages behind stone walls.

And it is incredibly strange to me that only those
Who call themselves Christian and civilized
are the ones who need prisons.

Perhaps it is because a violent people
need a violent means of control
And that is what prisons are all about.

Prisons in Canada and the U.S. are simply white racist institutions
with a track record of eighty percent failure.

If the healing professions had an eighty percent failure rate
they would soon be abandoned
So why do we persist in trying to heal social ills with a system
that is an eighty percent failure?

The truth is that prisons are a growth industry,
a vestige of empire
run on military lines
Where people choose to become robots for the state,

which is nothing other than criminal,
captive state governments
Who take orders from the robber barons,
the invisible government,
the real government in Canada (and the U.S.).

To claim that Canada and the U.S. are democracies is simply another self-delusion.

In order to serve the God of Materialism,
that great negative power,
it is essential for the individual to dispense
with his or her humanity.
Otherwise, it simply cannot work.

A rabbi was heard to say, long ago,
"If these Christians lived by only One of
their Ten Commandments, everything would be
all right."

That commandment was
"Love thy neighbor as thyself."

What we have, instead, is a racist greed,
an arrogance beyond comprehension,
with which the whole society is infected.

There is nothing in so much need of correction
as the Corrections systems in Canada and the U.S.
They have been in chaos from the beginning
and are now coming into their total dissolution.

If they were truly based on Justice
they would have been very different than they are.

We are coming into a time when what is evil will be removed
from before the face of God.

Mahatma Ghandi once said,

"There's enough in this world for everyone's
need but not enough for everyone's greed."

When the rich stop stealing from the poor
there will be very little need for prisons.

As it is now, prisons serve very well to multiply the evil.

Two wrongs never made a right in the past
nor will they in the present or the future.

At no time in the history of the human family
have the earth and the people
of the earth been so desecrated.
To believe that it can continue
is to believe that God is going to let this Creation
Be destroyed by the hands of fools.

It is guaranteed that this planet will not be destroyed
by nuclear holocaust or by human devastation.

To believe otherwise is to believe that there is no God,

No Divine Creator
Who made it all and keeps it all together.

There are those of us who believe that there must be
Peace and Tranquility on the earth,
And who are willing to work to make it happen,.
We are called terrorists and communists;
we are a threat to the evil designs of the state.

We are aware of the racism whipped up by the governments,
by Hollywood, and by the Big-Business-dominated Media
which provide a cover for the corporate plunder
of Native lands and Native people.

We are aware of the deliberate genocidal policies
practiced by all governments of North America
Over the past five-hundred years
against the aboriginal people of this land,
And that the main-line Churches of North America
very willingly participate in that genocide.

We remember the smallpox infested blankets that were given to our
people to wipe them out.
We do not seek revenge.
Instead, we endure the continuing atrocities
practiced against us.

We are very much aware of the wanton killing of our people
not only in the past but in the present,
by police and prison guards
in the name of the law.

We can not forget and we know that
God has not forgotten either.
But we know also that the way it is now
is not the way it is going to be for very much longer.

We have not forgotten our people who suffer
in the prisons of KKKanada and the U.S.
-- Donald Marshall, Cameron Kerley,
Flying Eagle, Leonard Peltier and countless others --

We know that most of our people in prisons have been ripped off
from their families by the Children's Aid societies
and the Bureau of Indian Affairs
who operate without control
out of an unbelievable arrogance
that cannot be fathomed.

They are totally involved with
the genocidal policies of these nations.

Where can we turn for mercy or justice?
We have been under attack for five hundred years,
but we will endure.
If this earth will survive, we will survive.

God did not put us on this earth to disappear
from the greed and the wrath of those
who could never comprehend the purpose
and the meaning of life for all living things.

Like the prisons, the National Parole Board is out of control.
It is my experience that the Parole Board is interested only in
keeping the prisons full.
There is no mercy there either,
only another part of the evil empire.

There was an investigation of the criminal Just Us Cystem
in Nova Scotia
about the false imprisonment of Donald Marshall.
There is presently an enquiry in Manitoba
and an enquiry in Toronto.
There is also an enquiry into the many killings by the
Royal Canadian Mounted Police
of the people of the Blood Nation of Alberta.

We believe that all this is only the tip of the iceberg;
One day the whole truth will be revealed
in its stark nakedness.

There has been an open season on Native people
And Black people
All the way through the years.
We are hated simply because we are different
But the law of God is
"Thou shalt love thy neighbor as thyself."

There are alternatives to prisons.
In fact, there need be no prisons at all.
But it means right living.
It means sharing the gifts of God
Equally with all of God's children.

That is what all faith traditions teach,
But between the teaching and the living
There appears to be no connecting link.

It seems pointless to propose the abolition of prisons
to a society that does not want to look at working models
That existed in the past and would still work today
if they were not prevented by the rich and powerful
and their captive state governments.

The whole criminal Just Us Cystem
serves as an excellent camouflage
For the robber barons who impoverish the whole world,
Stealing even the inheritance of their own children.

Long ago, Pope Gregory said,
"Those who steal the inheritance of the poor
are the murderers of those who die every
day

for the want of it."
Stokely Carmichael once said,
"The more money you got
the less they gonna ask you
how you got it."

Yes, the rich get richer
And the poor go to jail.

For us, the Native people of this country
and its genocidal policies
Recognize three faces of the beast:
The Department of Indian Affairs;
The Children's Aid Societies; and
The Criminal Just Us System.

It is of more than passing interest
that racist South Africa sent representatives to Canada
to learn how this country
did it for "their Indians,"
Then went back and did the same thing
to the indigenous Black people in their own homeland.

Two years ago, when Pieter Botha said
"there has to be law and order,"
We who cared asked aloud,
"Whose law and whose order?"

It is no different here in Canada or the U.S.

We have survived the onslaught of Christianity
and civilization,
When the earth is made clean again
we will be here to take care of it
to make sure that it stays clean
For the ones who come after we are gone.

This document does not speak to my sense of outrage
against the Children's Aid societies of Canada
and the U.S.
who have worked so diligently and deliberately
To destroy Native families
in their superior and arrogant belief that they knew best.

It does not speak to the reality that most of our people
in the prisons
Started out by being ripped off
from their families by Children's Aid,
becoming lost people without roots as a result.

It does not speak to the identical actions of the U.S. government.

It does not speak to the unutterable lack of humanity
and sense of common decency
that exists within the national Parole Board of Canada

or the U.S.

Racism is alive and well in Canada and the U.S.
and there is no justice
for the Aboriginal people of Canada and the U.S.
in the law courts of Canada or the U.S.

The reality for the Aboriginal people of Australia
is precisely the same except that the churches of Australia
have picked up their responsibility
and expressed their outrage
Against a system that is out of control.

I do not propose to talk about alternatives to prison
because a question so serious must be dealt with
at another place in another time
Where we can assess
the sincerity of those who propose alternatives.

We have always had alternatives
But those whom we try to talk to
were such that they could not hear us.

Dr. Gilliam Baker was asked
by the United Nations
to write a document
From her study of previous empires
from the Sumerian Empire
eight thousand years before Christ
To the present.

She described in words and graphs
how each empire rose
"to its highest point of arrogance and
from there fell to its total dissolution."

She said of the United States
that its highest point of arrogance
was when it dropped those two bombs
on Hiroshima and Nagasaki.

She said that the U.S. empire would come apart by 1982.
Well, that has not happened but it is obvious
that the disintegration is well along.

I said at the beginning that
We were given many teachings or prophecies
about what was going to be
And one of those teachings was about
"When the Money Will Die."

When that happens there will be total chaos.
And according to some of the Native shamans,
That will happen before the year 2000.

Another is that the Thunder People
will take back their power, electricity,

And all those satellites in the sky
on which so much now depends
will be like the pebbles dropped by
a little boy into the ocean.

The Mayan teachings said
we would live through nine descending hells.
Each would be worse than the last;
But that time would end at sunrise on August 17, 1987.
From there would begin a new time,
The time we are in now.
The time when the positive is transcending the negative.

At some point there will be
peace and tranquility on the earth again.
But it will not come until after the purification has happened
when peace and justice and good order
will be the way of things again.

This document is only a thumbnail sketch of what is and what will
be.

Sincerely,

Art Solomon

Chapter One

The Cultural and Spiritual Genocide of American Indians: U.S. Policy from the 1880s to the Present

by

Little Rock Reed

We believe that the Creator made everything beautiful in his time. We believe that we must be good stewards of the Creator and not destroy nor mar His works of creation ... so that the voices of all living things can be heard and continue to live and dwell among us.¹

Early in the spring the trees begin to woo. By and by wind comes along and helps them meet. Then we see the trees bend their heads over toward each other until they almost touch, and presently they hold their heads up straight again. Often the whole forest is making love. It is when we hear from a distance the trees murmuring in low voices.²

Each individual must approach the infinite alone, in his own time, to discover his own unique guardian spirits, songs, and identity. Humility, cleanliness, and solitude are essential to the fulfillment of this quest, for it is said that silence is the voice of the Creator.³

[T]here were no priests authorized to come between a man and his Maker. None might exhort or confess or in any way meddle with the religious experience of another. Among us all men were created sons of God and stood erect, as conscious of their divinity. Our faith might not be formulated in creeds, nor forced upon any who were unwilling to receive it; hence there was no preaching, proselyting, nor persecution; neither were there any scoffers or atheists.⁴

There was no idea of interfering with the Indians' [sic] personal liberty any more than civilized society interferes with the personal liberty of its citizens. It was not that long hair, paint, blankets, etc., are objectionable in themselves -- that is largely a question of taste -- but that they are a badge of servitude to savage ways and traditions which are effectual barriers to the uplifting of the race.⁵

I have plans to burn my drum, move out and civilize this hair. See my nose? I smash it straight for you. These teeth? I scrub my teeth away with stones. I know you help me now I matter. And I -- I come to you, head down, bleeding from my smile, happy for the snow clean hands of you, my friend.⁶

Part One

Defacing Our Mother and Dehumanizing Our Children

As a result of humanitarian outcries in the latter 19th Century, the United States shifted from the policy of outright military extermination of Indian peoples to that of forced assimilation. While hundreds of volumes could be written about the actions of the United States government to serve its assimilative intent, this chapter will only briefly touch upon a few of the methods used by the U.S. in its attempts to achieve this end through the obliteration of tribal religions and cultures.

Early in the assimilation campaign, it was apparent to US. political and Christian leaders that the political and religious forms of tribal life were so closely intertwined as to be inseparable, and that in order to successfully suppress tribal political activity, it was imperative that tribal religious activity be suppressed as well.

To that end, nearly every form of Indian religion was banned on the reservations by the mid-1880s, and very extreme measures were taken to discourage Indians from maintaining their tribal customs. The discouragement usually came in the form of imprisonment or the withholding of food, and thus starvation. As observed by Matthiessen (1983), "on pain of imprisonment, the Lakota were forbidden the spiritual renewal of traditional ceremonies; even the ritual purification of the sweat lodge was forbidden. They were not permitted to wear Indian dress or to sew beadwork...." And as stated by Deloria (1973):

Even Indian funeral ceremonies were declared to be illegal, and drumming and any form of dancing had to be held for the most artificial of reasons. The Lummi Indians from western Washington, for example, continued some of their tribal dances under the guise of celebrating the signing of their treaty. The Plains Indians eagerly celebrated the Fourth of July, for it meant that they could...perform Indian dances and ceremonies by pretending to celebrate the signing of the Declaration of Independence.

As Burnette & Koster (1974) noted, "there are on file orders from the Department of the Army and the Department of the Interior authorizing soldiers and [Bureau of Indian Affairs] (BIA) agents to destroy every vestige of Indian religion, that is, to destroy the Indian's whole view of the world and his place in the universe." The sacred Sun Dance was discontinued or held in secret until the 1950s; medicine bundles and sacred pipes were confiscated, broken and burned; medicine men were jailed for practicing traditional healing or holding ceremonies. As late as the 1930s, the

BIA had openly promulgated a law called the "Indian Offenses Act" forbidding the practice of [Indian]

religion and...the rites of the Native American Church...which is a fusion of Christian and Indian beliefs. Any Indian who practiced either [Indian religion or the rites of the Native American Church]...could be sentenced up to six months in jail or fined \$360, more than most Indians' yearly incomes in those times (Burnette & Koster, 1974).

"English names were assigned to replace [Indian] names and even [Indian] hairstyles were forbidden under penalty of criminal law," Tullberg (1982) points out.

Those [Indians] who resisted this colonial rule were labeled as 'hostiles' and were subjected to arbitrary criminal punishment, including imprisonment and forced labor, as determined by the [BIA] agent. Mass arrests of 'hostile' leaders were ordered and many served lengthy sentences at the U.S. prison at Alcatraz and elsewhere (Tullberg, 1982).

The General Allotment Act of 1887⁷ is a good example of a major 'indirect' attack on tribal religions. This Act violated virtually every treaty entered into between the United States and any Indian tribe or nation. It was designed to break up the tribes by authorizing the United States President to 'allot' Indian tribal lands to individual Indians (160 acres to the head of each Indian family). According to the framers of the Act, this was to teach the Indians to become good "civilized" farmers. It was of no concern to the drafters of the Act that most of the land to be allotted to the Indians was not suitable for farming. Indeed, most reservation land was precisely the land deemed by the whites to be worthless for agriculture and that is why the Indians were forced onto it.

It also didn't concern the framers of this Act that the Indians had neither the capital to invest for getting farms started, nor the desire to become farmers. This act violated the traditional Indian concept that the land is an integral and sacred aspect of the Creation, something that no man can own, sell or buy any more than man can own, sell or buy the air we breathe. It is sacred, it is God's, and we are merely its stewards during this life, vested with the responsibility of caring for our mother earth so that she may care for her children in the future generations (including all living creatures on the earth - plant and animal).

The concept of ownership of the land was not this Act's only violation of Indian beliefs, but the very thought of tilling (cutting into the face of) the earth mother was terrifying to many Indians because of the deep and abiding reverence held for the earth. As was stated by the Sahaptin chief Smohalla: "You ask me to ploy the ground! Shall I take a knife to my mother's bosom?"

The effects of the Allotment Act on the Indian people were devastating in many ways. After the Indian allotments were made, the "surplus" land was to be opened up to white settlement, thereby turning the reservations into checker-boards of red and white. Many

Indian nations and tribes vigorously resisted the Allotment Act, but the Act nonetheless resulted in over 90 million acres of Indian land being transferred to non-Indians during the next half century (Coulter, 1982).

When it comes to Indian affairs, the United States certainly can not claim to have ever shown an inclination toward a separation of Church and State. As Kickingbird & Kickingbird (1979) pointed out, the government negotiated with the various Christian sects and divided the Indians up between them. Throughout the mid-19th century, the missionaries worked diligently at stomping out Indian religion and at separating young Indians from their "heathen" parents and relatives and at "raising" Indian people up from their "savage" state of existence to the level of the "civilized" Christian society.

However, this process was a bit slow and "as more and more Europeans immigrated to this new land, the need for new lands [on which to] settle ... increased. The [Euro-] Americans became impatient. They wanted instantaneous conversions of Indians to an agrarian 'civilized' life" (Kickingbird and Kickingbird, 1979).

Thus the government became more involved and in 1878 the first BIA boarding school was founded at Carlisle Barracks in Pennsylvania, which marked the beginning of a systematic attack on Indian religions and cultures through the de-Indianization of the children. Over the next couple of years there were a dozen such schools established.

Before we discuss these schools, let's take a look at a few of the policies and practices utilized by the U.S. government to assure the Indian child's attendance. Unlike their Anglo counterparts, many of the Indian "children were captured at gunpoint by the U.S. Military and taken to distant [BIA] boarding schools" (Tullberg, 1982). BIA employees' kidnapping of the chldred was a fairly popular method of assuring attendance (Fuchs and Havighurst, 1972; Beuf, 1977; McBeth, 1983; Burnett and Koster, 1974). For those parents who were reluctant to let their children be taken away and placed into the schools, rations and annuities were withheld (Fuchs and Havighurst, 1972).⁸

The purpose of the boarding schools was adequately stated by the U.S. Supreme Court Justice Douglas in 1973:

The express policy [of the schools was that of] stripping the Indian child of his cultural heritage and identity: Such schools were run in a rigid military fashion, with heavy emphasis on rustic vocational education. They were designed to separate a child from his reservation and family, strip him of his tribal lore and mores, force the complete abandonment of his native language, and prepare him for never again returning to his people (Rice, 1977).

This "Americanization" of the Indian children was thought most effective if they were removed from all tribal influence at the

earliest age possible, "before the traditional tribal way of life could make an indelible stamp on them."⁹ Thus they were taken to boarding schools at such great distances that the child's contact with family was virtually impossible. For example, "Indian children were ... shipped from South Dakota or New Mexico to Carlisle Barracks in Pennsylvania where the death rate of students sometimes excelled that of children on disease-ridden malnourished reservations" (Burnette & Koster, 1974).

Even in our "enlightened" age in this latter 20th Century, Indian children in Alaska "are shipped as far away as Oklahoma, 6000 miles from their parents" (Cahn, 1969). All of these same techniques and practices were utilized by the Canadian government against Native Americans as well.

As pointed out by Grobsmith (1981), in case the school-year itself couldn't do the trick, "children living in boarding schools during the year were sometimes sent to work as domestics in non-Indian homes during the summer to keep them from their relatives and traditions, a policy that became known as 'legalized kidnapping.'" And then there was the "outing system," the "supreme Americanizer," in which the students were placed in the homes of white people for three years following graduation (Fuchs & Havighurst, 1972).

From the very beginning the boarding school experience has been an American horror story. The speaking of tribal languages was a physically punishable offense in the boarding schools, and continues to be so in some of the schools (Beuf, 1977). For most of the children, this amounted to having one's mouth washed out with lye soap every time he or she was caught communicating with the other children in the only language he or she knew. Until one could learn the English language, oral human communication was virtually impossible.

Christianity was forced upon the children and continues to this day to be stressed over tribal religions at the boarding schools. As one graduate of boarding school recalls, "one of the bad tastes it leaves in my mouth is that when we were there...they cut our hair, and shaved our heads, and forced us to go to Sunday school where they showed us pictures of this man with long hair and a beard and told us he loved us" (McBeth, 1983).

Absolutely everything that was even remotely identifiable as being Indian was uncompromisingly prohibited at the boarding schools, and the students were constantly reminded that they should be ashamed of their heritage, and that Indians who fail to simulate the white man's values, dress, customs, mannerisms and even points of view are filthy, dirty, stupid, disgusting, and less than human.

Many children would climb out the windows of the boarding schools in an attempt to return to the warmth of their families; many died of exposure during their attempts. Punishment for recurrent runaways commonly included being placed in dark, locked closets, or having balls and chains attached to their ankles so as to humiliate them in front of the other children and to discourage

the children from further attempts to return to their families. The runaways--and consequently, the deaths from exposure--became so numerous that many of the schools barred their windows to keep the children in (Coffer, 1979).

The schools were indeed run in "rigid military fashion," from the uniforms to the constant marching to-and-from everywhere there was to go, including Sunday school. To so much as get one's shoes wet was a terrible offense for these students. The greatest impression on the children was the overwhelming brutality, both physical and psychological. The staff member vested with the task of keeping the children in line was known as the "disciplinarian," whose title was changed to "boy's advisor" or "girl's advisor" around World War II; and shortly before that the brass-studded harness strap that went with the job was replaced by a rubber hose which leaves no marks, although some children beaten on their hands are crippled for life (Burnette & Koster, 1974). Up into the 1960s and 1970s, "unmanageable" students were regularly handcuffed and beaten in at least some of the schools (Burnette & Koster, 1974; Cahn, 1969). The handcuffing itself is a discipline that has permanently scarred some of the students (Burnette & Koster, 1974), and the most controversial practice at the Intermountain Boarding School near Brigham City, Utah, was the use of Thorazine, a powerful tranquilizer which is also used on prisoners.

"[Boarding] School authorities maintain that Thorazine is used only when the student is a danger to himself or people around him, usually because of drunkenness. The *Physician's Desk Reference*, a pharmaceutical guide used by doctors, states that Thorazine is a dangerous drug if misused and that use in the presence of alcohol is inadvisable" (Burnette & Koster, 1974).

"Running the belt line" was a common form of punishment at the boarding schools, which meant the "guilty" party was to crawl between the legs of other students as they lashed the student with belt buckles. Other common punishments include standing on tip-toes with arms outstretched for long periods; paddlings; being locked in dark closets (known as going to "jail") for extended periods; lifted-dress spankings to humiliate little girls; the wearing of dresses to humiliate little boys; having hands whacked with sharp-edged rulers. One school employee at Intermountain was notorious among the students for dunking their heads into a toilet whenever he suspected them of drinking (Cahn, 1969). More from Cahn:

There are the dead:

Recently, two young boys froze to death while running away from a boarding school. They were trying to get to their homes -- 50 miles away.

Senator Mondale made this report on the Fort Hall, Idaho Reservation: "The subcommittee was told during its visit to that reservation that the suicide rate among teenagers was perhaps as high as 100 times the national average.

No one really knew for certain but everyone could cite examples. We were told that suicide had occurred as early as 10 years of age."

In one school on the Northern Cheyenne Reservation, also in Montana, there were a dozen suicide attempts in 18 months, among fewer than 200 pupils....

....At Intermountain Indian School in Utah...last Fall, a student thought to be drunk and unmanageable was carted off to jail, where he committed suicide by hanging himself with his sweater. The student was actually having convulsions and needed medical attention....

There are the psychologically scarred:

There is not one Indian child who has not come home in shame and tears after one of those sessions in which he is taught that his people were dirty, animal-like, something less than a human being.... (Cahn, 1969.)

The tone of the boarding school is pretty well brought to light in Burnett & Koster's description of the Intermountain School in Utah:

... A massive institution surrounded by a chain link fence, it looks very much like the military installation it once was. The school is seven hundred miles from the Navajo reservation it was created to serve. Many of the staff members are Mormons, whose religion teaches them that the American Indians are Lamanites, the remnants of the Ten Lost Tribes of Israel, condemned to wear dark skins and to wander for their sins against God. The Mormons, of course, are entitled to their beliefs, but anyone except the BIA might pause before asking believers in this sort of racist myth to exercise a sensitive control over Indian destinies.

The BIA does not pause, because, like Pratt [the designer and founder of the BIA boarding school system], they want to feed the Indians to America. A pamphlet issued by the Intermountain school information office spells this out:

The essential difference [between Intermountain and public schools] is that public schools have the task of preserving the prevailing customs of our society, namely the same language, same costume, same diet, housing, social customs and civic responsibilities. The task of the Intermountain School is to change language, change diet, costume, housing, manners, customs, vocations, and civic duties [emphasis added].

"Changing people's habits and outlooks is one of the most complex tasks in human affairs," the pamphlet concludes. Indeed. Particularly when the people don't want to be changed, at least at the expense of their dignity and mental health... (Burnett and Koster, 1974).

Many children come out lost, and they know they're lost:

"Education...it has separated you from your family, your heritage....What more sickening life do you want? So God help me I didn't ask for this. No, I didn't..." (Cahn, 1969).

There can be no question where the emphasis has been placed in the boarding schools. It certainly has not been on education:

A good example, if extreme, of the kind of education these schools offered is the case of George Kills Plenty, who underwent eighteen years of boarding school education and finally graduated from the sixth grade when he was twenty-four years old; he was barely literate. By today's standards, he would have scarcely been qualified to enter the first grade" (Burnette & Koster, 1974).

Over the past couple of decades, BIA day schools have been taking precedence over the boarding school system; however, because the BIA day schools are also staffed by BIA personnel, they "fall prey to many of the same problems as the boarding schools, ethnocentrism and shaming in particular" (Buef, 1977).

A recent 2-year investigation conducted by the Senate Select Committee on Indian Affairs revealed blatant child abuse within the day school system, abuse which is fully endorsed and covered up by BIA administrators:

The Committee found that BIA ... permitted a pattern of child abuse by its teachers to fester throughout BIA schools nationwide. For almost 15 years, while child abuse reporting standards were being adopted by all 50 states, the Bureau failed to issue any reporting guidelines for its own teachers. Incredibly, the BIA did not require even a minimal background check into potential school employees. As a result, the BIA employed teachers who actually admitted past child molestation, including at least one Arizona teacher who explicitly listed a prior criminal offense for child abuse on his employment form.

At a Cherokee Reservation elementary school in North Carolina, the BIA employed Paul Price, another confessed child molester - even after his previous principal, who had fired him for molesting seventh grade boys, warned BIA officials that Price was an admitted pedophile. Shocked to learn several years later from teachers at the

Cherokee school that Price continued to teach despite the warning, Price's former principal told several Cherokee teachers of Price's pedophilia and notified the highest BIA official at Cherokee. Instead of dismissing Price or conducting an inquiry, BIA administrators lectured an assembly of Cherokee teachers on the unforeseen consequences of slander.

The Committee found that during his 14 years at Cherokee, Price molested at least 25 students, while BIA continued to ignore repeated allegations - including an eye-witness account by a teacher's aide. Even after Price was finally caught and the negligence of BIA supervisors came to light, not a single official was ever disciplined for tolerating the abuse of countless students for 14 years. Indeed the negligent Cherokee principal who received the eye-witness report was actually promoted to the BIA Central Office in Washington - the same office which, despite the Price case, failed for years to institute background checks for potential teachers or reporting requirements for instances of suspected abuse. Another BIA Cherokee school official was promoted to the Hopi Reservation in Arizona, without any inquiry into his handling of the Price fiasco.

Meanwhile at Hopi, a distraught mother reported to the local BIA principal a possible instance of child abuse by the remedial reading teacher, John Boone. Even though 5 years earlier the principal had received police reports of alleged child sexual abuse by Boone, the principal failed to investigate the mother's report or contact law enforcement authorities. He simply notified his superior, who also took no action. A year later, the same mother eventually reported the teacher to the FBI, which found that he had abused 142 Hopi children, most during the years of BIA's neglect. Again, no discipline or censure of school officials followed. The BIA simply provided the abused children with one counselor who compounded their distress by intimately interviewing them for a book he wished to write on the case.

Sadly, these wrongs were not isolated incidents. While in the past year the Bureau has finally promulgated some internal child abuse reporting guidelines, it has taken the Special Committee's public hearings for the BIA to fully acknowledge its failure....¹⁰

Kidnapping of Indian children and their forceful placement into non-Indian homes, institutions and boarding schools has long been a practice utilized by the United States in its efforts at assimilation, and various forms of "legalized kidnapping" continue today (refer to the chapter on "More Cause for the Fear").

For example, in the late 1940s and early 50s, Congress again

violated all the treaties by unilaterally granting the states extreme powers over Indian people. Specifically, Public Law 280¹¹ gave the states Congress' consent to assume almost absolute jurisdiction over the Indian reservations within their borders. Several states chose to assume only limited jurisdiction while others assumed the fullest powers possible until the law was amended in 1968 to require the Indian people's consent before states could assume further jurisdiction. Some of the advantages taken by the states under this law are described by Burnette & Koster (1974):

[S]tate authorities used their new powers to break up Indian families by removing children from the custody of their parents and placing them in foster homes. In theory, this was done to provide the children with a better environment. In practice, it was a method of breaking up the culture and of penalizing Indian mothers who applied for welfare assistance to feed their families. The most arbitrary standards were sometimes applied -- too many children in a single room, inadequate plumbing, and the like. In many cases, children from unbroken families were removed. The white foster homes they were sent to received a per capita payment for each child, so that boarding Indian children became a business to many whites far less qualified to care for the children than their natural parents.

By 1970, the ratio of Indian to white children in foster homes was ten to one in Montana, seventeen to one in North and South Dakota, and twenty-four to one in Minnesota. Many of these children were not unwanted by their families--they were forcibly removed by outside interlopers... (Burnette & Koster, 1974).

And, as was observed by Cahn (1969), "many boarding school students are welfare referrals; the schools are used to avoid providing increased family assistance, and parents are penalized for being poor by having their children shipped off to distant boarding institutions."

Whether the practice be that of forcing Indian children into boarding schools, into non-Indian homes or other institutions, the practice is a direct attack on Indian religions. Native American religion and culture are one and the same. It's a way of life, it's a heritage and it's an inherent right that must not be denied the individual by aliens. It is impossible to take one away (or to deny one) without taking away (or denying) the other. When an Indian is forcibly removed from his or her culture, he or she is being deprived of his or her religion as well, and vice versa. The act of such deprivation through such methods as those I have set forth so far in this chapter constitutes genocide every bit as much as Hitler's reign over Germany during the Third Reich. The systematic destruction of a people is the systematic destruction of a people. Period.

I will now turn to a discussion on the more explicit forms of

the persecution and repression of American Indian religious freedom that have been and continue to be practiced by the federal and state governments.

Part Two

The Struggle for Religious Freedom

The injustice and genocide has not ceased, for it is our belief that without our religion and traditional practices, the spirit of our people shall slowly die and wither away.

-- Laughing Coyote,
North Fork Mono Tribe,
California, 1992¹²

Religious freedom is one of the fundamental individual rights upon which the American government was founded. In fact, it was religious intolerance and persecution in their own countries that brought many Europeans to America in the first place.

In the early 1960s, this fundamental right was expressed by the U.S. Supreme Court in its holding that the free exercise clause¹³ of the First Amendment mandated that when government or government agents burdened the free exercise of religion, such burden must be justified by a "compelling state interest" which cannot be served by less restrictive means.¹⁴ In subsequent decisions, the Court has stated the rule in different, but very clear ways.

In one case, the Court held that "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion."¹⁵ And in another, the Court ruled that state laws burdening the practice of religion "must be subjected to strict scrutiny and could be justified only by proof by the State of a compelling interest."¹⁶ Even when a compelling government interest is present, however, the Court has ruled that the regulation infringing on the free practice of religion must be the least restrictive alternative to achieve that interest.¹⁷

Notwithstanding this broad scope of religious protection established by over twenty-five years of case law, in deciding religious freedom cases initiated by American Indians in 1988 and 1990, the Supreme Court severely restricted the scope of religious protections under the First Amendment. In these cases,¹⁸ the Court held that a government action that creates an incidental burden on

religious freedom, or which may even have "devastating effects" on the religion itself,

need not be justified by a "compelling state interest" which cannot be served by less restrictive means. Indeed, after [these two cases], religious claimants must prove that government actors intended to punish the claimants' particular religions -- a virtually impossible standard to meet -- in order to invoke the protections of the free exercise clause. In addition, in the 1987 case of *O'Lone v. Shabazz*,¹⁹ the Court similarly restricted the free exercise clause as it applies to prisoners, essentially leaving prisoners' religious rights to the unfettered discretion of prison officials²⁰ (Simpson, 1993:19-20).

Even before these recent Supreme Court decisions tossed American Indian religions into the legal waste basket (and placed other minority religions at great risk), Indians received very little First Amendment protection in the Courts.

For example, in the 1970s, Congress investigated claims that Indians were being prevented from visiting sacred sites, that they were being denied the use of sacred religious objects, that they were not being allowed to worship in traditional ways, and that the federal and state governments were severely disrupting Indian religious practices and ceremonies, and desecrating sacred sites. In response, Congress passed a joint resolution in 1978, the American Indian Religious Freedom Act, which declared it a policy of the United States

to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.²¹

However, the Act, as with all joint resolutions, contained no enforcement provisions²² and thus has been entirely ineffective at protecting and preserving the religious rights of American Indians, Eskimos, Aleuts and Native Hawaiians. In fact, a task force established by the Carter Administration to evaluate government policies and procedures pursuant to the Act, identified 522 instances where federal agencies were violating Indian religious practices in 1978 and 1979²³. The report cited, for example, the U.S. Navy's bombing of Native Hawaiian sacred sites (entire islands) for target practice; the denial of access to traditional sacred sites to many Indians of various tribes; and the drilling of oil wells through sacred grounds. In many cases, the sacred sites referred to in the task force's report were located on lands expressly reserved by treaty to the Indian nations and tribes who are having them destroyed or are being denied access to them -- treaties which are being ignored by the government.²⁴ Although the task force made recommendations that would put an end to many of these atrocities, to this day not one of those recommendations has

been adopted.

And thus the atrocities continue, some of which I will describe in a moment. First, however, it is necessary for the reader to have some understanding of American Indian religion. Michael Simpson, an Indian law attorney, identified some points on the subject in a recent article:

Although substantial differences exist between the various tribal religions, some generalizations about traditional Native American religions are possible. First, traditional Native American religions are pervasive, giving all aspects of Indian life a spiritual significance. See, e.g., 25 U.S.C. 1302 (1988) (the Indian Civil Rights Act, while imposing most of the provisions of the Bill of Rights upon tribes, makes an exception for the Establishment Clause due to a conscious recognition that government and religion are inextricably interwoven in some tribes); Brown [the Spiritual Legacy of the American Indian] (1982), at 69:

What we refer to as religion cannot, in the case of the American Indian, be separated from the forms and dynamics of everyday life, or from almost any facet of the total culture; nor, as we shall see more clearly, may there be separation from the phenomena of the natural environment.

Second, Native American religions differ profoundly from most major world religions in their attitudes toward history. Most major world religions are "commemorative" as a substantial portion of their religion deals with commemorating sacred events of the past.... Native American religions, however, are "continuing" as their ceremonies and rituals deal with the ongoing interaction between the tribe and the natural world it inhabits.... Finally, Native American religions are fundamentally inconsistent with at least one major world religion, Christianity, in their conceptualization of the relationship between mankind and the environment. Native American religions have a more profound appreciation of the interdependence of all living things. Further, Indian rituals and ceremonies are seen as necessary to ensure the continuing health of "Mother Earth." ... In contrast, Christianity generally distinguishes between mankind and the natural environment. For example, *Genesis* 1:26-28 states that man should "have dominion over" and "subdue" the earth... (Simpson 1993:21).

Hopi tradition helps give an understanding of Indian religion. In Hopi religious tradition, it is believed that the Creator destroyed the world for its evil. Those who remained faithful to the Creator's will were chosen to survive. They were protected inside the earth, which is believed to be the Mother -- the "womb" from

which the faithful were "born" (or emerged). Then they were sent out on four migrations until they came to Oraibi (in what is now Arizona) and settled. Oraibi is considered to be the crossroads of these four migrations, and was the first of several Hopi villages that were settled after the emergence. These villages are guarded by the spirits of the four major clans of the Hopi. These spirits reside at four high points which surround the area, which are believed to be the home of the Kachina Clan. The Kachinas are the spirits sent by the Creator to guide the other clans down the road of life according to the will of the Creator. The Hopi people have resided in the area within these four sacred high points since long before the white man was convinced that he could sail out across the ocean without falling over the edge.

The Hopi way of life is deeply religious. The values and beliefs of the Hopi are expressed through cycles of ceremonies that pervade every aspect of their daily life according to the will of the Creator.

Now, the Kachina Clan was different from the other people who were protected during the destruction of the world. They were spirits merely taking the forms of humans and are the teachers and guides of the Creation and of Life. It is vital to the Hopi way of life, the Hopi religion, that the San Francisco Peaks be protected and respected, because the role of the Peaks as the home of the Kachinas is integral to the religious ceremonial cycle of the Hopis, and thus the survival of the Hopi as a people, culturally and religiously. Now, in the words of Freesoul (1986):

...The Hopis and Navajos were, and still are, having problems with corporate developers desecrating natural sacred shrines (such as the San Francisco Peaks in Flagstaff, Arizona; Mount Taylor near Grants, New Mexico; and Big Mountain near Black Mesa). I attended several open hearings sponsored by the U.S. Forest Service where the wishes of the people were supposed to be heard. In sadness and outrage, I watched Forest Service officials and corporate developers patronize...[traditional] elders as senile old people.... I discovered that the "Indian Freedom of Religion Act" had no teeth but was only fancy words on paper.

Although my function in these matters was only as escort and protector of ... some elders of one Hopi village, I was given permission to speak at a few gatherings such as the one at Mount Taylor. I wrote several newspaper editorials regarding the expansion of the ski resort in the sacred San Francisco Peaks. These Peaks are very special for many reasons, on many levels. They are the shrine of the Hopi Kachinas. Mount Eldon, a foothill of the Peaks, is laden with sacred Navajo shrines and caves. Hopis, Navajos, and Indians from many tribes throughout America go there to fast and to pray. The site is a natural cathedral. However, it is prevalent in Anglo consciousness that if a site is not marked or if a man-made structure is not built on it, then the area is

not considered a place of worship....

Most Hopis and Navajos originally agreed to let people go into a designated area to ski and to commune with nature in the original ski resort. [The developers] agreed about twenty-five years ago to respect these sacred peaks, to let people ski peacefully, and not to expand. But now a wealthy Mormon developer had come up with a plan to expand the ski resort, to clear a hundred-acre parking lot, to build a lodge and a bar, and to widen the road leading up to the resort from two to four lanes. During debate on this heated issue, the Hopi villages were flooded with Mormon missionaries trying to convert the people. A number of Hopis converted; the Hopi tribal chairman became a Mormon. It was no coincidence that once Hopis became Mormons the San Francisco Peaks [would] no longer [be] a sacred shrine to them....

...The controversy became so heated, complicated and political that the original spiritual issue became over-shadowed. The final decision was therefore handed over to officials in Washington, D.C. In a short time, Secretary of Interior James Watts approved development and expansion of the ski resort in the San Francisco Peaks, betraying the original agreement with the Indians and blatantly ignoring all religious claims and the outcries of all the traditional Hopis and Navajos in Arizona and New Mexico....²⁵

The Hopi Tribe was to find no remedy or protection in the United States courts that held that the Hopis and Navajos can practice their religion elsewhere.²⁶

And today, not far from the San Francisco Peaks, the University of Arizona's Telescope Consortium proposes the development of an astrophysical Mount Graham International Observatory. If completed, the telescope complex will be located on the Summit of Big Seated Mountain, which is sacred to the Apaches.

The telescope complex with its associated roads, parking lots and tour buses will desecrate traditional Apache religious sites and burial grounds and will significantly diminish the religious nature of the mountain's summit....

The University of Arizona and its collaborators have persisted in their proposal to violate the sacred grounds on Mount Graham, even though the proposed astrophysical research could be done on other mountains. The University of Arizona, the Smithsonian, the Vatican, the Max Planck Institute, the Ohio State University, and Arcetri Observatory, along with their Congressional promoters (Senators DeConcini and McCain, and Representatives Udall and Kolbe) have chosen to ignore Apache religious rights.²⁷

Many similar religious deprivations have occurred and continue to occur because the courts have refused to provide any protection to Indian religious rights. The courts have allowed the federal and state governments to construct dams that flood sacred Indian sites;²⁸ they have allowed sacred sites and ceremonies to be disrupted and exploited by the government in order to promote tourism, which the courts have found to be of greater public interest than the religious rights of Indians;²⁹ they have allowed the government to deny Indians access to sacred sites for ceremonial purposes on their own lands that have been reserved through treaties. And they have allowed the construction of logging roads and the destruction of forests on sacred ground, including burial sites. This is what happened in the 1988 case in which the Supreme Court drastically reduced the protective standards under the free exercise clause of the First Amendment.³⁰

Northern California's District Court Judge Stanley A. Weigel issued an order that would stop the construction of a logging road through the Six Rivers National Forest, a project of the Forest Service. Weigel had ruled that the road, running from Gasquet to Orleans (also known as the "G-O Road"), would desecrate traditional sacred sites that are central to the religion of several tribes, including the Karuk, Yurok, Tolowa and Hupa Indians.

In April 1988, the U.S. Supreme Court reversed the lower court's decision. While admitting that the G-O Road would "have devastating effects on traditional Indian religious practices," it nevertheless ruled that the economic "needs and desires" of commercial exploiters must necessarily take precedence over the religious rights of American Indians. The Court ruled that governmental actions which infringe upon or destroy American Indian religions are not in violation of the U.S. Constitution so long as:

- (1) the government's purpose is secular and not specifically aimed at infringing upon or destroying the religion; and
- (2) the government's action does not coerce individuals to act contrary to their religious beliefs.

Hypothetically, I suppose the U.S. Department of Energy is perfectly within the realm of this decision as it detonates nuclear bombs (and invites other nations to do so) at the Nevada Test Site created by executive order in 1951 in blatant violation of the 1863 Treaty of Ruby Valley, by which the Shoshone retained all of the land on which the Test Site was created. I suppose that the U.S. government is in compliance with the U.S. Constitution if they blow the Shoshone people up during religious ceremonies on their traditional lands so long as the "specific aim" of the detonations of these nuclear weapons is to "test" them (as opposed to depriving the Indians of religious freedom), and so long as the explosions and radiation do not "coerce" the victims into acting contrary to their religious beliefs. I suppose also that the hundreds of non-violent anti-nuclear protestors who have been arrested and jailed for interfering with the government's bombings on Shoshone land in violation of the Ruby Valley Treaty and International Law

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violated the government's "freedom of expression" since these criminal protestors' purposes were not "secular" yet were specifically aimed at infringing upon the government's freedom of expression.

The Association on American Indian Affairs addressed the significance of the G-O Road decision in the following excerpts from testimony they submitted to the Senate Select Committee on Indian Affairs:

[T]his decision greatly threatens the free exercise of Indian religions and, in many cases, the ability of the religions themselves to survive. Congress must take action to ensure that Indian religions are accorded the same respect and protections provided to other religions. American Indian religions are based on the natural world. Religion, social organization, political life, the economic system and spatial order are interconnected and subject to the forces of nature and the spirits of the universe. From one generation to the next, continuity is maintained through the natural world. In essence, Indian religions are land-based theologies which entail site-specific worship. Sacred places of power can be thought of as amplification points for human, psychic, and spiritual energy. This type of worship is indispensable to the practice and preservation of Native religions. The survival of a religion may be threatened by man-made changes to or an outsider's use of a particular site.

Many sacred sites can be found on federal lands. It is for that reason that the G-O Road decision is so dangerous. We believe that once a site is established as sacred, the burden should then be placed upon the government to show that its management practices are appropriate. Because of the site-specific nature of much of American Indian religious belief and practice, such protection is essential for the free exercise of Indian religions... (Association on American Indian Affairs, 1988).

And the Supreme Court's 1990 decision which I referred to earlier³¹ was a case involving the Indians' use of a sacred sacrament, peyote. In this decision, the Supreme Court issued a ruling which grants states the right to criminally charge and imprison American Indians for possession and use of peyote regardless of whether such possession plays an integral role in the religious system of the Indians so charged. It isn't likely that Court would have ruled similarly had the case involved Christian religious ceremonies where children are served wine despite the fact that it is a criminal offense to serve alcohol to minors, given the fact that Christians were granted exemption to the prohibition of alcohol in the 1930s.

Let's consider the dynamics of discrimination involved here by

focusing on the real, rather than the imagined, state interest in controlling drug abuse, which is ultimately the excuse to prohibit Indians from using peyote for religious purposes. The following are some relevant statistics provided by McCaghy (1985), relating to the general population in the United States:

- 20% of drinking males and 10% of drinking females report signs of dependence on alcohol; about half of these claim that drinking has led to serious consequences such as loss of job and family problems.
- The majority of homicides and aggravated assaults, and a significant proportion of rapes, are alcohol related. Recent research...indicates that among prison inmates convicted for robbery, burglary and motor vehicle theft, nearly half were drinking at the time of their offenses.
- Alcohol-related offenses constitute the largest single arrest category. In 1982, 10% of all arrests made by police were made for drunkenness. This despite the fact that only 13 states still have laws allowing criminal prosecution solely because of a person's intoxicated appearance in public.
- 60% of people who die in accidents while driving passenger cars, light trucks or vans have been drinking.
- 60% of fatally injured motorcycle riders have alcohol in their systems at the time of death.
- 40% of fatally injured adult pedestrians have a blood-alcohol level of .10 or more at the time of their accidents.
- About 25,000 persons are killed and 700,000 persons are injured each year in automobile crashes involving alcohol.
- Studies have shown that up to 40% of fatal industrial accidents, 69% of drownings, 83% of fire fatalities, and 70% of fatal falls are alcohol-related.
- More than 1/3 of all suicides involve the use of alcohol and disproportionately high numbers of persons with drinking problems commit suicide.
- More deaths, disease and financial and emotional loss result from alcohol use than from all of the other psychoactive drugs combined.
- The annual economic cost of drinking exceeds \$60 billion.
- There are also the intangible and unmeasurable expenses of disrupted families, desertions, and countless other social and psychological problems that arise from

drinking. Alcohol clearly constitutes America's greatest drug problem... (McCaghy, 1985:267-69).

These statistics are significantly higher among American Indians, so much so that alcoholism is considered to be not only the greatest drug problem in American Indian communities, but the greatest social and health problems (Beauvais and LaBoueff, 1985; Grobsmith, 1989a; Hall, 1986; Mail and McDonald 1981; Pedigo, 1983; Price, 1975; Snake, et al., 1977; Task Force Eleven, 1976; Weibel-Orlando, 1984; Weibel-Orlando, 1987).

Meanwhile, as I have thoroughly documented in the chapter on "Rehabilitation: Contrasting Cultural Perspectives," the Native American Church, whose members use peyote as a central element in their purification and healing rituals, has been more successful at curing Indians of alcoholism than any other therapeutic program in existence.

It appears, therefore, that those states that refuse to grant religious exemptions to Indians from the laws prohibiting the use of peyote defeat the very intention of their refusal to grant such exemptions: that is, their intention to prevail in their "war on drugs."

I doubt if the Supreme Court would have ruled similarly had the case involved the serving of alcohol to children in Christian ceremonies. But then, I guess we'll never know since no one has ever been (or is likely to be) criminally charged and jailed for serving alcohol to a minor in the name of Christ.

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There is currently a bill (S.1021) pending before Congress which was introduced in May 1993 by Senator Inouye (on behalf of himself and Senators Baucus, Campbell, Feingold, Hatfield, Pell and Wellstone) which, if passed with its current language, would significantly reduce, if not stop, the type of atrocities I have discussed in this chapter. Please support this legislation by urging your Congresspersons and representatives to vote for this bill. For more information, contact the Native American Rights Fund, 1506 Broadway, Boulder, Colorado.

The President of the United States proclaimed 1992 to be the "Year of the Indian." The United Nations proclaimed 1993 to be "The Year of Indigenous Peoples." Hopefully, 1994 will be the year Congress passes legislation that will protect the religious freedom rights of American Indians. But it's up to you. If you're not willing to write your Congresspersons or representatives, or to spend a few minutes of your time taking some other form of affirmative action to support the bill that's pending before Congress, then please put this book down. I don't want you to entertain yourself by the suffering of my people.

Endnotes to Chapter One

1. J. Snow, *These Mountains are Our Sacred Places* 145 (1977).
2. Jones, *Ethnography of the Fox Indians*, 125 Bureau of American Ethnology Bulletin 20 (1939).
3. R.L. Barsh, The Illusion of Religious Freedom for Indigenous Americans. In *Oregon Law Review* 65: 363-412, at 368 (1986).
4. C. Eastman, *The Soul of the Indian*, 4-5 (1911).
5. Annual Report of the Department of Interior, Report of the Commissioner of Indian Affairs. H.R. Doc. No.5, 57th Congress, 2nd Session. 15-16 (1902).
6. J. Welch, *Riding the Earthboy* 40, 34 (1976).
7. 24 Stat. 388 (1887), 25 U.S.C. 331 et seq.
8. See, e.g., Congress' "Regulations for Withholding Rations for Non-Attendance at schools," 27 Stat. 628, 635 (1983), 25 U.S.C. 283; and "Withholding Annunities from Osage Indians for Non-Attendance at Schools," 38 Stat. 96 (1913), 25 U.S.C. 285.
9. This was quoted from a pamphlet that was issued with the 1889 annual report of the Commissioner of Indian Affairs (Hoxie, 1984).
10. "Final Report & Legislative Recommendations, Select Committee on Indian Affairs, U.S. Senate, November, 1989.
11. 67 Stat. 588 (1953), 18 U.S.C. 1162.
12. Statement to U.S. Senate Committee on Indian Affairs, AIRFA field hearing, Los Angeles, California, November 12, 1992.
13. The First Amendment contains what are referred to as the Establishment Clause and the Free Exercise Clause: "Congress shall make no law respecting an establishment of religion [Establishment Clause], or prohibiting the free exercise thereof [the Free Exercise Clause]."
14. In *Sherbert v. Verner*, 374 U.S. 398 (1963), the Court stated that the question was "whether some compelling state interest ... justifies the substantial infringement of" First Amendment rights.
15. *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).
16. *Hobbie v. Unemployment Appeals Commission*, 480 U.S. 136, 141 (1987).
17. See, e.g., *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640, 654-56 (1981); and *Thomas v. Review Bd. of Indiana*, 450 U.S. 707, 718 (1981).
18. *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988); and *Oregon v. Smith*, 494 U.S. 892 (1990).
19. 482 U.S. 342 (1987).
20. The *O'Lone* case and current standing of prisoners' religious rights are discussed in the upcoming chapter on "White Man's Law."
21. 92 Stat. 470 (1978), 42 U.S.C. 1996.
22. The Act provided no new protection for Indian religion, but merely expressed the importance of considering the potential effect on Indian religion when promulgating policies and regulations in the course of government business. Moreover, as the court held in *Fools Crow v. Gullet*, 541 F.Supp. 785 (D.S.D. 1982) the Act "does not create a cause of action in federal courts for violation of rights of religious freedom." *Id.* at 793. Similarly, the court in *Wilson v. Block*, 708 F.2d 735 (D.C. Cir.), cert. denied, 464 U.S. 956 (1983), ruled that the Act merely requires the government to consult with the Indians about the potential devastating effects their actions may have on Indian religious practices, but it

does not require the opinions of the Indians to have any type of effect on the government practice. Other courts have ruled likewise.

11. U.S. Department of Interior, Federal Agencies Task Force, American Indian Religious Freedom Act Report 1-8 (Aug. 1979).

12. Treaties are the "Supreme Law of the Land," according to Article VI of the U.S. Constitution. Many proponents of bills that would abrogate all treaties claim that the treaties are "antiquated." However, every treaty made between the U.S. government and Indian nations is newer than the U.S. Constitution, so which should be abrogated first on the grounds of "antiquity"?

13. For those who are not aware, the Secretary of Interior is vested by the U.S. government with nearly absolute power over all Indian people, even to the extent that the laws passed by tribes are subject to his approval. If the members of a tribe vote unanimously to adopt a tribal resolution or law, the Secretary of Interior has absolute veto power. All economic tribal decisions are subject to his approval. This system of government forced on the Indian nations and tribes by the U.S. government, and its never-too-far-away military, is fascism. Of course, America calls this particular situation a "trust relationship" or "trust responsibility" -- the good Secretary is there to be sure nobody tries to do anything wrong to "America's Indians," and to be sure the Indians don't make any decisions that might not be in their own best interests. According to the U.S. government, the Secretary of Interior knows what's in the best interest of the Indians - even more so than they themselves do. Trouble is, there seems to be a conflict of interest involved, since most of the government agencies that are interested in exploiting Indian lands and resources are also supervised by the same Secretary....

14. *Hopi Tribe v. Block*, 8 I.L.R. 3073 (D.D.C. June 15, 1981), aff'd, No. 81-1912 D.C. Cir. May 20, 1983).

15. Reprinted from *Indian Treaty Rights Newsletter* (2)1:9, Winter 1991 (1020 W. Leland, Chicago, IL 60640). For more information, please contact Ernest Victor, Jr., San Carlos Tribal Headquarters (602) 475-2361 ext. 275 or Wendsler Nosie (602) 475-2229, or write the Apache Survival Coalition, P.O. Box 11814, Tucson, AZ 85734.

16. See, e.g., *Badoni v. Higginson*, 455 F.Supp. 641 (D. Utah 1977), aff'd, 638 F.2d 172 (10th Cir. 1980), cert. denied, 452 U.S. 954 (1981); *Sequoya v. Tennessee Valley Authority*, 480 F.Supp. 608 (E.D. Tenn. 1979), aff'd, 620 F.2d 1159 (6th Cir.), cert. denied, 449 U.S. 953 (1980).

17. See, e.g., *Fools Crow v. Gullet*, 541 F.Supp. 785 (D.S.D. 1982), aff'd, 706 F.2d 856 (8th Cir. 1983); cert. denied, 464 U.S. 977 (1984).

18. *Lyng*, *supra* note 18.

19. *Oregon v. Smith*, *supra* note 18.

CHAPTER TWO

*Alien Jurisdiction, Cultural Clash
and a Look at Some American Indian Political Prisoners*

by

Little Rock Reed

The utmost good faith shall always be observed toward the Indians; their lands and property shall not be taken from them without their consent; and, in their property, rights and liberty, they never shall be invaded or disturbed unless in just and lawful wars authorized by Congress, but laws founded in justice and humanity shall, from time to time, be made for preventing wrongs being done to them and for preserving peace and friendship with them.

-- U.S. Congress
Act of August 7, 1789

"... It is the intent of the United Yupik Tribes to repudiate U.S. claims of jurisdiction and to vindicate our status as a free people. The U.S. is requested, therefore, to show cause why the United Yupik Tribes should have ever been subject to U.S. law...."

-- Council of Elders,
United Yupik Tribes
Western Alaska, 1989

The first chapter focused on the United States' intolerance for tribal religions and cultures, and it laid the foundation upon which to illustrate the same intolerance practiced by the U.S. and individual state governments against American Indian prisoners and their spiritual leaders and traditional elders across the country. Before examining the prison struggle, however, it is necessary for the reader to have some understanding of the historical and contemporary circumstances and events which have forced Indian people into the white man's criminal justice system, and ultimately into his prisons. An informed understanding of these circumstances and events must lead one to the logical conclusion that American Indians do not belong in the white man's criminal justice system or prisons, and that many of them who are captives of the system are political prisoners.

Two general areas of study are necessary for this understanding: first, the U.S. government's historical basis for asserting criminal jurisdiction over Indian people; and second, the intolerable racism and ethnocentrism Indian people are subjected to in their efforts to maintain political and cultural autonomy -- efforts which render many Indians political prisoners. I will begin with the first overview.

The U.S. Constitution, which was ratified in 1789, is the basis of the American system of government. Although the U.S. Constitution reserves many powers to the individual states, it gives the federal government certain powers the states do not have. For example, the individual states do not have the power to enter into treaties with other nations. This power is vested exclusively with the federal government. Article VI of the Constitution states that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land."

A treaty is not only the supreme law of the land, it is also a contract between two or more sovereign nations. Indian tribes are sovereign nations existing within the geographical boundaries of the United States and they enjoy a higher status than states.¹ Under international legal principles, nations have civil and criminal jurisdiction over all people within their territories. By virtue of these international legal principles and the inherent sovereignty of each Indian nation, the federal and state governments do not have a right to assert jurisdiction over Indian Country except by the express consent of the Indian nations through treaty or agreement. In very few cases have Indian nations consented to the United States government's assertion of jurisdiction over them, and in those few cases where they have, the jurisdiction granted has been very limited.²

Notwithstanding international law or the fact that all treaties are the "Supreme Law of the Land," the United States government has always asserted jurisdiction over Indians and Indian country. The following is a rough sketch of the manner in which criminal jurisdiction has been increasingly imposed on Indian nations.

The U.S. government generally relies on three arguments to support its claim of a right to assert jurisdiction over Indian Country without the consent of Indian nations. These arguments are based upon the "plenary power doctrine," the "doctrine of geographical incorporation," and the federal-Indian "trust relationship."

The so-called "trust relationship" can be defined as "the unique moral and legal duty of the United States to assist Indians in the protection of their property and rights,"³ which was more or less expressed by Congress in the Northwest Ordinance of 1789, which appears on the title page of this chapter.

In using the federal-Indian trust relationship as a basis to justify the assertion of jurisdiction over Indian people in Indian Country, the argument is, of course, that the forced jurisdiction, despite treaty law or international legal principles, is "in the best interests" of the Indian nations, and that if the Indian people disagree, then it is simply because they are incapable of assessing what is in their own best interests. (This would be the equivalent of the Soviet Union asserting jurisdiction over all the people in the United States because the Soviets sincerely believe that it's in the United States' best interests -- regardless of whether the U.S. citizens agree.)

The argument that Congress has "plenary" (meaning absolute) power over Indian tribes lacks a legitimate legal foundation as well, for the plenary power doctrine clearly contradicts international law as well as Article VI of the U.S. Constitution which expressly states that all treaties are the supreme law of the land. This means in effect that treaties between Indian nations and the U.S. government have supremacy over any law Congress might enact which unilaterally abrogates or alters a treaty without the consent of the nation-parties to the treaty.

And then there is the "doctrine of geographical incorporation." This is where the courts have convinced themselves that since the Indian nations' respective territories are located within the geographical boundaries of the United States, the United States holds title to all of the land, and it is holding the title "in trust" for the Indians (whether they like it or not). This being so, it is argued, the U.S. has the absolute right to assert jurisdiction over Indian Country. This argument, much like the others, lacks any legal-historical foundation.

The federal government's first jurisdictional intrusion into Indian Country came with the Congress' passage of a series of six laws known as the Trade and Intercourse Acts, which were centered on commercial dealings between Indians and whites. The primary intent of these laws was to prevent corrupt trade practices, and possible warfare with Indian nations as a result of corrupt trade practices, by greedy whites. The drafters of the first of these Acts, which was passed in 1790⁴, agreed that Indian sovereignty meant that tribes should be considered as foreign nations. Nevertheless, by the time the final Act in the series was passed in

1834⁶, the acts extended federal jurisdiction over crimes committed by or against whites in Indian Country.

The General Crimes Act of 1817⁷, which was amended in 1854⁸, extended all federal criminal laws into Indian Country except in cases where (1) offenses were between Indians and did not involve whites; (2) an Indian had already been punished under tribal law for an offense committed against a non-Indian; or (3) tribal jurisdiction over the offense had already been expressly reserved by treaty. The latter of these exceptions effectively denied the sovereign status of the many Indian nations who had never (or would later choose to never) enter into treaties with the federal government. The fact that the Indian nations were not obligated to expressly reserve any sovereign rights in treaties in order to retain those rights was also disregarded by Congress when passing the General Crimes Act.

In 1825, Congress passed the Assimilative Crimes Act⁹, the stated intent of which was to prevent "federal enclaves" from becoming sanctuaries for white outlaws. According to the Assimilative Crimes Act, in the absence of federal statutory law, the laws of the respective states within which "federal enclaves" were situated would be applied in the federal courts if committed within the federal enclaves, which are property owned by the federal government, such as national parks. For example, if a federal enclave sat within the geographical boundaries of the state of California, California's crimes would become federal offenses if committed within the federal enclave.

Although Indian reservations and lands were not mentioned in the Assimilative Crimes Act, in 1946 the U.S. Supreme Court ruled that the Act was applicable to Indian Country.¹⁰ Although this Act would not apply to cases where only Indians (and no non-Indians) were involved, or where application of the Act would violate a treaty which expressly reserved such jurisdiction to the Indian nation, or where the Indian offender had already been punished according to tribal law, this Act greatly encroached on the jurisdictional rights of Indian nations by drastically increasing the number of crimes in Indian Country that could be federally prosecuted.

The Major Crimes Act of 1885 has had greater impact on Indian people than all the other Acts. This Act originally gave federal courts jurisdiction over seven "heinous" crimes committed by Indians against other Indians in Indian Country, in utter disregard for international law, treaty law, and Article VI of the U.S. Constitution. The Act was later amended to include seven more offenses. The offenses listed in the Major Crimes Act are, of course, serious. However, Indian nations were perfectly capable of handling criminal behavior in Indian Country without the imposition of U.S. jurisdiction over these matters. As was observed by Tom Tso, Chief Justice of the Navajo Nation Supreme Court, when blood-thirsty white politicians were pushing to have the Federal Death Penalty Act of 1989 enacted: "The traditional Navajos were held together by a system of values and a sense of community so strong that, before the federal government imposed its system on the

tribe, there was little violent crime and no need to lock up wrong-doers."¹¹

In passing the Major Crimes Act, Congress was reacting to the outcries of white people who were outraged because Indian customary laws weren't based on the Judeo-Christian doctrine of an eye for an eye and a tooth for a tooth. Specifically, the outcry was the white people's reaction to the case of *Ex parte Crow Dog*¹², where the U.S. Supreme Court held that the tribes had exclusive jurisdiction over crimes in Indian Country involving Indians. In this case, Crow Dog, Lakota (Sioux), killed another Lakota, Spotted Tail, on the Great Sioux Reservation. In the 1868 Fort Laramie Treaty, the Sioux Nation reserved exclusive jurisdiction over crimes committed among the Sioux. Therefore, the matter was resolved by the Sioux in accordance with Sioux custom. But the Sioux Nation's manner of handling the matter was unacceptable to the whites, so they (the whites) charged Crow Dog with murder and in their court they convicted and sentenced him to death. On appeal, the Supreme Court properly held that the United States had no legal jurisdiction over the matter, and Crow Dog's conviction and sentence was reversed. The whites could not accept that decision, so they cried to Congress and got their Major Crimes Act passed into law.

Today, as a general rule, criminal jurisdiction in Indian Country is vested in the tribes except for the offenses listed in the Major Crimes Act.¹³ Those offenses are federally prosecuted. And when an Indian commits a crime outside of Indian Country, the same laws apply as would apply to a non-Indian; that is, unless it is a federal offense, the state within which it is committed has jurisdiction. Thus, we can see that when Indians are charged with serious criminal offenses involving the prospect of imprisonment or the imposition of a death sentence, they usually find themselves within the federal criminal justice system or a state criminal justice system.

This is very problematic for many Indian people who wind up in federal or state criminal justice systems, for two predominant reasons:

- 1) The laws the Indians are charged with come into conflict with Indian rights reserved under treaties or aboriginal rights (such as the right to hunt, fish, gather and use water sources in areas where they have historically exercised these rights but which now fall within federal or state boundaries; and
- 2) Many jurors presiding over the cases of Indian defendants, and prosecutors and investigators involved in Indian cases, have a deep-seated hatred for Indians because of the cultural conflict that exists around reservation boundaries caused in great part by the non-Indians' belief that Indians should not have "special rights" (aboriginal rights, treaty rights, etc.) in the first place, and should be treated like "any other

citizen."*

Consider, for example, an article which appeared in the June, 1989 edition of the *Native Prisoners' Rights Committee News* (now defunct), which described the atmosphere experienced by Indians on a typical day in Wisconsin:

The "Lake of Torches" or Lac du Flambeau received its name from the traditional spearing encountered by the first French visitor to the area, who saw the lake alive with the flames of the spearing torches. In the Treaty of 1837 and the Treaty of 1842, the Ojibway sold to the United States extensive lands in the Upper Great Lakes area, including the northern third of Wisconsin; however, they kept their right to hunt, fish and gather in the lands that were ceded. Wisconsin for over a century has refused to recognize these treaties and jailed the Ojibway for "violating" the fish and game laws imposed by the state. The Ojibway sued the state to enforce the treaties and in 1983 the federal appeals court ruled in favor of the tribes. The spearing (fishing) now, as in the past, takes place in the period of two weeks (mid-April through early May, depending on location and the weather) right after the ice melts, when the walleye (fish) congregate to spawn.

The spearing began again in 1984, after the court's decision. However, the Ojibway have met with increasing opposition by non-Indians. The opposition started in small groups protesting the regained treaty rights. As the groups enlarged, the controversy turned into racial slurs and violence. Tactical squads were called in during the 1987 season when a mob of 500 hurled rocks and racial epithets and blocked 12 Ojibway speakers from escaping from a small point of land near a boat landing. Two anti-Indian organizations have heated the hatred: Protect America's Rights and Resources (PARR) and Stop Treaty Abuse (STA). As Dean Crist, a leader of STA, put it, "Our efforts to hinder the spearing and netting harvest won't be stopped."

During one 12-day session, over 200 non-Indian protestors were arrested. Miraculously, no Ojibway were seriously hurt, despite the racial riot conditions:

* A plot to pool \$30,000 to hire a hit man to assassinate tribal leaders, uncovered by a Milwaukee newspaper.

*U.S. citizenship was conferred upon all Indians through an Act of Congress in 1924. Traditional Indians have never sought nor recognized this forced "citizenship" any more so than would U.S. citizens recognize an Act of the Soviet Union making all people in the U.S. citizens of the Soviet Union.

- * Signs bearing such legends as "Save a Walleye, Spear a pregnant Squaw."
- * Effigies of "Injun Joe" hanging in the woods at landings and Indian heads impaled on spears, like some horror movie prop.
- * Patrol car tires slashed, rocks thrown through truck radiators, organized attempts to force tribal vehicles off the road, police officers hurt in melees with protestors.
- * Pipe bombs found at landings with makings for more discovered in a nearby home.
- * Shouts of "Timber nigger!" "The only good Indian is a dead Indian!" "Rape our women, not our walleye!" "Kill 'em!" "Scalp 'em!" coupled with a thesaurus of obscenities.

In the atmosphere of these tensions, politicians scurried to attempt to bully the Ojibway into surrendering their treaty rights. The Wisconsin congressional delegation threatened to cut off all federal funds to the tribes. State politicians rallied against welfare benefits. Treaty abrogationist legislation was introduced in Congress, joined in by all of the Wisconsin delegation [and many other Indian haters around the country] except Rep. Kastenmeier of Madison.

Wisconsin Governor Tommy Thompson initially chose a more responsible path. He negotiated with the Ojibway for a reduction of harvest levels in return for a pledge of specific types of protection for the speakers. He promised to take all action necessary, including calling out the National Guard to provide protection.

As violence increased, the governor reneged on his promise. He betrayed the agreement and instead sought the end of the Ojibway spearing season. Eight Northern Wisconsin sheriffs joined him, announcing that they would no longer provide any protection for speakers at the landings. It appeared that the racists had won. But the Ojibway hung in there -- they refused to close the season and called on the governor to keep his promise. However, the governor chose to seek a federal court order closing the spearing season. The tribes in turn forced the governor to take the unprecedeted step of taking the stand in court in support of his request. In the courtroom, packed with reporters, Governor Thompson was forced to explain that he had lost control of the situation and would not call out the Guard, but wanted the court to stop the legal activity of the Ojibway.

Federal Judge Barbara Crabb rebuked the governor, saying, "[the governor] is seeking an injunction against

the tribes solely because persons opposed to the lawful activities of the tribes are engaged in illegal and wrongful acts against tribal members.... But can we let the fear of bloodshed destroy our state and country? What kind of country would we have if brave people had not faced down the prejudiced, the violent, and the lawless in the 1960s? What kind will we be if we do not do the same today? ... We claim to have respect for law.... If we do not meet this challenge this week in Wisconsin, what right do we have to make that claim? If we abandon our principles whenever they are put to the test, do we not risk the loss of our identity?"

On May 6th, the day after the court session, the Ojibway held a rally and feast at Lac du Flambeau. The following day the Ojibway announced the end of their spring spearing season. "It is a gesture of good will that neither the state officials nor the people of northern Wisconsin deserve - but that we are freely offering them anyway," said tribal chairman Mike Allen. Note that the Ojibway had only taken 29% of the anticipated angler harvest and only 60% of their own harvest of the previous year. The Ojibway fish under tight restrictions in accordance with a very conservative, safe harvest level, under a regime in which literally every fish taken is counted and measured.

As history has unfolded here on Turtle Island we can easily see it repeat itself. Are not the expressions of "The only good Indian is a dead Indian" old? Did it not surface in the earliest days of the forming of the United States?

People of power have repeatedly weakened from pressure for various reasons. But Native Americans know that trouble like this is always waiting to surface. I have learned that we must always be ready to stand up for our rights, even in the eighties.

In her doctoral dissertation, Robyn (1993) points out:

There appears to be a hidden agenda behind the Chippewa exercising their treaty rights to spear fish. After [a 1983 court decision upholding the treaty rights], several anti-treaty groups were organized in Wisconsin: The Wisconsin Alliance for Rights and Resources (WARR), Equal Rights for Everyone (ERFE), Protect Americans' Rights and Resources (PARR), and Stop Treaty Abuse (STA). These groups tried to convince the public that the Chippewa were out to "rape" the resources, over-harvest deer and fish, and exercise their treaty rights without limitations which would destroy the entire economy of Northern Wisconsin. As the sportsmen physically try to keep the Chippewa from exercising their treaty rights, the state of Wisconsin acts as though the Chippewa are the cause of the problem. They are criticized for

exercising their rights and have become a scapegoat for economic problems.

Wisconsin wants to open the northern part of the state to large mining corporations such as Rio Tinto Zinc, Noranda, Kennecott, and Exxon. Treaties granting hunting and fishing rights on ceded lands stand in the way. The corporations are using the scenario which unfolds at the boat landings each spring as a smoke screen which hides a highly organized, corporate financed attempt to dissolve treaties.... Racist propaganda is being disseminated through the media saying the exercise of treaty rights will deplete resources. The corporations, with the help of the state, have fueled the flames of anti-treaty, white sports-fishermen, and a call for the ... termination of Indian treaties and reservations... (Robyn, 1993:14-15).

But, of course, the climate described above is not exclusively a Wisconsin one. As the late Yakima elder David Sohappy, Sr., said:

First the U.S. Government built the dams that killed our fish; then they imprisoned me, my son and seven others for continuing to fish in the way of our ancestors; Now, they have ordered me to leave my home, so they can destroy it. I say to the U.S. Government: "I will not leave my home and I will continue to fish according to my religion and the teaching of my ancestors."

The prisons are filled with Indians and Alaska Natives who have been convicted in the white man's courts for hunting, fishing and subsistence gathering in accordance with their customs which are intruded upon by white man's laws. Those laws violate the treaties ("Supreme law of the land") and aboriginal rights.

There are many Indians who have been targeted and sent to prison because of their political activism, though peaceful it may be, because their activism is a threat to the greedy few who wish to exploit the lands and resources the targeted activists try to protect, or because their activism is a threat to the criminal activities of those greedy few and their agents. The government will go to extremes to "get its man" (or woman) once the man (or woman) has been targeted to be silenced. The case of Eddie Hatcher is illustrative of this fact.

In February, 1988, Eddie Hatcher approached federal government agencies asking for help in responding to the desperate situation in his home county of Robeson, North Carolina. Robeson, a county whose population is equally mixed between Blacks, Indians and whites, was suffering an epidemic of racial violence and murders of Indians and Blacks. In addition, cocaine and other hard drugs were flooding the county, with devastating effects on an entire generation of young Indians and Blacks. Hatcher was among those who had obtained evidence that local law enforcement and county officials were complicit in major cocaine trafficking.

Hatcher's attempts to publicize and challenge this situation had already led to threats on his life. After failing to receive any help from the FBI or the DEA, he and another Tuscarora Indian, Timothy Jacobs, took the desperate step of seizing and holding the offices of a local newspaper in order to publicize the extreme situation in Robeson County. His conditions for surrender were accepted by the Governor of North Carolina, who agreed to; 1) place Hatcher and Jacobs in federal rather than state custody, 2) transfer John Hunt, an Indian prisoner, from a life-threatening situation in Robeson County Jail to another facility, 3) establish a task force of the Governor's top advisors to investigate the serious charges of corruption which motivated Hatcher's action, and 4) investigate the death in jail of African-American Billy McKellar.

In accordance with the conditions of surrender agreed to by the Governor, Hatcher and Jacobs were tried in federal court for hostage taking and several other charges. Theirs was the first case to be heard under the 1984 "Anti-Terrorism" Act. The jury acquitted them on all charges. Seven weeks later, both men were re-indicted on state charges of kidnapping, charges which the state had dropped in favor of the federal trial in which Hatcher and Jacobs were acquitted. This action by the courts in North Carolina clearly violated Hatcher's and Jacobs' constitutional right not to be tried twice for the same crime. Fearing for his life, Hatcher fled North Carolina.

In the period between his acquittal and his re-indictment Eddie Hatcher's home was fired on and he received death threats in the mail. State and local police also monitored the attendance at organizational meetings of a newly formed Native and African-American coalition, whose members were later harassed and threatened.

Eddie was captured in California in the summer of 1989. During his extradition hearing, the federal district judge refused to even look at the three-hundred pages of evidence that testified to the mortal danger he faced (and still faces) in custody in North Carolina. Three marshals from North Carolina were present in the courtroom, making clear that his extradition had been decided on before any hearing was ever held.

Upon his return to North Carolina, Hatcher was kept in a solitary cell for six months. With the knowledge that pretrial motions might take years to be heard, and with the promise that he could remain in Central Prison in Raleigh where he had developed close friendships, Eddie Hatcher pled guilty to kidnapping charges and received an eighteen-year sentence.¹⁴

The case of Leonard Peltier is another which illustrates the lengths the government will go to "get its man." From a flyer issued by his Defense Committee to announce June 26, 1990 as "International Day to Resist the Imprisonment of Leonard Peltier":

Leonard Peltier is an Anishnabe-Lakota indigenous man and a leader of the American Indian Movement. He has

served 14 years in prison, framed on false murder charges, and is sentenced to serve two consecutive life terms.... Nelson Mandela was released this year in South Africa. It is time for the United States to do the same and release its political prisoners.

On June 26, 1975, an indigenous man named Joe Stuntz and two FBI agents were killed in a shoot-out between federal agents and American Indian Movement activists on the Pine Ridge Indian Reservation in South Dakota. The death of Joe Stuntz was never investigated. The death of the two agents, however, evoked one of the largest manhunts in FBI history, involving more than 200 federal troops and characterized later by the U.S. Commission on Civil Rights as "an over-reaction which takes on aspects of a vendetta ... a full-scale invasion."

On that very same day, Dick Wilson, the corrupt tribal chairman of Pine Ridge, was in Washington, D.C., arranging to sign away 1/8 of the reservation lands against the will of the traditional Lakota people. These lands had been found to contain sizable amounts of oil, gas, and most notable, uranium ore, coveted by U.S. corporations and military for use in nuclear power plants and nuclear weaponry.

The traditional people on Pine Ridge opposed corporate development on their lands, and since the occupation of Wounded Knee in 1973, intrusions onto Pine Ridge by federal agents in support of Dick Wilson and against the traditional Lakota people had become commonplace.

Charges were eventually brought against four American Indian Movement activists for the deaths of the two FBI agents. Two of them were found not guilty on grounds that they had been acting in self-defense during the gunfight. Charges were dropped against the third for lack of evidence, and so that the Justice Department could bring the full weight of its prosecution against one man--Leonard Peltier.

According to the FBI's own records, they had initiated a plan long before the Pine Ridge shoot-out to neutralize Leonard Peltier by framing him on false felony charges and imprisoning him. Neutralizing Peltier was just one part of a larger FBI "counter-intelligence program" to destabilize and destroy the American Indian Movement completely.

Believing he had no chance for a fair hearing in the U.S., Leonard fled to Canada to seek political asylum. To obtain extradition, the U.S. government presented a false affidavit to the Canadian government, signed by an indigenous woman who claimed to have been an eye-witness to the "murders." This affidavit was coerced from her

under threat of death by FBI agents, and she later admitted that she had never seen Leonard Peltier before in her life. The U.S. government has since admitted that the affidavit was false.

The Trial

Without following any of the usual procedures for a change of venue, the courts moved Leonard's trial to Fargo, North Dakota, where Judge Paul Benson would hear the case. Judge Benson met with prosecutors and FBI agents before the trial, and during the trial, he refused to allow the defense to present any evidence of FBI misconduct against the American Indian Movement (AIM). All of the key defense witnesses who would have given testimony about FBI brutality, coercion of witnesses, tampering with evidence, and the FBI's campaign of terror against AIM were never heard by the jury. As a result, Leonard Peltier was convicted on circumstantial evidence for the deaths of the two FBI agents and was sentenced to serve two consecutive life sentences in prison.

Court of Appeals

During Leonard's most recent appeal in 1987, the Eighth Circuit Court of Appeals found that previous trials had been riddled with FBI misconduct and judicial improprieties including the knowing use of perjury, coercion of witnesses, fabrication of the murder weapon and other evidence, and the suppression of evidence that would have proven Leonard's innocence. They agreed that FBI misconduct in the case had been "a clear abuse of the investigative process," yet astoundingly, they refused to grant him a new trial.

Outrage in Canada

The fraud used by the U.S. to obtain extradition of Leonard Peltier created public outrage in Canada, and in the Spring of 1987, Parliament member Jim Fulton put forth a motion seeking the return of Leonard Peltier to Canada. Though this motion never came to a vote in Parliament, the public responded with thousands of letters and an around-the-clock prayer vigil. Support was expressed by all the major church and human rights organizations in Canada...

The F.B.I.: Our Secret Police

The FBI has always tried to maintain a high media profile as a tough crime-fighting agency, keeping us safe from gangsters and such, but from its earliest days, its

mission has largely been to undermine and quell dissenting voices and attitudes in U.S. society. Groups that oppose the abuses of capitalism or advocate substantive social change have been defined as "subversive" and every effort has been made by the FBI to divide, confuse and disrupt them.

Although the FBI ostensibly has programs aimed at disrupting right-wing and white supremacist groups, over the years there have been many occasions when the FBI knew well in advance that violent attacks were planned by right-wing groups against left-wing groups and did nothing to stop them. The KKK's attack on the Freedom Riders is just one such example. In fact, according to a National Lawyers Guild publication, at that time more than one-fourth of all KKK members were known to be either FBI agents or informants who initiated much of the violence directed toward Blacks rather than trying to prevent it.¹⁵

The FBI's sights were set instead on infiltrating and disrupting groups like the Southern Christian Leadership Conference, the Socialist Workers Party, the Nation of Islam, The Puerto Rican Independence Movement, the Black Panther Party and, of course, the American Indian Movement.

These kinds of FBI operations continue unabated today. A senate subcommittee found that the FBI maintains at least 858 data banks containing more than 1.25 billion files on individuals. The FBI also maintains, unconstitutionally, a "security index" listing at least 15,000 dissidents who will be targeted for detention in a declared national emergency such as a nuclear war or a domestic uprising in response to a U.S. military invasion into another country.

"Indian Land": Corporate Exploitation

U.S. corporations derive huge profits from the exploitation of indigenous peoples' land, resources and labor in this country. Hunger for gold has turned to hunger for oil, coal, timber, uranium ore and other minerals. Mining and development schemes near Pine Ridge have produced toxic waste that pollutes the land and the air, and uranium mining has caused the irradiation of the Pine Ridge water supply. Cancer and birth defects have risen sharply, and an estimated 38% of pregnant women on the reservation have suffered spontaneous abortions.¹⁶ These are just some of the perils and abuses that AIM activists and traditional Lakota people are still fighting against today.

Wounded Knee

In the late 1800s the United States used the military might of the cavalry to back up its illegal theft and incorporation of vast portions of the Great Sioux Reservation. In December, 1890, 300 indigenous people, mostly children, women and elders, were brutally massacred by the cavalry at Wounded Knee on what is now the Pine Ridge Reservation.

In February, 1973, 300 members of the American Indian Movement and their supporters, including children, women and elders, peacefully occupied the village of Wounded Knee. They were protesting the economic exploitation of their lands and their people, and they were protesting the abuses committed by the tribal government of Dick Wilson and his BIA police, known as the GOON squad. Like U.S.-backed governments in third-world countries, Dick Wilson was supportive of U.S. corporate interests to the detriment of his own people, and his government carried out policies of terror and violence against any who opposed him.

The U.S. government responded to the occupation of Wounded Knee by sending in the Army with forces that included 17 armored personnel carriers, 136,000 rounds of M-16 ammunition, twelve M-79 grenade launchers, 600 cases of C-S gas, 100 rounds of M-40 high explosives, as well as helicopters, Phantom jets, and all the necessary personnel. Under U.S. federal law, the use of the military in these domestic operations was illegal.

The campaign of terror against AIM activists and supporters peaked in the three years following the Wounded Knee occupation. Independent research determined that during this period alone, 342 traditional indigenous people and AIM supporters were killed on the Pine Ridge Reservation.¹⁷ This is the backdrop of murder and repression against which the June 26, 1975 shootout happened....

World-wide support for Leonard Peltier has been expressed by 74 international religious organizations, 46 international religious leaders, 4 Nobel Prize winners, as well as more than 20 million individual supporters from around the world.¹⁸

But Leonard still sits in prison, and despite the international attention his case has received, it continues to be suppressed, for the most part, from the American public, just like hundreds of other cases involving political prisoners in the United States. Leonard filed his fifth appeal recently in the Eighth Circuit Court of Appeals, the hearing of which was held on November 9, 1992. Fifty-five members of the Canadian Parliament intervened in this latest appeal, represented by law professor Dianne Martin expressing their outrage at the illegal extradition of Leonard.

Peltier from their country. This was the first time members of the Canadian Parliament have ever intervened in a United States criminal appeal. Senator Brock Adams expressed the opinion of many of Leonard's supporters when he stated in October of 1992:

I remain hopeful that the upcoming hearing on Leonard Peltier's request for a new trial will be granted, and the American people will at last have all the facts presented fairly before an unbiased judge and jury. The thousands of pages of documents the Federal Government, to this day, refuses to release might well contain the answers that have eluded those who feel justice was not done in this case. What possible national security grounds can be honestly invoked to withhold documents regarding the Peltier case? ... I strongly believe that a free society must demand accountability and responsible behavior from all citizens, including FBI agents.... I do not believe this nation can afford to allow the Russian KGB to set a standard for disclosure of archive materials and past activities that is more open and honest than the FBI's approach to the Peltier case....

At the November 9, 1992, hearing the primary issue raised by Leonard's attorneys is that the government's theory regarding Leonard's involvement in the case has significantly changed over the years as a direct result of the uncovering of evidence which exonerates Leonard Peltier -- evidence which at the time of the trial was knowingly withheld by the government to ensure that Leonard would be convicted and placed in prison for two consecutive life terms.

Leonard's attorney, Ramsey Clark (who was the United States Attorney General from 1967 to 1969), said the prosecution which originally charged Leonard with personally executing two FBI agents, has switched its theory to one of aiding and abetting. Lynn Crooks, the Assistant U.S. Attorney who prosecuted Leonard, agreed with Mr. Clark that the government has no evidence with which to link Leonard to the deaths of the agents. Crooks is adamant, however, that Leonard should nevertheless remain in prison. Notwithstanding all of these facts, in the spring of 1993 the Eighth Circuit Court of Appeals denied Leonard's fifth appeal.¹⁹

There are many cases which exemplify the political nature of Indian imprisonment as a result of either government misconduct or the conflict existing between whites and Indians. Two such cases are those of Clifford Olson, Sr., and Norma Jean and Hooty Croy.

The case of Patrick Hooty Croy and his sister Norma Jean arose in California, thus a brief background on the locale is called for. It is summarized nicely, as is Hooty's case, in a pamphlet distributed by the Patrick (Hooty) Croy Defense Committee:

California History: The Hidden Genocide

First gold, then land drew the world to California. Some of the best, but many of the worst, swept into this

fruitful country with their picks and their plows destroying the welcoming, unresisting Indian people in their path. From 1850 to 1890 disease and murder reduced the indigenous People by 94%. Local bands of citizen "Volunteers" roamed the countryside killing Indian families, earning praise from their fellow citizens and reimbursement from the state.

Some early business of the California State Legislature was to pass a *de facto* Indian enslavement act and strip Indians of the right to defend themselves in the white man's courts by the decree that "in no case shall a white man be convicted of any offense upon the testimony of an Indian." (California Indian Indentured Act of 1850).

From the early 1900's, Indian children were removed from their families and sent to boarding schools to be washed of their culture and prepared for menial jobs at the bottom of the economic ladder. This is cultural genocide, but it kills the body, mind and heart as well as the spirit.

Their vast ancestral lands reduced to dots on a map, Indian people live today in a "State of Oppression": Their culture disrespected, treaty rights violated, and remaining lands preyed upon.

History Continues

The re-emergence of Indian pride and self-respect in the last 20 years has lead to a direct confrontation with government and corporate agendas that would have the remaining Indian people vanish into American society leaving behind the riches on the reservations no longer needed by "no longer" Indians. Determined to resist, Indian people are targets!

In the limbo between Indian law and non-Indian law, state law and federal law, Indians face, unprotected, the racism of an American system whose strongest wish is that there be no more "Indian problem." It inflicts upon Indian people the highest arrest rate, conviction rate, severity of sentencing and average length of time served of any group of people....

JUSTICE FOR PATRICK HOOTY CROY

The injustice demonstrated in Patrick Hooty Croy's conviction is seen by California Indians as a continuation of the bitter injustices that they have historically experienced at the hands of the white

settler population.

On July 16, 1978, just before midnight, Patrick Hooty Croy, a Shasta/Karuk Indian, age 22, and four of his relatives (ages 17 through 26 -- including his sister Norma Jean), stopped at a local store in the small Northern California town of Yreka. The store clerk became verbally abusive, mistakenly accusing Hooty of short-changing him. When a Yreka police car coincidentally drove into the parking lot, the clerk directed him to go "get" Hooty and his companions.

The police chased Hooty to the cabin where his grandmother and aunt lived in a rural area outside town. Minutes after Hooty reached the cabin, many other police vehicles from several agencies arrived. Chaos reigned. The police (by this time 27 officers wielding semi-automatic weapons, shotguns and .357 magnums) fired over a hundred shots at anything that moved on the hillside. Both Hooty's sister and cousin, who were with him on the hillside (with one .22 rifle among them), were wounded by police gunfire.

During a *de facto* cease-fire, Hooty approached the cabin to check on the well-being of his grandmother and aunt. There he encountered Yreka police officer Hittson (who had been drinking prior to being called to the scene). Hittson emptied his .357 at Hooty, hitting him behind the arm and in the hip. The one shot which Hooty subsequently fired from the .22 which he was carrying hit the officer in the heart, and he died almost instantly. Several police officers then opened fire with semi-automatic weapons; Hooty, who miraculously survived this onslaught, was soon arrested and taken to the hospital. Hooty and his four companions were prosecuted for the death of officer Hittson. The trial was moved out of Yreka to Placer County.

In August 1979, Hooty and his sister were convicted of murder, attempted murder, assault on several officers and robbery. He was sentenced to death. The other defendants (two of whom had a separate trial) were found guilty of lesser degrees of homicide and were acquitted on other charges.

In December 1985, the California Supreme Court reversed Hooty's conviction.

In a landmark decision in December, 1987, Hooty was granted a change of venue out of Placer County due, in part, to that community's racism. Four days of testimony by seven experts (six of whom are Indian professionals) regarding historic prejudice against Indian people in rural Northern California counties had convinced the judge to rule that in addition to the traditional basis (usually pretrial publicity)

for granting a change, "the potential for residual bias against the defendant in the context of traditionally preconceived notions, raises a risk that prejudice will arise during the presentation of evidence unrelated to the facts."²

Fortunately, in mid-1990, Hooty was acquitted -- found not guilty by reason of self-defense. Unfortunately, the twelve years he spent on California's death row can never be reversed. He has served an actual life-sentence by most state standards. However, he was luckier than most Indians, because he had international support for his case on appeal. (Amazing, isn't it, that most Americans never even heard of him?) Bia DeOcampo (Me-wuk Nation) of Hooty's Defense Committee said, "We need people's support.... We want people to know that what's happened to Hooty is still happening to Indian people."

Indeed it is. Hooty's sister, Norma Jean, for one. After fourteen years she is still in prison -- the only one left in jail from the incident -- with no release date. She has been to five parole hearings before the Board of Prison Terms, the last hearing being on July 16, 1992. Despite the fact that Norma Jean was unarmed the night of the incident, and notwithstanding the fact that a jury in 1990 found that the killing of the police officer by her brother was justified as self-defense, and without any regard whatsoever for the fact that her brother's trial judge, Edward Stern, has let the parole board know that Norma Jean Croy is innocent, the parole board has once again denied her parole.²¹

The case of Clifford Olson, Sr., a Menominee from the Menominee Reservation in Wisconsin (the state with the nearly official "Save a Walleye -- Spear a Pregnant Squaw" slogan), is another of the many cases which go unnoticed by the average American.

In 1980, Clifford was charged in the shooting death of a white man. Three witnesses were subpoenaed to testify before a federal grand jury. Two of them stated that they didn't know anything about the shooting. Their testimonies were confirmed by polygraph examinations. The charges were dropped because the only witness who implicated Clifford in the shooting, according to an FBI memo, "lacked credibility in this matter."

A few years later, the two witnesses who originally testified that they had no knowledge of the murder changed their stories despite the polygraph examinations. Clifford was re-charged and indicted. At the trial, the only evidence which linked Clifford to the murder was the testimony of these three witnesses. Their stories drastically contradicted each other, but the all-white jury didn't seem to mind; they found him guilty anyway.

Now that Clifford has served several years of his life sentence, the two witnesses whose testimony didn't "lack credibility in this matter" have come forward with new statements, both sworn to under oath. According to their new statements, their

original statements which vindicated Clifford -- and which held up under polygraph examinations -- were truthful statements. According to their new statements, a Special Agent for the FBI coerced these two witnesses into committing perjury by telling stories that would collaborate with one or two of the stories told by the witness who "lacked credibility in this matter." According to their new statements, these witnesses were intimidated by the Special Agent who made threats against their lives and the lives of their children. According to their new statements, these two women were terrified of the Special Agent -- terrified enough to testify exactly as he told them to. Terrified enough to commit the kind of perjury that would persuade a jury to find Clifford Olson guilty of a crime he knew nothing about (the jury, incidentally, was not an "impartial" jury of Clifford's peers, for it was comprised of individuals such as a police officer, a police officer's wife, a police department secretary and an assault victim). According to the new statements of the two witnesses who sent Clifford to prison for the rest of his life, they did it because they were terrified of what the Special Agent might do to their babies. Some mothers will do or say anything to protect the lives of their children.

And although the truth is out, it is suppressed from the public while Clifford sits in a cage watching his life ticks slowly away.

Endnotes to Chapter 2

1. *Native American Church v. Navajo Tribal Council*, 272 F.2d 131 (10th Cir. 1959).

2. *Indian Jurisdiction*, Institute for the Development of Indian Law, Washington, D.C., 1983, p. 6.

3. *Indian Jurisdiction* (see note 2 above), p. 6, citing G. Hall, *The Federal-Indian Trust Relationship* (Washington, D.C.: Institute for the Development of Indian Law, 1981) pp. 9-11.

4. Act of July 21, 1790, 1 Stat. 137; Act of March 1, 1793, 1 Stat. 329; Act of May 19, 1796, 1 Stat. 469; Act of March 3, 1799, 1 Stat. 743; Act of March 30, 1802, 2 Stat. 139; Act of June 30, 1834, 4 Stat. 729.

5. *Merrion v. Jicarilla Apache Tribe*, 617 F.2d 537, 549 (10th Cir. 1980).

6. Section 25 of the Act of June 30, 1834, 4 Stat. 729:

And be it further enacted, that so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States, shall be in force in the Indian Country: Provided, the same shall not extend to crimes committed by one Indian against the person or property of another Indian.

7. Act of March 3, 1817, 3 Stat. 383.

8. Act of March 27, 1854, 10 Stat. 269 (18 U.S.C. 1152).

9. 18 U.S.C. 13.

10. *William v. United States*, 327 U.S. 711, 713 (1946).

11. Tom Tso's observations were noted in a newspaper article authored by Nicholas Hentoff and Jon Sands, both lawyers in Phoenix. Someone sent me the clipping from a newspaper, but failed to indicate the date it was published (sometime in 1989) or the newspaper it was published in, although I recall them saying it was a Phoenix newspaper. In their article, Hentoff and Sands pointed out that the proposed Federal Death Penalty Act of 1989 would single out Indian murder defendants for the special sentence of death since the majority of all murders that are federally prosecuted are committed by Indians on reservations. A relevant segment of their article follows:

The problems faced by lawyers in ensuring that Indian defendants are afforded a fair trial would be magnified by the proposed federal death penalty. With the stakes so high, public defenders would have little choice but to plea-bargain cases they otherwise would have taken to trial. Such a result is especially likely where the jurors are drawn from rural areas, where the slur of "drunken Indian" is common and the racism prevalent among Anglo-Americans living near reservations....

The discriminatory impact of the death penalty bill cannot be denied. To obtain federal jurisdiction over first-degree murder cases, the government must prove beyond a reasonable doubt that an Indian was involved in the crime and that it occurred on Indian land. In many cases, juries would therefore be required to make an explicit finding that the defendant was an Indian before they sentence him to death.

In addition, in some states that have a less stringent death penalty or no death penalty, the imposition of a federal death penalty for first-degree murder would result in Indians being subjected to the possibility of a death sentence in cases where a

non-Indian prosecuted in state court for the same crime [in the same location] would not be facing the death penalty.

The imposition of a death penalty as a means of punishment or deterrence for the commission of murder is alien to the cultural and religious beliefs of most Indian tribes. Tom Tso, Chief Justice of the Navajo Nation Supreme Court, observes that the traditional Navajos were held together by a system of values and a sense of community so strong that, before the federal government imposed its system on the tribe, there was little violent crime and no need to lock up wrong-doers.

Somehow it is not surprising that alcohol, introduced to the Indians by Anglo society, is the single motivating factor in nearly every first-degree murder involving Indian defendants....

12. *Ex Parte Crow Dog*, 109 U.S. 556 (1883).

13. Two exceptions to this general rule are Public Law 280, which was discussed in chapter 1, and Congressional Acts which terminated Indian tribes, virtually eliminating their identities as Indian people and subjecting them to state jurisdiction. The affects of termination are briefly discussed in the chapter on "More Cause for the Fear," and in the interview with Darrell Gardner in chapter 15.

For those who are interested in further reading on the subject of jurisdictional issues in Indian Country, I would recommend the following sources: K. Kickingbird, Alexander Tallchief Skibine and Lynn Kickingbird, *Indian Jurisdiction* (Washington, D.C.: Institute for the Development of Indian Law, 1983); *Rethinking Indian Law* (Washington, D.C.: National Lawyers Guild Committee on Native American Struggles, 1981); Vine Deloria, Jr., *Behind the Trail of Broken Treaties* (New York: Delacourte Press, 1974).

14. On Wednesday September 18, 1991, in the recreation yard of the Southern Correctional Institute in Troy, North Carolina, Eddie was stabbed in the back four times by another prisoner. This prisoner barely knew Eddie and was not known to hold any grudge against him. One side of Eddie's lung was punctured and collapsed in this attack. He was taken to Durham County General Hospital, then transferred to a prison hospital in Raleigh, North Carolina.

In an earlier incident, a prisoner who had assaulted Eddie was rewarded with a transfer from maximum to medium security confinement. What reward inspired this latest savagery? And why is Eddie Hatcher the target?

After his guilty plea, Eddie was transferred to the Southern Correctional Institute in Troy, the state's control unit, where the stabbing took place. In 1992, he tested positive for the HIV virus, contracted since his imprisonment. Under the severe conditions of the control unit (see the chapter on "The Fear of Reprisal" for a discussion about the kind of torture chamber a control unit is), Eddie has remained a committed activist for human rights. He has taken on the causes of dozens of fellow prisoners, writing and filing legal briefs on their behalf.

Eddie Hatcher is in prison now because his constitutional right not to be tried twice for the same offense was entirely disregarded by the North Carolina government. This vindictive imprisonment must not be allowed to turn into a death sentence.

15. National Lawyers Guild, *Counterintelligence*, vol. 1 (Chicago, NLG, 1990).

16. Women of All Red Nations, "Pine Ridge Health Study," Feb. 1980.

17. Jim Messerschmidt, *The Trial of Leonard Peltier* (Boston: South End Press, 1988).

18. This was excerpted from a pamphlet distributed by the Leonard Peltier Defense Committee. For more information, please write: Leonard Peltier Defense

Committee, P.O. Box 583, Lawrence, KS 66044.

19. Leonard Peltier's case is discussed in depth by Matthiesen (1983), which has recently been re-published with an epilogue which includes an interview with the man who pulled the trigger that killed the two agents Peltier has been railroaded for allegedly killing.

20. National Lawyers Guild, *Counterintelligence*, vol. 1 (Chicago, NLG, 1990).

21. Judge Stern stated to the parole board: "Had Norma Jean Croy been tried in the case I heard, Norma Jean Croy would have been found Not Guilty.... I want the record to be clear that this is my judgment, my opinion, having heard the evidence in this case."

CHAPTER THREE

A Jury of Peers and All That Bull (With a Sprinkling of Conscientious Objection)

by

Little Rock Reed

[The white man's court] tries [Indians], not by their peers, nor by the customs of their people, nor the law of their land, but by superiors of a different race, according to the law of a social state of which they have an imperfect conception, and which is opposed to the traditions of their history, to the habits of their lives.

-- U.S. Supreme Court, 1883¹

Indian tribes traditionally had strict codes of conduct that were adhered to by their members, so that there was seldom a need for sanctions to be placed against Indians for misconduct, or "crime," through any formal judicial structure. When there was a need for corrective action to be taken because an Indian committed some act that was unacceptable to the tribe or band, the matter was resolved through cooperation between those individuals and their immediate family members involved or affected by the unacceptable action. The ultimate goal of the process -- a process tempered with mercy -- was reconciliation, not punishment. The case of Crow Dog (Lakota), as discussed in the previous chapter, is a good example of the process. After discussion between the families of Crow Dog and Spotted Tail (Crow Dog had killed Spotted Tail), everyone concerned was satisfied that the matter was resolved. Everyone, that is, except for non-Indians who neither lived among the Lakota nor had any legitimate interest in Lakota affairs. The non-Indians were simply outraged that their own "morally correct" philosophy of an eye for an eye and a tooth for a tooth was not being excercised by the Indian people.

And so it is today Indians are tried in the white man's courts.

I am unaware of any instance in which an Indian defendant has received a trial by jury of his or her peers in a federal or state court. I am aware of few instances in which an Indian has received a fair trial in federal or state court.

Because of the sovereign status of Indian nations, although their lands are situated within the boundaries of the states, they are exempt from state taxation, and they generally do not

participate in state or federal elections. Thus, Indians who reside in Indian Country are not included in the selection process for state juries. For this reason, it is something of a miracle to find an Indian sitting on the jury presiding over an Indian defendant's trial in state court. And those chances are nearly as slim in federal court. This presents a very frightening situation, and a very unfair one, for the Indian defendant.

But of course, it is necessary for the Indian to be tried in order to receive a fair or an unfair trial. Few Indians make it to trial. As Dr. David Hilligoss has observed:

When an Indian defendant walks into court, he faces almost an entirely white system. Communication, even with his own counsel, often poses great obstacles.... Most American Indian defendants will simply plead guilty to avoid a confrontation.... This raises the question of the right to plead not guilty as an important constitutional right for criminal defendants. (Hilligoss, 1987.)

In fact, with the exception of the defendants who are wealthy enough to retain exceptional legal counsel, few criminal defendants of any kind ever make it to trial in the white man's courts. This point is illustrated by the results of a survey I conducted over a four-year period from 1987 to 1991 in which the indictments of 612 convicted felons in Ohio's prison system were examined in cases where the prisoners had pled either guilty or no contest to the charges for which they were ultimately sent to prison. Before I reveal the results of the survey, however, I will present my own case to you, as I am one of those 612 prisoners and, according to the results of the survey, my case is characteristic of the overwhelming majority of cases in which the defendants have pled either guilty or no contest.

I committed an armed robbery of a drug store in the city of Cleveland. I took measures to see that no one would get hurt in the robbery and, in fact, no one was hurt. I took the money from the store, and I took several types of drugs from the store, all of which were listed on a piece of paper I had brought into the store with me, and each of which I placed into a paper bag I had brought into the store with me. After the robbery, each of the people who had been in the store during the robbery told the police and news reporters that I was very mild-mannered and polite for a robber--nothing at all like in the movies. As a result, one newspaper even referred to me as a "gentlemanly gangster." When I was later arrested, these are the charges for which I was indicted by the grand jury (for the single drug store robbery I just described -- one robbery: ten charges):

* Two counts of aggravated robbery (my court-appointed attorney told me this was because I took the money *and* the drugs).

* One count of kidnapping for each person who happened to

be in the store during the robbery (according to the letter of the law, if a robber says "Freeze, this is a stick-up!" he is guilty of kidnapping anyone who freezes because in so doing they are restrained of their liberty).

* One count of drug theft.

* Felonious assault (this charge was the result of one of the customers stating to police and news reporters that when she realized the store was being robbed, she "almost had a heart attack." The fact that this was merely a figure of speech, and the fact that this same customer told police and news reporters that I was "awfully polite for a robber," was totally irrelevant, according to the LAW).

* Having weapons while under disability.

* Four counts of possession of criminal tools (a paper bag, a piece of paper, and the like).

My court-appointed attorney assured me that although it wasn't fair, I would be convicted of every charge listed above because technically I was guilty of each charge even if the only crime I knowingly and intentionally committed was the single robbery of a drug store. My attorney told me that if I would cooperate with the prosecutor by pleading guilty to just a couple of the charges, he could arrange to have the remaining charges dropped. He told me that if I would not cooperate with the prosecutor in this manner, he would be totally powerless to defend me and that if I took the case to trial I could expect to be convicted and sentenced to prison for each and every charge. He pulled out his calculator, pushed a few buttons, shook his head in feigned sorrow, and proclaimed, "I think we better cooperate with the prosecutor, because we're looking at fifty-nine to 195 years if we take a stand at trial" (as if "we" were going to do the time together).

Because I was young, scared, uneducated and inexperienced in the machinations of the criminal justice system and the law, I believed him. I also believed that if the prosecutor could be so dishonest as to have me indicted for all those charges knowing that the only crime I committed was a single armed robbery, and if the attorney appointed by the court to defend me was actually sitting here telling me to do whatever the prosecutor wants me to do and to be thankful for it, then certainly I couldn't expect anything that would resemble a fair trial. I pled guilty to one count of aggravated robbery and one count of drug theft. Two convictions for the one crime. Double jeopardy. I received the maximum sentence allowable (at that time) for each charge, and the sentences were to run concurrently: 7 to 25 years.

Of the 612 prisoners whose cases were reviewed in my survey:

* 100% pled either guilty or no contest to the charges for which they were sent to prison.

- * 41% swore that they were innocent and that they were coerced into pleading guilty or no contest because their court-appointed lawyers refused to investigate the charges or prepare a real defense, choosing instead to "encourage" the prisoner to "cooperate with the prosecutor."
- * 8% said that they did commit the crimes for which they pled guilty or no contest and that they got a fair deal.
- * 51% stated that although they were guilty of some of the crimes they pled guilty or no contest to, such as in my case, they were not guilty of all the crimes they pled guilty or no contest to.
- * 88% were over-indicted like I was.
- * 100% were instructed by their court-appointed lawyers to state for the record (in the court room) that no plea bargains were made in their cases and that they were pleading guilty or no contest of their own free will.
- * 53% stated that they received stiffer sentences than they were promised in return for their pleas of guilty or no contest.

The results of this survey clearly suggest that the overwhelming majority of prisoners in the United States are victims of coercive "plea bargaining" and have never experienced a trial. As observed by Nissman and Hagan (1982) and Caulfield (1989:236), "the prosecutor basically has unchecked discretion in relation to plea bargaining and charge reduction,..., and only in exceptional cases will these decisions be judicially reviewed."

The National District Attorneys Association's *National Prosecution Standards* state that it is solely up to the prosecutor what charges and how many charges will be filed in any given case (National District Attorneys Association, 1977:131), and although those *Standards* do include guidelines which state that a record of the charging decision should be made in each case and maintained in order to verify adherence to the prosecutor's guidelines (p.133),

if one looks further, [s/he] will note that this record shall be available for office use only and should not be made available for outside use or dissemination. In other words, a record should be maintained, but it should not be subject to public scrutiny. If not subject to public scrutiny, these records...maintain the same secrecy that exists without them (Caulfield, 1989:237).

Some would argue that there are processes built into the system to prevent the misuse of prosecutorial discretion, such as the grand jury's review of indictments. However, as Caulfield observes:

A determination of misused discretion as applied to the charging decision is not likely to be made by the grand

jury even given information that supports a charge of misuse. To the contrary, as Campbell (1973) noted: "At its best, the grand jury today operates as a sounding board for the predetermined conclusions of the prosecuting official" (p. 178). While the history of the grand jury instructs us that one of its functions is that of "the people's watchdog," that is, to seek out and disclose governmental abuse or detect areas in need of legislative reform,....,it is difficult to regard this as true if the grand jury is, in fact, simply a tool for the prosecution (Caulfield, 1989:235).

Indeed, in the face of evidence of discretionary abuse in the form of multiple charges against a defendant for an alleged single offense in order to coerce a "plea bargain," the prosecutor may easily manipulate the grand jury by playing on that long-instilled mythical assumption that "the defendant won't be convicted by the trial jury unless he is, indeed, guilty, for this is AMERICA where there is LIBERTY AND JUSTICE FOR ALL! And if the myth alone can't impel the grand jury to agree with the indictments, why, the prosecutor has at his fingertips many more tools of the trade with which to employ his manipulative expertise. For example, if the grand jury in my case wasn't quite convinced that it would be fair and just to issue all 195 years worth of indictments that they issued against me for the single robbery I committed (which at that time carried a maximum of 25 years), the prosecutor could have simply pointed out that Ohio's legislature has already carefully considered this type of thing and determined that coercive plea bargaining and multiple-indictments for single offenses -- and in some cases for no offenses at all -- are in the public interest; and as proof he could open Ohio's criminal law book and show them the passage that reads:

This section shall not be construed to prohibit a prosecutor [from]...offering or agreeing to dismiss, or dismissing one or more charges pending against an accused...[or] offering or agreeing to grant immunity from prosecution...in return for a plea of guilty to one or more offenses charged or to one or more other or lesser offenses, or in return for the testimony of the accused [against other persons]... (section 2905.12 of the Ohio Revised Code).

And for those who would argue that these "plea bargaining" tactics are not coercive, take note that the above quote from the Ohio law book is located right smack dab in the middle of the criminal statute entitled "Coercion," which makes it a crime for everyone but prosecutors to "threaten any calumny against any person,..., institute or threaten any criminal proceedings against any person,..., [or] take or withhold, or threaten to take or withhold, or cause or threaten to cause official action to be taken or withheld,...,with purpose to coerce another into taking or refraining from action concerning which he has a legal freedom of choice," such as a legal freedom of choice to be deemed innocent until proven guilty in a fair trial by a jury.²

Others may argue that it just doesn't make sense that a truly innocent person would plead guilty to a crime s/he did not commit. However, consider the circumstances: you have no money and must therefore rely on a court-appointed attorney whose only energy expended on the case has been utilized in an effort to get you to plead guilty (court-appointed attorneys have a clear motive for this, since they are paid the same regardless of whether they win or lose a case; therefore, they make more money in less time if they can convince their client to plead guilty or no contest so that they don't have to conduct an investigation or prepare a defense); you are informed that other county jail prisoners who you may or may not know, or who you may or may not have met, have agreed to testify that they saw you commit the crime or that you told them you committed the crime, and this is, of course, their "plea bargain," as their own charges, which may or may not have anything to do with your case, will be dropped in return for their testimony against you;³ and you have no alibi witnesses because you were at home alone at the time of the offense for which you are charged. And if you've got a prior criminal record, you know it will weigh heavily against you in the minds of the jurors - especially if your prior conviction is based on a guilty plea, which the unknowing jurors will consider as conclusive proof that you are, in fact, a common criminal. A habitual criminal.

Under these circumstances, who is going to believe you are innocent? What are the odds? Under these circumstances would you try your luck at trial like you would try your luck at the lottery, knowing that if you don't win you may spend the rest of your natural life in a cage, just as your court-appointed attorney has convinced you that you will? Or would you prefer to plead guilty or no contest to a charge or two, knowing that if this is the choice you make, you have almost a 100% chance of seeing the free world again sometime before you die? Forty-one percent of the prisoners in my survey who pled guilty or no contest swear that they are innocent. How can we be sure? I believe most of them. They've shown me the documents in their cases which are kept secret from the public in accordance with the National Prosecution Standards.

Even if grand juries act in good faith and function as "the people's watchdog," it is impossible for the grand jury to consider that which is withheld from them. Do you suppose, for example, that the prosecutor responsible for coercing (i.e. "enticing" with a carrot of immunity) someone to give perjured testimony against a defendant, and the prosecutor responsible for withholding evidence which points to a defendant's innocence, and the prosecutor responsible for other conduct aimed at securing the conviction and imprisonment (or execution) of a defendant he knows to be innocent, is likely to exercise his discretion in good faith when the defendant he has railroaded to prison or death row attempts to press criminal charges against him for those actions? Do you suppose the prosecutor will act in good faith by presenting such charges and evidence against himself (or those he has conspired with) to the grand jury for consideration, knowing that he has the "legitimate" authority to throw such evidence in the incinerator? Since it is solely up to the prosecutor what will be presented or

withheld from the grand jury, it isn't likely that the grand jury will ever see it.

As a case in point, I have a friend, Jesus Zamora, who is serving a life sentence for a crime I am convinced never even occurred. His conviction (by a jury trial) was obtained on the basis of perjured testimony by every state witness that appeared at court to testify. We have solid evidence that each witness perjured, including a police chief who stated that he had arrested Jesus in the past for a crime that he had never been arrested for. We have evidence that his court-appointed lawyer, the judge and the prosecutor all had knowledge that the state's star witness was committing perjury even as the perjury was being committed. After the prosecutor presented all the state's evidence, the state rested its case, and it was now time for the defense to present its case. At this time, the court-appointed lawyer stated to the judge, "Your Honor, I believe Mr. Zamora would have a request to the Court." At this point, Zamora stated that he wanted his court-appointed attorney dismissed from the case because the attorney had failed to conduct an investigation, he failed to call witnesses or to even interview people who told him they wanted to testify for Zamora, he failed to do anything at all that Zamora asked him to do in order to prove his innocence, and Zamora couldn't do it himself because he was in jail pending trial, unable to afford bond. There was one witness in particular who Zamora wanted on the stand. That witness was subpoenaed by the prosecutor but left the court house before taking the stand because the prosecutor told him to leave. That witness could have proved Zamora's innocence. The court-appointed attorney, however, stated to the judge that he did not want to call that witness:

I feel that a large number of [the questions Zamora wants me to ask this witness] are irrelevant and other questions could bring out material that would reflect upon Mr. Zamora's prior record. I am certainly not in a position where I am going to invest as much time into a case as I have and drop a bombshell on our own defense. So, if Mr. Zamora is willing and able to waive counsel at this point, and if he is willing to proceed in his own defense, I have no objection to that. Perhaps we can find out if [the man he wants called as a witness is still] available, but I am not at this juncture going to call him as a witness. If Mr. Zamora wants to proceed on his own behalf and ask the questions he has propounded to me for [the witness], so be it.

...I think it is certainly Mr. Zamora's desire that I withdraw and now it is my desire. If the Court were forced to declare a mistrial, it is certainly not one caused by the prosecution and I think that alleviates the speedy trial statute from consideration in terms of a mistrial and that the state would have a reasonable time to retry the case. I apologize, but judge, I don't know how I can do a good job for a man facing two mandatory life sentences who basically called me a liar in front of the Court... (emphasis added).

After a bit more arguing, the prosecutor stated to the judge:

Your Honor, I realize that [defense counsel] is in a very difficult position, but so, I think, is the Court, and so is the State [never mind the guy facing two mandatory life sentences - there's nothing difficult about his situation]. We have gone through the entire trial, laid out all the cards we have, and we are at the point of giving instructions and closing. That is the point that this was brought to light. This is after the defendant has already seen what everybody has testified to and everything that has been presented. Now he is trying to get the Court to grant a mistrial and we [as in "we the people"] respectfully ask the Court not to do that. We have gone all the way through the trial and we are at the point of closing and I am sure [defense counsel] can continue in that regard and close the case regardless of whether we can retry this case. I don't think it should be retried. It has already been tried fairly and we should give it to the jury and let them decide.

The judge then reminded the prosecutor that the defense had not yet been presented, much less rested. The prosecutor's response was, "I understand that, but from all indications there was to be no defense and I assume that is still the case." The judge then turned to Jesus and asked, "Mr. Zamora, are you requesting that you represent yourself in this case?" "No," replied Jesus, who was functionally illiterate. The judge then stated:

Well, whenever counsel for the defense takes a case, they take an obligation until they are relieved. The Court feels that it cannot relieve counsel at this juncture of the trial of such a critical nature.

Note that all of this occurred in the court room while the jury was out to lunch, as is often the case. The jury had no idea that any of this had taken place. When the jury returned, the defense counsel rested his case. The prosecutor was certainly right: there was absolutely no defense presented to the jury, so I have difficulty perceiving what the court-appointed lawyer was imagining when he stated that he wasn't going to "drop a bombshell on our own defense." What defense?

Meanwhile, Zamora is disappointed that he refused to accept the offered "plea bargain" which would have resulted in his being in jail for a maximum of six months. He had refused to plead guilty to anything because he was guilty of nothing, and because he believed, like so many others who have been deceived about America's "liberty and justice for all," that the jury would see the truth and find him innocent.

The Ohio Supreme Court feels that the perjury is of no significance, and that the judge's, the prosecutor's and the court-appointed lawyer's knowing and willful withholding of evidence from the trial jury is of no significance, and that the mere fact that the court-appointed attorney is a member of the bar is conclusive

evidence of his competence and that for this reason the claim of ineffective assistance of counsel would not be considered on appeal. Zamora gave up on his appeals. He's absolutely certain that there will never be justice in his case because his case is no different than the cases of so many other prisoners he lives among.

Several years ago I helped Jesus prepare some criminal complaints against various people involved in securing his conviction through the use of perjury and fabricated evidence. The complaints contained solid evidence in support of his allegations of perjury and conspiracy. The prosecutor never did present the criminal charges or evidence to the grand jury. But, of course, we didn't really expect for him to prosecute himself or those he conspired with to put Jesus in prison for the rest of his life without regard for his innocence.

But why? Why would a prosecutor, a judge, a court-appointed attorney, or any other politician bent on building more prisons want to fill the prisons with people whether they are innocent or guilty? What can their motives possibly be? Well, I must confess, I don't have the answers, but I do have some reasonable suspicions. Perhaps I'll write a book in the future after documenting my suspicions. In the meantime, I figure it would be interesting to find out how many judges, prosecutors and other politicians crazed on building and filling prisons own stock in the companies that enter into contracts with prisons so they can profit from the slave labor being performed by prisoners. The Thirteenth Amendment to the U.S. Constitution didn't abolish slavery, it merely transformed it: "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have [pled guilty or no contest or] been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." You can change the title from "slave" to "convict," but it does nothing to change the reality that slavery does exist on a multi-billion dollar level in the United States, and Indians aren't the only victims.

Of course, wealth is but one motive for putting people in prison. An even more fundamental motive is control. I am reminded of a dream I had not long ago. In that dream I saw the Persian Gulf War, and I saw people in the US military who refused to take part in the war because their consciences would not allow them to slaughter their fellow human beings for George Bush and his oil-baron buddies. I saw a lot of behavior modification and control techniques employed by the US military to crush the resistance of dissenters -- techniques not unlike those employed against the American POWs in North Korean and Chinese prisoner-of-war camps during the Korean War, and which are followed by the administrators of the control units and control unit prisons throughout the United States, as is discussed in the forthcoming chapter on "The Fear of Reprisal." And I realized that there is really no difference between the US military and the amerikan Criminal Just-Us Cyst'm, and that they are two interrelated components of the power elite's machinery used to control everyone, everywhere -- domestically and abroad.

In 1989, a medical doctor in the Army Reserves, David Wiggins, filed for a discharge as a Conscientious Objector (CO). Although everyone in his chain of command testified to his sincerity, his claim was denied by the Pentagon in August 1990. He went on a hunger strike to protest Desert Shield, even as he was forcibly deployed to the Gulf. In Saudi Arabia, he made numerous attempts to submit his resignation as an army doctor, but his resignation was not accepted. Finally, as the bombs began to drop on Iraq, he removed his army uniform to disassociate himself from the war, and he walked into the streets of Riyadh. He was court-martialed in Saudi Arabia and imprisoned. He was eventually given a dishonorable discharge and a \$25,000 fine.

Many army and marine reservists, and soldiers who declared themselves conscientiously opposed to the war, were beaten, hand-cuffed, placed in leg-irons, and forcibly shipped to Saudi Arabia where they were dropped into the middle of a combat zone by commanding officers who knew they would not fire a weapon.

Many COs today occupy Amerika's prisons, having received stiffer sentences than people who went AWOL for reasons that have nothing to do with conscience. Said Harvey Hensley while starting his two-year sentence for refusing to kill people: "The military tried to make an example of conscientious objector's in this war because it fears dissent. COs were treated worse than people who simply went AWOL." Indeed they were. As Naomi Thiers had written at the time:

Not surprisingly, the military is trying to downplay the resistance. Stephanie Atkinson [a CO] said she and other resisters were pressured not to talk to the media. 'They deny that they put a media gag on me, but that's what it was. They told me that if I talked to the press I'd be disobeying a direct order and it would make it very difficult for my case.'

The military also tried to isolate resisters from other soldiers.... Atkinson recalled that when local peace groups held a demonstration against her confinement at Fort Knox, the base was put on lock-down (meaning soldiers could not leave) so that GIs would not come in contact with peace activists (Thiers, 1991:27).

Imprisonment and the use of plea-bargaining to obtain convictions is also related to the US military's intentions for the New World Order. According to a 46-page policy statement developed by the Defense Department in conjunction with the National Security Council, George Bush and his senior national security advisors, the US political and military mission, in simple language that we can all understand, is to become the planet's dictator. It will militarily crush any nation or group of nations for "challenging our leadership or seeking to overturn the established political and economic order." In a March 1992 article in the *New York Times*, Patrick E. Tyler considered this policy:

With its focus on benevolent domination by one power, the

document rejects collective internationalism, the strategy that emerged from World War II when the Allies sought to form a United Nations that could mediate disputes and police outbreaks of violence (emphasis added).

The US apparently intends on resolving all such disputes and policing all outbreaks of violence unilaterally, without any enforceable input from the other nations of the world. This would effectually strip all nations on the planet of their nation-state status, since there will no longer be even the pretext of self-determination, for the very right of self-determination means the right of the people of each nation to determine for themselves their political and economic status and structure, without external influence. Such autonomy cannot be realized by any nation or group of nations on the planet if the US succeeds in its mission to dictate "the established political and economic order" of the world.

Of course, those who drafted this US policy realize that the masses, domestically and abroad, who are increasingly homeless and starving as a result of the "established political and economic order," will increasingly express their dissent. The construction of even more prisons is one means of controlling the masses in the United States. The practice of railroading the dissenters and the victims of US policy into those prisons (e.g. through coercive plea-bargaining) is one of the only "legitimate" ways to silence the voices of the innocent masses.

Another way of silencing those voices is expressed in the recommendations provided by the policy that include the Bush administration's proposal to support a 1,600,000-person military over a five-year period at a cost of approximately \$1,200,000,000,000 (one trillion, two-hundred billion tax dollars) -- "benevolent domination," indeed! And Bill Clinton's military actions involving the dropping of bombs on innocent women and children of color on the other side of the globe indicate that he is either a man after George Bush's heart or a spineless puppet. The United States needs a true and courageous leader of men to change the destructive course it is speeding down. I hope to see someone like Janet Reno run for the US Presidency next time around.

In conclusion I want to tell you a little story. In January 1993, while I was out on parole, I accompanied a friend of mine to the courthouse in Cincinnati because her brother was going to trial for an alleged assault. Two days previously, my friend called her brother's court-appointed attorney to inquire about the case. He told her it was none of her business. When we got to the courtroom, the court-appointed attorney introduced himself to me, my friend, and two other people who were there to support my friend's brother. The attorney told us that the plan was to work out a plea-bargain for the brother so he would only have to spend perhaps two years in prison instead of the decade he could expect if he refused to plead guilty or no contest. One of us asked the attorney how badly the victim was allegedly beaten by my friend's brother. The attorney

replied: "I heard the victim was severely beaten, but I don't know the extent of any injuries incurred. I don't know if there were any broken bones or anything. Do any of you know?"

I confronted the attorney. I expressed a deep concern for the fact that he did not know the extent, if any, of the alleged victim's injuries. I asked if he did anything to investigate on behalf of his client, and if so, what had he done? I asked him, "How can you suggest that our bro plead guilty to something when you don't even know what, if anything, he has done?"

The attorney indignantly proclaimed that he was not the one on trial here, that he would not be interrogated, and that he did not have to answer my questions. I replied: "That's because you are unable to answer my questions, Mister. You have not conducted the investigation that you are lawfully required to conduct on behalf of your client. Are you planning on railroading my brother to prison?" He blurted out, trembling in apparent fear, "Hey, you take a hike, Pal!" He stumbled over to the other end of the courtroom and went into a closed conference with the judge (whom he had previously indicated was a "good friend" of his) and some other courtroom officials.

When they returned from the judge's chambers with two huge police officers who apparently got there through a "hidden" entrance, one of the assistant prosecutors and the two goon-cops attempted to intimidate me by talking with each other in voices loud enough to be heard across the courtroom. Their conversation implied that I had committed the crime of "menacing." I am not easily intimidated, however, and I made them understand that I was organizing courtroom witnesses for an appeal for our bro on the grounds of ineffective assistance of counsel. Everyone who heard the court-appointed attorney's that he did not know the extent of the victim's injuries was in agreement that he was railroading our brother to prison.

The attorney and all the courtroom officials knew it to, apparently. There was no plea of guilty or no contest in the courtroom that day, and our bro walked out of jail and had dinner with us that evening.

The point is: They can only do it to us if we let them.⁴

Endnotes to Chapter Three

1. *Ex Parte Crow Dog*, 109 U.S. 556, 571 (1883).
2. The "plea-bargain" sham is not limited to over-indicting people so that they will be coerced into pleading guilty to lesser charges. The coercion comes in other forms as well, such as a potential death sentence if found guilty of murder. In the majority of capital cases in the country, the defendants plead guilty because they know they won't get a fair trial, and if they plead guilty to a "lesser charge" they won't have to be put to death. And in many of these cases, guilt or innocence is totally immaterial.

As an example of what kind of fair trial someone can expect to receive when relying on a court-appointed lawyer, the *National Law Journal* published a study of death penalty cases in Texas and five other Southern states. The study showed the following:

- * Lawyers for poor defendants facing the death penalty more often than not are too inexperienced and unskilled to mount an adequate defense.
- * Some people have been killed by the state after a criminally inadequate defense. For example, in 1987, William Mitchell was executed in Georgia after the U.S. Supreme Court refused to review his case. But three Supreme Court Justices dissented from this decision because Mitchell's lawyer did not investigate his client's background, call any witnesses to testify or present any mitigating evidence during his sentencing hearing.
- * All of the states surveyed set unrealistically low fee limits that discourage a thorough preparation for trial. In Mississippi, for example, there is a \$1,000 cap on legal fees for a death penalty defense.
- * Defense lawyers in the capital cases studied have been disciplined, suspended or disbarred up to 46 times the overall rates in those states.
- * The U.S. now has more than 2,300 men and women on death row, almost half of them in the states studied, known as the "death belt" states.

(*Coalition for Prisoners' Rights Newsletter*, vol. 15, no. 8 (September 1990). P.O. Box 1911, Santa Fe, New Mexico 87504.)

3. When a prosecutor has a weak case against a defendant and is bent on "getting his man," he will often rely on this type of testimony. I conducted a survey of one-hundred cases involving lifers in the Southern Ohio Correctional Facility which revealed that 27% of the convictions could not have been obtained without the testimony of pretrial detainees who received immunity or had their charges dropped or reduced in return for their testimony. The use of such testimony was used in 73% of the cases.
4. The author wishes to thank the National Interreligious Service Board for Conscientious Objectors, the War Resistance League, and the Central Committee for Conscientious Objectors, for providing the information in this chapter regarding the Persian Gulf war resistance and prisoners of conscience.

CHAPTER FOUR

An Interview with Lenny Foster, Spiritual Advisor and Director of The Navajo Corrections Project

On March 7, 1992, in testimony before the United States Senate Select Committee on Indian Affairs, in a hearing on proposed amendments to the American Indian Religious Freedom Act (AIRFA) of 1978, Lenny Foster stated:

I offer my testimony on behalf of the Navajo and other Native American males and females who are incarcerated in federal and state correctional facilities. I will review the problems which I have observed in the eleven years I have been a Spiritual Advisor for the Native American prisoners in the thirty-two prisons I visit very frequently.

My name is Len Foster and I am a member of the Navajo Nation from Fort Defiance, Arizona. I am of the Towering House clan and born of the Mountain Cove clan. Since July 1983, I have been the Director of the Navajo Nation's Corrections Project in Window Rock, Arizona. The Project advocates on issues that are significant to the Navajo Nation. These issues include spiritual, religious and cultural services, counseling and activities, pre-sentence advocacy, alcohol and substance abuse counseling for [prisoners] and their families. I also facilitate and conduct Sweatlodge ceremonies, Pipe ceremonies and Talking Circles and parole advocacy and courtesy supervision of parolees.

In addition to this work, I have negotiated policies with the Arizona, New Mexico and Colorado Departments of Corrections and have testified as an expert witness in U.S. Federal courts in Utah and Oklahoma on behalf of the Native American [prisoners] requesting religious and spiritual programs including the Sweatlodge and Long Hair privileges. Also, I have advocated and testified in the Arizona and New Mexico State Legislature on bills introduced to allow religious rights of Native Americans.

In the duration of my work I have observed that the federal and state prisons are continuing major violators of the First Amendment Rights of Native Americans to practice their respective tribal religions. Because of the ever increasing number of incarcerated Native Americans this is becoming a serious problem....

Because a high number of Native Americans who are

incarcerated have committed alcohol-related offenses, we feel through our experiences that their self-esteem and dignity can only be restored if we are allowed to counsel and work with our own people through traditional spiritual counseling and ceremonies. A mutual understanding, awareness and a spirit of cooperation can be developed through these amendments affecting the Native prisoners and their families because it affects the clans, communities, and tribes where they will be returning upon release. It has been our experience that those individuals who have participated in these programs while incarcerated are more culturally viable, responsible, contributing members of their communities....

Compliance with and enforcement of the First Amendment and AIRFA must be exercised and the Correctional Institutions must constantly be informed by outside Native Spiritual Advisors. At the present time, there exist some problems in the New Mexico Department of Corrections' lack of compliance with the Native American Counseling Act of 1983; Arizona Department of Corrections' lack of compliance with the Arizona Revised Statutes 31-206 (Religious Services) allowing consistent religious services for Native prisoners. The interference, intimidation and harassment by the prison officials is ever present toward the Native Spiritual Leaders who come into the institutions to conduct and facilitate these services. Ignorance and lack of respect and awareness compound these problems, and [federal] legislation specifically protecting the religious freedom of all American Indian prisoners is the only thing that will [adequately] address these issues....

Lenny went to Ohio to assist Indian people in their efforts to get the prison administrators in Ohio and Indiana to consider adopting policies that would serve the spiritual needs of the Native American prisoners in those states. While there, he was also able to enter the Mansfield Correctional Institution in northern Ohio to share the sacred pipe with an Indian brother in that prison -- the first time the sacred pipe had ever entered the walls of that prison. Yet he was denied access to another Ohio prison.

During his visit to Ohio, he agreed to be interviewed by Little Rock for this book. What follows is that interview, which took place in a park alongside the Ohio River outside of Cincinnati.

Q. Can you open by telling a little about yourself, Lenny?

Lenny: My name is Lenny Foster. I'm Dineh from Ft. Defiance, Arizona. I am 44 years old and I have 4 kids. I've been the director and spiritual advisor for the Navajo Nation's Corrections Project, for going on twelve years now. I've been involved with the American Indian Movement for twenty-three years. I've also been

involved with the International Indian Treaty Council for eighteen years since its inception in 1974.

The work that I've been involved with in the Corrections Project for the Navajo Nation is to advocate on behalf of tribal members who are incarcerated in state prisons and federal penitentiaries. I also work with other Native Americans who are incarcerated in these facilities. My primary responsibility has been to conduct sweat lodge ceremonies, pipe ceremonies, talking circles, counseling, and to act as an advocate and liaison in behalf of the inmates, their families, and to work with the various prison officials.

Q. The Navajo Corrections Project is involved primarily with the New Mexico and Arizona federal and state prison systems. Can you give me a little background on how you've worked with prison officials in some of the states, and some of the things you've established that the Navajo Corrections Project and you in your capacity as its director have established in the way of getting programs started, and maybe talk a little about how you've established some programs working with the prison officials?

Lenny: I work with the correction officials in the Departments of Corrections (DOC) in Arizona, New Mexico, Colorado, Utah and also the Federal Bureau of Prisons in Arizona, New Mexico, Texas, Oklahoma, Kansas, Missouri, Colorado, California, and Minnesota, and I've visited facilities in Montana, Minnesota, South Dakota, North Carolina and Ohio. Early on it was decided upon request from the incarcerated tribal members that they would like to have visits by traditional spiritual leaders, spiritual advisors, to teach and to conduct ceremonies. So we arranged meetings with the DOC officials in Arizona and New Mexico to implement the sweat lodge and conduct sweat lodge ceremonies on a consistent basis, the same as chaplain services and other Christian services that the institution provides for its inmate population.

The Native Americans were totally disregarded, discounted and left out of the process and we felt that the programs need to include the participation of Native Americans in their traditional religious worship and services. So we negotiated with the Arizona and New Mexico DOC officials to consider the implementation of the sweat lodge and the construction of the sweat lodge on the premises. After a series of meetings in 1980-81, it was decided to allow the Native Americans the opportunities to have sweat lodges constructed in their facilities. That became a successful program through the full participation of the Native American inmates. We also introduced the pipe and the different religious items, such as the sage, sweetgrass, cedar, tobacco, the eagle feather, the drum and the gourd, the headband, as well as the privilege to have the inmates grow their hair long in the traditional fashion.

These services were implemented, but, of course, there are still a lot of misunderstandings by the prison officials as to the use and reason why these different items and paraphernalia were part of the ceremonies and services. So an ongoing effort to

educate and to create awareness among the prison officials has to be done, and to this day we still have a lot of misunderstanding by the prison officials as to the very important significance of these various items such as the pipe, headband, and sweat lodge. There is still a lot of misunderstanding about the need for the inmates to use these things and to carry on these ceremonies without the interference, intimidation or harassment by the correction officials.

A religious program is the most successful, positive aspect in programming for Native Americans. These traditional spiritual and cultural programs have been very successful to the changes in behavior, attitude, and conduct of the inmates, and they promote the respect and responsibilities and sobriety that we feel is very important for our people while they are incarcerated, as they can take those changes in their personalities back to their communities, back to their families, back to their nations. It's very important at this time of our history that our people are in this type of recovery. Our loved ones who are incarcerated are much more needed at this time because of the various issues that have confronted the Indian community and the Indian nations. Our loved ones are needed back home to help their families and not to continue to be a burden upon the various resources and the various tribal entities.

Q. You made reference to the continuing process of educating prison officials about the spiritual significance of the various items and practices. For some of the readers who are not familiar with the spiritual significance of some of these things -- for example, the sweat lodge -- can you explain what the spiritual significance of the sweatlodge and the sacred pipe are?

Lenny: The sweat lodge is a cleansing ceremony that purifies the mind, the body, the spirit, and it involves the complete cleansing and purification of a person's existence. It enhances the dignity and the pride that a person feels when he's in touch with the Creator because one must be honest and truthful in his contact and communication with the Creator. And it resolves the misgivings and misdealings and shortcomings that a person has in his daily life.

The pipe is very sacred also. It takes our prayers, the prayers that we make with the smoke, to the Creator. We put that prayer into the pipe when we pray and say the prayer and the song that goes with it. It takes our prayers to the Creator. And again one must be honest with himself in his mind, his body and his spirit, to receive the blessing. So in this way we communicate with the Creator on a very personal one-to-one basis and it eliminates all other middle persons who would intercede, such as a priest when he hears confession. We feel that we have that special relationship and special dealings with the Creator on a one-to-one basis and that's a gift that was given to the original people of these lands, the Red man. We have that ability to communicate with the Creator on a one-to-one basis.

So these services and ceremonies that we have are very

important to our people who are incarcerated, and we as outside spiritual advisors advocate on their behalf and we assist with the drafting of different policies and regulations that allow these services to be held inside the facilities without any interference from the officials or guards, without any harassment from the guards or the officials, without any intimidation from the guards or the officials. For the blessings and the good feelings to occur, this must be done without any interruption. And the services, to be effective, should be done on a consistent basis. We like to have them at least once a week, preferably on a weekend on a Saturday or a Sunday. And we as outside spiritual advisors need to be present, whenever we can, to lead these services and to give that spiritual direction, that spiritual guidance, and to teach. It's our responsibility to teach the ancient teachings and the ancient ceremonies and the ancient ways of our ancestors. We've made those vows and commitments to do that and we've been successful in that way. There have never been any major incidents or any violations involving the use of the sweat lodge or the pipe or having long hair. But the prison officials feel that sometimes we're in there with ulterior motives or our religion's not viewed as being valid. We don't always receive the same acknowledgment that other groups -- Christian denominations -- receive. But we feel that our religious and spiritual beliefs are just as valid and just as credible as any other denomination, if not more.

Q. There's a sensitive issue with respect to non-Indians getting involved in ceremonies and a lot of Indian people refer to some people as wannabes, plastic medicine men and plastic spiritual leaders. There is a lot of exploitation of spiritual, traditional ways and ceremonies and some of this is being carried over into the prisons. Can you just share a little of your own view concerning non-Indian involvement in these ceremonies either in or outside of the prisons?

Lenny: I believe the Native American traditional and spiritual practices and worship have been here for centuries and it's been passed on through the generations by ancestors and they have fought and resisted very, very hard and long to continue these teachings and to continue the ceremonies to the present time. And we have always invited non-Indians to observe and participate on occasions, as long as they have the sincerity and the respect to our ways and our teachings. That doesn't mean to take over and assume any leadership -- leading these ceremonies or services just because they've learned some of the songs or the prayers or the procedure of the pipe ceremonies, the sweat lodge ceremonies, the Sundance, etc. They have a place and a role in the circle but not in an Indian leadership capacity. It takes years of training, years of learning the procedure, the ceremonies, the songs. In some cases it's a very tedious process because it takes not only training but one must be blessed from birth through the family, and the responsibility is upon the person who has been blessed to carry on these ways and no one can take that away from an individual who has been blessed with a gift to heal and to doctor, to provide that type of spiritual direction, insight or enlightenment. Not just anyone is blessed with that gift. So a person can learn the songs

and the prayers and the procedure but still, it's not in any capacity to really provide leadership.

So you have these non-Indians who think that they have the ability to provide leadership in the ceremony -- that power is missing -- the power that the Great Spirit gives to Native Americans. It's only limited to the Native Americans and the non-Indians seem to be missing that gift. At the present time we have some individuals, non-Indians who are going into the prisons passing themselves off as spiritual leaders, as spiritual advisors and saying that they have this certain ability to lead the ceremonies and services, but they don't have the power. Our ceremonies are not for sale; our ceremonies and spiritual practices are not to be played with, abused or misused. It can be very dangerous because one could hurt someone if they use the wrong prayer, the wrong song, say the wrong thing, because words are very sacred. Songs and prayers are sacred. They're not to be misused or abused or played with. And there seem to be some problems throughout the country in the U.S. with this going on, and we need to put a stop to that. And I think the DOC officials need to be informed: not just anyone can lead these ceremonies, these services or give that type of instruction in these ancient teachings that our ancestors have passed on to us.

Q. When a correctional official is approached by someone who is placing himself in the position of a spiritual advisor who wants to come in and run sweats or ceremonies or whatever, do you have any suggestions or recommendations as to what the prison officials could do to ensure the protection and sanctity of these ceremonies and the spiritual teachings?

Lenny: There are a number of ways to go about this. One way I think of right off hand would be to contact the Native American Church Organization and/or the Medicine Men associations in the various states. I also believe the Indian centers and the commissions of Indian Affairs have people employed who might know medicine people, i.e. medicine men, medicine women or Native American Church Roadmen, Sundancers, pipe carriers, back home on their respective reservations who would know if a person has been recognized or has that credibility. The Indian world is actually a very small, small world because of the network, and people know each other's abilities, the work that they're doing, what they're engaged in. Also the International Indian Treaty Council has a network, the National Prisoners Support Network has people who are employed as spiritual advisors with the DOC in various states throughout the western U.S. who would be in the capacity to either investigate or seek out the information that's being requested. For example, there was some question about several individuals here in the state of Ohio and Indiana and I think there are people around in these states that would be available to lend their expertise and help the DOC as to the credibility of those people in question. One would just need to get that information from the various people that I mentioned. I think it is becoming a problem because you've got so many non-Indian people who want to be recognized as Native Americans and it seems to be a fad or a popular feeling to identify

with Native Americans.

Our way of life is not an easy way of life, the Red Road is a very, very hard way of life because you make a commitment for a lifetime. We have suffered all these years and we have resisted for five hundred years, and we can't just allow someone to come along and say that they're spiritual advisors or they're Native Americans after our people have resisted and put their lives on the line and have died for a cause in the struggle. So it's to be respected and held with reverence. Our ways are not for sale. Our ways are not for compromising or to be treated with contempt or to be discounted. We have a very rich and beautiful way of life and Native Americans are beautiful people, and they are to be respected.

Q. One of the problems that exists which I know that the proposed amendment to the Religious Freedom Act addresses is the wearing of long hair by Native American prisoners. A lot of people don't understand the spiritual significance of long hair. From your own perspective can you explain the spiritual significance of the wearing of long hair, and just what effects the forcible cutting of an Indian's hair has on the Indian? Just based on your experience on what you've seen and perhaps some Indians that you personally know who have had their hair cut by force.

Lenny: Long hair is a beautiful expression of one's Indianness. The long hair is an extension of your thinking and your thoughts and your prayers. And it is the communication between the person and the Creator. A person's thinking is affected by the way he treats his hair, the way he grooms his hair, whether it's braided in the traditional plains fashion or if it's loose in the traditional Apache or Southwest Indian fashion or if it's neatly tied in a bun in the traditional Dineh fashion or the Pueblos. In other tribes they have their own tradition as to how they groom their hair and this affects a person's thinking. This affects how he conducts himself, this affects how he presents himself and this is how he feels about himself. His thinking is a reflection of the way he presents himself to the Creator and how he thinks of himself. But when you forcibly cut a Native American's hair you automatically put him into a very severe depression. You put him into a state of being discounted, made to feel ashamed, angry and resentful, and you bring out all these feelings of hostility that are not natural to the Native American way of life. Our tradition is based on harmony and unity and having your existence or your essence being the same with all living things and walking in a good, positive manner on the Red Road here on Mother Earth. But when you psychologically, spiritually castrate an Indian by forcibly cutting his hair you violate that unity and you violate the harmony that puts him in touch in a positive manner with all living things whether it's the air, the water, the trees, the desert, the mountains, the 4-leggeds, the creeping crawlers or the insects, the flying creatures, all living things that exist on Mother Earth. You violate that universal serenity that the Native American has when he's in harmony and unity with all living things through his connection to the Creator with his hair, and his

thinking, his prayers, the songs that he makes.

We have seen and observed incidents where inmates have had their hair forcibly cut. It leads to severe depression and they become suicidal. They become withdrawn and they become very difficult to communicate with and it makes problems for everyone because this is not our nature -- it is not our human nature. The Native American is a gentle, peaceful person who is in touch and who loves his freedom. When you violate his gifts of being one with the forces of nature by cutting his hair it creates very severe depression as I mentioned. We want to avoid that. I don't feel the prison officials understand this. They have no reason to cut an Indian's hair. We Indians have had long hair for centuries. We don't feel the European or the non-Indian can come to our country and dictate his laws and his rules and say he's gonna cut the Indian's hair and burn his medicine bundle and take away his pipe, tear down his sweatlodge and burn it and convert him to Christianity, and give him a bible and a rosary and have him become a facsimile of the white man. No, we don't want that. We feel that we have our place in this circle of the human beings. We wish to occupy our rightful place in this arena of the human family and all living things. We have our original instructions, which include the wearing of long hair in the traditional fashion. No man-made laws can dictate to the red man, the original people of this land, to cut our hair. We don't feel that they have a right and the American Indian Religious Freedom Act should allow us to have protection. We should have protection under that law, but the white man has failed to comply with his own laws; he has failed to enforce his own laws. They have failed to live up to their treaty obligations; they have failed to live up to their own agreements; they have failed to live up to their own statutes. So all we're asking is for them to be men and to live up to their own laws and to enforce them, make them the same for everyone.

Since 1986 ten decisions handed down by the U.S. Supreme Court have taken away all of our first amendment protection so we feel it's necessary to seek a congressional amendment to have the protection of our religious and spiritual practices. Our religious worship must be protected if we are to continue to exist as a race of people, as human beings, the red people. For 500 years the Europeans have been here and they have been repressing our way of life, our traditions. In the last 200 years the U.S. Constitution and their government has made every effort to turn the red man, the Native Americans into white people and they have failed. I think it's time that they realize that they have failed. They need to just allow us to co-exist and take our rightful place in this arena, in this human family. We have a contribution to make. We have made contributions. We as Native Americans were the first ecologists and the first environmentalists. We always prayed for Mother Earth and were in harmony and in tune with every living being on Mother Earth. That way of life needs to be respected and we feel we have something to offer. And the amendments to the American Indian Religious Freedom Act will allow us the opportunity to show the non-Indians we can give that leadership and that guidance and perhaps to lead the human race off the road to destruction that it seems to be heading down.

Q. In many places, many geographical locations, in the east and the west, there's a problem that there aren't spiritual advisors available on the same scale as Christian chaplains and spiritual people are available for the Christian prisoners. In many cases in some states the prison officials maintain policies that prohibit the Native American prisoners from gathering for congregate worship services or pipe ceremonies or sweat ceremonies unless there is, in fact, a spiritual advisor from the outside to come in. How do you feel about that?

Lenny: As outside Indian people who live in the free world we have a certain amount of responsibility and have an obligation to help our loved ones who are incarcerated in the state prisons and the federal penitentiaries. We need to reach our people who are incarcerated. I also feel that spiritual leaders and spiritual advisors need to make themselves available to our people who are incarcerated regardless if they are in Ohio, Indiana, North Carolina, New York, Arizona or California. And I think we need to develop this network of spiritual leaders and spiritual advisors who are available to provide their experience, their expertise, their knowledge, their sacred teachings to help our people who are incarcerated. By developing this network of support, people on the outside -- I ask those who would be willing to travel to some of these places to meet with the prison officials. We need to do that. And my purpose for being here in Ohio and Indiana this past week has been to meet with the prison officials to inform them of the vital and necessary spiritual and religious programs that need to be implemented into their religious services. It's very important for our Native Americans who are incarcerated in these two states, and in all states, to receive these instructions and to participate in the sweat lodge ceremonies, to participate in the pipe ceremonies and to discuss their personal feelings with Indian spiritual advisors so they can help themselves overcome their depression of being isolated from their loved ones.

I was invited to assist in the struggle here in Ohio and some of these eastern states, by Mr. Little Rock Reed who has been advocating for a number of years on behalf of the Native Americans in this area and I think we need to help him as outside spiritual leaders from the western U.S.; we need to make ourselves available to him and help him in his struggle here in the upper mid-west and it's only through this support and network that is being developed that we can successfully bring in the true spiritual advisors because you have too many non-Indian so-called spiritual leaders who are willing to provide these services but they are not teaching the true teachings of our ancestors and our ways and they are violating those sacred teachings. The lack of sincerity or respect or reverence is missing. It becomes a show. We need to put a stop to that, so I feel that individuals who are out there who perhaps might be listening to this or who might read this are to contact Little Rock and make themselves available and to provide these services and teachings and work with his organization. He can facilitate the arrangement for travel to Indiana and Ohio to provide these services for our Native Americans. And it's not only just for Indiana and Ohio but I believe we have Native Americans

who are incarcerated in Kentucky and Illinois, Tennessee, Georgia, West Virginia, places like that where there are very few Native Americans living in the area, but there are people who are incarcerated and we need to reach out and help our own kind. It's been our experience that the dignity and self-esteem of our people can be restored only if we as outside Native American people reach out to those who we can help from the outside. Like I said, it's a responsibility that we have and we should make our obligations to that affect. We'll all become better people for it because I think we need to promote the unity and the brotherhood and by practicing these virtues we are a sovereign nation, all tribes can come together and help one another, and I think it's very critical in this time in history that we do that. We can no longer be divided; we can no longer be separated. And I think we can all utilize the sacred elements that have been given to us by the Creator, and that's the fire, the water, the wood, the rocks, the sage, the cedar, tobacco, the pipe, the drum, the gourd. The languages in the songs are different but we can share our songs and our prayers and we can teach and we can learn from one another, and truly become inter-tribal and promote and advocate the American Indian Movement and unity and brotherhood. We can truly have self-determination and be sovereign, but it's gotta begin with ourselves. Otherwise we're gonna be separate and we fight each other and we play right into the non-Indian's hands. We need to put a stop to all this bickering and fighting.

Through my own experience I've been a Sundancer for nineteen years and I made a vow in Wounded Knee in March of 1973 that I would give something back to the Native Americans. I'm personal friends with Leonard Peltier and when he became incarcerated I felt that I had a certain obligation to help him and other brothers who were incarcerated, so I became involved as a Sundancer and as a pipe carrier to go into the institutions. In 1980-81, in Florence, Arizona, at the Arizona State Prison, myself and Wayne Walkazoo, who is a Lakota from South Dakota, went in and constructed the first sweat lodge. And from that time on I've visited and assisted in the implementation and the construction of the sweat lodge, and I've conducted pipe ceremonies, and the talking circles in various institutions in New Mexico, California, Utah, Colorado, Montana, Texas, Oklahoma, Kansas, Missouri, Minnesota, South Dakota, North Carolina, Ohio, and I feel very good about my calling. I also have a degree in sociology from Colorado State University that I obtained in 1974, and I've been involved with the American Indian Movement since the fall of 1969. I participated in the occupation of Alcatraz out in California, the Bay area and San Francisco. I participated in the Raymond Yellow Thunder campaign up in Nebraska and the Trail of Broken Treaties caravan that took us to Washington DC on the eve of election in 1972. I participated in the 71-day occupation from day-one to the last day at Wounded Knee, SD in 1973. I also participated in the Longest Walk that took us across the country from California to Washington DC in 1978. And I've participated in a number of other actions and campaigns that seek the freedom of our Native Americans in trying to obtain the treaty rights of our people, not only of the Dineh people at Big Mountain, but the Lakotas with their Black Hills, and other Indian nations.

Up till now it's been a very beautiful experience for me, and I feel I have a wonderful family -- the contacts that I've made through the Sundance, the Native American Church, and my travels have taken me through many, many Indian nations and reservations throughout North America. I have made many fine relations through the fire place and through the Sundance and through the Pipe, and I hope to continue this work that's been a blessing to me. It has been a blessing to do something on behalf of all Indian nations.

Q. Another question I wanted to ask you, concerning a lack of availability of spiritual advisors to come into the prisons. In some prisons, the prison officials do allow the Native Americans to gather for sweat ceremonies whether or not there is somebody available on the outside. Some prison officials, on the other hand, seem to think that that would be a problem -- a problem with the prisoners meeting for ceremonies without an outside spiritual advisor present. What is your experience with that?

Lenny: I don't think that's a problem. When we teach our ceremonies, we teach the songs, we teach the prayers, we teach the procedures, how to conduct the ceremony and the service, what the sweat lodge is all about. We teach how we prepare the fire, how we use the rocks and the fire; we pray upon building the fire, heating up the rocks. We teach what the purpose of the altar and the staff are, the purpose, the use, and the history of the pipe, the tobacco, the sage, the cedar, the sweetgrass. How we pray with the water and the charcoal. We teach all of that, and it's a universal learning process that the Native Americans have. We have different ways of doing these things, but these elements are almost all the same to all the tribes, so when we teach, a person learns, each one of them learns, and we teach them that they are leaders, every one of them are leaders, they have something to say, they have something to give, they are all beautiful people, they're precious, they're loved, they're missed by their loved ones. So we reaffirm the love that we have for our people. And when they learn they in turn can teach other inmates who come into the system. In my experience there's never been a problem with any of these services. When a person learns he in turn teaches the younger ones. They all learn, and then we always advocate that they take this way of life, this lifestyle and this teaching with them. It's not to be forgotten when they leave the iron doors. No, we want them to take these beautiful teachings with them, and take it home and build a sweat lodge at their respective homes and have them include their families, their loved ones, their relatives, their children, their companions and their wives, and we want them to teach them. We want them to incorporate that into their lifestyles, their way of life. We teach them to use the sweat lodge before they go to the Native American Church ceremonies, and to use their sweat lodge ceremony again when they complete their Native American Church and sitting up all night and using the sacred herb, peyote, and pray with that, and in the morning go to a sweat before you eat your feast. That's a beautiful feeling when you do that.

So these things we teach, and like I mentioned, we are all blessed with a gift from the Creator to help, to heal and to

doctor, and I feel our people are in recovery. We are in recovery, overcoming the pain we have carried, that burden, that anger that we feel. Five hundred years of being suppressed and oppressed; for five hundred years non-Indians, the Europeans, have been committing genocide. But we still pray for them. We pray for our enemies, we respect our enemies. We pray for them so they'll have sensitivity and awareness about our way of life, so they'll come to understand our way of life is beautiful. And when we teach these ways our people change. Our people go through some very positive, beautiful changes and they're not angry anymore. They see the mistakes they have made, and seeing the mistakes, understanding the mistakes, makes them become better human beings. They go home and leave the alcohol aside, leave those drugs alone, and they treat their family with respect and sincerity. And they're reverent with all these ways, with the pipe, the sweat lodge and the Native American Church ways, the teachings and the traditional ways that they now have. Maybe they use corn pollen, maybe they use tobacco, maybe they use charcoal, maybe they use the arrowhead, maybe they use the feathers, or whatever way that is traditional with them, we encourage them to learn these ways.

So it's not a problem when the person learns who he is. He has a spiritual foundation that becomes very strong within his being, his essence. What he is is a man, or a woman, a human being. That in turn makes him a better human being and he can teach his fellow brother or sister, relative, and go from there. This Red Road allows us to make mistakes, but it also allows us to be in harmony and unity with all forces of nature, all living things. To my knowledge and experience there's never been any problems of anyone desecrating, misusing or abusing these teachings, these ways in a prison setting. Once a person starts using the sweat lodge he changes. He becomes a better person and this has been conveyed to me by the chaplains and the prison officials that a person really does go through some changes, and the chaplains and prison officials observe the changes, and I've observed the changes, the positive spiritual growth that takes place in a person's thinking and his behavior and the way he conducts himself, the way he presents himself, the way he speaks.

There are some leaders among our people who are coming out of these prisons because they've seen the wrong of their action that led them to the institution. But they also change and when given the opportunity to grow, and they become leaders in the community, they become leaders with their families, they become leaders with the tribe, they get that spiritual leadership, that spiritual guidance that's so lacking and necessary in this day and age. And I don't believe there are any existing major problems with the sweat lodges where Native Americans are allowed to conduct their own ceremonies. And I think it's good for them because they can take turns giving that leadership and that guidance, and sharing their knowledge, their feelings, their emotions with one another. This makes us grow, makes us better persons when we allow everyone to express themselves and to speak and share what they feel, share their experiences, share their emotions with each other. The sweat lodge ceremony is a very beautiful expression of our spirituality. It needs to be in every prison throughout the United States. Even

if only one Native American is incarcerated, the sweatlodge should be there.

Q. I've seen where some prison officials and chaplains tend to think that since there's a relatively small community of Native Americans within a prison, in order to grant a request for the implementation of a spiritual program they seem to feel that all of the Native Americans in the facility must agree with each other and go the same way. I see a disparity in philosophy, doctrine, actions and beliefs among the Christians. And these various Christian denominations are respected. But it seems like some prison officials don't want to recognize that there is a diversity among the different Native Americans that might be in one facility. They don't seem to want to afford them the same treatment and respect that they do the various Christian denominations. Can you give me your comments on that?

Lenny: I think that prison officials are very misinformed or unenlightened. They're ignorant of our Native American spiritual practices and religious beliefs. They must be educated, they need to be informed, they need to make every effort to include the various Native American nations, the tribes, and the spiritual leaders to have input, either as consultants or as employees or contractors to provide this type of knowledge and services. I feel that up to now the prisons, the correctional institutions, the penitentiaries, they have not included the input of the outside spiritual leaders or the Indian nations. The tribal governments whose tribal members are incarcerated need to have input into the policies and the regulations and the laws that govern our people while they are incarcerated. The conditions and treatment of our people need to be monitored and we need to have a say how our people are treated while they are incarcerated. What conditions they exist in, we need to have a say how these things are done while our people are in there and I feel it's an obligation of outside tribal governments, Indian nation spiritual advisors to have that input and to give direction and to have a say into the drafting of the policies that are developed or implemented. They need to have a say about the religious and spiritual programs that are implemented, and the state's statutes that are implemented, and of course, to have input into the amendments to the American Indian Religious Freedom Act. That's the only way that these changes are going to be made. At this time, the chaplains are not aware of our spiritual practices. The wardens are even more ignorant of our ways and we feel that they need to be enlightened. We need to give them an insight as to what our traditions, our culture and our spiritual teachings are. These things are to be included in every institution's policies governing religious practices. Our spiritual leaders need to have the same status in the prisons as the Christian chaplains, and no less. Our sweat lodges are to be received the same as the Christian chapels. Every institution has a chapel inside the facility. Every institution should also have a sweat lodge. The sweat lodge is the Native American's church. So we need to have our religious practices received with the same respect anyone else's religious beliefs, such as the Muslims, the Catholics, the Jewish people, etc.

I think we're moving in the right direction by meeting with the prison officials to try to show them how these things can be implemented. They need to listen, to show respect. I feel positive that we will prevail. We have endured 500 years of genocide and we've persevered through all these difficult times, but I think we're starting to see the daylight at the end of the tunnel. And we appreciate the support and the alliance with other non-Indian people who are concerned and we welcome the moral support, and the prayers, the financial support of all other concerned peoples. This would be a better world if Native Americans were to be included in this human family and we occupy our rightful place in this arena. This coming year, 1993, would be a good time for that to happen since the United Nations has declared 1993 to be the "Year of the Indigenous Peoples." And it's only through support from other concerned people that these things will happen. We cannot continue to go at it alone and carry this burden alone because it has become a very hard and intense struggle. We have lost many, many people in this struggle. Lives have been put on the line, families have been destroyed, alcohol and drugs have taken their toll. We feel it's high time to make these changes. I feel it's that time.

Aho! Mitakuye Oyasin!
(All My Relations)

CHAPTER FIVE

Glimpses of the Prison Struggle

by

Oowah Nah Chasing Bear, Charles Fancyhorse, Harry Hall,
Moses Headman, Bob J. Iron Eyes, Cheryl (Dusty) Jackson,
James Romero, Bedeaux Wesaw and Standing Deer Wilson,
with interspersed commentary by Little Rock Reed

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Little Rock Reed:

In this chapter we begin to place the prison systems -- state and federal -- under a microscope. For clarity and convenience, this chapter is broken into "glimpses." Many of these "glimpses" will be seen through the words of prisoners and spiritual advisors themselves - that is, the few who have opted to risk reprisal by vindictive prison officials for coming forward with their stories. For those who fear reprisal, I have either presented the "glimpse" in my own words, or have used their words with care to obscure their identities.

Before presenting our first "glimpse," a brief discussion on the interconnection between Indian culture and religion is called for. In his article, "Native Americans and the Free Exercise Clause," R.J. Rice made the following observation:

An important distinction between Native American religious practices and other religious practices needs to be considered when any comparison is made. In the dominant American society a clear distinction is made between a religious practice like worship and a secular practice like professional sports. In traditional Native American culture no such distinction exists. Religion permeates every practice of daily life. Culture defines religion in our contemporary society while religion defines culture in the traditional Native American society. This basic distinction becomes crucially important when any particular Native American religious practice is examined.... What might seem to be of only minimal religious importance to the occidental mind is often extremely important to the total religious system of a Native American (Rice 1977: 1509-10).

An example of how culture defines religion in the dominant

society might be something like this: the dominant society's culture revolves around the Almighty Dollar which boldly proclaims that "IN GOD WE TRUST." So too, many Christian leaders and chaplains compartmentalize and limit their concept of religious practices to those functions that are handled through contract and/or in the course of an 8-hour work day.

An example of how religion defines culture in the traditional Native American community might be something like this: a Native American spiritual leader will share with his or her people 24 hours a day, 7 days a week, from birth to death. To give freely to those in need is not deemed to be an act of "charity," but rather is a way of life which is expressed out of a responsibility to help one another. It is a religious practice because it is an action which is rooted in a religious value system which makes the action a responsibility.

What follows is the testimony of just one of the many Native spiritual people who have been and are being persecuted by the dominant society for refusing to stop acting upon their religious responsibilities outside the prison setting.

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Oowah Nah Chasing Bear (1990):

Some years back I founded an outside spiritual support group for the Native brothers at Terre Haute Federal Prison in Indiana. It has never been easy trying to deal with Reverend Bean, the Christian chaplain. At almost every visit he would find some negative issue - asking ladies if they had on underwear, saying he would not recognize any spiritual person who did not attend a seminary as he had. On one occasion he told a member of our group that our group was viewed as a "nuisance - too much work for personnel." He said we would be harassed until we got so frustrated we would stop coming. Soon after that he told me and three ladies that we would not be permitted to return. The charge? - giving a traditional hug greeting to the men, and smiling, laughing! I stood up to him, asking him if this was the harassment he spoke of. He began to shake, sweat and hyperventilate, and then told a prison guard to escort me out. I told him that the issue was not closed - that it was a religious freedom/religious discrimination issue. Within a month the other three were reinstated, but Reverend Bean accused me of being a security risk, stating that I had threatened him. I fought him for one whole year, all the way to Washington, D.C., and won. I was reinstated; but Bean never forgave me. His racism grew worse.

Now another chaplain was brought in, a man named Michael Cook. He seemed to be the opposite of Bean, being more communicative; even giving me advice on certain things to help with the support group. He was courteous, kind, and often called me to talk of things for the men.

It has never been a secret that for many years I have worked for

the People, whether it is begging food, or protecting the bones of our ancestors, to fighting for the land or support of my Brothers in the Iron Houses. I have sent many truckloads out to reservations, helping however I can. Cook knew this; we spoke of it. I would tell him I am not coming in next Friday for the meeting; I am taking a truck out to the Rez. He was well aware of my work and that I have widespread connections and acquaintances among the People. Many times we had talked of the sacred hoop of our people, the extended family - how we are all relatives.

Chaplain Cook would say, "it's okay for you to continue your charity - just be sure not to use your name; use the group's name, 'Red Hawk.'" He knew how careful I am of my honor; my deep love and devotion to my people. He also knows that Red Hawk handles the group's [prisoners'] bank account. He knew I was concerned about the seminar and powwow that we were planning for the men. We needed money from the account for the expenses. I could not sign a check for them, and my friend who handles this was in Alaska on a visit. Chaplain Cook knew I would never betray the men. He knew my concern for the hungry people on the reservations and told me again, "use Red Hawk, not your name."

I prayed for a way to get things out to the People, and it came to me to ask people to adopt a family and send them a box or two a year. I often speak at colleges, churches, clubs, schools, or to individuals. So I asked, and people were receptive and many boxes were sent. I never really knew which families - I left it to people to pick. However, when a prisoner was talking on the phone to his family, my name was mentioned. And Reverend Bean accused me of being in contact with prisoners' families! He was over-joyed to call me and tell me not to embarrass myself by returning to the prison - that I would not be permitted to enter. But I protested that I had done nothing to endanger security.

On my last visit to the prison, I was held up in the parking lot awaiting the tower guard to acknowledge me. I sat by the speaker for a half hour and the guard refused to speak to us. We pulled away thinking surely he will see us. We circled the drive and came back to the speaker. For another 15 minutes we blinked the lights and blew the horn. Finally he acknowledged us and told us to pull over into the parking lot and wait. We did and it was 35 more minutes that we waited. He timed it to open the gate in a down-pour of rain!¹ So now I was soaked to the skin. The guard inside acted odd and seemed to know nothing of routine. Though I had a security photo on file, he insisted he would take my picture.

Chaplain Cook had been away and no one would speak of him except to say he was "on leave." As it turned out, the guard later stated at an FBI indoctrination meeting where volunteers are finger-printed, photographed and view movies on prison ministry, that "if a chaplain gets too close to a volunteer, he must take a 6-week leave!"

Now, on this last visit, Reverend Bean was practically bursting. He said that I had been in contact with prisoners' families. I had challenged him before on this, asking if it was a federal law

forbidding religious volunteers from helping families of prisoners. He admitted it was not a law, but rather something the chaplains and administration had decided. How strange; even the Indiana state prisons encourage religious volunteers to help prisoners' families; whereas, the Federal Bureau of Prisons demands that we totally ignore the pain of a man if his family is cold and hungry. The Federal Bureau of Prisons demands that if a man should come and ask help for a dying mother, I must refuse, saying rules forbid my contact with his family. Reverend Bean has told me that the men have access to chaplains. I told him the needs of Indians are totally different, and they need Native spiritual leaders to talk with. It is also forbidden to have a released prisoner visit or contact me in any way. If one should happen to do so, Terre Haute demands that I refuse to have them in my home, and that if I am contacted in any way by them, I must report immediately to the authorities.

I refuse to close the door of my home to any of my people. Reverend Bean takes great pride in telling how he reports just seeing a prisoner on the street!

Now, many people who have sent boxes to many families have written to Warden Luther Turner, Reverend Bean, and Chaplain Cook to show proof it was them, not me, who sent boxes. But Warden Turner refuses to even respond to me, and Reverend Bean has sent form letters to people saying that the evidence he has against me is all he needs.

The real victims in all this are the men, for now they have no outside local spiritual support. Their families are being punished. It is just another act of genocide against the People. I feel it is also a violation of religious freedom -another way of forced assimilation.

I sit in meetings of Christian chaplains for state prisons and they emphasize supporting families. I also listen to the Carlson Group (prison fellowship) and they, too, feel that families should be included in religious programs. I trusted Reverend Cook, a stupid thing, I know. But he did at the time seem to want to help. He totally betrayed my trust. He told me in the presence of witnesses that it was alright to continue my work for Red Hawk. I suspected these things when I was held out in the parking lot that night, and Cook's avoiding me, especially at the orientation meeting where as he had always been very friendly, he would not meet my eye.

The bottom line is that I was set up, and the men suffer because of someone trying to help their families. But Bean carried out his revenge.

It is religious genocide.

I hope you can understand my words, and what has happened, and what is going on. I have broken no law and would die rather than to endanger my Brothers by breaking security. I heard a medicine man was permitted to come visit since the powwow. Usually, only once a year can one come, and it costs money, which the men have to

contribute to. Odd, huh? - because I complained that the men had no spiritual person to visit, suddenly Terre Haute has permitted a medicine man to visit.

We must work and pray to change this totally unreal attitude toward extended families. In the traditional way Native people are a hoop, helping each other. Punishment of a prisoner should not extend to his child or wife or parent.

The list of names I supplied to people were many people on reservations. Perhaps some are related to prisoners. I have frequently tried to tell Bean and Cook how we are one people; that if I attend a ceremony or a powwow, it is possible someone there might be related to prisoners. Must I report each to Terre Haute?

When I take a truck out, I just see it is unloaded. I do not hang around for thanks, or to shame and take the last vestige of pride. The load is distributed; I do not ask to whom or where. If a child receives bread, it is good. If a grandmother receives a blanket, should I ask a name? Should I inquire if their father, son or brother is held captive by the dominant society in Terre Haute?

Churches, Boy Scouts, clubs and individuals have sent the boxes, but Bean and the administration refuse to accept the proof. I guess one thing is as good as the next to get rid of me. Bean is full of fear and hate, and he deeply hates me and all Indians. The spirits see, and Grandfather knows. Bean has no victory, for I feel this can only motivate our people to change this cruel, inhumane treatment of prisoners. It defies their own constitution and Bill of Rights....

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Little Rock Reed:

There are many Native spiritual people who are prohibited from entering prisons merely because of their affiliation with prisoners' relatives. This policy (which also exists in most state prison systems) is an act of religious genocide because it effectively denies Native prisoners access to Native spiritual leaders in many prisons. Unlike the Christian clergy who greatly outnumber the Christian prisoners and who are all welcome inside the prisons, Native spiritual leaders are far and few between - many states have absolutely no Native spiritual leaders. It is unlikely that you will find a Native spiritual leader who is not affiliated with Native prisoners' relatives in one way or another. What the prison administrators and chaplains such as Reverend Bean refuse to accept (although they do not fail to realize) is that this affiliation is deeply rooted in the traditional Native religious system, the political system, the culture. To seriously demand that Native spiritual leaders cease all contact with Native prisoners' relatives is to demand that Native spiritual leaders cease all contact with the Native community outside the prisons; for if the old saying, "it's a small world," is true among the non-

Indians, it is several thousand times truer in Indian Country. This policy literally demands that Indian spiritual leaders only be Indians while inside the prison walls and nowhere else. It is unrealistic. It is unreasonable, and it cannot be justified on any grounds whatsoever. It may be attested that "security" legitimizes the policy. If so, however, then why are the Christian chaplains not also forbidden to have contact with the families of prisoners? Are Christian clergy the only religious group leaders who are not deemed a potential threat to national security in America? Are all non-Christian clergy potential criminals? That's discrimination, clear as a bell.

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A Glimpse of Leavenworth Federal Prison

Leonard Peltier, a wrongfully imprisoned Native American who is perhaps the United States' most renowned political prisoner, continues to be harassed because of his insistence on maintaining his religious and cultural identity. In January 1990, Peltier (who is the subject of intense human rights efforts in almost every country in the world -- discussed further in the chapter on "A Jury of Peers") was once again forced to file religious freedom charges against his captors at Leavenworth.

After Peltier filed his charges concerning an oppressive incident at the prison in January, six Indian prisoners were thrown into solitary confinement -- no reasons given. They were released four days later -- no reasons given. Two days after the charges were filed, Peltier's cell was ransacked -- no reasons given. Two members of the United Tribes Community Group, who have long provided spiritual and cultural resources for Indian prisoners at Leavenworth, were told they would not be readmitted to the prison -- no reasons given. The four-year-old practice of allowing outside Indian teachers and speakers into the prison was cancelled -- no reasons given. All Indian religious and cultural group meetings in the prison were cancelled -- no reasons given. And the annual spiritual gathering held at the prison for Indian prisoners, at which there has never been a "problem" or "incident," was immediately restricted to those prisoners who prison officials might invite to participate, based upon their "cooperative," assimilative behavior.

In a letter distributed by Frank Torres, one of the Indian prisoners at Leavenworth, he stated:

The religious discrimination, prejudice and harassment against Leonard Peltier and other Native American prisoners in United States penitentiaries has not stopped.

...On January 20, 1990, the venerable Lakota Sioux holy man Chief Leonard Crow Dog was denied entrance to the

Leavenworth facility -- even though he is the spiritual advisor for the American Indian Movement, has conducted many religious ceremonies in federal [and state] prisons (including this one several years ago), and had government documentation with him.

On January 19, after a long, grueling trip from South Dakota to Kansas, Crow Dog arrived at Leavenworth in order to finalize arrangements for a religious sweat lodge ceremony scheduled for the following morning. He was escorted into the facility by Chaplain Bruce Newkirk so that he could be cleared to enter the prison for the ceremony.

The next morning, Crow Dog had a friend phone Gil Nichols, the civilian sponsor for United Tribes (the Native American group here in Leavenworth), to ask what time they should arrive at the facility. Nichols told the person that the prison was "under a lockdown" and that no civilian visitors could enter the prison for any reason. A few hours later it came to light that there was no lockdown -- somebody had lied. Crow Dog's friend phoned Nichols again, at which time Nichols reportedly said, "It doesn't make any difference anyway. Newkirk isn't going to let Crow Dog in because he was wearing a Leonard Peltier support T-shirt yesterday."

Of course, this wouldn't be the first struggle Leonard Peltier has faced with respect to religious freedom in the prisons. He and a couple of other brothers initiated a death fast at the Marion, Illinois Federal Prison, which is explained quite well by one of those brothers in an open letter he had written at that time which we reproduce here in its entirety.

Standing Deer Wilson:

Greetings to all of our brothers and sisters who struggle in unity for the sake of our unborn generations. We pray that you and all your relations are well and strong and enjoying all the blessings our Mother has to offer. I am a prisoner of the united states presently being held captive in Greed's Ironhouse at Marion, Illinois. On October 22, 1983, there was some trouble in this prison, in a part of the prison I do not even have access to. I only know there was trouble because I heard about it on the radio. Since October, life in Marion has become no life at all as the warden takes revenge against all the prisoners. We are being brutalized and beaten by sadistic guards who continue to punish the innocent for the deaths of two of their brother guards. All programs have been discontinued permanently. I will never be allowed to work again. I cannot get medical attention for a very painful degenerative disc disease. I cannot seek redress for grievances through the courts because there is no longer a law library. There is no educational program. If I

write a letter I must do it on the floor because I do not have any furniture other than a bed in my cage. They say we are too dangerous to have a chair or table. If I want to shave I must do so without a mirror because mirrors are illegal. If I wish to place my comb or toothpaste somewhere I must put them on the floor because I'm too dangerous to have a shelf in my cage. If I want to put my shirt and trousers somewhere it must be on the floor because I am too dangerous to have a clothes peg on my wall. If I want to stir my coffee I must do it with my finger because I may not have a 3" plastic spoon. If I attempt to write a letter to my lawyer or a Congressman or Senator complaining about these conditions, the guards will come into my cage and steal my unmailed letter.

That's why I am writing to you in the dead of night. I am limited to possessing three paperback books, three newspapers and two magazines. If I have four newspapers delivered by the mailman because Marion does not have mail delivery on Saturdays, Sundays or holidays, the men with clubs will invade my cage and steal my unread newspapers. At the conclusion of every meal, men with clubs will come to my cage door and demand the empty paper individual salt and pepper containers, butter containers, 4.5 gram sugar packet (paper), plastic fork & spoon, empty milk carton and even the plastic wrap that comes on the microwave food tray insert. Woe be to you if you don't have any single item. Sometimes the guards will leave a sugar packet off your tray, or fail to give you pepper or one of the other items. Then the men with clubs will strip off your clothes, gaze at your privates, make you bend over and spread apart your cheeks so they can look in your rectum, then they make you stick your hands out through the bars backwards while they handcuff your hands behind your back. Then they open your door while one of the guards half drags you off your feet by pulling your handcuffs up while walking you away from your cage. The other guards walk on your bedsheets, steal and destroy your property and call your mother a whore. If you are lucky and make no sound they may put you back in your cage without beating you with clubs. In my case, I am not so fortunate. On three occasions, October 31, November 1 and November 6, 1983, I was beaten with clubs because I am unable to bend from the waist to spread my cheeks. There are notes in my prison medical file signed by the Chief Medical Officer attesting to my inability to bend from the waist, but the sadistic guards do not care.

I must eat all three of my meals in my cage. I am locked in a 6'x9' cage 23 hours a day. I must eat where I shit. I don't mean to sound gross, but there is no other way to say it without being dishonest. I am forced to eat where I shit. I am given three teaspoons of cleanser a week. I am only allowed the cleaning brush for the commode once a week on Saturday night. I keep it as clean as I can, but how clean can you keep a toilet with 3 teaspoons of

cleanser and a brush once a week? The odor of raw sewage permeates the cell 24 hours a day. When my food tray comes I try not to think about the open toilet and the acrid stench. I turn my back to it, but still it assails my consciousness and brings tears to my eyes until I retch and retch and pray that this nightmare will someday end.

All these things I could probably learn to live with because I realize that Marion is America's #1 gulag for political prisoners, and I know that my brothers, friends and comrades in here are suffering the same indignities. But there is one outrage that I can no longer tolerate. I will no longer allow the United States to continue to deny me the right to practice my religion. For 491 years the religion of my people has been trampled on and disrespected by the sea pirates and many of their descendants who invaded my land so long ago. For those of us who today wish to follow the religion and teachings of our grandfathers the road is rocky and the struggle is hard even under conditions in the so-called "free world," but for American Indians in Marion Federal Prison, we have been cast into a spiritual wastebasket where every aspect of our religion is denied.

When men brutalize, degrade and dehumanize other men there is a point at which injustice becomes intolerable, and I have reached that point. I will no longer cooperate as the United States steals my life little by little, day by day, and makes the quality of my existence not worth perpetuating. Since my captors have taken away even the religion of my grandfathers, then I shall make them choose between killing me by starvation, or obeying their own laws which have been written into their constitution which say that all men and women have a right to practice their religion.

It is with these thoughts in mind that I have come to a decision this day to go on a death fast just as soon as the United States Bureau of Prisons can be enjoined in their courts from force-feeding me. Two of my brothers are joining me. Leonard Peltier #89637-132, an American Indian, and Albert Garza #49602-146, a Jewish brother. Albert bases his death fast on Talmudic law. The guards who were stabbed to death in the Control Unit were both Klansmen who were tormenting Tom Silverstein & Clayton Fountain who are both Jews. Albert Garza is the head of the Marion Jewish society here, and because he is a Jew, the guards have subjected him to vile and incredible reprisals even though he was in general population (which is light years from the Control Unit) when the guards were killed.

Leonard and I enter into this fast not out of despair or depression but with a joyful commitment of total love and dedication for our people. We must have our pipe, drum,

sweat lodge and access to our outside spiritual people. We will fast until we are either granted our constitutional right to practice our religion or until we return to our Creator. If the united states does not wish us to die, they have but to obey their own laws. If we do die, the united states' total disregard for human rights will be our murderers.

We will be fasting and praying for all the peoples of this world, for all the little animals of the woods, for the gilled peoples of the waters, for the winged creatures of the air and for all living things such as the flowers, trees and grasses. We pray for all of our sisters & brothers who are imprisoned throughout the world. We pray for our brothers & sisters who daily suffer the knowledge of hunger not because they choose to fast as I have done, and Leonard has done, and Albert has done, but rather because they cannot find even a crust of bread to feed themselves and their starving children. We especially pray for the little ones who in their innocence have inherited a world intent on destroying itself because of the greed of a tiny minority who believe it's alright to kill in order to protect their privilege. We pray that we will not entertain thoughts of hatred against those who destroy us because of their stupidity, but rather I pray that my motives may remain steadfast out of love for our Mother.

*In the Spirit of Crazy Horse,
Standing Deer*

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Bob J. Iron Eyes
FARMINGTON STATE CORRECTIONAL CENTER
MISSOURI, 1989

I am a traditional reservation Indian. I was born and grew up on the Standing Rock Reservation, in Fort Yates, North Dakota. I grew up with the teachings of canunpa wakan, all the time I was on the reservation. It is what the white man calls religion. To me, it is a way of life. It comes natural to our people. To respect Mother Earth, and all the creation that the Great Spirit put here for us....

There are two brothers here now, and myself, who have filed federal lawsuits in the courts, plus a lot of letter-writing to people asking for support here. And a lot of writing grievances, and complaining to the officials here, and a lot of hole time (solitary confinement) for our activism. So I can honestly say I have been punished, ridiculed and treated badly for attempting to organize as Native Americans and to stand up and be recognized for a justice

where a justice should have already been there....

About a year ago we were having some major problems here as Native Americans. They forcefully cut our hair and tried to say we were not Indians, and classified us as whites when we came into the penal system. Then they said, after a few months of bitching and complaining to them, that if we could show proof that we are from a recognized Indian tribe, we could grow our hair. Then, just like they have done throughout history, they broke their word. They told us, after we showed them proof of Indian heritage, that we had to get a haircut anyway.

When I think of all the pain, harassment, persecution and suffering that our people have gone through in this country, it makes my heart sad. I always wonder, why us, the Native Americans? Why is the government so afraid of us and our religion? Is it because we live in peace and harmony with Mother Earth, with no kind of government telling us how to do it, where to do it, and how long to do it? Otherwise, if you stand up for your rights and demand to be respected and recognized as a Native American, they lock you up for it. I cannot understand their way of thinking. They are filled with evil....

But speaking for myself, about the effect or what kind of changes they put me through while doing all this. It had a hell of an impact on me. I felt like they were just picking on one race of people, and that we were just another white boy to them, and that there were no such Indians in their prisons. I felt mad, resentful, hurt and sad at the same time. I know it happens everywhere to the Indians. So I had to take a frame of mind, spiritually, that whatever they do to me, they can not take this from me. When they held me down and cut my hair the first time, it felt like they cut off my leg or arm or something. I felt lost, mad. I walked around like in a daze for a couple days after it. It felt like a part of my spirit was pulled away. I prayed a lot, and fasted, asking the spirits what I should do. I listened to the wind, the animals, and prayed a lot. Then after a bit, I got the strength to endure whatever they did to me for fighting for my rights as an Indian. It has been a long, hard, uphill struggle all the way. And will continue to be....

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CALIFORNIA STATE PRISON - NEW FOLSOM
1990

My name is Bedeaux R. Wesaw. I'm from the Shoshone Nation, the Wind River Indian Agency, Wyoming. I am a Sundancer and pipe holder. I have been Sundancing for the past nine years. I currently have a lawsuit against New Folsom prison administrators. I was the spiritual advisor for three sections in this prison for almost one year (previously I did this for Susanville prison and was negotiating with Vacaville prison administrators for this position

there). All of these prisons are in California, where I have lived the last ten years.

In the position of Spiritual Advisor for the prisons, my responsibilities included running sweat lodge ceremonies, pipe ceremonies, making sweet grass, sage and cedar available to the Native American inmates, making sure lava rocks were available for sweat ceremonies, etc. In general, my responsibilities were for the overall spiritual needs of the Native inmates.

On September 16, 1989, while I was conducting a sweat lodge ceremony at New Folsom prison, one brother requested that I take his foot-long braid he previously cut and send it to his father. One of his relatives had recently passed away and this was how he wanted to show his bereavement. Cutting hair is a common practice among Native Americans during mourning. During a round of the sweat lodge ceremony we prayed with the hair and I returned it to the brother. After the ceremony he returned it to me in front of two prison guards so that I may send it to his father. He had placed his braid in an envelope. Many times the guards had witnessed the inmates or myself exchange items such as cedar, sage, feathers, etc.

Upon my departure from the prison, I was stopped by a prison guard and searched, as usual. The guard called her watch commander in reference to the envelope with the braid. I was interrogated about the braid and a letter that was enclosed with the braid to the inmate's father. I was threatened with state imprisonment for contraband!! I was then escorted to the main gate and stripped of my brown card (a brown card is prison clearance which I needed to conduct the ceremonies and see to the Native American inmates' spiritual needs). The inmate whose braid was confiscated was put into solitary confinement. The envelope and its enclosures were kept by the prison staff.

A hearing date was set with the prison administrators. I had conversed with my liaison at the prison and was given the impression that I would be allowed back into the prison after I explained the meaning of the cut braid. However, at the prison administrators' hearing they told me that I would no longer be able to work in any prisons in California. They sent letters to Vacaville and Susanville prisons stating that I was banned for contraband and that I should not be allowed in their prisons.

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OKLAHOMA STATE PENITENTIARY - McALESTER
1990

Standing Deer Wilson, who was incarcerated in the Oklahoma State Penitentiary in McAlester in 1990, wrote a letter to me at that time stating that:

We have had a long struggle here at McAlester, and we

still have absolutely nothing. Our religion is banned in its entirety....We are not allowed to pray together, no sacred pipe, no sweat lodge, no drum, no nothing. For American Indians, McAlester is a spiritual wastebasket. Some of us have stories to tell for inclusion in the book.

Indeed - here are a couple of those brothers' stories.

~ ~ ~

Moses L. Headman

My name is Moses L. Headman. I am a Ponca Indian incarcerated here at Oklahoma State Penitentiary (McAlester). "Big Mac" is one of the many prisons in the U.S. that denies Native Americans the right to practice Native American religion. For the past 5 years Native American brothers here have been battling within a legal framework to overcome the systematic racial and religious suppression that prohibits Native American Indians from exercising religious rights the same as allowed those of other religious denominations (e.g. Christian and Muslim). In order for Native American prisoners to wear long hair as a tenet of Native American religion, we are subject to undergo the infamous "exemption procedure," which is intended to serve as documented proof we are sincere adherents of Native American religion. As one of those unable to locate references as required by the exemption procedure, I've had my sufficient share of harassment by correctional officials. We also have documented cases here where even those of us who do have exemptions approved are subjected to forcible haircuts, the asserted reason being that the exemptions weren't updated. I attest to the fact that this type of aggression and violence by prison officials is intended to discourage Native Americans from applying for exemptions and filing future lawsuits.

This negation of Native American religion within the prison environment reflects the mechanism to enforce cooperation, which was initiated by the early missionaries to proselytize tribal groups into Christians and colonizing them here in Oklahoma territory. But as revealed in the Miriam Report *The problem of Indian Administration*, "the missionaries need to have a better understanding of the Indian point of view, of the Indian religion ... in order to start from what is good in them as a foundation. Too frequently, they have made the mistake of attempting to destroy the existing structure and to substitute something else without apparently realizing that much in the old has its place in the new." History clearly illustrates that most of those self-appointed Messiahs were in reality Messianic hypocrites instituting barbaric methods of forced assimilation. Dogmatic religion rather than the so-called Christian tolerance was the rule with these foreigners. The result of these forced assimilation tactics and infringements has been the cultural and religious genocide of Native American civilization.

As a member of the Native American Church my elders taught me that religion is a matter of choice, not of force, threats, intimidation and violence. Therefore, we must not proselytize to dogmatic religions but crystalize in the way of Native American religion. In that way we will be permitted to resume our normal growth and make our maximum contribution to modern society.

~ ~ ~

Harry Hall:

I'm going to attempt to explain the importance I place on and feel about our Traditional Spiritual Beliefs and Ways, the acts of intimidation and harassment I have endured in my attempts to practice my chosen religion, and the need I see in our people being allowed to learn and practice our religion without interference or persecution from anyone or anything, whether it be out there or in here.

My name is Harry Hall. I'm 45 years old and a member of the Kiowa and Otoe-Missouri Tribes. I consider myself a Traditional and I'm presently incarcerated here in Oklahoma. I've spent a number of years confined here and in other places.

Rather than go into detail about my early life I'll simply say that I was raised by my maternal grandparents (Otoe-Missouri) and was taught their beliefs, ways and understandings.

Like most of us, I became involved with alcohol at an early age and later became addicted to numerous types of drugs. So, I've spent a number of years being ignorant and causing a considerable amount of sorrow, grief, worry, and suffering upon my loved ones and myself.

Although I was taught to believe in the Creator and the strength and necessity of prayer, I can't honestly say that I gave any serious thought or consideration to these beliefs and teachings once I decided to live life my way. Unless, of course, when I was in trouble or managed to do without drugs or alcohol.

Today the regret, guilt, shame, and sorrow that I feel from realizing the extent of suffering my hard-headedness and stupidity created for my loved-ones is tremendous. Especially since most of them are gone now and I can't ever tell them I'm sorry.

So now, through my sharing with you and others I meet as I travel the Spiritual path, I hope to alleviate some of my sorrow from disrespecting my loved ones and others by trying to help you to avoid the many mistakes I've made throughout my life.

Although I've spent my entire life being an Indian, I've never gotten involved with any types of groups, as I've always taken care of my own individual problems.

I experienced my Spiritual Awakening in 1986, after becoming acquainted with Brother Standing Deer. Rather than go into detail about the thankfulness, love, and gratitude I feel for this strong brother, I'll only say that I'm forever grateful for the change and inspiration he provided in my life.

During this time we became involved in the *Carnes v. Maynard*² litigation, and through brother Standing Deer's knowledge, spirituality, contacts and guidance, we were able to prevail in the litigation and come to a deeper understanding of the Creator. Also, we learned the truth about the many hardships intentionally inflicted on our people since our "discovery."

Brother Benny (*Carnes*) had filed under the Native American Church beliefs, and since both of my grandfathers were leaders in the Church I became quite involved, especially since this had always been my spiritual belief, and unless I was dunked or sprinkled at birth or an age that I don't recall, I've never had the Christian Baptism Rites performed, nor do I desire to. It's not that I'm anti-Christ or anti-Christian, but it's because I'm more comfortable with my individual beliefs, and, like Christians, I believe in the Creator (God).

Anyway, during the *Carnes v. Maynard* litigation and my involvement, I commenced to read the history of our people, various publications associated with the subjects that were under litigation, and many forms of information that spoke of the tactics instigated by the government and its agents in their attempts to annihilate our people.

I found the latter very interesting, especially since the history that was used during my school era taught us that Washington, Custer, Jackson, et al. were heroes! Needless to say, I became quite knowledgeable and pissed off.

I arrived at the Oklahoma State Penitentiary on January 1, 1986. They had recently undergone the 23-hour lockdown situation which is still in effect today. This came about from a riot that happened in December of 1985. During the riot, there were several non-Indians handling the negotiations who were wearing bandanas and had long hair. So, being this was a big news item, the negotiators were seen on the major network channels and well publicized in most of the newspapers. During this time, several ambitious politicians decided that the bandanas and long hair had to go. There was no consideration given to those of us who practiced the spiritual beliefs and ways of our people. So the *Carnes* lawsuit was filed.

At this time, for the benefit of those who won't understand how the taking of our hair became a religious issue, I'll attempt to explain, although somethin' of this nature is extremely hard to relate to someone who doesn't have any knowledge of our people's Traditional spiritual beliefs and customs to begin with (including many of our own people).

First, I must say these are my individual reasons, and each

person you ask that practices our spiritual ways and beliefs will have their own individual thoughts. For me, it's extremely hard to list my reasons simply because many of the reasons would need more elaboration, and that's not possible when attempting to explain something as complex as this on paper.

I never had to explain why I wear my hair long until 1986. This was an embarrassing situation. But since I had to put it into terms that self-professed Christians and outright ignorant persons could understand, I listed the following:

1. I believe wearing my hair long, like my people before me, helps me to achieve spiritual balance within myself and helps me to keep in harmony with nature and all things around us. It reminds me to stay in contact with the Creator (God).

2. The cutting of my hair for a purpose other than a death in my family will weaken my spiritual strength and will invite harm, death, or sickness to me or my loved ones.

3. The importance of my long hair can be compared to the Christian objects that are considered sacred by the numerous Christian denominations, such as the cross and the many other items that show one's standing or faith in their "chosen" religion.

4. In today's society, my long hair identifies me as a Traditional who shares, teaches, and practices the spiritual beliefs and ways of my people.

Rather than go into detail concerning every aspect of the *Carnes v. Maynard* confrontation, I'll list some of the many forms of persecution that were directed toward those of us who believe in the Creator and the spiritual ways of our people.

We were constantly harassed in many petty forms such as being denied jobs, having our cells torn apart for no reason, having our cedar, sage, sweetgrass, and other sacred objects disrespected by the officials, being provoked by numerous officials with racial slurs and other forms of intimidation, being denied the right to participate in programs that would accelerate our release or transfer to another facility, having our mail become "lost" and interfered with, and upon hearing that we were being granted a restraining order, the officials took our hair before the order went into effect.

What really stands out in my mind is how we were unable to get support from our people here in Oklahoma (our help came from out of state), especially since most of our time was spent writing to different tribal offices, various tribal leaders, Native American Church leaders and members, our families, and many other influential people that could have helped. This was a very sad experience, and I can't help but feel the assimilation process here in Oklahoma, dictated by the government and its

agents over the years, has been such a success that our people have practically quit sharing their wisdom, teachings, and understandings.

Anyway, through our determination and self-sufficiency, we were able to prevail in proving that our hair is a major tenet of our spiritual beliefs at the trial. But the Department of Corrections was able to obtain an order granting them an exemption process, meaning a religious exemption clause in the short hair policy. This exemption process was supposedly granted so the officials could determine who was sincere and practiced their spiritual ways. I guess the reasoning for this was the officials couldn't allow an Indian to look like an Indian if he couldn't get written proof that he believed or practiced the Traditional Ways and customs of our people. I haven't been able to figure this out yet.

Because of the exemption clause, we appealed the ruling of the court on April 11, 1989. The Oklahoma Appeals Court approved the exemption process. So, for those of us who were involved and protected by the restraining order granted us during the controversy, the struggle began again.

At the time of the decision of the Appeals Court, I was confined at a work-release center. Upon hearing of the decision, I immediately went to my case-worker asking for an exemption application. He informed me that the center didn't have the forms and I shouldn't worry because the center didn't have a hair-length policy. After explaining why I was concerned (I was being transferred), he agreed to obtain the form for me. Although I reminded him several times about the form, he failed to produce it. So on May 4, 1989, I submitted a written communication to my case-manager explaining I was a Traditional and for me to keep my hair I had to complete the exemption process. In his reply, he stated he had contacted the Oklahoma State Penitentiary (O.S.P.) and they would mail the exemption form. On June 13, 1989, I was transferred to another facility. Although I inquired about the form several times, I never received one.

On my arrival at the other facility, I learned we were required to participate in either an alcohol or drug program, and there were no activities provided for Native Americans to practice their Native religion and customs. For my desire and efforts to obtain permission to attend and participate in programs that focus on Native American problems, I was issued a bogus misconduct report, placed in detention, and on June 29, 1989, I was transferred to another facility.

Upon my arrival at the new facility, I was immediately issued a misconduct report for refusing to cut my hair. After explaining to my unit-manager my attempts to obtain the exemption, he said they didn't have any exemption forms, but if I could provide written documentation from reliable sources, he "thought" I'd be allowed to keep my hair.

I said this wouldn't be a problem, but the officers at the

last place had kept some of my property, including phone numbers for my references. So everything would have to be done by mail. He asked if there wasn't someone I could call. I immediately called my sister, explaining the necessity and importance of contacting my references and how to reach them, and I described the information I needed and explained why. She promised she would do everything possible, but it would be difficult even though one person was in her area, because he was the chairman of the Tribe and extremely busy at the time. Also, my other source was now doing work that kept him away from home. I then informed my unit-manager of the conversation with my sister. He said I'd be given consideration, but that I'd still receive misconduct reports until the matter was resolved. Consequently, I was issued misconducts until I received so many that I was transferred to the next higher security facility.

Although I frequently called and reminded my sister of the necessity of obtaining the statements, she was unable to do so. I was found guilty of the misconducts and lost 120 days' earned credits. On July 11, 1989, I was placed in detention and on July 12, 1989, I was transferred to yet another facility, arriving on July 13, 1989.

Upon my arrival, I immediately approached the security major explaining my problems with obtaining the exemption. He informed me that they had the application forms there, and I would be given an opportunity to provide the necessary information with no interference from his officers.

Although I attempted to obtain the exemption forms, I was unable to do so because of the excuses I received. On July 16, 1989, I was issued a misconduct report for refusing to cut my hair. I informed the officer of my discussion with the security major and my attempts to obtain the exemption form, but this had no effect. On July 18, 1989, I was issued another misconduct report by the same officer. On July 19, 1989, after finally obtaining and completing the exemption form, I presented it to the required person along with the *Incorporation Certification and Constitution and By-laws of the Native American Church*. On July 20, 22, 26, 29, and 31, I was issued misconduct reports for refusing to cut my hair. Before I continue, I'd like to explain that the rules and regulations pertaining to the exemption process clearly state that once the procedure has been started, no misconduct reports would be issued. I brought this to the attention of the disciplinary officers, but I was still found guilty of the misconducts after I started the exemption process.

On the exemption application, we're required to produce two non-family members that can establish our sincere adherence to our religion, list our religion, and explain how the grooming code policy inhibits the exercise or practice of that religion. It then goes to the chaplain for his investigation. On his investigation sheet there are three questions he is required to answer. They are the following:

1. *Is the religion of the inmate a recognized religion?*

2. Is there sufficient evidence to prove that the inmate is a sincere adherent to his religion?

3. Is there sufficient evidence as to how the practice of his religion is inhibited by the grooming code?

This is then presented to the classification committee for their use at the hearing.

On August 10, 1989, my hearing was held. Although there were affirmative answers to the above questions, I was denied the exemption for the following reasons: there was not enough evidence to indicate the religion is a recognized religion or that the inmate is a sincere adherent of the religion or that his practice is inhibited by the grooming code. In addition, the facility's interest in security outweighs the inmate's interest in the practice or exercise of the religion. (This is verbatim!) In the conclusion section of the committee review document, the chairman made the following comments: "Mr. Hall presents that he is very sincere in his belief in his Native American Spirituality. He strongly emphasizes his sincerity." Also in the Chaplain's questionnaire to my witnesses, my witnesses both stated that I was sincere in my religious belief and that they had known me to practice the ways of the Native American Church for 25 and 15 years respectively. One of my witnesses was an Elder in the church. During this time, numerous people either called or wrote the warden attesting to my sincerity, but this was never mentioned at any time even though I made it known. Needless to say, I appealed the decision.

I endured many forms of harassment and intimidation similar to those of 1986, but this time my life and several other brothers' lives were placed in jeopardy by the officials. Their last act was having me placed in detention for bogus charges and not being allowed to present witness statements at my hearing. I was found guilty of the charges, spent the detention time I received, and was transferred back to O.S.P. on December 1, 1989.

On my arrival, the very first words I heard were, "Do you have an exemption?" I explained that my papers were presently in Oklahoma City, and I was waiting on their decision. I was advised to refile for the exemption, so the process began again.

Since the process is practically identical to the above, I'll not go into detail but comment on things that restricted my being granted approval for the exemption. Since my statements from outside sources attesting to my sincerity were sent to Oklahoma City, along with the documentation on my previous attempt, I was unable to provide the necessary information required for the process here. And again, my phone numbers and other needed items were lost or destroyed during my transfer. Here, besides the 23-hour lock-down, you're only allowed one phone call a month and two free letters a week. So your outside communication is severely limited. Unless, of course, your money arrives and you can purchase stamps, but this is unlikely for several weeks. Since I was unable to produce the needed

information for the process, I submitted a request to my counselor that I be provided this information from my file, as this information is required to be placed there. Upon inspection of my records he found that this information wasn't there. He called the other facility asking why these records weren't present in my file and requested that they forward them to this facility. They've never arrived, even though I remind them repeatedly. By this time, my deadline had nearly run out, so I submitted the application on December 14, 1989, and on January 11, 1990, my hearing was held. On the day of the hearing, I wasn't allowed to produce any type of documentation even though I informed the committee I had such. Like the other hearing, it was a farce. I was asked ridiculous questions that had no significance to my sincerity. When I asked how they could determine my sincerity if none of them knew anything about my spiritual beliefs to begin with, the chairman stated he had Indian blood. I then asked if he knew of or practiced his traditional Tribal Spiritual beliefs. His answer was, "If you believe in your religion, why are you in prison?" At this time, I knew what the outcome would be.

Before continuing, I'd like to share a question that was asked another brother by the committee to show the level of intelligence and hypocritical attitudes we encountered at the hearings. The question was, "How long have you been an Indian?" Needless to say, I was denied the exemption once again, including on my appeals, even though the Kiowa authorities informed the officials that long hair was a tenet of our religion. The reasons were the same as before, although this time they added my misconduct and crime as the deciding factor. (All prisoners, regardless of their crimes, are encouraged to take part in the Christian religious programming at the Oklahoma prisons.)

Like previously, I submitted the *Incorporation Certificate and Constitution and By-laws of the Native American Church* along with my application. So this alone should give you, the reader, an idea of the tactics practiced by the officials in their actions to suppress our religion. Especially since the Native American Church was accepted as a recognized religion during the trial of *Carnes v. Maynard*.

Like before, I was subjected to the usual harassment and intimidation techniques practiced by the authorities. Only this time I was able to witness a "low-life" act that I never thought the officials would stoop to in their acts of oppression against our Traditional ways.

On March 30, 1990, I was notified by the Chaplain that my brother had crossed-over and asked if I'd like to attend the funeral. I informed him I would, and explained my family observed certain ceremonies, and cutting my hair was one of them. I then asked if I would be allowed to participate in any of them. He said he would go inquire and would come back and let me know as soon as possible. He then left to make arrangements for me to call my sister and notify her that I was aware of the death and that I'd be allowed to attend the funeral. He's never returned.

On April 1, 1990, I was awakened and told to get dressed, as I was being taken to the funeral at 0600. I informed the officer that the funeral wasn't until the next day and someone had mistaken the dates. I then gave the officer the name of the funeral home and location of the funeral so it could be verified. Another officer returned and said I was to go up front, and they would explain the circumstances. Upon my arrival, a Captain said that according to his information I was to attend that day. I asked if the chaplain could be reached, as he was aware of the date of the funeral and the Sacred Ceremonies involved. My family was expecting me the next day. He said the officers were ready to go and I could leave now or not go at all. I could ask about the changes the following day. I'd only be allowed 30 minutes to be with my family and to view the body. I then asked if I could call my family and notify them of the changes, but this, too, was denied.

On April 2, 1990, I submitted a complaint to my case-manager about the disrespect and added sorrow I experienced during the loss of my brother. I was advised to file a grievance report to the warden. I submitted the grievance, explaining my problems to the warden and followed the process completely through to the reviewing authorities with no results other than being told that they don't allow inmates to attend these types of funerals, that attending a funeral was a privilege and not a right. On July 6, 1990, I was notified by a counselor that my sister has crossed-over. I was taken to view the body on July 7, 1990, with the same above rules in effect.

Incidentally, I had my hair cut next to my brother's casket; luckily, someone there knew how to perform this ceremony. Anyway, this pleased the officials to such a degree that I was moved to a different quad and I'm now awaiting transfer to another facility for completing a program that I've never attended.

At this time I'd like to say that speaking of the many acts of persecution I've experienced in trying to learn and practice my Traditional Religious beliefs and ways is not a favorite subject. I've left many things unsaid that should have been mentioned, but due to my present emotional state (hate and bitterness!), it's not in my best interest to continue the subject. I would like to add that I have documentation and witnesses to the acts I've mentioned, for any of you that will think I'm lying or exaggerating.

Regardless of the odds and consequences, I'll continue to resist the oppression practiced by the officials to suppress our religion and Traditional ways and beliefs.

In explaining my desire to follow the ways of my people and what these ways mean to me, I'd like to say that remembering my earlier teachings and coming to understanding them is what has given me the determination to live a different life, and, hopefully, a better life. Through the strength I've attained from the Creator, prayers, and my determination to change my life-style, I'm more able to confront my everyday problems when they

occur, rather than try to solve or forget them through alcohol and drugs. I've not only been able to feel the change in myself, but I've been able to witness the change in other brothers who want to learn and practice these ways also. But unless we gain your support, these ways will continue to be denied in Oklahoma.

For those of you who wonder why we have difficulty practicing these ways when we get out, I can only speak for myself, but it's difficult to address this question, as each reason sounds like an excuse.

I'd have to say there's a communication problem. This involves our families and all of you who've never experienced the traumatic occurrences of prison life. One thing that has a tremendous effect on us is the shock of being free again. In our confusion the persons we become involved with at first are a deciding factor in our actions and decisions. I know many of our family members and friends mean well, but the first thing they offer us are the very things that brought us here to begin with (alcohol, dope, self-pity, etc.) For those of you who have good thoughts in mind, we're unable to get comfortable around you because of our fear of saying the wrong thing or disrespecting you in some way, especially since you're usually a person that we feel deep respect for to begin with. So, in order to gain your trust, respect, and support, there needs to be communication.

What I see that's needed is resources who are sincere, understanding, and available 24 hours. I say this because our emotions are a 24-hour problem when we first get out, and we need help whenever, rather than to wait for an appointment.

For myself, now that I've lived through these years of suffering and mistakes, I realize what I need to do and accomplish before I'm able to achieve peace of mind. But my concern is for the younger brothers who are affected by the hate and bitterness that these places produce, and who don't know who and what to avoid when they're released.

Hopefully, my words will be effective in gaining your interest and support for those of us who seek spirituality in here and out there, because this is something that we all need to strive for.

May the Creator bless you and your families with contentment and good health and guide you in your thoughts for us. I close with a prayer for unity and Spiritual strength.

FORT SUPPLY, OKLAHOMA STATE PRISON

In a letter to the NAPRRP dated April 17, 1990, from Charles Fancyhorse:

There are two of us who desperately need some type of documentation which will help us explain why traditional values are so important to an Indian.

Hopefully, something in black and white will provide credibility. It will also give us hope. It will remind us that we are not alone.

The facility we're in has no Indian club. There's no spiritual program for Native Americans. Right now there are two of us who are challenging the grooming code. My brother with me on this is Wayne Wimmer, a full-blood Cherokee. I'm also a full-blood, Pawnee/Sac & Fox.

The Unit Manager, Joel Potts, told me the Indians lost a court decision and now there are no exemptions from the grooming code. If an inmate refuses to cut his hair, it will be cut forcefully, followed by charges. If this is true, then those who want us to cut our hair will have the law on their side.

Me and my brother are level-4. It's the highest level of classification an inmate can get. He's considered a role model, and more importantly, he receives 44-credit days a month, plus the days of that month. If a Level-4 gets a misconduct report against him, he loses his Level-4 classification, and the 44-credit days a month.

We both have applications for an exemption from the grooming code. We're in the process of providing statements of people who will verify our sincerity.

My parents (now deceased) raised me to respect the old ways. My real name isn't Ceasar, it's Fancyhorse. Both of my parents were members of the Native American Church. I was honored as being the door-man in a sweat lodge some years ago.

After losing my parents, I began to feel all alone, and I started living a reckless life, which is what got me in here. I'm serving 10 years for possession of a stolen vehicle.

Keeping my traditional values is the only thing that has kept me strong....

The NAPRRP provided materials to the officials at the prison in Fort Supply which would help them understand the spiritual significance of long hair to Charles and the other brothers who might find themselves in the prison. We also provided a video cassette to the officials which is a 60-minute documentary produced by Spotted Eagle Productions (Minneapolis), entitled *The Great Spirit Within the Hole*. The film takes the viewer into several state and federal prisons out west, and can be a valuable educational tool for prison officials. It quite clearly shows that long hair is not a real security threat in the prisons, as neither are sweat lodges, pipe ceremonies, etc., and it shows the

rehabilitative value of these traditional ways. Unfortunately, the officials at Charles' prison at Fort Supply weren't interested in becoming educated about the matter, as they failed to acknowledge receipt of our correspondence, and they have never returned the video tape or considered the religious requests of Charles. We sent the same video cassette to the head chaplain at the Oklahoma State Penitentiary in McAlester, but he refused to sign the receipt for it, so it was returned to us. The warden there has totally ignored all of the correspondence we have sent to him on behalf of the brothers in McAlester. Apparently, the Oklahoma prison administration is accustomed to ruling with an iron hand without regard for human rights, and without having to account to anyone for it.

Charles Fancyhorse, June 9, 1990:

My Indian brother, Wayne, and I both agreed that it just wasn't the time to confront them with the hair issue. We didn't have the support we needed. There's only the two of us.

We complied with the grooming code and got the haircuts. We both teased each other. Wayne said he didn't know I had a set of white-walls, and I told him I didn't know his head was shaped like a peanut shell. We made each other laugh, but deep down, both of us felt bad for giving in....

I've asked the unit manager, Joel Potts, for documentation, or something in black and white that states why Native Americans are denied the right to practice traditional beliefs, such as being exempt from the grooming code. He told me (in private), "If you want something in black and white, I'll give you something in black and white. It'll be in the form of a write-up."

A "write-up" is the current slang used here, which means a class-A-B-or C Misconduct Report. Disobeying a direct order is a Class-A. You will lose up to a year in time-credits, lose your job, lose canteen and mail privileges, visiting privileges, and lose your security level and pay-grade level....

Pay-grade 4, (\$24 per month), is our pay-grade. It's the next to the highest pay-grade given. If we made a stand and refused to get haircuts, the disciplinary action would begin with the loss of all these things I just listed, and they would end with lock-up, then our being shipped to a higher security prison....

~ ~ ~

Little Rock Reed
RE: Arizona State Prison: Florence Complex
Women's Division
1993

In late 1992 and early 1993, I received a number of complaints from the Native women incarcerated at the Florence Complex of the Arizona Department of Corrections (A-DOC). After an exchange of correspondence with several of the women, I wrote a letter to the chaplain in charge of the Florence Complex and sent copies to John Thompson, Administrator of the Pastoral Department for the A-DOC, the director of the A-DOC, and the warden of the women's division of the Florence Complex. That letter is reproduced here in its entirety:

Dear Chaplain Grant:

I am writing to express my concern about what appears to be a disparity of treatment regarding religious freedom for the Native American women incarcerated at the Florence Complex. First, our organization has received correspondence from several Native American women in the Florence Complex complaining that they are not permitted to have access to the purification ceremony of the sweat lodge. What seems to be the problem? Native men incarcerated in the Arizona Department of Corrections, including those in super maximum security, are allowed access to the sweat lodge. Why aren't the women accorded the same access? I would be grateful if you could inform me of any action being taken by the prison officials to resolve these complaints concerning the sweat lodge for Native American women.

Another concern is that the Native women at the Florence Unit are not permitted to hold Talking Circles without the presence of an outside advisor, yet the Native women at other facilities are permitted to -- which indicates that it is certainly feasible to accomodate the women's wish to hold Talking Circles at the Florence Complex without the presence of an outside advisor. I believe you will find that the outside advisors agree that the women should be permitted to hold Talking Circles whether or not an outside advisor is available. Could you please assist the Native American women in obtaining approval for this? If not, why?

It appears also that some Native American women at the Florence Complex are not receiving proper recognition for their religious beliefs if they failed to identify their "religious preference" as Native American upon entrance into the prison system. What is your department's policy regarding this matter?

My final concern is in regard to a Native American

woman incarcerated there, Ms. Cheryl Jackson (#33145). She said that she was allowed to have a number of sacred items when she was in the Perryville - Santa Maria unit, but that when she was transferred to the Florence Complex, you confiscated a number of items that are of deep spiritual significance to her, including feathers and an abalone shell. She must now burn her sacred herbs in a sardine can while she prays. That is entirely unacceptable treatment of Native American religion. Why were her items confiscated when she was permitted to have them at the other prison unit?

I'm sorry to burden you with all these questions, Chaplain Grant, but I feel that I can get a better understanding of the situation if I can get an explanation from your perspective. I have promised these women to do what I can to follow up on these matters so that their complaints may be resolved to everyone's satisfaction. Any suggestions you may want to offer which will assist me in this endeavor would be deeply appreciated.

Thank you very much for your cooperation in this matter, Chaplain Grant. I look forward to hearing from you at your earliest possible convenience.

On March 2, 1992, Cheryl Jackson, the Native woman (of Piwa/Hopi descent) referred to in my letter to Chaplain Grant, wrote me a letter after she had received a copy of my letter to Chaplain Grant. What follows is her letter to me:

Dear Little Rock:

I am in receipt of your letter of February 25, 1993. First I would like to thank you for the letter sent to Chaplain E.M. Grant -- I'm sure he'll appreciate the interest, as will John Thompson and director Sam Lewis!

I will be very honest with you -- litigation will be necessary, because A-DOC does not recognize 'open negotiation' -- not from our contractor/spiritual advisors, and certainly not from a prisoner's point of view. What they do understand is litigation and being forced to pay for damages incurred by their unwillingness to show any regard for constitutional rights and guarantees. This is unfortunate, but there's a method to this madness: they realize that most prisoners, especially women, will tire of the inflicted harassment in dealing with any issue.

There are 12 prison complexes in the A-DOC, and there are 26 sweat lodges presently standing, all in the men's units. There are none in the women's units: I ask why? Their response is, there is only one Native

American female who has been listed as having "Native American religious preference."

There are now 8 Native American females in this unit, seven of them have never participated in a sweat lodge ceremony; however, not only are they very interested in becoming more aware of various traditional ways, they have been more or less "barred" due to their stated "religious preference," which is other than Native American. Any endeavor to obtain "change" has been ignored by the office of Chaplain Grant in this complex. I can't help but wonder why? Apparently there is a deep seated fear of our people coming together in our traditional ways, not only in prisons, but on the streets as well. I find this situation sad, and very scary, for several reasons. First, the state and federal governmental interest in Native Americans obtaining self-sufficiency is hog wash. They pay lip service to it, but really don't mean a word of it. The continued suppression, oppression and depression inflicted upon us is demonstrative of their unwillingness to allow us to stand with respect and genuine dignity among ourselves and others in this land. But for all intents and purposes we are coming together more and more every day -- in the prisons, on the streets of the cities, and more importantly, on our various reservations. Yes, we are coming together, and I find this most exciting. We're learning to speak out, and are drawing lines of defense which say, "no more! Enough!" And that is precisely my point. I am a Native American; I wish to practice my religious beliefs in full, regardless of where I am in this world! The brothers in this state are determined to do so, why not the women also? We are supposed to be guided by the same rules, regulations and procedural guidelines as "prisoners"; but that isn't true, not in this instance! Yes, litigation is necessary, it's the only way.

I have begun research on my own, I do not have the funds to hire an attorney, but have decided that is not an important element at this time. Any assistance you can provide in filing a lawsuit will be greatly appreciated. This issue has been in existence long enough, and the prison officials have demonstrated their unwillingness to rectify the situation without legal action. Now it's time to apply myself to doing the actual litigation myself, or assisting you in accomplishing this goal. I will obtain a copy of my file in full and send it to you. It will speak for myself; however, due to limited funds, it will take a little time to accomplish, so your patience will be appreciated.

Lastly, thank you for your support and willingness to help in this matter, it takes a big load off my shoulders in knowing that there are folks willing to

lend a helping hand, in addition to those already on line.

Walk in peace and happiness,

C.A. "Dusty" Jackson

As this book goes to press I have received no response from the prison officials in Arizona. A lawsuit is currently being initiated on behalf of the women at the Florence Complex - with your tax dollars.

I would like to comment briefly on two points raised in Cheryl's letter. First, prisoners at the Florence Complex (and in every other prison in the United States) are not only allowed, but are encouraged, to participate in Christian religious services whether or not they participated in Christian religious activities prior to their incarceration, and regardless of what their so-called "religious preference" was identified as when they filled out the questionnaire seeking that information upon their entrance into the prison system. Thus a disparity of treatment certainly exists in this regard.

My second comment relates to Cheryl's point that "there is a deep seated fear of our people coming together in our traditional ways, not only in prisons, but on the streets as well." Indeed. As I had pointed out in an article I wrote for simultaneous publication in *Social Justice and Freedom Magazine* (both in press) :

The suppression of religious freedom of Indian prisoners ... is a systematic one aimed at obliterating the potential for Indian prisoners to become politicized and thus to re-enter society as fully committed advocates for the interests of their traditional tribal communities and nations, for as I pointed out in the beginning of this [article], the United States and Christian leaders have realized since the mid-1800s that in order to suppress political tribal resistance to colonization and land theft, it is necessary to suppress traditional spiritual values and religions. The prisons are an appropriate target for such suppression, as there are at least 7,000 Indians incarcerated in the prisons of the United States [many more who are classified as "black, white or other] representing a potentially formidable political force against the United States government and its corporate affiliates who want to continue committing atrocities against Indian nations, tribes and individuals.

Simply put, I contend that to allow Indian people to become familiar with the traditional values that have been systematically ripped from them by the white man would be to allow them to embrace a spiritual way of life and its attendant obligation to protect what is sacred -- that which the white man covets.

James Romero
A Look at a Continuing Struggle
within the Federal Bureau of Prisons
1993

My name is James M. Romero and my Indian name is Landwater Good. I was raised on the Taos Pueblo Reservation in the northern part of the state of New Mexico.

By going to the Sundance at Crow Dog's Paradise in South Dakota, I got involved in the American Indian Movement. I then traveled to Arizona and opened up the American Indian Movement Camp in Deer Springs, Arizona. Some Indian Brothers, Sisters and I then traveled down to the state line, to a place called Lopton Trading Post. There, on September 2, 1973, a shoot-out took place, and a Deputy Sheriff was killed.

One month later, on October 2, 1973, I was arrested and in 1974 I was convicted of murder in the Second Degree. I received a sentence of twenty years and was sent to Leavenworth.

While in Leavenworth I received incident reports for refusing to have my hair cut military style. Due to my inability to read or write English, I submitted to the haircut.

After talking to some of my Native Brothers I found that I should initiate a lawsuit. I litigated a lawsuit with the support from Native Brothers as well as some non-Native friends.

From the correspondence that I was receiving, I realized it was going to be a big thing and that we were going to win the lawsuit.

While the lawsuit was going on, some Brothers and I got into a fight with some officers. I was then charged and indicted for assault with a deadly weapon. At this time, the lawsuit played a major part. The Government was pressing for me to receive up to thirty years on five counts. With the advice of my Brothers, and based on the Government not wanting the lawsuit to go on through court, I entered into a plea agreement receiving only two years but having to withdraw the lawsuit. The District Attorney and my attorney both assured me that the policy would change, allowing us to grow our hair. The Government's main objective was to not allow the lawsuit to proceed through court, allowing me to receive judgment and monies for damages.

From this point, I was transferred to U.S.P. Lewisburg where I had the honor of meeting Leonard Crow Dog, a Medicine Man. I talked with Crow Dog and asked his advice of many things. I received some advice on different ways to proceed in the struggle.

In early 1976, after Crow Dog was released and with some help from friends, we started to exhaust administrative remedies to get a sweat lodge in U.S.P. Lewisburg. We had a lot of support from the outside community.

I was transferred this same year from U.S.P. Lewisburg to various institutions and ended up in San Quentin, California. I was told that I was placed into a state prison because I was a "potential management case." At this point I had learned to read and write. While in El Reno, with the help of my family and the friends we knew from Oklahoma, we started to exhaust Administrative Remedies to bring a sweat lodge to El Reno. While we were doing this, a riot jumped off in New Mexico and they started bringing many of my home boys to El Reno. Then the Administration came and locked up about fifteen people and said that they had confidential information that I had made knives out of metal. This was claimed because I was the shear operator at the prison industries.

In 1980 I was transferred from El Reno to F.C.I. Memphis, Tennessee. While at F.C.I. Memphis, we started exhausting Administrative Remedies to bring a sweat lodge there. In 1982, while at Memphis, I had one year added to my sentence for conveying a weapon. I was also given a disciplinary transfer to U.S.P. Lewisburg.

While at U.S.P. Lewisburg I had the privilege of meeting one of the Brothers by the name of Standing Deer. Again, I was transferred from there and was sent to F.C.I. Oxford, Wisconsin. In Oxford I had the honor and privilege to experience and participate in the sweat lodge ceremonies for the first time while incarcerated, proceeding in my spiritual growth.

After two more transfers, I was transferred to Bastrop, Texas. While at Bastrop I got involved with the struggles of exhausting Administrative Remedies to have a sweat lodge brought there. This time it was easy to get the sweat lodge in because of the precedents being set by the other institutions. I was then given a disciplinary transfer for stabbing someone. I was transferred from Bastrop to Marion.

While at Marion my good time was restored and I had come to realize that I was only 106 days away from my Mandatory Release date. In 1988 I was transferred to F.C.I. Phoenix, Arizona.

I was released from Phoenix on June 2, 1988 to Taos Pueblo Reservation in New Mexico. I had served fourteen years and eight months of incarceration for a crime I did not commit.

On November 22, 1988, I was placed back in prison illegally, as is discussed by Little Rock Reed in the chapter called "Back to the World." I was sent to FCI-Phoenix.

In 1991 I was transferred to FCI-Englewood, Colorado, where I learned that we could not wear religious head gear (headbands) at the institution, only with the exception of the Chapel area and at the sweat lodge. I started exhausting Administrative Remedies and litigating the religious issues at the District Court here in Colorado. I was successful in getting a preliminary injunction against the institution for the Indian Community to exercise their religious rights as far as wearing religious head

gear.

It was very sad the way the District Attorney argued the case in Court on behalf of the institution. For somebody in the position of authority, such as the District Attorney to not understand the sensibility of religion and for him to say: "to cut a piece of colored paper and tape it on to your forehead would be religious significance enough to represent the sacred colors of the sacred directions" that we practice in our sacred ceremonies everyday of our lives. But, I guess that we are gonna have to deal with this kind of ignorance and stupidity, it isn't anything new in dealing with this kind of people. I guess they will always be stuck in their thinking with their frontier mentality and look at us as noble savages. But again, I ask who is the real savage? I guess that we are going to have to educate people from in here and from out there.

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**Dale N. Smith
FROM THE FEDERAL PRISON IN BASTROP, TEXAS**

I am enrolled on the Fort Peck Reservation in Montana, but I'm writing from a Federal Corrections Institute in Texas.

I've been incarcerated since 1978 and have done battle in many forms for the religious rights of Indian prisoners throughout that time. I've been beaten, chained, humiliated and shipped from facility to facility by prison officials as payment for my persistence. These are the dues I've paid for the right to pray in my tribal ways....

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Little Rock Reed:

Meanwhile, the state prisons in Texas are no better than any of the prisons referred to in this book. In fact, they are even worse in many ways. While all expressions of Indian religion are prohibited in the Texas Department of Corrections, the officials of the good state of Texas go a step further by prohibiting the Indian prisoners from receiving religious literature such as the *Iron House Drum*, the official newsletter of the NAPRRP, a newsletter which is used in some college courses, and which is subscribed to by some prison chaplains, which indicates it is not a "security risk." Perhaps its ban in Texas is because the *Iron House Drum* also informs the prisoners of their human rights and offers suggestions on how to effectively assert those rights, and the good officials of Texas certainly can't afford to let the prisoners become educated about the human rights that are non-existent in the Texas Department of Corrections' policies and practices.

But Texas is not alone. And there simply is not enough space in one book to expose the religious persecution taking place in all the prisons around the country. The NAPRRP (2848 Paddock Lane, Villa Hills, KY 41017) has on file documentation which verifies that the type of discrimination and persecution exposed in the pages of this book is taking place in state and federal prisons (for males and females) throughout the country, including state prisons in Alabama, Alaska, Arizona, California, Florida, Georgia, Hawaii, Idaho, Indiana, Louisiana, Massachusetts, Michigan, Missouri, Montana, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Utah, and numerous federal prisons across the country.

Since space considerations preclude us from providing a comprehensive examination of the religious persecution taking place in the prisons around the country, we will attempt, in the following couple of chapters, to place prison officials' techniques of religious persecution and repression under a microscope for you. We will begin by examining the religious repression in a couple of states -- Ohio and Oklahoma -- which provide classic examples of how things are in the many states referred to above.

Endnotes to Chapter Five

1. It's quite ironic that the tower guard didn't see Oowah Nah. Was he sleeping? Most people who go onto prison property without officials business are arrested for criminal trespassing, and the guard towers are situated so that no one may enter the Terre Haute parking lot without being observed. That's what security is supposed to be all about. It's quite apparent that the attention Oowah Nah was receiving was intentional.

2. Case Number 68814, Supreme Court of Oklahoma, appealed from the district court of Pittsburg Country.

CHAPTER SIX

American Indian Prisoner Repression in a Couple of States that Start With an O

by

Little Rock Reed

From the affidavit of a Native American incarcerated in the Southern Ohio Correctional Facility (SOCF) in Lucasville, 1990:

I am going to describe the spiritual significance attached to the immediate relief I am seeking. My reason for this is so that this court will possibly be able to understand how important these things are to me and my people...and the injurious effects the denial of these things are having on me and my people. I will describe, or explain, why the Defendants have no legitimate reason for continuing to deny us these things.

I will begin with the sacred pipe. To have an understanding of what the sacred pipe means to me and my people will make it easier for you to understand the other things I will describe. I am not a spiritual leader, and there may be some things I am unable to elaborate on because of my little knowledge; but this is my personal testimony, and I speak from my heart.

The sacred pipe is at the center of my religion. We call it canunpa wakan. It is a gift which was given to my people by the Great Spirit, through a messenger. This messenger instructed us in the meaning and use of the pipe. This messenger wasn't just a person, but a holy spirit woman. She told the people that this pipe was to be used in prayer. It is constructed like this: the bowl of the pipe is made of sacred inyansha, red stone. This stone is very sacred and it is only found in one place in the world, up in what is now called Minnesota. A long time ago there was a flood, a great flood. This flood covered the whole earth because the Great Spirit was unhappy with the human race, the wickedness of humans.

So the Great Spirit cleansed the earth with this flood. The weight of the water crushed the people.... The blood of the people ran out onto the earth and over a long period of time it congealed and turned to stone. This is the inyansha, the sacred stone which we are to use to make the bowl of the sacred pipe. The bowl of the pipe represents the blood of the people, and the earth, which we think of as our mother, because she sustains us with all the nourishment we need to stay alive and healthy. The bowl of the pipe reminds us that we are of the earth, we are tied to the earth, and we must love and take care of our mother just as she does us.

The stem of the pipe is made of wood, and it is long and straight.... It represents all that grows upon the earth: the trees, the grasses, the flowers, and all that grows upon the earth. It also represents the straight path that we want to walk in this life; the straightness of character and the virtuous qualities we strive to achieve in this life, and which we know the Great Spirit wants us to strive for.

There may be animal parts, such as the hide of a deer, or perhaps an etching on the pipe which is of an animal. These represent all the animals on the earth: the deer, the buffalo, the coyote, the wolf, the snakes, the insects, the fish, and all the other animals of the earth.

There may be an eagle feather attached to the pipe, or perhaps some other bird feather. This, as well as the smoke of the pipe, represents all that lives above the earth: the winged creatures, the sun, the moon, the clouds, the air, and all that resides above the earth. In my own way of perceiving, I believe this also represents all the waters, the rivers which are the life blood of our mother earth, because the clouds represent the rain which nourishes and purifies.

When we place the tobacco into the bowl of the pipe, each tiny grain represents some aspect of the universe: there is a grain in there for you and for me, and for all peoples, the rocks, the grasses and trees, the animals, the winds, and every living thing in the universe. And when we smoke the pipe we are praying--the smoke carries our prayers to the Great Spirit. We are praying for the coming

together, the harmony, the healing of all peoples, and of all parts of the universe. And we are giving thanks for all that we have....

These things are all very important to us; they are our way of life, our religion. I need the spiritual guidance--as do the other Brothers in the prison here--which can come only from a Native American spiritual advisor.... I feel like an alien in here because this whole prison system is created in such a way as to cut me off from my culture, my religion. There is no way I can describe the affect it has had on me to be forcefully separated from my very way of life. The values of the white man I don't understand. I don't understand a culture that believes that it is good to fight one another for wealth, for material things. I don't understand the white man's philosophies which believe that we [humans] are superior to the earth, our mother, and that we must destroy her so that we can get rich with material things, or that we are above the other animals, or that one race is superior to another. These things I don't understand, but it is the way of the white man, and it is the way these prisoners are taught to be so that they can function properly in the white man's society when they are released. But I don't let these things touch me, because I know in my heart that the way of my people is the way the Great Spirit wants me to be. But it is hard on me in here to be deprived of an opportunity to join with my Brothers so that we can worship the Great Spirit together, and so that we can help each other to renew our spirits. None of us were walking in balance when we were out there in the free world, otherwise we wouldn't be here now. We need the guidance that can come only from our spiritual leaders, and from our spiritual rites.

Imagine that you are a Christian and that you are placed in an environment where nobody but a small handful of people are Christians, and that those of you who are Christians are separated from one another because the officials don't want you to have an opportunity to see one another, and that all religious leaders in the free world are invited to come into the prison with the exception of any who are Christian, and they are barred from entering, and that you are prohibited from having a Bible or a Crucifix. Imagine what that would feel like, and let the

feeling sink down into your bones, your heart, your mind, your guts, and that it is with you every day, every night, every minute. And that you are constantly ridiculed or punished for any attempt to practice your beliefs. If you can realize how that would feel, then and only then can you have any idea how it is for me and my people in this Iron House. But even if you have an idea, it is only a small idea, because you could never know what it is like until you have lived it. It is hard, and every single day before I go to sleep at night I pray to the Great Spirit, Wakan Tanka, and I ask that some miracle take place so that the officials in this prison system will become enlightened enough that they can some day know that my people are human beings who deserve a little bit of freedom. You have taken our land, you have taken our children forcefully from the reservations and placed them in the BIA Boarding Schools and punished them for doing anything Indian, and have set them loose into your cities after programming them into being ashamed of their heritage, you have murdered our women and children and our elders after smoking the sacred pipe in friendship, you have broken and continue to break your treaties with my people so that your oil companies can come onto the little bit of land that is left to us--we don't "own" the land. It never did belong to my people. We belonged to it. And it is our duty to take care of her for the generations to come. We must take care of her if she is to take care of us.

Your people have caused much suffering to my people. The least you could do is live up to your own laws by letting us worship God in the way God has instructed us to. You will all always be in my prayers, even though you usually do such wrong to my people. May Tunkasila Wakan Tanka have pity on you after all you have done and condone today. May he forgive you for destroying the earth he has given us to share as brothers. May he forgive those who feel they are so superior that they even stand between God and those who wish to worship in accordance with God's will. I pray for you.

I sincerely believe everything I have told you in this affidavit. The religious beliefs I profess to have are my true beliefs, and I should not be deprived of the right to my religious practices. They are sacred, and the Great Spirit gave them to me. Who is so

superior that he will take away that which the Great Spirit has given me?...

This chapter is where we place Ohio and Oklahoma under a microscope. Over the years I have compiled thousands of pages of documents from lawsuits, official correspondence, official memoranda, statements from Indian prisoners and their supporters on the outside, prison chaplains and their clerks -- documents which indicate that the Ohio Department of Rehabilitation and Correction has been carrying on a systematic repression of American Indian religious practices ever since the first Indian in the state of Ohio requested that he be permitted to practice his traditional spiritual beliefs when the prison was erected in 1972. I could go into exhaustive detail on the history, but will instead briefly outline the struggle up to the point I became involved in the system. I will then bring out the microscope.

To my knowledge, the majority of American Indian prisoners in the state of Ohio who have attempted to practice their traditional religious beliefs have had to file lawsuits because their requests were summarily denied by prison officials and chaplains. According to a 1972 article in *Akwasasne Notes*, an Indian prisoner in the Southern Ohio Correctional Facility was beaten to the ground and given a forcible haircut in 1972. He was the first in a long line over the years. In 1979 the same thing happened to an Indian prisoner in the Ohio Penitentiary. The latter won a lawsuit in 1979 when the federal district court in Columbus ruled that prison officials had no legitimate interest in cutting his hair in violation of his sincerely held religious beliefs.

Notwithstanding this decision, Ohio prison officials have repeatedly forced Indian prisoners to file similar lawsuits. Some of the lawsuits have resulted in favorable decisions for the prisoners. Others have not. In some cases, prison officials have been ordered by the courts to allow prisoners to grow their hair, and then forcibly cut the prisoners' hair anyway. The prison officials have absolutely no regard for court decisions that are adverse to their wishes. On the other hand, the courts generally rule in whatever way the prison officials ask them to rule. These judicial matters are discussed in detail in the chapter on "White Man's Law." For the purpose of this chapter, I will move forward in time.

The following is an excerpt from an article I had published in the May-June 1990 edition of *The Other Side* magazine while I was incarcerated at the Southern Ohio Correctional Facility in Lucasville, Ohio:

In 1972 the U.S. Supreme Court established that "reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendments to the United States Constitution without fear of penalty."¹

... There shouldn't be a warden, superintendent,

[chaplain] or administrator of any prison or jail in the United States who isn't aware of the Supreme Court's decision.

Yet...we Indian prisoners in the Southern Ohio Correctional Facility (SOCF), where I am being held, are denied all reasonable opportunities to practice our spiritual beliefs. All Indian spiritual leaders are barred from entering the prison for any religious purposes. And Indian prisoners are prohibited from using the SOCF religious service facility for congregational worship.

We are, in fact, systematically separated from one another so that we may never meet, even informally, for any religious activities. After a long struggle, we recently won the right to have our medicine bags and sage. But we are still denied access to all other sacred objects and herbs.² Our hair, which is sacred and should not be cut (except at particular times, such as while in mourning) is cut by physical force. If we resist, we are placed in solitary confinement for six months. This has also happened to Indian prisoners who have undertaken hunger strikes as a peaceful means of opposing the prison's suppression of our religious freedom.

O. Franklin Johnson, a prison chaplain who was supportive of our desire to worship together in the Indian way, was "set up" by prison officials and dismissed for having given change to a prisoner for a marked \$50-bill. He was lured into this set-up by being made to understand--per the direction of the prison officials--that the prisoner's life was in immediate danger and that the only way he could protect himself was to obtain change for the bill and pay a debt. Since the prison officials rushed in on Rev. Johnson within seconds of this transaction, a possible good-faith defense by the chaplain that he would have notified the officials about the transaction if given perhaps one minute, was out of the question. Ironically, this set-up occurred only two days after I filed a motion for a temporary restraining order upon which the Reverend's support relied - an order which would have afforded the Indian prisoners here an opportunity to practice our religion. Chaplain Johnson was replaced by Mike Crowell, who has displayed open hostility toward not only Indian religious needs but the religious needs of all non-Southern Baptists.

Ohio prison officials, like others across the country, have been claiming for some years now that any interest we Indian prisoners have in religious freedom is minuscule in comparison to the state's interests in maintaining security and order within the prison. They've also been claiming that their maintenance of security and order has in no way infringed on our freedom of religion. These lies are repeated without correction in the mass

media.

For example, in late May 1988 the *Cincinnati Enquirer* published an article on our litigation in federal court concerning freedom of religion issues in SOCF. The paper quoted Assistant Attorney General Christian B. Stegeman as saying that there was no cause for concern because any Indian spiritual leaders wishing to do so could enter the prison to conduct ceremonies, provided they were approved in advance by David Schwarz, the religious administrator for the Ohio Department of Rehabilitation and Correction (ODRC).

When Indian prisoners wrote to the paper, pointing out that Schwarz has refused to approve any Indian spiritual leaders who wanted to visit the prison and that we are, in fact, prohibited from meeting for any religious ceremonies, no correction or follow-up story was published. Nor was our correspondence acknowledged.

That's not surprising. It's a regular practice of prisons to convey false information to the public. And because prisons also function to undermine the credibility of the oppressed, the established media blindly cooperate.

We ran into the same problem when we tried to document to the Associated Press the way in which the office of the Ohio Attorney General had used a fraudulent "Indian Chief" of a non-existent Indian tribe as an 'expert' witness against American Indian prisoners in Ohio.³ Once again, no one bothered to investigate the veracity of our claims....

For several years I have served as the elected representative of the Indian prisoners at SOCF. During this time, I have repeatedly asked Ohio officials how our requested religious practices could possibly present a threat to the security and order of the prison... (Reed 1990). Here is an example of such an inquiry, which is an excerpt from a letter I had written to George Wilson, the director of the ODRC, on October 27, 1988:

For the past couple of years I have made repeated attempts to practice my religion, as have several other American Indians in SOCF. The officials here, as well as Dr. David Schwarz, refuse to permit any Native American practices in this institution, and the officials have not yet made one attempt to give me any reason or justification for this absolute deprivation of our religious freedom. I have been through the grievance procedure also, and no official in the state of Ohio has yet responded to my questions: 1) Why are the Native Americans in SOCF not permitted to have

any spiritual leaders enter the prison to conduct religious ceremonies...? 2) Why are we not permitted a designated time and place to meet for prayer meetings and other religious activities...? 3) Why are we not permitted to have access to any sacred objects or cassette tapes for religious teachings...when this is permitted for the other religious denominations at SOCF and when the prison chaplain, O. Franklin Johnson, has stated that he would be willing to inspect any such tapes to assure that they are of a religious nature...?

Supposing that these practices and activities are viewed by the administration as a potential threat to the security within the prison, how is a threat presented? Chaplain O. Franklin Johnson has stated that he would be willing to hold any and all religious objects in his office while not in use for religious services, and that he is willing to supervise the use of all the objects. This being as it is, the practices and objects we are requesting [present no security threat]....

I would also like to bring to your attention that these practices and objects are permitted in [many] of the maximum security prisons in the United States and Canada, and while I have read numerous cases that have arisen around the country concerning the specific practices [I have requested in this letter], I have not yet seen one case in which the courts have not granted every bit of the relief sought in this request....

Although copies of this letter were sent to ODRC religious administrator David Schwarz, as well as to the SOCF Warden Terry Morris, Governor Richard Celeste, Attorney General Anthony Celebreze and the Associated Press in Columbus, no one acknowledged receipt of this letter except for Assistant Attorney General Christian B. Stegeman, who responded by threatening to have sanctions placed against me for "harassing" the prison officials by sending them such a letter. Stegeman is directly responsible for systematically barring my lawsuit from judicial review by refusing (with the court's absolute consent and encouragement) to comply with any of the federal rules of civil procedure. For example, in the well over three years that my lawsuit has been pending, he has still refused to even acknowledge receipt of discovery requests which by law he is required to respond to within 30 days. This unlawful disregard for the litigation he is responsible for, as well as some quite underhanded activities of his and other government

officials in Ohio, are discussed in greater depth in [the chapters on "White Man's Law" and "More Cause for the Fear."]

The federal district court has refused to issue any kind of temporary relief over these years that litigation has been pending over the subject matter. A review of the record in this case clearly shows that neither the Ohio Attorney General's office nor the prison officials, nor the United States District Court judges in the Southern District of Ohio have the slightest regard for the religious freedom rights of prisoners, and that the prison officials and attorney general's office have never had to account to anyone for their actions against the American Indian prisoners in Ohio.

The above was extracted from my article in the May-June 1990 edition of *The Other Side*. Since that time the struggle has continued. A substantial amount of that struggle is discussed in the chapter on "White Man's Law." An update on the situation in Ohio is called for as this book goes to press.

I was released from prison in May 1992, and paroled to Cincinnati, Ohio, where I began working full-time as the director of the Native American Prisoners' Rehabilitation Research Project (NAPRRP), the organization behind this book project. Within three weeks of my release from prison my parole officer allowed me to travel to South Dakota for two weeks, unsupervised, to participate in the Sun Dance - without incident. A couple of months later my parole officer allowed me to travel to Salt Lake City, Utah, over 2,000 miles, unsupervised, so that I could present prisoners' rights issues, along with Lenny Foster, director of the Navajo Corrections Project, at the annual conference of the Governors' Interstate Indian Council, an association of tribal leaders and state commissions on Indian Affairs in the approximately thirty-eight states that have such commissions. At the Salt Lake conference, Lenny and I were able to get the Council to adopt a resolution which recognized the religious persecution of Indian prisoners on a national level and which strongly supports efforts to get legislation passed that will protect Indian prisoners' religious rights.

About a month later I informed my parole officer that I had been invited to speak at the annual conferences of the Commission on Religion in Appalachia and the Catholic Committee of Appalachia. I submitted a formal request that I be permitted to travel to these conferences which were both less than a two-hour drive from Cincinnati. Both requests were denied with a strong warning that I had better watch what I say when speaking at conferences. I was assured that if I attended these two Christian conferences to speak, I would be placed back in prison for up to fifteen years.

At this same time, I received a direct order from my parole officer -- who assured me that it was coming from his superiors at the Ohio Department of Corrections headquarters -- to stop all my

communications with Ohio prison officials or I would be placed back in prison for up to fifteen years. It should be noted that I corresponded with the officials only in my capacity as director of the NAPRRP, and I used the NAPRRP letterhead each time I wrote to them. The exchange of correspondence I speak of is reproduced here for you to read first-hand. When you've finished reading it, ask yourselves why I was threatened with re-imprisonment.

The following is a letter from me to Arthur Tate, Jr., warden of the Southern Ohio Correctional Facility, dated August 7, 1992:

Dear Mr. Tate:

During the month of September, Lenny Foster, director of the Navajo Corrections Project (and member of our advisory board), will be traveling to this part of the country so that he may conduct some sweat ceremonies for the Indian prisoners in several maximum security prisons in the states that adjoin Ohio. It is our hope that at that time you will allow Mr. Foster to enter the Southern Ohio Correctional Facility to construct a sweat lodge for the Indian prisoners in your facility, and that you will be agreeable to having a conference with Mr. Foster so that religious freedom issues may be addressed with the objective of implementing a policy (modeled after the policies of other prison systems across the country) which will adequately provide for the religious needs of the American Indian prisoners in your facility.

As the enclosed materials indicate, Mr. Foster is a recognized spiritual leader whose experience includes serving as spiritual advisor for Native prisoners in several dozen prisons, expanding to a number of states. Additionally, he has been instrumental in drafting policy directives, administrative regulations and legislation relating to American Indian prisoners' religious programming in several states, and he has testified as an expert on religious programming for Indian prisoners in numerous lawsuits, as well as before the Senate Select Committee on Indian Affairs; and later this month he will be co-facilitating a session with me at the annual conference of the Governors' Interstate Indian Council, the participants of which are elected tribal leaders and members of the various state Commissions of Indian Affairs.

We do hope, Mr. Tate, that you will take advantage of Mr. Foster's expertise to establish a religious program at the Southern Ohio Correctional Facility which will adequately serve the spiritual needs of the Native American prisoners in your facility. It is clear to us that past efforts of the Indian community to facilitate such programming at your facility have been thwarted by prison wardens and chaplains who were hostile toward American Indian religious and cultural beliefs and values. We trust that you, however, will take a different

approach -- a good faith approach -- in responding to our efforts to work with you. It is our hope that while Ohio citizens participate in the \$100 million celebration of Columbus' "discovery" of this land for the quincentennial in October, the descendants of those who were here before the "discovery" will be permitted to adequately practice their traditional religion for the first time in the Southern Ohio Correctional Facility. If you think our hopes are realistic, please contact me or Mr. Foster so that arrangements can be made for his visit to the Southern Ohio Correctional Facility in September.

We look forward to hearing from you soon, Mr. Tate, and to working with you for the betterment of our indigenous brothers inside your prison.

When Tate responded to my letter, he failed to address it to the NAPRRP, refusing to acknowledge the legitimacy of the NAPRRP because I am its founder and he despises me because I'm an ex-convict and while I was at his prison I had a habit of defending prisoners' human rights. What follows is his response to my letter of August 7, 1992:

Dear Mr. Reed:

I am in receipt of your recent letter (attached) regarding religious programming for those Native Americans who are incarcerated (sic) here at SOCF.

I am happy to advise you that we have been responding to those needs for sometime (sic) now and have a Native American spiritual adviser who visits our facility regularly for this purpose. I have always been sensitive to the religious needs and requirements of incarcerated prisoners; I am confident these needs are currently being met here at SOCF. It is with this in mind, that I will deny Mrs. Foster (sic) access to this facility to construct a "seat lodge" (sic).

I trust you will understand (sic) my position with regard to your request; if there are further questions please advise.

And here is my response to Arthur Tate, dated August 20, 1992:

Dear Mr. Tate:

I am in receipt of your letter dated August, 12, 1992, in which you have denied our request as set forth in my previous correspondence to you, i.e., that you meet with Mr. Foster to discuss the spiritual programming for Indian prisoners at SOCF, and that Mr. Foster be permitted into the facility to construct a sweat lodge and to pray with the Indian prisoners at your facility. The purpose of this letter is to seek your reconsideration of our requests.

The Indian prisoners in your facility asked me to try to assist them in these matters, as they have not had any religious services or spiritual advisors coming into the prison since last April. When you indicated otherwise in your correspondence to me dated August 12, I decided to investigate. I contacted Mark Welsh, the only person that has ever gone into your facility in the capacity as a spiritual advisor for the Indian prisoners in the general population, and he informed me that when you had received my letter of August 7, 1992, the chaplain (Lewis) called Mark to inquire about the possibility of coming into the facility for religious services. Mark has said that he will begin coming into the facility after Labor Day on a regular basis. That is good and I'm sure the Indian prisoners will be pleased to learn this. However, Mark agrees that it is in the best interest of the Indian prisoners at SOCF that the requests set forth in my previous letter to you be granted, and that the current "religious program" at SOCF is woefully inadequate at meeting the spiritual needs of the Indian prisoners.

Mark Welsh agrees that even if he were able to travel to SOCF on a regular basis, other Indian spiritual advisors, such as Lenny Foster, should be encouraged to participate in the religious programming when they are available to do so since there in fact are no Indian spiritual leaders in the state of Ohio. Indeed, the mere fact that there are Christian chaplains available at SOCF on a daily basis has never been asserted by your administration as justification for denying Christian volunteers access to your facility. Accordingly, there appears to be a disparity of treatment here which raises constitutional questions under the Equal Protection Clause of the Fourteenth Amendment.

Mark agrees further that it is impossible to provide adequate spiritual programming at SOCF without a sweat lodge for purification ceremonies, the sweat lodge being a central component in the practice of Native American religion. Certainly the experiences and practices of prison officials in many maximum security prisons across the country indicate that the sweat lodge should be permitted for the religious services of Indian prisoners, and that the use of the sweat lodge and its associated practices and objects are no more a threat to prison security than are the Christian religious services currently being provided for the prisoners at your facility.

Accordingly, on behalf of Mark Welsh, the Indian prisoners at SOCF who wish to practice their traditional tribal religious beliefs, and Lenny Foster and the NAPRRP, I ask that you reconsider your position and grant the requests set forth in my previous correspondence.

If the spiritual advisor referred to in your letter of

August 12 is someone other than Mark Welsh, please advise me.

When it appeared that Tate had no intention of responding to my letter, I sent a letter to David Schwarz, Administrator of Religious Services for the Ohio Department of Rehabilitation and Correction. In my letter to Schwarz, I enclosed a copy of my letter to Tate and asked Schwarz to encourage Tate to respond to it and to act in good faith. I asked Schwarz if the NAPRRP could donate a drum and beater sticks to the Indian prisoners at the Southern Ohio Correctional Facility. I also asked if he would be willing to meet with Lenny Foster to discuss the spiritual needs of the Indian prisoners in the Ohio Department of Rehabilitation and Correction. Schwarz's response to my letter was dated September 9, 1992:

Dear Mr. Reed:

Thank you for your letter of August 31, 1992, regarding your desire to be involved with the Native American program at the Southern Ohio Correctional Facility.

Since you were released on parole from the Southern Ohio Correctional Facility on May 5, 1992, there appears to be potential conflict of interest and roles between the religious programs at the institution and yourself. As a matter of course, a former inmate should be released from parole before functioning as a religious volunteer or resource person.

Also, the Ohio Department of Rehabilitation and Correction prefers to use religious organizations that are based in Ohio as resources.

Because of the above issues, your request to donate a drum and beater sticks for the Native American inmates at the Southern Ohio Correctional Facility is declined. Thank you for the offer, but to accept this gift would raise the issue of conflict of interest which could jeopardize your parole as a violation of its conditions. (Emphasis added.)

I trust that you continue to grow in your faith.

I wrote back to Schwarz on September 13, 1992, and said that I wasn't asking to become an individual religious volunteer or resource person, but that I was asking on behalf of the organization, and my only involvement would be communicating with the prison officials, not the prisoners, and that if necessary I wouldn't be personally involved at all. I said that the Indian Center in Xenia would like to donate a drum if he insists on closing the door to the NAPRRP. I also pointed out that Mark Welsh (who by the way is not an American Indian but is the "Native American spiritual adviser" Arthur Tate recognizes) and the Indian prisoners at the Southern Ohio Correctional Facility had submitted a written request that they be allowed access to a drum for ceremonial use, and that Tate's administration would not even

acknowledge receipt of the request -- among many other similar requests -- even though it had been submitted to the administration many months ago and the administrative regulations state that such requests are to be responded to within five working days. I told him that my requests were not inconsistent with my parole conditions, and that I would like for him to cite the parole conditions that he referred to in his letter. I reminded him that he forgot to respond to my request that he meet with Lenny Foster. And I reminded him that his administration welcomes religious volunteers and resource persons from other states when they are Christian. He never did respond to my second letter. However, within a few days my parole officer called me to his office and said that if I write any more letters to the prison officials I would be placed back in prison for up to fifteen years. I told my parole officer not to let his superiors put him in a bad position, that this order was illegal and I would continue to correspond in accordance with my constitutional rights. I have already spent many years in prison for asserting my constitutional rights (as discussed elsewhere in this book), and I wasn't going to lay down and roll over now.

As for Warden Tate, he didn't respond to my letter of August 20 for two months (his letter was dated October 16, 1992). When he did finally respond, he was rather upset. The following is a copy of his response, dated October 16, 1993:

Dear Mr. Reed:

I have just finished reading your 9/13/92 letter to Dave Schwartz, South Regional Religious Services Coordinator for the Ohio Department of Corrections. My comments will be brief, yet blunt, concerning your allegations that we/I refuse to work with you regarding Native American Spiritual requirements within Ohio's prison system.

As I mentioned to you in earlier correspondence, I have always and continue to be sensitive to the religious needs of all prisoners confined here at SOCF. It is not my concern to pattern religious activities at SOCF, be they Native American or otherwise, after those from around the country, but to insure that what we do meets constitutional requirements which are well-defined.

I personally resent your continued attacks and attempts to dictate to me the "specifics" of how SOCF's Native American program must operate. I have always been a reasonable person and as such, am willing to discuss how the needs of our prisoners can best be met. Any program that is developed will be "tailored" to the physical and security requirements mandated in a maximum security prison environment.

It is obvious to me that your emotional and past physical involvement with this facility are a "driving-force" regarding your current position. My only concern is that we meet the needs of all of our prisoners to the best of

our ability and I am confident that we are doing just that!

That's the last communication I've had with Tate -- not because I give up easily, but because (and this may be purely coincidental, but I'll let you decide) as he was writing the letter to me, all the Indian prisoners in the Southern Ohio Correctional Facility were being transferred to other prisons.

I subsequently learned that there are now two religious administrators for the Ohio Department of Rehabilitation and Correction (ODRC) -- David Schwarz of the Southern Division and Marlo Karlen of the Northern Division. This would provide the Indians with a strand of hope, for they were transferred from the Southern Ohio Correctional Facility to the Mansfield Correctional Institution in northern Ohio which made it necessary for me to contact Marlo Karlen for the first time. I thought that we would be able to communicate and that he would perhaps be more honest and sensitive than David Schwarz, but no such luck. My first contact with him (over the telephone) assured me that he had previously been thoroughly briefed about me by David Schwarz. I asked him what the possibility was of his meeting with Lenny Foster to discuss the spiritual needs and programming of the Indian prisoners in the Ohio Department of Rehabilitation and Correction. He said that the Department already has two advisors that they consult on Indian religious issues. One of them was Paul Pennell, whom I'd heard of (a non-Indian), and the other was Bobbie Kean, whom I'd never heard of. Karlen attempted to assure me that she is an Indian from Columbus who is heavily involved in Indian Affairs. I asked him who she was affiliated with. He raised his voice to me and said, "That is none of your business, Mr. Reed!" I figured it would be better not to pursue the discussion on that note any further, so I said okay.

I told Karlen that I thought it would be appropriate for his administration to meet with Lenny Foster while Lenny was in town, given Lenny's extensive experience as a prison consultant and Indian spiritual advisor. He agreed to meet with Lenny under the condition that Lenny personally contact him to make arrangements and that he not work through the NAPRRP.

A week later, on September 16, I wrote a letter to Karlen. I'll reproduce the letter here in its entirety and let it speak for itself:

Dear Reverend Karlen:

In our telephone conversation of September 8, 1992, you had indicated that a meeting with Lenny Foster, Director of the Navajo Corrections Project and board member of this organization, would be feasible on October 23, 1992, for the purpose of discussing policies regarding the religious programming of the Ohio Department of Corrections, provided that Mr. Foster makes personal contact with you via correspondence or telephone. This

letter serves, in part, to inform you that Mr. Foster has contacted me to assure me that he will follow up on the matter by contacting you. I want you to know that I do appreciate your willingness to meet with Mr. Foster to discuss these issues.

In our telephone conversation, you indicated that the Department of Rehabilitation and Correction currently has two Native American consultants, and that they should take part in the meeting on October 23 also. I fully agree that these individuals should be present at the meeting [as you suggested]. I must say that, after communicating with various Indian organizations in the state of Ohio, the Indian community in general is concerned about the Department of Rehabilitation and Correction's use of the two individuals you had identified in our telephone conversation (Paul Pennell and Bobbie Kean) as Native American consultants. It appears that Paul Pennell has been asked by numerous Native American individuals and organizations in the state of Ohio to cease his activities surrounding Native American spiritual matters, as he is not a spiritual advisor (or an Indian) to anyone's knowledge, and his repeated requests for endorsement by the Indian community to represent Native Americans at any level has been denied. As for Bobbie Kean, I have personally spoken with representatives of the Columbus Indian Center, the Xenia Indian Center, and the Ohio Center for Native American Affairs (based in Columbus) and other organizations and individuals throughout the state of Ohio, and no one seems to have heard the name "Bobbie Kean" before. This raises some real concerns among the Native American people in Ohio and elsewhere, as the general consensus is that the Native American community should have some input into who should serve as a consultant on Native American affairs to any government agency, otherwise there is a clear risk of having Native American concerns misrepresented or represented inadequately. For this reason, I would at this time also like to request that the meeting on October 23, 1992, be open to representatives of interested Native American parties, including representatives of the three Native American organizations referred to above. I would also hope that you will reconsider your position concerning my involvement in the meeting, as I can assure you that my involvement is in no way in conflict with the requirements of my parole or with established policy of the Ohio Department of Rehabilitation and Correction. If I am incorrect about this, please provide to me a copy of the policy directive or administrative regulation which precludes parolees from meeting with departmental officials at 1050 Freeway Drive....

Once again, Reverend Karlen, I wish to express my appreciation to you for your willingness to meet with the

*Indian community to address those fundamental concerns.
Thank you.*

A couple of days later I spoke at a gathering of Indian organizations at the Ohio University in Columbus. When I returned from the conference I wrote the following letter to Marlo Karlen. It was dated September 19, 1992:

I have just returned from a meeting where I was fortunate enough to make the acquaintance of Lance Kramer, Assistant Provost at the Ohio University, and David McCoy of the Ohio Council of Churches. I spoke to these gentlemen of your seeming willingness to address the spiritual needs of Native American prisoners by agreeing to meet with Lenny Foster as per our telephone conversation of September 8, 1992, and as referred to in my correspondence to you dated September 16, 1992. Dr. Kramer stated that he would very much like to participate in that meeting of October 23, and Mr. McCoy expressed an interest in having a representative of the Ohio Council of Churches present at the meeting.

At this time I would like to request that these individuals be permitted to attend the meeting. Because these gentlemen are familiar with Native American concerns as well as the concerns inherent in the criminal justice system, I believe their leadership and communication skills would prove invaluable at bridging the gap that has existed for too long now between your administration and Native American traditional religious practitioners incarcerated in the Ohio Department of Rehabilitation and Correction and the Native American community in general.

I wish, once again, to express my appreciation to you, Reverend Karlen, for your willingness to meet with the Indian community to address these fundamental concerns.

Several days after I sent this letter out, I was told by my parole officer that I was "making too many waves in Columbus." That's good. I guess that means I was doing my job.

I received a phone call from Lenny Foster stating that Marlo Karlen would not return his calls and he hadn't responded to Lenny's letter requesting the meeting. And then, only about a week before the October 23 meeting was to take place, Lenny called me to say that Karlen had finally returned his calls. He told me that Karlen ranted and raved for over an hour about how I belong in prison and that I'm way out of line forcing him to have this meeting, but he agreed to have the meeting with Lenny under the condition that he come alone. David Schwarz would be there as well.

After the telephone call between Karlen and Lenny, Karlen sent me a letter acknowledging receipt of both of my letters, and stating:

It appears in your correspondence that you have taken the liberty to invite a number of people to this meeting. This is highly inappropriate for you to be doing since you are not the one calling this meeting, nor can you attend it because of your parole. I would have greatly appreciated you sending me these names as suggested persons to contact for a meeting and trusting me to utilize these resources. That would have been appropriate.

... You said you would have Mr. [Lenny] Foster contact me. As of this date I have not heard from Mr. Foster. Therefore, no meeting is scheduled for October 23, 1992.

Karlen's letter was postmarked October 16, 1992 -- the day after he confirmed the meeting over the telephone with Lenny -- and copies were sent by him to David McCoy, Lance Kramer and all the Indian organizations that expressed an interest in participating in the meeting. Did Karlen send copies of the letter to all the Indian organizations and to David McCoy and Lance Kramer so that they would believe there would be no meeting and thus not attend? If, on the other hand, he did actually write the letter before the meeting was confirmed with Lenny for the 23rd (he dated the letter for the 14th), there was certainly sufficient time for him to contact the Indian organizations, Lance Kramer and David McCoy, to let them know that there would be a meeting after all.

But there was a witness after all. Lenny brought a friend to the meeting with him, Lorry Thomas, who is a member of the Criminal Justice Task Force of the Ohio Council of Churches and who serves as coordinator for Justice Watch, a prisoners' rights group in Cincinnati (she wasn't there in an official capacity - only as a friend). According to Lorry, as David Schwarz introduced himself to Lenny, Schwarz told Lenny that if he was there to represent me or the NAPRRP there was nothing to discuss. He also made it very clear from the beginning that absolutely no consideration would be given to the wearing of long hair by any male prisoner regardless of religious belief, or to the construction and use of a sweat lodge in any Ohio prison.

Karlen did, however, escort Lenny to the Mansfield Ohio prison so that he could smoke the sacred pipe and pray with an Indian brother who had been transferred out of SOCF by Arthur Tate. It was the first time in the history of that prison that an American Indian spiritual leader was allowed into the walls to pray with any Indian prisoner. Unfortunately, it was also the last.

It's pretty obvious that until legislation is passed which forces prison officials to allow Indian prisoners to practice their religious beliefs, there will be no religious freedom for many Indian prisoners, including those in Ohio and many other eastern states where prison officials and chaplains have an apparent disdain for Indian culture and spirituality. But it's not only happening in states with small Indian populations such as Ohio.

A glimpse of some of the dialogue between prison officials,

chaplains, prisoners and Indian spiritual advisors in the state of Oklahoma exemplifies just how carelessly blatant the prison officials and Christian chaplains' discrimination against Indian spiritual leaders and Indian prisoners often is. For instance, a couple years ago, Pat Moss, a priest in the Four Mothers Religious Society of traditional Cherokees, wrote a letter to Jack Hawkins, chaplain of the Oklahoma State Penitentiary, explaining that he would like to provide for the religious needs of the Indian prisoners in the Oklahoma State Penitentiary as well as in other Oklahoma prisons. Chaplain Hawkins' response to this letter is reproduced here in its entirety:

Thank you for your inquiry and interest in the inmates of the Oklahoma Department of Corrections.

If I understand your letter correctly, you are desiring to minister in the various Department of Corrections' institutions to the Native American inmates who affiliate with the Cherokee religious organization known as the Four Mothers Society. There are several institutions in the State of Oklahoma with varying degrees of security and program involvement allowable for the inmates in them.

At the Oklahoma State Penitentiary the security system is maximum. There is little program involvement for the inmates and many inmates are kept separate due to their classification and housing. Penological concerns mandate certain restrictive measures at this type of institution. This creates difficulty in administering programs.

Since your desire is to be of assistance department wide and the lesser security institutions afford more opportunity for program involvement you might wish to contact the Programs Coordinator for the Oklahoma Department of Corrections. He could make you aware of the various institutions, locations, and the opportunity for program involvement. The Program Coordinator is Mr. Ed Stoltz and he may be reached at the Oklahoma Department of Corrections, P.O. Box 11400, Oklahoma City, Oklahoma 73136-0400.

Please let me know if I may be of further assistance.

Pat Moss wrote back to Chaplain Hawkins. His letter is reproduced here:

Once again I am writing to you in hope of establishing an opportunity for the Native Americans, incarcerated in McAlester [Oklahoma State Penitentiary], to receive visits from "clergy" of Native American traditional religious groups.

I (as you may remember from my first letter) am a priest in the Four Mothers Religious Society (of traditional Cherokees) and am in contact with priests and traditional

religious leaders of many tribes and bands. Many of these (others) are willing and anxious to minister or offer spiritual counsel to inmates, but many are not fluent in English and most are not familiar with "going thru the proper channels" as established by state and federal agencies.

In your letter to me, you suggested that I approach some of the lesser security type facilities about coming in for visits. I definitely want to be available to inmates in those facilities, but I must insist that prayer and counseling should be afforded all inmates, including those on "death row."

I have been told that Christian ministries have been afforded access to even the strictest maximum security units. If this is true, then I ask only for equal access with the Native American inmate population. I would be perfectly willing to comply with any and all regulations, and to help other tribal religious leaders through this process. Your time and cooperation is genuinely appreciated.

But, of course, Chaplain Hawkins, being thoroughly determined that he will never allow Indian religion into his prison so long as the decision is in his hands, replied to Patt Moss' letter with a seemingly posthaste courtesy (no doubt thinking all the while, "I wish this stupid pest would just go away!"). Chaplain Hawkins' letter is reproduced her:

Mr. Moss:

Again, thank you for your inquiry. Did you contact the Oklahoma Department of Corrections concerning ministering in the Department of Corrections Institutions? I think this might be the best route to enable you to minister to the greatest number of incarcerated Native Americans. In my last letter I provided you with a contact person and an address.

Another option is for any Native Americans of the Cherokee Tribe who belong to the Four Mothers Religious Society to request you be put on their visiting list as their minister. We currently have two Native American ministers coming to Oklahoma State Penitentiary to minister. Any inmate has the right to have a legitimate authorized minister to be put on their visiting list (sic).

We are anxious to meet the spiritual needs of all our inmates. Some caution is required in order to carry out our mission, which is to protect the public, the staff and inmates at Oklahoma State Penitentiary. This is true especially in maximum security. Legal precedent and practical experience mandate us considering the request and number of potential participants in scheduling

services.

In your desire to help incarcerated Native Americans, I urge you to contact the person at the Oklahoma Department of Corrections whose name was previously sent to you. We definitely are concerned with meeting the religious needs of all the inmates of Oklahoma State Penitentiary. Again, I stress any inmate has the right to have a minister put on their (sic) visiting list as long as he complies with Oklahoma State Penitentiary guidelines.

If I may assist you or any of the Native American inmates I am anxious to do so.

Yeah, we know, Chaplain Hawkins. Just so long as they want to practice Christianity, right?

So, Pat Moss wrote to Ed Stoltz, the Programs Coordinator for the Oklahoma Department of Corrections. He complained to Mr. Stoltz about Chaplain Hawkins' persistence in turning him away from the Indian prisoners at the Oklahoma State Penitentiary. Ed Stoltz, in his response to Pat Moss' letter, stood firmly behind Chaplain Hawkins and assured Pat Moss that Hawkins knows what he is doing:

It is not my policy to interfere with the facility chaplain in running his religious program. Each is highly trained, not only in department policy but in his facility operations procedures, and each is dedicated to providing full religious rights to all inmates in his facility population.

It was about this time that Standing Deer Wilson, an Indian brother incarcerated in the Oklahoma State Penitentiary in McAlester, wrote to Chaplain Hawkins. In his communication, Standing Deer wrote:

In the matter of Pat Moss, I would like to say that he is an Indian priest in the traditional teachings which are not just "Cherokee" or "Four Mothers" teachings, but rather encompass the original instructions for all of the so-called Five Civilized Tribes, as well as all the confederated and adopted tribes such as Delaware, Yuchi, Shawnee, Natchez, Miccosukee, and Alabama to name but a few. To limit him to visiting only Cherokees who belong to the Four Mothers Religious Society providing that those Indians request that Mr. Moss be put on their visiting list as minister is highly discriminatory in that it does not give Indian religion the equal consideration given to Christian ministers. As you know, in the Maximum Security Oklahoma State Penitentiary at McAlester, there are a number of Christian ministers who come in and visit with the prisoners at their beanholes. Other Christian and Muslim ministers hold religious services in this prison. These ministers who visit beanholes are not limited to visiting only Baptists, Methodists or those prisoners who are members of their own particular sect. Neither must they have an

appointment, be invited in writing, or conduct their visits in the visiting room.

I have this date requested that visiting papers be sent to Pat Moss in order that I may receive spiritual guidance from him even though I am not Cherokee and am not a member of the Four Mothers Religious Society. Mr. Moss understands my religion, he respects it, and I will gain much happiness and peace of mind from his visits. Praying and receiving counseling with a traditional Indian priest will be spiritually uplifting for me as well as any Indian who feels that tugging at his heart which is yearning to be closer to the ancient teachings. A traditional Indian can minister to Indians as no other can. Even those Indians who have been taught Christianity or who have no religion at all in their lives can benefit enormously from religious counseling from a traditional teacher. Indian religion does not require that the practitioner forsake all other religious beliefs. An Indian can be both a Christian and an adherent of the traditional beliefs with no contradiction.

The two Native American ministers who are presently allowed to come to everyone's beanholes at OSP, while very nice people, are Christians. I am not a Christian. I do not believe in God, Jesus or the Holy Bible. My religion is nothing like Christianity, therefore I receive no benefit from the fact that the two ministers are Indians; they could just as well be Chinese or Black because they do not believe in or encourage my religion. I honor their religion - but it is not mine....

I very much appreciate the consideration you have given me in the past, and I thank you for reading this letter. I pray you and your family are well and happy and enjoying all the blessings our Mother has to offer. In the Spirit of Crazy Horse. Mitakuye Oyasin.

In Chaplain Hawkins' response to Standing Deer's communication, he stated:

I have been working with two Native American organizations in an effort to get a Native American non-Christian spiritualist for service at Oklahoma State Penitentiary. I have not been able to accomplish that to date. I am continuing those efforts.

Well, it's no wonder he hadn't been able to accomplish it to date, being's how he was at that very time working so diligently, as you have read, at discouraging Pat Moss, a Native American non-Christian spiritualist, from coming into the prison for any religious services. And I wonder who the Native American organizations are that Chaplain Hawkins claimed to be working with in these most diligent efforts to meet the religious needs of the Indian prisoners at OSP, for the Native American Prisoners' Rehabilitation Research Project (NAPRRP) had written to Chaplain

Hawkins in 1990 while these dialogues were going on, and we offered assistance to Chaplain Hawkins. We had even sent him some materials that would be useful in helping him understand how these issues have been handled at other maximum security prisons. The materials we sent to him were policies at other prisons, scholarly papers which addressed these issues, and even a video documentary which took the viewer into numerous maximum security prisons to see the benefits of the sweat lodge and other Native spiritual practices. Chaplain Hawkins rejected the correspondence. He refused to accept every packet of certified mail that the NAPRRP ever sent to him.

I must also wonder who the "leaders" are that Chaplain Hawkins was referring to when he wrote the following to Standing Deer:

My information in discussing traditional religion with the leaders of the Five Civilized Tribes in Oklahoma is that traditionally their religion is Christian. This has been presented by each leader I have discussed the issue with. Further, they have not been able to provide any information concerning the type of religious leader you desire.

Wouldn't a chaplain acting in good faith try to seek that information from Pat Moss after becoming aware that Mr. Moss was a traditional spiritual person who was "in contact with priests and traditional religious leaders of many different tribes and bands" who "are willing and anxious to minister or offer spiritual counsel" to the Indian prisoners at OSP?

But based on Chaplain Hawkins' profound wisdom and knowledge of religion and spirituality, he offered this piece of advice to Standing Deer in a written communication:

I do disagree that a person can be both a Christian and an adherent to another religious system. Christianity does not make provision for such.

Of course, this is Chaplain Hawkins' own narrow interpretation of what Christianity provides for. And he as an individual is certainly entitled to his limited religious system and belief. But as a facilitator of religious services vested with the responsibility for meeting the religious and spiritual needs of all prisoners at OSP, his personal opinions (read that as his intolerance for non-Christian belief systems) are totally inappropriate. There are thousands of Indians in the United States who are both Christian and who adhere to traditional religious practices and belief. To adhere to traditional Indian religious beliefs means to love thy neighbor as thyself, and to show respect for everything in Creation. It is very sad that Chaplain Hawkins and many other prison chaplains around the country feel that Christianity does not provide for such.

After telling Standing Deer what Christianity does not provide for, Chaplain Hawkins concluded his letter in the following way:

I will assist you in your religious beliefs wherever

possible under the prevailing policies and procedures of Oklahoma State Penitentiary. As you are aware, OSP is a maximum security institution. Programmatic conditions and opportunities are rarely ideal at this security level. I hope your conduct and attitude are such that you may be able to go to lesser security levels where you may have the opportunity to participate in more programs and practices.

As stated, I hope to be able to assist you in maintaining your beliefs. The opportunity to practice is limited by security considerations. I will do whatever is possible within policy and procedure to see you are afforded every possible opportunity. I pray for your well being and for you to have a Spirit of Truth and Wisdom.

Well, we pray for you, too, Chaplain Hawkins.

When one of the Indian prisoners at OSP complained about Chaplain Hawkins' discrimination with respect to Pat Moss, Deputy Director of the Department of Corrections, Jerry Johnson, responded by stating simply that "Indian spiritual priests are as much welcome as the priests of other religions.... Your contention of discrimination cannot be substantiated."

Now, when anyone in the free world writes a letter to the prison officials of Oklahoma expressing a concern that the Indian prisoners are not being treated properly with respect to their religious needs, the prison officials will respond with a form letter which proclaims that the Department of Corrections is "anxious" to serve the religious needs of all prisoners, including "our Indians." The form letter will assert that the Department of Corrections provides every opportunity for traditional religious practices that is possible within the constraints of a maximum security prison, and that any restrictions on the practice of religion are imposed because "Our Mission is to Protect You."

Endnotes to Chapter Six

1. *Cruz v. Beto*, 405 U.S. 319, 322 n. 2 (1972).
2. Not long after this article was published in *The Other Side*, the warden at Lucasville at that time, Terry L. Morris, took it upon himself to determine that Indian prisoners may not actually burn the sage that we were allowed to have access to as a result of my grievance to central office in Columbus. His reasoning behind this was that the Indians in some other state and federal prisons are not allowed to burn sage. He sighted the federal prison in Ashland, Kentucky (where he had sent the SOCF chaplains) as an example. He also said (in a sworn statement he filed in my lawsuit against him) that the prison in Ashland did not have a sweat lodge or allow the wearing of long hair. This sworn testimony in my lawsuit was clearly perjured, for the federal prison in Ashland has long had a sweat lodge and every federal prison in the country allows all prisoners to wear long hair.
3. The fraudulent Indian chief is Hugh Gibbs, so-called "Principal Chief" of the "Etowah Cherokee Nation." He testified about Lakota religion in the form of an affidavit, and the information he gave was totally perjurious. The man knows nothing at all about Lakota religion. The principal chiefs of the Cherokee Nation of Oklahoma and the Eastern Band of Cherokees in North Carolina have also stated that they have never heard of this man or the so-called "Etowah" - except with reference to an animal mound in Georgia. For more on Hugh Gibbs, see the chapter on "White Man's Law."

CHAPTER SEVEN

Coming Home: the Birth of Spirit in America's Gulag

by

Standing Deer Wilson

My name is Standing Deer. I was born in Oklahoma in 1922. I started life knowing I was American Indian, but because I was not raised among Indians, or with Indian values, I somehow lost track of who I was, and I lived a life based on greed.

If it were only my story I think I would not tell it, but because it is a story of a boy who grew into a man alienated from his roots, cut off from his culture, traditions, language and religion, it is a story that becomes the property of us all. In the same way that many of us have used alcohol and drugs in an effort to blot out the towering emptiness that accompanies the genocide of unsuccessful assimilation, I have pursued a life of crime, and because of my crimes I have spent a good many years in maximum-security prisons.

Since 1962 I have been a prisoner in both state and federal prisons, and I have had the opportunity to reflect upon some of the problems peculiar to the American Indian corrections consumer. At the outset, I view arguments against the tragedy of prisons that are based solely on racial considerations with great suspicion. Special pleading along racial lines can only serve the interests of the state, as it contributes to the mistrust, division and paranoia that shatters attempts at organizing; it impedes efforts to create solidarity. This lack of unity is what renders prisoners totally powerless. Dividing people into racial and ethnic cliques in prison is employed by our captors as a control device, and the method is as old as the first prison.

The ideal of total equality in America has nearly been achieved with respect to the children of the poor who inhabit her prisons and jails. We seem to be brutalized almost equally with little regard for our race, color, creed or national origin. The primary sin is being poor; not red, black, brown, yellow or white. But in the area of religious freedom, native people almost alone suffer a special brand of denial and discrimination, and we have been without a voice for much too long.

In this and the next chapter we will begin at the Oklahoma State Penitentiary at McAlester. From there we will go to the super-maximum prison in Marion, Illinois, and briefly tour five other maximum-security federal prisons. Finally, we will return back here to McAlester where I am today and where Indian religion is completely banned. Along the way I will tell you about a Lakota/Ojibway prisoner of war who gave me the chance to redeem

myself and allowed me to come home to my people.

I spoke Choctaw and Oneida before I spoke English. My grandmother on my father's side spoke only Choctaw. She held me when I was an infant and sang songs in Choctaw and talked to me in Choctaw. I spoke to my mother's people in Oneida. This felt good, and when Indian people were all around me I felt safe, secure and totally happy. I was a part of the people when I was very small, and there was absolutely no doubt that I belonged there. My mother's people were in Wisconsin and my father's people were in Southeastern Oklahoma. I don't remember how old I was when my mother taught me to read English, but when I was three and a half I read Lincoln's Gettysburg Address over an Oklahoma City radio station.

From my earliest memories my parents were ashamed of our Indianness, and my sister, brother and me were forbidden to speak our native language. It was something we had to do in secret, in the dark, in small voices. My mother would not let us discuss our grandparents or the clan. She always spoke of them with scorn. She wanted us to hate everything Indian and to think of ourselves as white people. I was beaten by my father to get all the Indian out of me. I don't know how they did this, but when I was about six years old we were driving in the country near Shawnee, Oklahoma. I was in the car with my father, mother, brother and sister. I looked out the window and saw two Indian boys running and I hollered in surprise, "Look! There go some Indians!" I really didn't know our skins were as dark or darker than the boys running beside the car. Both my mother and father were full-blood.

We lived in a white neighborhood and went to a white school. My mother and sister were both color-struck. I was lighter-skinned than my brother, therefore I was better. My father was an auditor for the United States Indian Service. My father and mother graduated, met and married at Haskell Institute at Lawrence, Kansas. All their friends were white. I was taught to fight anyone who called me an Indian. I was taught to beat them until they agreed to call me an "American." I beat people until my brother and me were so well-known in northwest Oklahoma City that everybody knew we were "Americans."

I caught on when I was about six - shortly after the incident of seeing the Indian boys - that it was all sick, and that for some reason I was being required to hate a part of myself that I remembered was good. I was too desperate for the approval of my mother to go against her so I kept up the charade, but I knew it was something I had to get away from.

I dreamed of my grandparents constantly, and I longed to be with my Indian people. Then one day there was an old Lakota man named Sam who moved into a tiny house that was attached behind the garage of a rich family. He was very quiet, and so far as I could tell he didn't speak at all. His face was wrinkled and seemed to be fixed in a perpetual scowl. Most of the time he wore an old flannel shirt and well-worn blue jeans, but in spite of his age and plain clothes he stood very straight and carried himself, I

imagined, as would a chief. Sam was the only person besides myself I thought of as Indian. Not my father, certainly not my mother, sister or brother -- just me and Sam. Sometimes I would look out my window very late at night and I would see him running - shirtless - in the moonlight. All the kids except me were afraid of him, but everybody knew and admired the fact that anything Sam put in the ground would grow. Sam made his living as a gardner, and he was the very best one any of the grown-ups had ever seen.

When I would walk by Sam, he would look at me with a question on his face, but neither of us spoke a word for a long time. I couldn't take my eyes from his hair. He was the only man I had seen with long hair since I had moved to the city from Indian country, and it was the hair more than the dark skin that made me think that here was a man who could teach me about the things I was missing in my life since leaving my Indian people.

One day as I was walking by where he was working, he interrupted my staring by asking me if I would help him plant a tree. I was silently overjoyed and quickly agreed. I began to work alongside him every day in spite of my parents' repeated warnings to stay away from him. Sam seldom spoke, but one day I asked him why he wore his hair long. He told me that he came from a place where there were many sacred persons, and the spirits of the Grandfathers lived there. He said there were singers and drummers and many old people whose total way of life was religious. He explained what sweat lodges, vision pits and sacred tobacco offerings hanging in the trees meant to his people. He told me how White Buffalo Calf Woman brought the Sacred Pipe and what great wakan (sacred) power it possesses.

He said that a long time ago a man was walking in the forest looking around seeing how the trees, grasses and flowers all had roots attaching themselves to Mother Earth, and yet he had none. He was feeling very sad and began to pray to Tunkasila to give him roots to connect him to his Mother. All of a sudden Tunkasila appeared, and, grabbing a rainbow from the sky, He thrust it upon the man's head. As soon as the rainbow touched his head it became beautiful long hair reaching to his waist. Tunkasila told the man that his hair was his strength; it was sacred and must never be cut except when done in a special ceremony mourning the loss of a loved one who crosses over to the spirit world. He said that when the man enters the sweat lodge with the entrance so low he must crawl on all fours like an animal, his hair should touch Mother Earth because his hair is his roots which attach him to the rest of creation. Tunkasila said if the man should cut off his hair when he is not in mourning he is rejecting his creator, and throwing away his roots, and is no longer attached to his Mother. When he does this, disaster will strike him, his family, the clan or even his nation. Tunkasila said a man's hair is sacred. At last, I knew the answer to the question of why disaster in the form of a miserable life had overtaken me and my family. My father, brother and me had all cut our hair for no other reason than that white people thought it made men look neat, respectable and macho. White people claimed they could hardly tell a man from woman if the man had long hair. I thought it was all to do with giving jobs to

white barbers. I vowed to never again cut my hair so that when I could finally enter the sweat lodge my hair would be at one with Mother Earth.

I knew Sam for four years, but one day he vanished. He never said he was leaving. There was not a trace of him at his little house. I felt nothing but emptiness and grief. I don't know to this day where he went, but I felt alone and betrayed. Finally, I did a ceremony Sam had taught me, and prayed for his journey to the spirit world. I cut my hair. My parents rejoiced.

After Sam disappeared, I wanted to leave my home and find the place where Sam came from, where the sweat lodges were. I escaped my home for the first time when I was 12 years old. I went to southeastern Oklahoma where my father's people were, but there were no sweat lodges there. It was a great feeling to be free, but I was recaptured after only two weeks and returned to Oklahoma City. I escaped again when I was 15, and went to Wisconsin where my mother's people were. The consensus in both Oklahoma and Wisconsin was that my parents were crazy for wanting to be white. I couldn't have agreed more heartily. From 15 to 17 I ran away from home several times, always going where there were Indian people. I was never accepted around Indians who weren't relatives because I didn't know how to act. I no longer remembered the language or customs. I was an outsider, and when I would ask about sweat lodges and vision pits I was met with blank stares.

In 1951, I married a white girl and settled down in Oklahoma City. By 1959 we had two beautiful daughters whom I loved more than anything that had ever been in my life. But still there was a gaping hole within me that made me feel incomplete. The anger continued to erupt out of me. I was mean and nasty and bitter around everyone but my family, and I was doing everything illegal under the sun. Finally, the inevitable happened: I went to federal prison at Leavenworth, Kansas for transporting counterfeit securities in interstate commerce. I killed a man there for stealing a carton of cigarettes out of my locker. That year a carton of cigarettes was worth two dollars. I had sunk to the bottom.

In 1972, I was transported to the Oklahoma State Prison at McAlester to serve 25 years for armed robbery. I was still wearing the medicine pouch that Sam had given me, but I quickly learned that there was nothing I could keep to remind me of my traditional heritage. My medicine pouch was quickly confiscated and flushed down the toilet. Next, I was hustled off to the barber shop where the guard told me they intended to cut off my hair and shave my head. I explained that my hair was part of my religious beliefs, and if they insisted on trying to cut it I would be forced to physically resist for as long as I was able. The warden was called to the scene to resolve the crisis. I patiently explained to the warden that I had been taught that a man only cuts his hair when in mourning; to do so at any other time is to invite disaster to strike at his family. I told him that the hair on my head was put there by the Creator, and it belongs to Him just as the rest of my body and spirit belongs to Him. I explained that I could not

destroy that which did not belong to me. What I imagined to be the light of understanding in the warden's eyes turned out to merely be a signal to the guard who stood behind me with a Louisville Slugger baseball bat. The last thing I heard before I lost my senses was the warden shouting that he wasn't going to have "no hippies, communists or homosexuals" in his prison. I woke up in the hole with my head shaved and my body a mass of bruises.

When I was released from the hole I found that McAlester had absolutely nothing to offer an Indian prisoner in spite of the fact that more Indian people live in Oklahoma than any other state except California. There were over sixty Indian brothers in population, and I finally met some brothers who knew what Sam was talking about. They said there was no doubt that Sam was talking about South Dakota. Several of the brothers knew the Lakota religion and I wanted to learn it. We attempted to get permission to practice our traditional religion. We all had crew cuts and the hair issue seemed to be such an emotional one to the guards that we decided to bypass it. Our efforts to receive our Sacred Pipe inside were met with sneers and guffaws by the chief of security, who claimed we only wanted to use the Pipe for smoking marijuana. Our spiritual leaders were denied access to the prison, and in response to our request to form a cultural group the warden answered that we were free to join the prison chapter of the Junior Chamber of Commerce which is the White culture organization. I wanted to kill.

In April of 1972, Bobby Battle, a Black prisoner at McAlester, filed a civil rights complaint in federal court alleging many constitutional violations that amounted to overall inhumane terms of confinement. Battle charged that McAlester provided inadequate food, non-existent medical attention, a complete lack of due process in disciplinary procedures, and a multitude of deprivations of federal, civil and basic human rights. Racist practices, including denial of the right to practice the Muslim religion and American Indian traditional religion, were prominent in the lawsuit.

On July 27, 1972, the U.S. District Court certified the complaint as a class action lawsuit on behalf of all prisoners against the Oklahoma Department of Corrections. After investigations of the allegations the court claimed to be shocked to find that most of the allegations were true. The court never mentioned that other prisoners had been filing similar allegations for years.

The American Civil Liberties Union took up the cause, and eventually the United States was to intervene on the prisoners' side. But instead of making some effort to improve the outrageous conditions at McAlester, the prison officials chose to dig in and deny every charge while lying through their gritted teeth.

With the filing of the lawsuit the guards became more brutal. Conditions deteriorated day by day until on July 27, 1973--exactly one year after the Battle case was certified as a class action--the prisoners could take no more, and McAlester Prison erupted in one

of the costliest prison insurrections in american history with a price tag said to be more than 20 million dollars. Hostages were taken and held for over 24 hours until the entire prison (with the exception of the cell blocks) was burned to the ground. The prisoners controlled the inside of the walls area from July 27 until August 2, and the National Guard was called in. Somehow through all the chaos only three prison deaths occurred, and one prisoner escaped. The guards had all been released unharmed and held only long enough to prevent the prison officials from fighting the numerous fires as McAlester burned. The entire industrial complex was destroyed, the mess hall burned, and the hated blood bank building--where for years the prisoners sold their blood in order to buy luxury items such as soap and toothpaste--vanished in flames.

On August 2, 1973, the prisoners were stripped naked and marched in chains back into the trashed-out cell blocks. The windows had been smashed, electric and plumbing in most cells had been destroyed, and much to the guards' dismay most of the locking devices were hopelessly broken.

I was put in a 5' x 7' cage with another prisoner. There was nothing in my cage except two steel bunks, and a sink/stool combination. There was only cold water in the sink. The spigot was little more than a drip. That is what we drank and cleaned ourselves with for a long time as our cell door was not opened even one time for nearly a year.

The last day on the prison yard before coming into my burned out cage, I had discovered a small, spherical, stone. I know from Sam that there is a spirit dwelling in that stone which is all spirit. Sam called it tunkan wasicun, which means roughly "spirit of the stone." My sacred stone gave me the only comfort I was to receive for many weeks, until one day I was sitting in my cell praying with the stone in the palm of my hand when a guard saw the stone and shot me with a tear gas gun we called "Big Bertha." All of us were being gassed on a regular basis at that time, and because I would not surrender my spirit stone I was gassed every other day on Monday, Wednesday and Friday. I was given Saturday and Sunday off.

I never did surrender the stone, and after several months the guards lost interest in my personal gassing because by then they were gassing the entire population of the prison on an almost daily basis. Over a thousand men suffered brutal beatings and gassings during the year following the riot. As a result of those gas attacks, I was permanently deafened in my left ear, and lost a good deal of my vision.

There was no medical or dental care. If you became sick you either got well, got worse, remained the same, or died. Once I developed a terrible toothache that grew worse with every passing hour. I tolerated this pain for almost four days until I could stand it no more. Since there was no dentist I was either going to have to pull the teeth myself or go through this agony for who knows how much longer. Finally, I was able to promote a nail and

a pair of pliers from the most racist guard in the prison. He gave them to me on condition that he be permitted to watch me pull my teeth.

I used the nail to pry the swollen gum loose very deep; then I pulled two wisdom teeth out with the pliers. The guard watched it all in apparent glee. The pain was excruciating, and I nearly bled to death, but I couldn't imagine going on with that kind of pain.

In 1974, a bad and a good thing happened. The guards gassed my beloved brother lil Bobby Forsythe to death, and my cage door was opened, and I was allowed to take my first shower in 14 months. The murder of Bobby proved to be the undoing of the gas attacks and the prison administration. Ten guards were indicted and the torture-camp conditions came to public scrutiny. The warden was replaced with a worse one, as is usual, but the new one had sense enough to know they had to end the revenge philosophy and lighten up.

At my Christmas visit, 1974, my brother whispered to me that he and several of my friends were maneuvering to get me out of the walls to one of the medium-security prisons where conditions were a thousand times better. I was ecstatic because I knew that my brothers would never lie to me just to give me new hope.

On April 2, 1975, I was moved from the super-max McAlester prison to a medium-security prison at Stringtown, Oklahoma. It was a shock to go from a place where only a day before I had been handcuffed and chained to travel 30 feet to the shower, to a completely different environment in which I was allowed to run and play every day in the fresh air and sunshine without handcuffs, chains or restraints of any kind. It was still a prison, but the food was good, the quarters were clean and airy, we had a big gym, and best of all there was no tear gas or brutality.

Perhaps I could have been happy to do my time there, but on the second day after my arrival, I was called before the warden, and told I was welcome to join the Christian church. He warned me that any attempt to organize or practice Indian religion would be a cause for disciplinary punishment and transfer back to the McAlester hole. It was like being kicked in the teeth. All my good thoughts about this new jail went away. It was worse than tear gas or clubs. From that moment on I wanted only to escape and be the criminal for a while instead of the victim.

Twenty-seven days later, on April 29, 1975, I took over a prison bus while they were trying to transport me. I was recaptured in Chicago in April of 1976 and confined in a solitary confinement cage on the eleventh floor of the Metropolitan Correctional Center (MCC). During my year on the street I had rampaged, and a number of police agencies were attempting to figure out what they wanted to charge me with. The FBI believed I was financing leftist political groups through compulsory expropriations. I was suspected of being with a group that was involved in liberating prisoners from prisons and jails by

hijacking transportation officers. I was being investigated by the FBI and state police agencies for numerous robberies and shootings involving policemen and prison guards.

On June 3, 1975, I had shot a policeman during a high-speed chase following a robbery in Oklahoma City. This incident resulted in seven indictments being filed against me: four armed robbery, two larceny of an auto, and one attempted murder of a police officer. Any one of these seven charges could have gotten me a life sentence.

In federal court I was charged with transporting the proceeds from a \$279,000 diamond robbery from Houston to Chicago. I was also indicted for a \$51,000 bank robbery in St. Louis, and a \$40,000 bank robbery in Indianapolis.

On October 29, 1976, after spending six and a half months in solitary at the Chicago MCC, I was sentenced to 25 years in federal prison. Richard G. Held, Special Agent in Charge (SAC) of the Chicago FBI, asked that I be sent straight to the United States Penitentiary (USP) at Marion, Illinois. Marion was designed to be the toughest, highest-security prison in the United States, if not the world. It was highly unusual for a prisoner to be sent straight from court to Marion.

The super-maximum Marion houses political prisoners and prisoners of war. It is used by the United States to silence freedom fighters, prison critics, religious leaders, and economic and philosophic dissidents. They keep in Marion members of the Black Liberation Army, the Republic of New Africa, the Fuerzas Armadas Deliberacion Nacional Puertoriquena (FALN), North American Anti-Imperialists, the American Indian Movement, and many others involved in liberation struggles. It is an experimental behavior modification center where prisoners are kept on 24-hour a day deadlock solitary confinement. The terms of confinement are severe and barbaric.

The reason I was sent to Marion has been revealed in several prison documents. A "Medical Record of Federal Prisoner in Transport" (from Chicago MCC to USP Marion) states that I was diagnosed as having an "assaultive personality." The report alleged that I have "assaulted every officer who has ever attempted to apprehend" me and consequently, that "Wilson is considered by the FBI to be the most dangerous individual apprehended in this district [Chicago].. As a result of my "negative and assaultive behavior," my "history of escapes," and my overall "extremely dangerous" personality, I was classified for the Marion Control Unit.

I had never heard of the Control Unit, so when I heard I was going there, I wasn't at all disturbed. How much worse could it be than pulling your own teeth with a rusty nail and a pair of pliers? I was soon to learn that there are tortures of the mind that are far more terrible than old-fashioned physical torture.

I was taken from my cage in Chicago MCC at 2:30 a.m. After

being stripped, searched and dressed in coveralls, I was handcuffed and chained with leg irons. Elbow restraints were locked into place, and I was placed in the back seat of a car with two big united states marshals. A driver and shotgun guard were in the front separated from us by woven steel mesh. There was a car behind us and one in front. Each car had four marshals with M-16 machine guns. The car behind was referred to as a "chase car"; the one in front the "crash car." All cars were in contact by radio with the others, and they were all in touch with the helicoptor overhead and a home base. The marshal in front beside the driver kept his .357 Magnum pointed at me during the trip. He told me that if any of my scum bag friends tried to rescue me from this small army (an unlikely hypothesis, as it seemed to me), he planned to personally blow my head off. I couldn't believe they were serious, but I soon found out that this sort of mad overkill was only the beginning of paranoid Marion security. We were on our way to the Control Unit.

Existing in the Control Unit was the most nightmarish experience of my entire life. To wake up day after endless day in a tiny 6' x 8' sealed-tomb tiger-cage completely destroyed my will to live. I would have killed myself, but 24-hour-a-day deadlock solitary confinement produced so much apathy that even suicide required more interest than I could muster.

I spent the first four days in total darkness in the soundproof sensory deprivation chamber known to the prisoners as "The Boxcars." Those four days seemed like weeks. I felt like I was living in a bathtub with a roof over it. I lost all sense of time, and the only way I could keep track was by trying to remember how many times the door had been opened to put a food tray in the food slot. Each time the door opened, the light produced stabbing pains in my head, and the guard's silhouette in bright red would be imprinted on the retina of my blinded eyes for several minutes after the cell would return to darkness.

On the third day I became disoriented and could no longer tell if I was standing up or sitting down or lying on the sleeping slab. Before the fourth day was over, I didn't know whether I was awake or asleep. I began either dreaming with my eyes open or dreaming I was dreaming with my eyes open. I was obsessed with a dreamlike image of black blood oozing from a butcher's block.

I heard voices from my past, and entered into an experience where I would hallucinate whole periods from my life. I was on the brink of insanity. Even after they opened the outer door, I continued having headaches and constant nausea. Every time the door to the boxcars section would clang open or closed, my stomach would cramp with fear. The walls of the cage seemed to be crushing the life out of me, and it felt as if the fetid air was smothering me with every breath I took.

Before my experience in the Control Unit, the worst mental pain I had ever known was when my brother died. I felt so grief-stricken I wanted to jump into the grave with the casket. If I hadn't been restrained by my mother and father, I would have done

so. Imagine the worst you ever felt in your entire life. That's how I felt every single minute when I was in the Control Unit.

In one of Tom Robbins' books, he talks about a creature called the Hunting Wasp. The female wasp hunts for spiders, and when she finds one, she stings it in the large nerve ganglion at the base of the thorax so that it is not killed but only paralyzed. She then lays eggs just under the skin of her helpless victim, and when the larvae hatch they begin eating the spider, consuming the non-vital organs first, allowing the paralyzed spider to live a good many days while being eaten alive. Eventually, of course, they eat too much of their unwilling host, allowing it to die. But all during the long hideous process of consumption, the victim cannot cry out, fight back or defend itself in any way.

A Control Unit victim is very much like the spider.

In September of 1977, I was beaten so badly by Marion guards that I was put in the hospital. The beating had caused an old back injury to flare up, and I was confined to a wheelchair. Texas authorities chose this time to take me from Marion and fly me to Houston to be tried for the November 1975 diamond robbery. During the Texas trip, I was accused of assaulting two guards and a prisoner who worked for the guards. The prisoner later died from wounds from his own knife that he had used to attack me. I was also accused of two attempted escapes. I returned to Marion in March of 1978 with three additional concurrent life sentences. The identities of the other two men who were accused in the robbery were never discovered, and they were listed only as John Doe and Richard Roe. A quarter of a million dollars worth of diamonds remained missing. The trial and trip to Texas had lasted 6 months, and I was a fuming mad dog.

On March 17, 1978, I was wheeled into Marion on a gurney and taken to the prison hospital. Dr. J.R. Plank told me that the Chief Correctional Supervisor, R.M. Carey, wanted to talk to me about keeping him posted on the activities of Leonard Peltier. I threw my urinal at the doctor and told him to get out and stay out. Four days later I was loaded into a wheelchair and taken to the hole by seven guards. I couldn't even walk, and the only thing that kept me alive was the prisoners who threw food and bottled water into my cage. For weeks I lay in my own body waste, and when I was able to negotiate the 20 feet to the shower, I fell down as I was returning to my cell. Two prisoners helped get me back into my bed. I made repeated requests for a wheelchair and medical attention, but they refused to even answer my written requests.

Finally, on May 10, Captain Carey came to my cage and asked me if I was ready to cooperate with him. I told him I would talk about it if he would get me some medical treatment right away. On May 12, I was examined in my cage by Dr. McMillan, who said I needed immediate hospitalization. On May 15, I was back in the prison hospital.

On May 17, 1978, R.M. Carey, accompanied by a well-dressed stranger, entered my hospital room. The stranger said that if I

would cooperate in "neutralizing Leonard Peltier," he would see to it that I received immediate medical treatment, and after I cooperated with him he would get me paroled from the federal prison system to my Oklahoma detainer. I asked the stranger who he represented and what he meant by "neutralizing" Peltier. He replied that he was a person who had the power to do what he promised. As to what he meant by "neutralizing Peltier," he said I would have to weigh that for myself, but that according to my record I was not averse to "going all the way" when faced with a desperate situation. I asked what he meant by "going all the way" and Carey interrupted saying that I was wasting their time if I was going to play dumb. The stranger said I would never make it through the Oklahoma City trial alive. He said the Oklahoma City cops had sworn revenge, and that he would personally see to it that I did not survive the Oklahoma trip if I didn't cooperate with him.

I knew it was true because I had received word that the police intended to kill me when I returned for trial. They had propositioned a prisoner who was a friend of mine to stab me in a fight when I came there. They told him the jailors would provide witnesses that I attacked him with a knife. They said it would be no problem since I had such a record of assaultive behavior. In return, they told him he would be given secret conjugal visits with his wife.

The stranger said he would guarantee my safety in Oklahoma by having me held in the federal prison at El Reno, Oklahoma during the trial, and never having me in the custody of state authorities without the presence of two united states marshals.

I told them I lived in terror of the trip, and I would do almost anything to stay alive, but what they were asking me to do could get me a life sentence. Mr. Carey laughed and said, "For a man who just got three life sentences in Texas, you worry too much about a life sentence."

The stranger then said that if anything happened to Peltier, and an inmate were acting in self-defense, no court would give the inmate a life sentence.

I asked how I could know they would keep their end of the bargain, and more important, how could I know they even had the power to promise parole. I pointed out that the captain of the prison guards (Mr. Carey) obviously did not have the authority to promise a parole, and on top of that I didn't even know who the stranger was nor whom he represented, and most important of all, the Parole Board wasn't famous for granting paroles to freshly convicted murderers.

The stranger said there were a good many ways for me to fulfill my task, and, if I agreed to act for them, he would explain a simple procedure whereby I would be able to neutralize Leonard Peltier without even seeming to be involved. I asked him what that procedure might be, and he said that I must first agree to cooperate.

I told him I would cooperate only on the condition that they advance me something tangible so I would know they had the power to keep their end of the bargain. The stranger asked me if I wanted money. I told him that the only thing I wanted was to have the charges in Oklahoma City dismissed so I would not have to go to trial there. I said if I could have immediate medical treatment, a promise of parole from the federal time, and the seven indictments in Oklahoma dropped before I cooperated, I promised to kill Peltier in front of the Marion Control Center on any day he designated. Mr. Carey and the stranger both laughed. Carey turned to the stranger and said, "It looks like I wasn't wrong when I told you he's your boy."

The stranger said that they would get my back well so they could put me in population with Peltier so that I could get as close to him as possible in order to gain his trust. He said Peltier was trying to get Indian religion into Marion, and I could probably help start a culture group by doing the paper work that would be necessary. This would help create the strong bond with Peltier that would lead to the next step.

I was to tell Leonard that I had access to several home-made zip guns. I would be given three guns that would appear to be in operating condition, but actually would not fire. He told me to urge Peltier to escape by playing on his patriotic feelings. He said I would be furnished with wire cutters capable of cutting through the fence and concertina wire, hacksaw blades, material for making dummies, and anything within reason in order to get Peltier out to the fence. He said Peltier would be taken care of at the fence and my job would be over.

I didn't like the idea of all the deceit and treachery involved and I told them so. I said I would rather just kill him outright. The stranger replied, "That is exactly what you'll have to do if this plan doesn't work. Don't even think of playing us for fools because, at this point, it's Peltier's life or yours. We don't accept backing out or betrayals. You are now committed to this with your life. If you betray us you will die. If you perform honorably you will be rewarded even more than our agreement. If you tell about this conversation it will be our word against yours, and you won't be believed. When you have things in hand and it is imperative that you see Carey, submit a sealed letter requesting an interview. Never mention anything in the interview request. Take your time. Don't try to move too fast, and don't hold any serious conversations with Peltier about escaping until you are certain you have his trust."

When those two men left my room I didn't know whether to laugh or cry. I had seen enough of the underworld of the corrections criminals to know that those men were dead serious. I have seen prisoners killed by guards and by set-ups because they miscalculated or underestimated the deadly intent and viciousness of the prisonrats that give the orders to the keepers of america's prisons. I knew that if I exposed their plot they would probably kill me. All things considered, maybe I could do it and regain my freedom. What to do? I didn't know the answer. My frustration

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problems of his people. I could

sense, rather than hear or see, the degree of love and total commitment he felt for the people. I saw the marks of flesh offerings and the piercings of the Sun Dance on his body, and I listened in awed reverence as he quietly told me and the other brothers about sacred matters. As I listened, I realized what a deeply religious man he was, and I thought what an upside-down world we live in when the criminals of this world portray the victims as criminals and make 90% of the sleeping future victims believe in their charade.

Leonard told me about how things were when he was growing up on the Ojibway reservation. Hunger, disease, poverty and alcoholism were rampant. Poverty was the lot of all, and the people were holding weekly meetings in an effort to solve the worst of the conditions. There was little food to eat and there was hunger each and every day for everybody. After the meetings the people would all sit together and share what little food they would have been able to collect.

One day, when Leonard was 14 years old, he saw and heard this woman stand up and speak with tears in her eyes, pleading for someone to help because her children were at home slowly starving to death. She asked if there were no more warriors among our men. She said, if there were, why did they not stand up and fight for their starving children? Leonard told me that that was the day he vowed to help his people for the rest of his life.

As I listened to Leonard I thought of my own life. Full-blood Oneida/Choctaw raised as a whiteman with whiteman values. Total cultural genocide. All the Indian beaten out of me by the time I was six years old. Spanked for remembering my grandfather and the stories he used to tell me. Forbidden to sing the Indian songs my grandmother taught me. Brown wasichu, me.

Once again I asked myself: "What price to do the dirty work of Greed?" The price would be to end the journey of the fearless warrior, Gwarth-ee-lass, who sat before me. Would all the remaining days of this man called Standing Deer be worth a twinkling flash in the life of this man whose love and dedication to his people - my people - was so intense, so pure, so total?

Although I had not come to the yard with settled intentions of telling him that the united states was scheming to take his life, I found myself revealing the plot to him in all its sordid detail. I didn't know what reaction to expect because in my heart I was not pure. I reeked with shame. I harbored guilt because I wasn't sure I was going to tell him until the moment I did it. Leonard silently gazed at me for a long time, then he shook my hand as he looked into my eyes with a look that radiated total love and trust. He smiled as he softly said, "Thank you for telling me, my Brother."

The next day Leonard and a giant 300-pound full-blooded Lakota named Alan Iron Moccasin summoned me from my cell and took me to the law library which was deserted. They led me into a room where books were stored. Alan produced a length of rope while Leonard

placed a bandana blindfold over his own eyes. Leonard's hands were tied securely behind his back by Alan; then Alan left the room and the law library. We were completely alone.

Leonard told me to close the door and push a bookcase across it so that it would not open. When I turned back around he was laying on his back on the floor. He told me to reach behind the law books on the third shelf and I would find a rolled up newspaper and I should withdraw it. When I picked up the newspaper it was very heavy and I felt the hardness of something metal so I removed it from the paper and I was looking at a 15-inch, beautifully, home-made knife, obviously in a machine shop. It was razor sharp and had a point like a needle. It gleamed the reflection of light in my eyes and I became so dizzy I could hardly stand. The knife turned into a snake in my hand, and as I stared paralyzed it became the face of the blond, blue-eyed stranger who wanted Leonard dead. As I looked into the blue eyes I saw the face of the man who murdered my grandfathers and grandmothers. I was terrified, but when I looked at Leonard he was smiling and I could hear his smile and it sounded like a gentle waterfall. I could no longer see through my tears but I heard the waterfall say, "Do whatever it is you have to do, my brother." And I fell to the floor and cut his bonds and removed his blindfold and he had tears in his eyes that looked like a rainbow. I discovered I was weeping for the first time since I was nine years old and my brother died. It was then I knew I was coming home to my People.

From that day forward I knew that I would never do anything to harm Leonard in any way. The days I spent with him were the most important days of my life. He re-centered my life. He put me in touch with my roots and started me on the road to recovering the humanity that had been buried all of my life under the conditioning of wasichu Greed.

By this time I knew for sure that the stranger had been for real and so far as the united states was concerned the conspiracy to assassinate Peltier had been set in motion. The Marion records control supervisor had been notified by Oklahoma that seven life sentence detainees (including the shooting and near killing of a police officer) had been removed and I would no longer be returned to Oklahoma for trial. Leonard decided I should pretend to cooperate with them so that I wouldn't be replaced by another assassin whose identity he wouldn't even know. I joined the Indian "Culture Club" that Leonard had formed and I was soon chairman and spokesman for the group.

When Leonard first came to Marion in 1977, there was no such thing as Indian religion allowed by the authorities, so he sought permission to have a Sacred Pipe brought in. The warden told him he would have to talk to the white preacher about it and try to get his approval. So one day eight Indian prisoners led by Leonard went to this man, who began questioning Leonard about his beliefs in a very condescending manner. Leonard explained our religion in eloquent terms, but the preacher always returned to the question: "But do you believe in God?" And Leonard would explain some more. Finally, this guardian of white souls declared that Indian beliefs

were pagan and mere animism, therefore Indians did not have a religion because they did not believe in God. The request to practice our religion was denied. Leonard's response to this man's ignorance was recorded by my Uncle Chuck who was standing at Leonard's side. Leonard said:

My existence, my religion and the natural world are incapable of being separated by your rules because they are all one thing. The entire universe is sacred and our religious ceremonies are a celebration of that fact. How ironic it seems for a representative of a race of people so alienated from the earth that gives them life to tell an Indian he has no religion. Well, my friend, we do have a religion and before long me and my brothers will be praying with the Sacred Pipe here in Marion.

From that time on Leonard waged a continuous struggle against the ignorance that was keeping our religion out of Marion.

In February of 1978, the American Indian Religious Freedom Act had been signed into law by President Carter, but the warden continued to resist our efforts to practice our religion.

On September 28, 1978, we demanded, through an administrative remedy request, that our medicine man be allowed to come in the prison and present us with the Pipe he had made and blessed especially for the brothers in Marion prison. We also requested the right to meet in the prison chapel and have the same rights as other religions.

The administration responded by saying we could meet in the chapel, but they said that the issue of the Pipe and medicine man could not "at this time be answered without additional specifics as to need, necessity and reasons." We were instructed to present the necessary documentation to the group coordinator, and he would rule on it. We could not even deal with one of the chaplains who is presumably knowledgeable in religious matters, but rather we were still being treated as if we did not actually have a religion. Whatever it was we had was so nebulous and vague that our white educators could not seem to understand at all.

In our appeal to the Regional Director, we said that we were not required by law to educate educators as to the sacred practices of our people when that information is revealed in anthropological and historical writings available in any adequate library. We listed two books that would explain our religion as we intended to practice it. As to need, necessity and reasons, we said:

The need for religious practices in Indians is governed by the same intrinsic feelings that Christians experience; the necessity is to contribute to the mental health and psychological well-being of the individual feeling that need; and the reasons are the same reasons all humankind have sought comfort in religious experience; namely the spiritual cravings of the soul."

To our great joy, we won our appeal. The Regional Director capitulated on all points. We had made an historic breakthrough at Marion. The practice of American Indian traditional religion was to be allowed inside for the first time ever. But before I could take part in receiving our medicine man and pipe, I received a second visit from the man who represented the government in their plan to assassinate Peltier. The news was not good.

The stranger met me in an empty classroom on November 9, 1978. He was mad. He wanted to know what I had done to keep my end of our agreement. I told him that I had been vigorously representing Peltier and the other Indians in winning religious freedom in Marion; that I was sure Leonard trusted me; that I had been preaching escape as the patriotic duty of a Prisoner of War. I told him Leonard was not interested in any zip guns. I said when the winter fog comes in, escape would be more feasible, and finally, that these things take time and he, himself, had said I shouldn't rush things.

He replied that they were just about out of time, and so was I. He told me that they had come to a decision that Marion has so much security, that planning a successful escape was just about impossible, therefore, unless I had firm plans to neutralize Peltier they intended to move both of us to a less secure prison in California where an escape attempt would be hard to resist. He said I would be going to USP Leavenworth in December. Leonard would go to USP Lompoc about 60 days after I got to Leavenworth. I would not go to Lompoc until they had another Indian situated in Lompoc who would help me and also be sure I did what they hired me to do. I agreed to go along with him once again.

On December 21, 1978, I was shipped from Marion to the maximum security federal prison at Leavenworth, Kansas. The trip agitated my back and I was placed in a locked room in the prison hospital. The day after I arrived a Lakota brother brought me some cedar and my spirits soared. That same afternoon a guard brought my aspirin and spied the cedar that I had left on the bedside table. He immediately scooped it up and began sniffing it and poking it with his finger while demanding to know what kind of drug it was and where I got it. I told him it was cedar that I burn when I pray. He was very sure it was all part of a no-good plot that only a bunch of lazy blanket asses could have dreamed up. I told him that he best calm down and not be disrespecting a power that could hurt him very seriously. He stormed out, taking my cedar with him, and that evening I was brought a disciplinary write-up that accused me of threatening the guard's life. I was unable to attend the disciplinary hearing, so it was held without me. I was found guilty of the second most serious charge in their rule book, and sentenced to be returned to the Marion Control Unit.

As I waited in my locked room I wondered if the Leavenworth prisonrats were aware of who I was and the government conspiracy I was involved in to kill Peltier. My question was soon answered when Associate Warden Ray Lippman personally came to my room and told me that the Chief Correctional Supervisor at Marion had called and suggested that I be given the job as clerk to the Chief

Correctional Supervisor at Leavenworth. I told him I would take the job, but I wanted to be housed in a single cell near my old bank robbing partner Steve Berry. My wish was his command, and a few days later I was given an air-conditioned office with an IBM selectric typewriter, and stereo. My single cell was just 4 cells away from my partner. So, I had the run of the prison, and for the first time since I had been doing time the guards treated me as if I was one of their rats. I worried what they might do to me when they found out I had no intentions of killing Leonard Peltier. It was obvious that somebody somewhere was confused because my personal property and canteen money from Marion was sent to the U.S. penitentiary at Lompoc, California.

On February 23, 1979, Peltier passed through Leavenworth on his way to Lompoc, but they would not let me visit him even though he was held in solitary for about six weeks. On April 10, Leonard arrived at Lompoc, and just two days later the Oklahoma City prosecutors made a formal motion to dismiss all charges against me, including shooting the policeman.

On May 11, an Oglala Lakota from Pine Ridge named Chuck Richards came through Leavenworth on transfer to another federal prison. He told me he was on his way to USP Lewisburg, but in my capacity as CCR clerk, I pulled his papers and learned that his destination was USP Lompoc.

Charles Richards was married to Dick Wilson's daughter, Saunie. Dick Wilson was the tribal chairman who was responsible for so much violence against传统als and AIM supporters on the Pine Ridge rez. He maintained an army of goons, and Chuck Richards was a well-known goon from one of the most brutal goon clans on the rez. He had been one of the gang responsible for the death of Byron DeSersa, but because of his marriage to Dick Wilson's daughter he had not been prosecuted in the DeSersa murder. He was the enemy of AIM, and hated everything Peltier and the traditionalists stood for. I was certain that Richards was the other Indian the stranger had told me about, and I was equally certain he was on his way to Lompoc to kill Peltier. I immediately sent word to Leonard of my suspicions.

Richards got to Lompoc on May 24, 1979. He got there ahead of my warning and called himself "Richardson" because his name was so notorious on the Pine Ridge. Since Peltier had never seen him he was able to befriend him. They ate together several times and played basketball on the yard.

When Leonard got my warning, he had no more to do with Richards. Leonard had already told the medicine man, Archie Fire Lame Deer, that he knew the police were trying to set him up to be killed. Peltier was traveling with two bodyguards everywhere he went. Leonard knew that the government was going to kill him unless he somehow got himself out of their grasp.

On July 20, 1979, Leonard, Bobby Garcia and Dallas ThunderShield went over the fences of Lompoc in a hail of gunfire. Leonard got away. Bobby Garcia surrendered outside the fences.

Dallas Thundershield, who looked exactly like Leonard in the dark - same build and hair style - was "released to death," according to the coroner's report, because of "exsanguination [due to] perforation of superior vena cava [as a consequence of] gunshot wound to posterior chest." He was shot by William Guild, a custodian from the power plant who never carried a gun, but who on that night just happened to be there with a .38 revolver. Bobby Garcia said Dallas was murdered in cold blood after surrendering with his hands in the air.

In other words, Dallas Thundershield, age 20, lay dead - shot in the back - because he was mistaken for Leonard Peltier.

Also on the day Peltier escaped--in spite of the fact that I was in Leavenworth, Kansas half a nation away--I was fired from my job and thrown in the hole. The week before, I had received an excellent work report and a raise in pay. No reason was given for my firing and severe demotion in status, but both me and the United States knew we had used each other. They had never intended to send me to Lompoc because they must have realized I would never do their bidding. They only let me keep the cushy job in order to keep my mouth shut while they worked on another plan to set Peltier up at Lompoc. The pressure they put him under caused him to nearly fall into their trap. I'm convinced that they knew about the escape in advance and when they shot Dallas in the dark they thought they were shooting Peltier. On July 27, 1979, Dallas was returned to Mother Earth.

Peltier was captured five days later in Santa Barbara County about fifteen miles from Lompoc. His escape trial was a farce. Once again he was prevented from offering a defense. Nixon appointee, Judge Lawrence Lydick, did not allow any of the twelve witnesses to testify about the assassination plot. Fortunately, we were able to get government documents on the record in an "offer of proof." These documents validate everything I would have testified to except for the actual conversations with the stranger and Captain Carey at Marion.

To my memory, the only good thing that came out of that trial was a sacred pipe ceremony we had with a strong circle of brothers including Leonard, Dennis Banks and Crow Dog. The ceremony was held in the mad jangle of concrete and steel bars behind the locked doors of the Los Angeles County Jail. I will never forget the spiritual strength that overwhelmed me during that ceremony. It showed me that all things are possible.

On February 4, 1980, Leonard Peltier, acquitted of conspiracy and assault, was sentenced to five years for escape plus two years for possession of a weapon by a felon; the seven years were added to his two consecutive life terms. Bobby Gene Garcia, who had given himself up, received five years. Both Leonard and Bobby received the maximum sentences allowed by law.

Roque Duenas was accused of being the outside man who shot in the general direction of the gun towers while the escape was in progress. He was acquitted on charges of assault and of smuggling

arms into the prison. A jury deadlock on the charge of aiding and abetting in the escape ended in a mistrial, and the government, rather than try him again, accepted a plea bargain: Duenas pleaded guilty to aiding and abetting, with the understanding that he would receive a two year sentence. Duenas had already spent eight months in jail, and at the sentencing Judge Robert Takasugi released him immediately on probation. By this time I was at the federal penitentiary in Terre Haute, Indiana where attorney Lew Gurwitz called me on the phone minutes after the sentencing. Lew told me that Judge Takasugi had expressed very deep concern about possible misconduct by the government in the Peltier case. Takasugi asked questions about my affidavits and wanted to know if the seven charges in Oklahoma had actually been dismissed (they had). He asked if it was unusual for a maximum security prisoner to have been transferred to Leavenworth and given a job as the clerk to the Chief Correctional Supervisor and my choice of cells (it was). He asked if I had actually been fired on the day of Leonard's escape (I had). Judge Takasugi had other questions about the assassination plot, all of which are in the minutes of the sentencing.

I rejoiced with Roque on the phone that day and we prayed together. It was to be the first and only time I would ever talk to Roque Duenas. A few months later he disappeared in rough weather off Narrows Point in Puget Sound.

With the death of Roque Duenas, two of the four men who were involved in the Lompoc escape were dead, either directly at the hands of the government, or under mysterious circumstances. The third to die was to be Bobby Gene Garcia.

On March 12, 1980, Bobby Garcia and me became cell partners in the United States Penitentiary at Terre Haute, Indiana. We demanded our religion, and organized the brothers there into a strong Indian club. When we got to Terre Haute there was nothing for traditional Indians, but in a few weeks we had a meeting place and had even convinced the administration to let us erect a sweat lodge. In April, they took Bobby back to Marion, but on May 29, he came back and was housed in another part of the prison where we could not be together to plan strategy. They wouldn't let us even live in the same cell block, much less the same cell.

On December 1, 1980, Bobby was removed from the general prison population. I couldn't find out why he had been locked up, so I tried calling everybody I could think of. I couldn't locate Archie Fire Lame Deer, so I attempted to call Dennis Banks and Russell Means. Then I tried attorneys Bruce Ellison, Lewis Gurwitz and James B. Roberts. I finally reached Jim Roberts and told him to call warden Ray J. Lippman and find out if they had decided to kill Bobby.

On December 13, Bobby was found dead in his cell on the N-2 isolation wing. The guard station was just across the corridor from his cell, and yet they had not heard his death throes when he allegedly hung himself with a twisted sheet. Never mind the fact that there were no sheets on N-2, plus an hourly count with

twenty-four hour TV scanning.

When the news was out that Bobby had been murdered by the police, we decided to wear black armbands until he was returned to Mother Earth. The next morning at breakfast there were many people wearing black armbands. By the evening meal there were men of all races honoring Bobby. The police insisted in saying he committed suicide, but for those of us who knew him that was absurd.

The next day I was interviewed by two FBI agents. I would not have talked to them but they told me they were "investigating the possible murder of Bobby Gene Garcia." I told them about the threat Warden Lippman had made on Bobby's life in November, and also that Lippman was aware of the government conspiracy to murder Leonard Peltier. Agent Martin K. Rigen said, "There is absolutely no connection between this suicide and the Peltier case. What you need is a good old-fashioned lobotomy."

That night we had a drum and prayer ceremony for Bobby's spirit. The drum could be heard over much of the prison. The next morning, December 16, 1980, I was chained up like a suitcase and whisked off to the Medical Center for federal prisoners at Springfield, Missouri. All of the prisoners who had been on N-2 with Bobby vanished. Michael McGrath, the only white man who was on N-2, was transferred to Marion while the other twelve prisoners were never located. Bobby was dead and it was as if he had never existed. I know Bobby was murdered and I know why. Bobby was killed because he was the witness who saw William Guild shoot Dallas Thundershield in the back while Dallas had his hands raised in surrender. Guild thought Thundershield was Peltier.

Ray Lippman, the warden of Terre Haute, lied about the reason Bobby was locked up on December 1, 1980. He lied about why Bobby was transferred to N-2 on December 12. He lied about the reasons the 13 prisoners on N-2 were on N-2. He lied about why the 13 prisoners were transferred following Bobby's murder. He lied about why I was kidnapped and brought to Springfield on December 16. In addition to all this, Ray Lippman was the associate warden in charge of custody at Leavenworth in January of 1979, and I personally know that he had knowledge of the government conspiracy to assassinate Leonard Peltier.

When I was taken from Terre Haute, we were waiting for a medicine man who was coming inside to help us put up our sweat lodge. Bobby had a lot to do with the struggle for our religion and he is sorely missed by those of us who knew and loved him.

On December 18, 1980, Bobby Gene Garcia was returned to Mother Earth in Colorado, in traditional ceremonies conducted by a traditional medicine man.

When I got to Springfield, they gave me a pretty hard time. I was put on deadlock solitary confinement, and my cell door couldn't be opened unless I was chained and four guards were present. I was not permitted to have visits or see or talk to any other prisoner. The official paperwork said I was brought there to

treat my bad back. When I told the psychologist that my back had never been better he admitted that I was sent to Springfield simply to get me out of Terre Haute following Bobby's death. I never received any treatment of any kind; just a lot of dark cell time. I made up my mind that I would return to Marion where a fierce struggle was going on to get humane treatment for everybody. When I told my case worker I wanted to go to Marion, he informed me that I could not go there because orders from on high said Leonard and me could never again be in the same prison. That made me want to get back there all the more.

They sent me to USP Lewisburg where Art Woolsey, from Harrisburg, was working hard to help the brothers get our religion into the Burg. Like most prisons in 1981, our religion was all but forbidden at Lewisburg.

In November 1981, I finally won my transfer back to Marion. We were able to meet in the chapel and pray with the Sacred Pipe. We had our own pipe carrier, and our medicine man was allowed to come in. There was no sweat lodge, but we were working on it. Best of all, I was once again with my beloved brother Leonard Peltier.

On October 22, 1983, two guards were killed in the Marion Control Unit in two separate incidents. We only knew it happened because we heard it reported on the radio. Life in Marion became no life at all as the warden began taking his revenge out on all the prisoners. Sixty-one guards were brought in from all over the country and the indiscriminate beatings started. Prisoners were arbitrarily pulled out of their cells and brutally beaten for little reason or no reason at all. I was beaten on October 31, November 1 and November 6, 1983. My crime was that I was unable to bend from the waist when the guards wanted to bend me over and look at my cheeks. There were notes in my prison medical file signed by the Chief Medical Officer attesting to my inability to bend from the waist, but the sadistic guards did not care. I saw a man beaten nearly to death because he screamed out in rage when they shook his cell down and threw his only photo of his recently deceased mother in the toilet. I saw a man dragged from his cell and beaten because he was not able to return the tiny individual salt and pepper containers on his food tray because they didn't put any on it.

We had nothing but a bed and toilet in our cage. No chair or table. No shelves or clothes hooks. All our personal property was confiscated except for 10 letters and a dozen photos. We ate all our meals in the same cage where we must also urinate and defecate.

All these things I could probably have learned to live with because I realized that Marion was America's #1 gulag for political prisoners and prisoners of war. I know that my brothers, friends and comrades were suffering the same indignities. But there was one outrage that I could no longer tolerate. I decided I would no longer allow the United States to continue to deny me the right to practice my religion.

On April 10, 1984, Leonard, Albert Garza and me began a religious fast, because fasting was the only aspect of our religion that we could still practice. This was when I wrote the public letter that appears in the previous chapter ("Glimpses of the Prison Struggle"), which was published in the U.S., Canada and Europe. Our lawyers obtained a federal court order that restrained the Bureau of Prisons from force-feeding us or interfering with our religious practice in any way. We fasted for 42 days before the government was finally able to overcome the restraining order on the grounds that death was imminent. We had each lost more than 40 pounds, and they intended to stick tubes down our noses and force-feed us. Rather than risk the danger of force-feeding, Leonard and me began voluntarily eating.

The fast drew worldwide attention to Leonard's case as well as the political prison in Marion. Five Nobel laureates from the Soviet Union petitioned Reagan not to allow his countrymen to starve to death when all he had to do was allow them to practice their religion. The Soviet scientists reminded Reagan that he was one of the foremost advocates of religion in the West. The Secretary General of France intervened on our behalf, and before we knew it our case was being handled by the State Department rather than the Bureau of Prisons.

In the final analysis the fast was a complete success in that it gave us a way to practice our religion even though our religion had been banned by the United States; it educated many, many people to the evils of Marion who otherwise would never have heard of America's Gulag; it exposed the political nature of Marion prison and showed that the Bureau of Prisons' claims that we were too dangerous to be in an open population prison ever again was a lie based on the perception that we were politically dangerous rather than physically dangerous.

After the fast, we all three spent 15 months deadlocked in the hole of the "medical prison" torture chamber at Springfield, Missouri. Our cells were bare except for a bed and toilet, and we were never let out of our cells unless there were four guards to handcuff our hands behind our backs and chain us up.

Finally, on June 19, 1985, Leonard went to open population at the federal prison in Leavenworth, Kansas; Albert Garza was transferred to Lewisburg, Pennsylvania on the same day. On July 24, I was flown to Lompoc, California and placed in the open population of the maximum-security federal penitentiary there.

After the fetid air of the living tomb called Marion, and the misery of the political prisoner section of Springfield, I was basking in the joy of feeling sunshine on my skin and breathing fresh air for the first time in many months.

On September 23, 1985, I had been in Lompoc almost two months to the day when the warden instituted a new policy with regard to the mess hall. Prisoners could not enter the dining hall wearing headbands. I talked to the warden and explained that to many American Indians our headbands are religious headgear and worn

throughout the day, and especially at mealtimes. I pointed out to him that his men were turning some Indians away because they could not feel right about removing their religious headgear, and those brothers are not getting to eat. Warden Christensen said he didn't care if the Indians starved to death. Twenty-one of the eighty brothers were refused entrance to the mess hall, and in a week the administration at Lompoc was under fire from the press, as well as the attorney Margaret Gold who represented me. The American Civil Liberties Union in Los Angeles and Margaret filed for a temporary restraining order against the Bureau of Prisons, and the prison started taking blood tests from a number of us to monitor our deteriorating physical condition.

Suddenly one day I was snatched off the yard and thrown in the hole. I was held in a dark cell for a few days and then taken with nothing but my shower slides and boxer shorts and flown to El Reno, Oklahoma where I was turned over to the Oklahoma state authorities. I didn't even have my federal time done. I was literally being kicked out of the federal prison system. I've been kicked out of a few places in my time, but never an entire prison system!

So, I was back in Oklahoma where I had started thirteen years earlier. I had made a round trip through the american criminal injustice underworld. During my circular hegira I had experienced the gamut of racist and cultural prejudices that cause prison administrators throughout america to trample on the religious needs of non-Christian prisoners. I already knew to what lengths these Oklahoma prisonrats would go to suppress Indian religion, and how these descendants of Anglo-European settlers--steeped in Bible Belt upbringing--not only show contempt, suspicion and a total lack of respect for our religion, but raise suppressing it to the station of a moral crusade. It was clear to me that my early release from the federal system was no gift. I knew--and the federal authorities knew--that these Oklahoma prison people were going to mistreat me.

CHAPTER EIGHT

"And Truth Can Never Die"

by

Standing Deer Wilson
with a contribution from
Moses Headman

I didn't have to wait long. Thirty minutes after my arrival at the Lexington Assessment and Reception Center, I was knocked down, chained up and my head was forcibly shaved.

After my head was shaved I was given institutional charges for the ten year old escape. I was sentenced to 180 days in the hole at McAlester Prison (OSP). I refused to take any of their intelligence tests, psychological profiles, medical exams or anything else they had to offer. There was nothing else they could do to me. The hole at McAlester is as bad as it gets. There are fifteen prisons in Oklahoma, and McAlester is the very worst super-max they have. They had beaten me up and stolen my hair so I saw no reason to cooperate with their efforts to "assess" me.

The warden told me I would never leave Lexington unless I took every last one of their tests. He said no one ever left without taking them and I wouldn't be the first. I told him that would be fine and they could just weld my door shut and let me die of old age. I was so angry and upset over my hair I could hardly think.

To make matters worse, on December 17, 1985, there was a riot at McAlester Prison where I was destined to go. The Department of Corrections was outraged about it. Seven guards had been taken hostage and held for seventeen hours before being released unharmed. Two guards were stabbed and a third was hospitalized. Damage to the two cellblocks taken over by prisoners was said to be \$375,000. I knew I would be going into another revenge situation just like Marion after the guards were killed. I thought I was in for a rough time, as usual.

On January 11, 1986--about three weeks after the insurrection--I was taken to McAlester Prison where the conditions were even worse than I had imagined. Guards were running around carrying clubs, and there were even guards with shotguns--a sight I had never before seen inside a prison, and certainly a security breach of which no "corrections expert" in the world would approve. Everything was in chaos. Even though the 700 or so prisoners were locked securely in their cages the guards were terrified and had no intentions of giving the prisoners showers or yard. I was taken through this mess and put on deadlock in the hole.

I guess what I miss more than anything in solitary confinement is human voices and human companionship. I stay strong, but

sometimes it requires great effort. The McAlester hole has soundproof cages like the Springfield hole where Peltier, Garza and I had spent fifteen months during and following our fast. I prepared myself for another long stretch of time with only the hateful stares and bitter commands of the guards to break the monotony and silence. Solitary confinement is the greatest drawback to struggling for your religion in prison.

The second greatest drawback is the punishment the federal prison system jokingly refers to as "Bus Therapy." Bus therapy is the practice of arbitrarily transferring a prisoner from one prison to another in order to tear him away from a prison where the struggle rages, and from the brothers he has grown so close to in the midst of that struggle. "Bus Therapy" also limits our ability to make and keep outside contacts with medicine men, spiritual advisors, attorneys, groups and organizations that are willing to come inside or otherwise assist us in practicing our religion. The ultimate "Bus Therapy" had been to move me to the most backward, racist and "anti-Indian religion" section of the country where I had not been for ten years, and where I knew almost no one.

So it was with great jubilation that I welcomed a long-haired, 25-year-old Choctaw brother named Benny Carnes into my life. Tunkasila, in His wisdom, had put Ben in the position of law library clerk which meant that he was the only prisoner who could visit me in the hole. His smiling face, keen intelligence and energetic optimism raised my spirits from the first time I met him. I felt as though I had known him all my life. Ben knew all about our struggle: AIM, Peltier, Fishing Rights, Treaty Rights, Big Mountain. You name it, Ben knew about it. Not only all that but Ben also knew the law. Things were beginning to look up.

Ben and I could only meet through a 6" x 12" hole in the door called a "beanhole." It was unlocked only to put food trays through or to allow the law clerk to discuss and assist a prisoner with legal matters. We decided at our first meeting that we would fight our way out of the dreadful oppression that was overtaking McAlester Prison. We both believe that resistance to oppression is the key to freedom.

There were rumors flying that all prisoners were going to be required to cut their hair short or be beaten and have it forcibly cut. McAlester had never had restrictions on hair length since 1977 when Alan James Little Raven--with the assistance of the Native American Rights Fund (NARF)--had filed a lawsuit against the warden of McAlester Prison claiming that Native prisoners were being denied the right to practice their religion.

In order to obtain a consent decree in Little Raven the Oklahoma Department of Corrections revised their policy on "Practice of Religion" to include american Indian prisoners:

F. Inmates desiring to meet on a group basis for native religious, cultural or spiritual purposes and activities will be permitted to do so on a regular basis....

(1) Inmates will be permitted reasonable access to Native American medicine men or spiritual leaders on a group or individual basis, for religious purposes. Native American medicine men or spiritual leaders will have access to inmates on the same basis as other outside chaplains.

(2) Inmates shall be permitted to receive and possess items incident to the practice of Native American religion for their religious worship. Such items shall include feathers, fans, beads, gourds, drums, literature and all other Indian religious items that are required.

The suit was dismissed upon the stipulation or agreement, by both parties, that the above policy would be adopted as one of the numerous federal court orders in the massive overall conditions lawsuit--also filed by a prisoner--issued September 11, 1978 (*Battle v. Anderson*, 457 F. Supp. at page 740), where after the court ordered to bring McAlester prison conditions into compliance with the U.S. Constitution the judge quoted a biblical scripture:

For I was hungered, and ye gave me meat; I was thirsty, and ye gave me drink: I was a stranger and ye took me in: naked, and ye clothed me: I was sick, and ye visited me: I was in prison, and ye came unto me. St. Matthew 25:35-36.

The words from the judge's Holy Bible sounded good indeed, but when Benny Carnes tried to form a Native American religious group in 1983, the warden of McAlester refused to allow it. Ben appealed to the Director of the Department of Corrections, and also wrote a letter to the attorney who was supposed to be monitoring the behavior of the D.O.C. to be sure they were obeying the orders of the federal court. The attorney, John Albach, received the following letter from Director Larry Meachum dated January 19, 1983:

The Warden of Oklahoma State Penitentiary has been requested by inmate Benny L. Carnes, #97891 to allow the formation of a Native American culture group. The warden has also been asked by other inmates for permission to form a Ku-Klux-Klan group and an Arian Brotherhood (sic) group. The warden has chosen not to allow these groups to form and meet because they do not fall under the category of religious activities.

The warden had been clearly aware that Ben was representing a group of traditional Indians who wanted to practice their religion. Our religion was being compared to the KKK.

So now in January of 1985, just two years later, even we--budding cynics that we were--were flabbergasted when the state legislature met to hold hearings on the causes of the uprising. We expected them to talk about the miseries the prisoners had endured for years, i.e., how many times the food was served uncooked, spoiled or delivered in insufficient quantities, or the

non-existent health care services, the overcrowding, inadequate clothing and idleness due to lack of jobs to name but a few legitimate gripes that made OSP a hell on earth.

The smokescreen they developed, however, was to hold up pictures of several prisoners who had been hostage negotiators (and who appeared on national T.V.). Each of them (all non-Indians, incidentally) wore long hair and headbands. Representative Gary Stottlemyre, D-Tulsa, held up a news photo of one long-haired prisoner. A note under the photo asked why prisoners were allowed "to look like this."

"I'd like to know why we let them run around like that to begin with," said Stottlemyre, who said the prisoners should appear "clean-cut."

Representative Frank Harbin, D-McAlester, also objected to long hair worn by the prisoners in the photos. Harbin argued that OSP prisoners should "march in lock step" and "ought to look like what maximum security prisoners ought to look like."

Another senator, seeing the game plan, chimed in with his observation that OSP prisoners had pay T.V. (which we had paid for out of our own money) which undoubtedly caused us to be violent.

So, it was decided after much debate that the riot was caused by long hair, headbands and pay T.V. The salons vowed to stamp out all three!

The warden hung his head in shame agreeing that the politicians who paid him were dead right, and promised he would shear the heads of all his prisoners and steal every headband he could find. So that is how the forced haircutting began at McAlester Prison.

The warden held a press conference during which he said, "Long hair has been related to rebellion. Inmates who wear long hair and headbands are the very ones who have been causing all the problems. They will either cut their hair voluntarily or we will cut it by force. A neat, clean-cut appearance makes people respect themselves."

Benny filed a request for administrative remedy telling the warden why Indians who wore their hair long for religious reasons should be exempted from the forced haircutting. Instead of responding sensibly to Ben's grievance, the warden stated, "currently departmental policy allows inmates to grow their hair to any length, as long as it is well groomed and maintained. No decision has been made at this time to restrict hair length."

Of course this was a lie. A confidential informant high in the administration informed us that even as the warden was lying in his non-responsive response the Attorney General for the State of Oklahoma was writing a forced haircutting policy that he believed would withstand constitutional muster.

On February 28, 1986, Benny learned that a motion he had filed

for a temporary restraining order against cutting his hair had been set for a March 5 hearing.

Meanwhile, I had contacted Margaret G. Gold, an attorney in New York who was an old and dear friend. Margaret had represented me during the fast in Marion. She also filed a million dollar lawsuit against the Medical Center for Federal Prisoners at Springfield, Missouri for general mistreatment. Margaret ultimately won transfers for Peltier, Garza and me after 15 months of deadlock in 1985. After I was transferred to Lompoc, California, Margaret had come there to represent me in the headband lawsuit. She kept me alive after I exposed the government conspiracy to assassinate Peltier. I couldn't have made it without her.

After I explained to her that they intended to forcibly cut the hair of Indians, she immediately came to McAlester and talked to the judge in charge of the case and got a postponement because she had to be with the elders at Big Mountain, and her schedule was such that it would be a while before she could do a trial in Oklahoma. Margaret went to see Mary Lee Barksdale, a civil rights lawyer from Tahlequah, Oklahoma, and when Mary Lee learned what the prison people were planning to do to the Indians at McAlester she agreed to represent us at trial as well as the hearing for class action certification which was eventually set for September 3, 1986.

Next, I called David Hilligoss, a professor at Sangamon State University in Springfield, Illinois. I first met Dr. Hilligoss in 1984 during the life fast at Marion. He coordinated news releases during the 42-day fast, and in general dealt with the press and our supporters all over the world. His phone bill looked like the national debt. What he was doing was a full-time undertaking, but he did much more than that. David kept my spirit strong when everything seemed to be as bad as it could get. His unquenchable dedication to helping Indian people made me come to trust him and love him as my own brother.

I asked David if he would be an expert witness at the trial. He immediately agreed.

I wrote to my medicine man, Archie Fire Lame Deer, who was in Europe, and asked him if he would come to Oklahoma to testify at our trial. Archie said yes.

I had been fasting and praying since the day the Baptist preacher told me my headband, eagle feathers, sage, cedar and sweetgrass were all contraband and would have to be destroyed. I filed a grievance and still had my headband pending the outcome of the grievance. The preacher/guard referred to my religious articles as "that stuff." I said in my grievance:

Today is a black day for religious freedom in america. The Oklahoma Department of Corrections has overruled the united states constitution and made a rule that American Indians at McAlester Prison will have their hair forcibly cut in violation of our religious beliefs. My sacred

eagle feathers and headband are to be destroyed. The prison chaplain refers to my religious sacraments as "that stuff" and states that sage, cedar and sweetgrass are against the rules. I am allowed to wear my sacred headband only while eating my meals in my cage. I have been ordered to remove it while sitting peacefully in my cage praying.

I am not allowed to purify at the Inipi or Sweat Lodge and I am forbidden to pray with my Sacred Pipe. When an Indian of my beliefs is forbidden to practice his religion, he is obligated to undertake a sacred life fast. This is to notify the warden that I am undertaking a religious fast which will continue until the warden removes the illegal and immoral ban he has placed on my religion. I request my headband, eagle feathers and sacraments (sage, cedar and sweetgrass) and that the ban against them be lifted for all Indians. I further request that upon receipt of this grievance that the guards not bring any more food trays as I will be utilizing the meal hour as a time for prayer and meditation.

On the thirty-seventh day of my fast my eagle feathers, sage, cedar and sweetgrass were given to me. The restrictions on my headband were also lifted. It was one of those little victories that really make you happy to be alive. When you live in a place where it sometimes seems there is nothing to celebrate, the power of my brother eagle entering my solitude made me whoop with unrestrained joy. I soared! That night my prayers were carried on the wings of my brother.

So we now had a hearing date set, an attorney to represent us and two expert witnesses; I needed to get out of the hole so I could help organize outside support. We were allowed to buy only ten stamps each week and I could use more than that in one day. I couldn't get extra stamps in the hole and my illegal 180-day sentence wouldn't be over until sometime in July. My hope to get released to general population was based on a grievance I had filed on February 18, 1986. I had already interviewed the warden and pointed out to him that the rules allowed only 30 days in the hole for each "Class A" disciplinary report. Since I had two "Class A" reports I should not have been sentenced to more than 60 days maximum. He told me that I had escaped in 1975, and the rules then allowed for unlimited hole time. He said we were going by the 1975 rules even though this was 1986. He said Warden Douglas at Lexington had sentenced me to 180 days and he was only carrying it out. I told him that if Warden Douglas had sent me to him to be executed for a "Class A" misconduct report he would hopefully decline the order to carry out the death sentence. Since he knew the 180-day sentence was against the law it was his responsibility to uphold Department of Corrections policy. I told him I was giving him the opportunity to avoid becoming a defendant in a lawsuit he was certain to lose. I told him I was also giving him a chance to smash cronyism in corrections by refusing to go along with his old pal Pete Douglas' illegal carryings on. He then slammed my beanhole shut barely missing my nose. I said in my

grievance:

In times gone by, OSP prisoners were thrown in the hole without a hearing of any kind and kept there until they were let out. Sometimes the prisoner was told why he was locked up and sometimes not. The rule limiting hole time to 30 days for any one "Class A" misconduct report evolved from *Battle v. Anderson* and is set forth as a Department of Corrections rule in both OP-060204 (revised), and OP-060401 (revised). The 30-day limit is now the rule and the law. It was necessary in order to correct and curtail lawless correctional practices of the past. To punish me today in 1986 by standards that were practiced eleven years ago in 1975, is in violation of two Department of Corrections operations memoranda as well as a federal court order.

Warden, as you know, in May of 1974, a prison gang composed of OSP correctional officers murdered political prisoner little Bobby Forsythe by spraying him with poison gas while he was locked securely in a cage on the 'Disciplinary Unit' known as 'The Rock.' Several years later, after OSP correctional officers murdered a second prisoner while punishing him for rattling the bars of his cage, the Department of Corrections was forced to promulgate standards for the use of force, hence OP-050201 (revised) came into being. Few D.O.C. officials would today openly suggest that corrections consumers be murdered in their cells with poison gas because to do so would be a violation of OP-050201 (revised) and could hamper their careers. Rules such as the above evolve through the necessity to limit the potential misuse of authority by correctional officials whose power to inflict gross and inhuman punishments on their helpless charges is virtually unlimited. A sentence of 180 days in solitary confinement--with the attendant psychological rape and physical debilitation always suffered in long term solitary confinement--is just as illegal as murdering a prisoner with poison gas. It's just a matter of degree.

Just as you can no longer gas prisoners to death because it is in violation of OP-050201 (revised), you can no longer sentence prisoners to 180 days in the hole for two 'Class A' misconduct reports. You may not like it but until you can change the rules you really should obey them. One can scarcely doubt that all right-thinking correctional officials will have little trouble obeying the rule that orders them not to murder prisoners as a means of punishment; so too then should they grit their teeth and obey the dictates of OP-060204 (revised), and OP-060401 (revised), and the judicial edict in *Battle v. Anderson*, irrespective of how distasteful it may be. After all, it is the law, and it is to them I must look for examples as to how I should conduct myself in my everyday life. If my very role models are outlaws what am I to think? To whom can I turn for guidance if not the

warden and his henchmen?

For all of the above reasons, I hereby request that I be released from the Disciplinary Unit at once and placed in the general population. In the alternative, I request that I be paid \$1,000.00 per day for each day I am held illegally in the OSP Disciplinary Unit in which case I may be kept here just as long as the State of Oklahoma and the OSP warden feel they can afford it. In the event the latter solution is chosen please make checks payable to the International Office of the Leonard Peltier Defense Committee.

On March 11, 1986, I was released from the hole to the so-called "General Population." It was the sixtieth day. Small victory number 2.

General population, when compared with the hole, was like the difference between being strangled and drowned. In one sense the hole was better since you had a single cell all to yourself. In general population you shared the same size cell with another man. The entire prison was locked down which meant you only left your cell for exercise and showers. Exercise was in a 50' x 100' fenced enclosure with a concrete floor. They called it a "yard." Yard time lasted one hour Monday through Friday. You would be strip searched coming and going. Showers were ten minutes, three times a week. The other 162 1/2 hours each week were spent in the cage where you ate, urinated, defecated and slept. Yard and showers were either given or not given at the whim of the guards. The lockdown continues the same at this writing some five years later.

But there were some good things too. A few days after I got out of the hole I met Harry Hall who is one strong Brother! Harry knows and is committed to the ways of our people, and he taught me more than any single Brother since Peltier; he helped me to hang on to my sanity through very troubled times. Harry, Benny and I became very close while struggling to practice the religion of our grandfathers.

There were more than sixty brothers in McAlester Prison, but because of the lockdown I was able to directly communicate with only eight of them. I was, however, able to send notes to the others through various underground channels. I was very upset to witness the arrogant and racist attitude of the guards who were constantly harassing and writing misconduct reports on the Indians who were refusing to cut their hair for religious reasons. The newspapers reported that thirty-nine prisoners were locked in the hole for refusing to cut their hair. The reports of beatings were on the rise.

On March 4, 1986, the court issued a Temporary Restraining Order forbidding the warden from taking any action contrary to the religious beliefs of Benny Carnes including the forcible cutting of his hair. Much to our dismay the order applied only to Ben.

So, on March 10, Ben filed an application that his request for

an injunction against forced haircuts be maintained as a class action protecting all Indians at McAlester whose religion forbade the cutting of their hair.

On March 14, the warden filed his first response admitting for the first time that a grooming code would be going into effect on April 1, 1986. The warden said that short hair was necessary for prison security because long hair made identity more difficult if there was an escape, contraband could more easily be hidden in long hair, exempting a few inmates made it more difficult to maintain discipline, and that if inmates were to be exempted they would be attacked and fought over by predatory homosexuals. The warden further stated that long hair contributes to unsanitary conditions (he did not say why long hair in women's prisons was not equally unsanitary), poses a danger to the inmate in certain working environments (he neglected to point out that McAlester Prison had no jobs for locked down prisoners and no future plans to have anything other than a locked down prison), and that inmate morale and self-esteem depends on a well-groomed appearance.

It did not take a genius to figure out that the security concerns given in the warden's response is a simple parroting of *Cole v. Flick*, 758 F. 2d 124 (3d Cir., 1985). The Third Circuit was one of the few circuits denying First Amendment protection to american Indians on the issue of hair. Of course, no mention was made of the highly publicized statements made by the warden following the riot where security concerns were not even mentioned. Neither was there anything about the equally high profile State House meeting where the salons instructed the warden that the causes of the riot were to be long hair, headbands and pay T.V. When we saw the response we could only shake our heads and pray that hypocrisy would not win out over truth.

Meanwhile, the judge had set a hearing date of September 3, 1986, to determine whether the lawsuit would be granted class action status. If the suit was granted class action status all Indians at OSP whose hair was sacred to their religious beliefs would be protected from the violence of having their heads shaved by force.

Our confidential informant high in the prison administration brought me some good news and some bad news. The good news was that the Attorney General would not contest the class action certification; the bad news was a memo he showed me from a high prison official instructing guards to cut all the Indian hair possible before the September 3 hearing. The harassment of long haired Indians by threats, intimidation, disciplinary reports and hole time intensified greatly from that time on.

On May 1, 1986, a brother named Joe came to OSP and was ordered to get a haircut. On May 8, the warden modified the grooming code and provided a religious exemption to the forced haircutting if the prisoner could show:

1. that his religion is a recognized religion;

2. that he is a sincere adherent of the religion and can establish membership as documented by a verified leader of the church; and
3. that the practice inhibited by the prison regulation is a fundamental tenet of the religion.

Joe was told by guards that if he did not get a letter from a verified leader of the Native American Church to document that he is sincere in his beliefs against having his hair cut, that his hair would be cut by force. Joe was unable to find a verified church leader to verify his beliefs.

On August 7, 1986, he filed a grievance with the warden stating that he was being denied his constitutional right to practice his religion.

On August 28, 1986, he was again ordered to cut his hair and when he refused on religious grounds this is what happened to him, in his own words:

August 28, 1986 in the detention unit of the Oklahoma State prison (OSP) for refusing to cut his hair a young Indian awaits his fate. Guards have just ordered him to cut his hair and told him what the consequences would be for refusing this time. He has explained his position of religious beliefs and protection from their grooming code under the recently filed Carnes v. Maynard hair case. It falls on deaf ears as it has since his arrival into OSP four months earlier, in which his reception into the maximum security was a barely missed confrontation with officials about his hair length. After hours of waiting in a condemned cellhouse with two other Indians it came within minutes of fighting the Tactical Squad for their religious beliefs. Instead, the Security Major issued misconduct reports with threats of later reprisals. Since then it has been a stress-filled, apprehensive four months. He has never experienced such prejudicial slurs, racial comments, contemptuous looks and withheld privileges from guards or anybody before. But then again he has only recently discovered his cultural heritage since entering prison 2 1/2 years ago. Now at twenty two years old, pacing alone in his detention unit cell awaiting guards to exert their prejudicial whims, he knows how his forefathers must have felt. A sense of impending loss, a despair, desperation against forces unprovoked and totally out of his control, circumstances not brought on by himself but those same circumstances catapulting him headlong surely into his preordained destiny. An inner-isolation that knows what must be done. Just as his forefathers knew their duty to their people, so does he. An obligation is vehemently acknowledged that their life is not their own to do with as they please. They were Indian, there was the cavalry. He is Indian, there are the guards. Nothing has changed! Not the government, not the struggle; only time has changed and now it is his

time.

Guards dressed in black military clothes with helmets, shields and sticks file into the unit. Even plainclothes people and a camera. All the young Indian wants to do is grow his hair to identify with his cultural religion.

For this he is charged, hit, thrown to the floor, limbs wrenched, handcuffed and shackled, carried out of his cell to the middle of the quad where his head is forcibly shaved while guards hold him and laugh and onlookers watch. His long hair falls to the floor and the humiliation and degradation that is inflicted will last a lifetime. He was the youngest and thought to be the weakest. He has met their attempts at forced assimilation and genocide that has plagued his people for five hundred years. He has met it, amidst mortification defied it...and still does.

Hair that means and represents so much to an Indian following his cultural heritage. Long hair that is a growing part of the body that caresses the inner soul and offers strength beyond mortal comparison. It is our belief and so it is in our hearts. It is a strength to us mentally, physically and spiritually. Long hair induces respect and self-esteem among Indians. It is a connection with the Creator whose powers are limitless. So it is with Indians' cultural religion and so it always has been. So it is with me and so it has been with me. I am that young Indian. I have seen and experienced much since being in prison. I know my direction in life, my place in the universe, despite constant deterrence from prison officials. My deeds are no match compared to our forefathers who have died in defense of their people. So let us today be the vanguard when attacking and the rear guard when retreating. Everytime. In any conflict. Prepare thyself!

Six days after the obscene, violent, racist, unnecessary attack and humiliation of this young man the court ordered *Carnes v. Maynard* to proceed as a class action:

...the class to consist of inmates at Oklahoma State Penitentiary, and inmates coming into said penitentiary during the pendency of this action who are Native Americans and are associated with the Native American religion or a religion with similar religious beliefs or practices.

Joe's hair would have been protected by the order and the prison officials were well aware that the order was coming out of that hearing, but they had fulfilled the instructions we had seen in the memo to cut all the Indian hair they could possibly cut. The cavalry had struck again.

We had the restraining order but we couldn't enforce it. Bill

Ahhaitty was the subject of a disciplinary report for refusal to cut his hair. The offense report was filed a day after the hearing that resulted in a restraining order that was supposed to protect all Indians at OSP from this very thing. Indians arriving at OSP who were supposed to be protected were having their hair forcibly cut. None of them were told that they didn't have to submit to these haircuts. Our cells were being ransacked on the pretense of searching for illegal headbands. When we would pray with burning cedar or sage, the guards would raid our cells pretending that they believed the cedar/sage smell was us smoking marijuana. Indians were being threatened by guards and told that they would be made to suffer if they did not cut their hair. Every day was a new crisis where some Brother was being intimidated by guards and did not know what to do. We prayed for a trial date.

At last, on October 23, 1986, a trial date of January 15, 1987 was set. Harry Hall, the Kiowa-Otoe brother of big spirit, wrote a powerful letter which we mailed out to Indian communities throughout the state. We asked the people to show their support by filling that courtroom on January 15. Unfortunately, the D.O.C. found out what we were doing and had the trial postponed to February 20, at the last possible second. Some of the people who showed up at the courthouse had traveled clear across the state and could ill afford the expense of the trip. Another successful coup from the Department of Corrections' bottomless bag of dirty tricks.

Early in the morning on February 20, 1987, Ben Carnes, Joe Gaines, Robert Klinich, Karl Tiger, Bill Ahhaitty and I were taken from our cells, encased in handcuffs and chains and transported to the Pittsburg County Courthouse in downtown McAlester. We were kept chained and under guard in a small room near the courtroom where we would testify. Harry Hall would have been with us but he had been released some weeks earlier. He was organizing support outside and just a week before the trial he had spoken at a press conference at the Native American Center in Oklahoma City which had received good coverage in the major Oklahoma newspapers.

The courtroom was not filled with supporters as we had expected, but Harry Hall was there along with Ben's mom. Anne Marshall was monitoring the trial for the Human Rights Commission. Donald Red Blanket and some others from out of state managed to show up. Professor Hilligoss had cameras set up in the courtroom with the court's permission, and, at last, we were ready for trial!

We had four attorneys representing us. Mary Lee Barksdale and Margaret Gold were our lead attorneys. They were assisted by Victor Hunt and Jerry Swanson.

The warden was also represented by four lawyers. Bob Nance, Linda Gray and Sue Wycoff who were all Assistant Attorneys General, and Don Pope, General Counsel for the D.O.C.

We had three expert witnesses qualified to testify about the significance and importance of long hair to American Indians as a religious practice and belief. Archie Fire Lame Deer testified as an expert on the Indian culture and religion and on rehabilitation

in a prison setting. Archie said that long hair was a part of the traditional Indian culture, that there is no distinction between Indian culture and Indian religion. He said hair length was a matter of pride, but also that "the spiritual connotation to long hair is that we have not abused the body. We have not cut the hair of our individual self. Spiritually atoning to the Creator...we are still connected and we allow our hair to grow and it's a matter of not only personal pride but a spiritual belief for us to keep this hair at its length...." Archie further testified that the wearing of long hair is a fundamental tenet of Native American religions.

Archie testified that he was a spiritual advisor and had worked with American Indians in numerous prisons around the country. He said that the wearing of long hair for Indian prisoners has a positive and rehabilitative effect. Quite a few Indian men discover traditional religion for the first time while they are in prison. Cutting the hair of a prisoner who adheres to traditional religion cuts away his pride, his rehabilitation, his spiritual understanding; "to cut the hair is cultural ethnocide...."

Archie said that from his experience working with prisoners in various prisons the wearing of long hair has not presented a security problem, and that there have not been problems with non-Indian prisoners. He said that at the Federal Maximum Security Prison in Marion, Illinois, Indians are allowed to keep their hair long and this had not caused any security problems.

Professor David Hilligoss testified as an expert on Indian culture and public administration as it relates to prisoners and the wearing of long hair. Doctor Hilligoss said that as a result of a cultural movement by Indians, full recognition of traditional Indian religion, including the wearing of long hair, is given by many federal and state prison systems. The wearing of long hair is very significant spiritually to American Indians, and from his experience working with Indian prisoners that the growing of long hair as part of participation in native religion is very rehabilitative and that a federal study stated a limitation of culture and expression of traditional Indian religion in the penal system increases violence and disruption.

Charles Allen Gourd was certified as an expert to testify on Indian culture. Dr. Gourd testified that long hair is significant to Indian cultural and religious practices. He said that the involuntary cutting of the hair of an adherent of traditional Indian religion was a violent act that would produce shame in the individual.

Dr. Gourd's testimony ended the first day of the trial, and as we were traveling back to our cages the mood was jubilant with what we Brothers and our attorneys considered a victorious day for our side. Even the notoriously negative reporting of the major newspapers was surprisingly accurate in their coverage, and therefore comparatively positive. We celebrated over the weekend as we reported the court testimony to our Brothers at O.S.P.

But on Monday, February 23, 1987, just three days after our

victorious day in court, all the happiness was crushed from my spirit when my medicine man informed me that Mary Lee Barksdale had crossed over to the Spirit World. She had been at home alone over the weekend (the trial had been on Friday) and when she didn't show up at her office on Monday, her friend and employee, Cynthia Gibson, went to her home and found her body.

The investigators would first say she had choked to death while eating chicken, but the medical examiner finally blamed her death on a stroke. I have seen so many of the people I love returned to Mother Earth prematurely and usually under violent and mysterious circumstances that I will never be satisfied with the medical examiner's opinion.

Mary seldom turned down a plea for help from a poor person. She used her education and skill to help bring justice a little closer to even the despised of society such as we. She was only thirty-four and appeared to be in perfect health. I couldn't believe she was gone. We had grown so close during the months before the trial. She was always full of energy, optimism and good cheer. Mary had become my leaning post, holding me upright and keeping me strong all through the hellish days when the prison administrators tried to break our spirits with their continuous harassment.

My medicine man brought the Sacred Pipe to the lawyers' visiting room and I wept as we smoked and prayed for Mary as she journeyed to the Spirit World. He told me a strange and wonderful story. He said there was this young woman who traveled to Big Mountain to help the Dineh fight against the u.s. government's forced relocation program. She was to stay for a week in a hogan with an old Navajo woman, and when she was first told that the old woman spoke not a word of English the young woman was uneasy. Sure enough, as it turned out, the young woman found it real hard to be quiet in the hogan and before long she actually became paranoid because the old woman seemed to know everything she was thinking and feeling. When she would be particularly nervous and uneasy, the Dineh woman brought her something to drink. When she drank the offering she woke up without her cold and the paranoia was gone. So on the second day she decided to go with the flow. She went out and cut wood and did chores and sat that evening with the old woman listening to the wind and the sounds of the sunset and twilight.

By the third day she knew that everything was all right and she was in tune with the woman. She no longer felt a need for words. That night a lot of Dineh people showed up at the hogan and they started ceremonies. The young woman helped with the food and other work, but then she started getting paranoid again because they laughed so much in their language she thought they were all laughing at her. Just when her paranoia was at its greatest, here came the woman, this time with a young woman who spoke both Navajo and English. Through the interpreter the old woman told her to walk outside to the foot of the mountain and breathe the air and talk to the wind in the trees. She told her to taste the Earth and make a prayer. The young woman did all that, and as she walked back in from the night she was overwhelmed because she could understand all the people in the hogan and she was no longer afraid. The old woman

came and told her that she was now a part of the Earth. She said you cannot be Dineh until you and the Earth are one. The young visitor was overjoyed and for the rest of the time she was there all the people accepted her and she felt like she was at home with her family. When it was time to go the old woman listened to her visitor tell her what an honor it was to have spent that time there with her and how sad she was to say good-bye. The old woman embraced her and said only one word. The young woman asked the interpreter what she said and the interpreter said, "She said, 'Hello'."

As my medicine man said the word "hello," he touched my forehead and I instantly felt the power of the Sacred Pipe surging through my being, wiping away my desolation and grief, restoring my strength and spirit. After the Pipe ceremony I felt as strong as a conquering lion, and I was ready for the struggle to continue. How could I ever explain the power of my religion and what it means to me to racist, uncaring prison officials?

But explain it I did when court resumed on March 16, 1987, with Tulsa attorneys Victor Hunt, Margaret Gold and Jerry Swanson representing us. Four prisoners testified that day and everybody thought we had a better day than the first day of the trial.

The trial concluded on March 20, with the testimony of Warden Gary Maynard. We thought Maynard's testimony was better for our side than his. The fact that prisoners could hide knives in long hair was cited as a reason for the short hair policy. Maynard gave a 1986 incident as an example. After questioning by Jerry Swanson, the judge refused to allow as evidence a report that indicated a knife had been found hidden in an Indian prisoner's long hair. Although the alleged incident occurred in February 1986, the report was not made until one year later on February 26, 1987. "What we have here is an incident report made a year after the incident. I assume it's made for this hearing," Judge Layden said. Swanson said that the only other case of a prisoner using long hair to conceal a knife was eleven years ago in 1976, and that was anecdotal and without documentation. Then Swanson asked Maynard if knives in long hair could be detected by a metal detector. "Yes," said Maynard. "How about a pat search?" asked Swanson. "Yes," said Maynard again. "About prisoners hiding knives in long hair, it's a bad problem, yes or no?" asked Swanson. "No," said Maynard. "Enough of a problem to take his hair off him?" "Probably not," Maynard said.

Another reason cited for the haircut policy is that prisoners with long hair could escape and change their appearance by cutting their hair. Under questioning, however, Maynard said that the Department of Corrections maintains two pictures of all long haired prisoners--one picture with short hair and another with long hair. There were no documented instances of escaping prisoners defeating capture by cutting their hair, and Maynard admitted it was only a minor problem at best.

The ludicrous theories that long haired prisoners would be more attractive to predatory homosexuals, and that long hair was

unsanitary and clogged drains were both shot down with the greatest of ease.

Finally Maynard said that short haired inmates have a better attitude about themselves and Swanson really tore him up. "If I'm an Indian who wears long hair which is sacred to my religion, and my hair is cut off my head by force and violence, I'm going to feel good about it?" Swanson asked. "I was thinking of inmates in general," Maynard replied. "What you're doing when you cut an Indian prisoners' long hair by force, aren't you making him more hostile?" Swanson asked "Could be....yes, I suppose....I don't know," Maynard asserted. Swanson asked Maynard if he believed that long hair is part of Indian traditional religion. "Yes, it's part of the culture and religion, too," Maynard replied. "Which is more compelling, the security problems as you have related them in your testimony, or an Indian who believes his long hair is sacred to his religion keeping it on his head?" Swanson asked. "Security is all inter-related," Maynard replied lamely.

So the trial came to an end and we thought we had won without question. Everybody thought we won, except the judge who handed down a seven-page order in which he quoted from *Bell v. Wolfish*, a U.S. Supreme Court case that says prison administrators must be given "wide-ranging deference in the adoption and execution of policies and practices that, in their judgment, are needed to preserve internal order and discipline, and to maintain institutional security."

The judge agreed with us that the short haircut rule is of very little significance in identification in the event of escape, and he thought that a cursory search would reveal contraband in long hair, but he said he would not substitute his opinions on questions of security for those of the warden.

He placed great emphasis on the fact that the warden had created an exemption for religious reasons. He said: "In this case, there is no doubt in my mind that long hair is an important part, is a tenet, of the Native American Indians' traditional, and perhaps personal religion." He went on to discuss how important the exemption process was so that the constitutional rights of Indians would be protected. He then approved the Grooming Code with the exemptions for religious beliefs that forbid the cutting of the hair. The injunctive and other relief we had sought was denied. He went on to say, "Now I recognize that this is a grave constitutional question and probably is too weighty to be resolved by an old judge in a small town." Then he granted a continuation of the temporary injunction until the matter could be brought before the Supreme Court, and with that we were outta there in a state of shock. We had had our day in court but we wanted more. We immediately appealed his decision to the State Supreme Court.

After the trial, our press went back to the way it had always been: terrible! The fairly positive coverage we had been temporarily blessed with during the trial was evidently due to the presence of the out-of-state lawyers and expert witnesses. Oklahoma

has great respect for the tourist trade dollars.

The examples below are from the editorial pages of two of the largest daily newspapers, one in Tulsa and the other in Oklahoma City. They will give you an idea of the virulent fascism and hate mongering the Indians in Oklahoma prisons are faced with every day. From the *Tulsa Tribune*, March 23, 1987:

JAILHOUSE RELIGION

The complaint by a 27-year old Choctaw Indian against Oklahoma State Penitentiary that short hair grooming rules are against his religion is countered by testimony by OSP Warden Gary Maynard that long hair can conceal contraband and has been occasionally used by prison murderers to force a head back for easier throat-cutting.

It would be interesting to learn how much inmates who complain of prison rules on religious grounds were involved in religious activity while they were compiling criminal records that landed them behind bars. The inventive imaginations of jailhouse lawyers could be counted on to come up with religious strictures against onerous prison rules.

Johnny-come-lately religious fervor among prison inmates lends itself to considerable doubt.

And from the *Oklahoma & Times*, March 28, 1987 (Oklahoma City):

HAIR TODAY, GONE TOMORROW

Jailhouse lawyers have filed lawsuits for such imagined civil rights violations as being deprived of girly magazines or for better dinner menu selections, so it was no surprise when a Choctaw Indian inmate at the State Prison in McAlester went to court to keep his long hair.

The inmate attacked the policy against long hair--instituted after scores of convicts resembling the long-haired, earringed hippies of the '60's staged a costly riot--on grounds it violated his religion.

He contended that long hair made him aware of who he is. Who he is is an inmate serving a prison sentence for committing a felony. He should have no more rights than an Indian in the military who must have short cropped hair.

District Judge Robert Layden ruled the prison's haircutting policy did not violate the inmate's constitutional rights. However, the judge let stand a temporary injunction forbidding the inmate's hair be cut until he decides whether to appeal the ruling.

That just keeps the legal door open to permit the man to continue cluttering up the court and taking up costly

time of the judiciary with frivolous lawsuits and legal actions.

Almost all of the Oklahoma newspapers followed the lead of Tulsa's and Oklahoma City's reactionary editors, and the tone of hatred, ignorance, intolerance and racism contained in these examples began to be reflected in newspapers throughout the state. Articles and editorials urging the Supreme Court to turn down our appeal and throw our case out were everywhere.

Victor Hunt began working on the argument for our appeal, but he told us that we shouldn't expect a decision from the State Supreme Court for at least two years. In the meantime, he said we were all protected from forced haircutting by the restraining order of the District Court.

Many of the Brothers decided to go ahead and get an exemption so they wouldn't be bothered by the administration's harassment. Much to their surprise, every single application for exemption was turned down except for one. Joe, who had already had his hair forcibly cut, was granted an exemption. That was clearly a political decision; an attempt to control the flak that had arisen as a result of the violent assault he had suffered at the hands of the haircut goons when they forcibly shaved his head. The video of that barbaric act had been shown in the courtroom during the trial. It was hard even to look at, much less justify.

Ben Carnes and I decided not to apply for exemption unless and until the Supreme Court should uphold the constitutionality of the grooming code. We felt it would be premature to submit to the exemption process, since it was precisely the thing we were challenging. The prison preacher notified Ben and me that if we did not immediately apply for exemption, we would not be given another chance if the Supreme Court decided that the grooming code was constitutional. Victor Hunt overcame the preacher's odd notion by having the warden commit in writing that any Indian who chose to wait for the Supreme Court decision would be allowed to apply for exemption when the decision was rendered, and there would be no harassment of those prisoners who might choose to wait for the decision.

The administration--in spite of the court order forbidding it--continued to force Indians who were new arrivals at OSP to cut their hair. They stepped up their attacks against Indians who--with full approval of the warden--burned cedar and sage when they prayed. These continuing attacks were justified--as in the past--by pretending they believed the burning sacrament was marijuana smoke. They refused to move Indians with long hair to upper level housing which would put them closer to being eligible for transfer to a prison with more privileges and less security. These racist attacks caused many of the Indians to be afraid to admit their religious beliefs because of the persecution they would have to undergo. Like Jews who forewent the yarmulke under the Nazis, many Indian prisoners cut their hair out of fear. Many told me they would never have cut their hair if we had the same freedom of religion accorded to the whites.

Some of the Brothers were having trouble satisfying Section 2 of the exemption regulation which required the applicant for exemption to show that "he is a sincere adherent of the religion verified by a reputable, non-family member who is not an inmate within the Department of Corrections." Bill Ahhaitty, for example, had a letter from the chairman of the Native American Church verifying his sincere adherence to traditional beliefs, but it was from a family member, his uncle, and therefore not acceptable. Bill would not tell his uncle that the whites found his uncle's letter unacceptable.

We decided to focus our attention on finding Indians outside who could verify our beliefs to the hair committee. Since so many of the OSP Indians were of the Cherokee Nation, we decided the place to start was with Principal Chief Wilma Mankiller who had been extremely supportive of Indian Rights.

Our friend Dr. Hilligoss tried to contact her, but when he made the trip to see her, she was not available. His request for help, however, was answered in a letter dated September 2, 1987, on Cherokee Nation stationery and signed by Julie Moss. The letter said in part:

Dear David,

Wilma has asked me to respond to your letter concerning the prison inmates' religious freedom issue.

She has not told me this directly. But, I feel, by her inaction to the contrary, she is personally very sympathetic to this cause. But, because of her position as an elected official, she is not as free as in years past to wholeheartedly, publicly endorse or support potential, controversial subjects. At least not without very carefully examining any political consequences of her actions. Consequences that could affect not just her alone but the Tribe as well. Anyway, that could be neither here nor there at this point and I'm sure you know exactly what I mean.

I'm only mentioning this because our Tribe has not yet taken an official stand on this issue. That is, other than in the attached policy statement which I drafted in response to the volume of mail from inmates in Texas and Oklahoma.

Attached was a document entitled "*Policy Statement of the Cherokee Nation of Oklahoma*" dated July 30, 1987. The document stated in part:

TO: All Prison Institutions With Cherokee Inmates
(Please post for inmate information)
SUBJECT: Inmate Hair Grooming Policy:
Verification of Religious Claims
for Exemption Purposes

The Cherokee Nation of Oklahoma is an established Federally Recognized Indian Tribal Government. It is not a religious organization. Therefore, as such, it is not the proper authority to address on the issue of Native Cherokee religion.

FOR PURPOSES OF VERIFICATION OF INMATES RELIGIOUS CLAIMS,
THE FAITH GROUP ITSELF MUST BE CONTACTED DIRECTLY.

All sincere adherents will know where to get or they can get the necessary information to contact the group(s).

Wilma P. Mankiller
Principal Chief

So it turned out that Cherokee traditional religion was too controversial for the Chief to even discuss. We were met with variations on the same theme by every tribal government we contacted. It was a grave disappointment to us all. Only a handful of individuals were willing to help us, and when the prison officials saw that we had almost no outside support, they became even bolder in their interpretation of their requirements for exemption.

Because the court had found that our religion is a recognized religion, and that long hair is a tenet of that religion, we naturally assumed that all we had to prove was our sincerity. Not so. Section 3 of the exemption requirements states "that the practice inhibited by the prison regulation is a fundamental tenet of the religion." The guards who sat in judgment on the hair committee twisted that to mean that you could only get an exemption if your religion prohibited you from practicing your religion with short hair. There is no such religion in the world, to my knowledge, that forbids a short haired practitioner. But that was the new unwritten requirement. We all know that there are many Indians who practice our traditional religions with short hair because economic survival demands that they have haircuts in order to be hired by white businesses. Others had been driven to cut their hair in white-run boarding schools when they were young, but were, of course, not turned away from the drum, Pipe ceremonies or the sweat lodge. So it became a game where the prison preacher would call a tribal council member and ask if an Indian with short hair would be permitted to participate in traditional ceremonies. The answer would always be, "yes," that he would be welcome. Then the preacher would write up a response to the application for exemption saying that if the prisoner got a haircut he could still practice his religion, therefore the grooming code did not inhibit the practice of his religion and the exemption should be denied.

On April 11, 1989, The Oklahoma Supreme Court upheld the grooming code, as modified with religious exemptions, to be constitutional. Justice J. Rapp, concurring, said in part:

Here, it appears the prison authorities initially reacted to a problem which could possibly be considered in its

initial stages to be an unnecessary and unreasonable constraint upon a deep religious conviction and manifestation. However, it is also apparent the authorities recognized the potential error and provided a reasonable means of allowing the outward manifestation to be exhibited--the filing of an application for exemption.

Linda Morgan, the warden's administrative assistant, boasted in a newspaper interview that in the more than two years between the hair case trial and this Supreme Court decision, not one single exemption had been granted although more than twenty had been applied for.

Benny Carnes was on the street enrolled at the University of Oklahoma. He said he hoped the Indians at OSP would not physically resist forced haircuts and get more time. Ben recommended passive resistance as was practiced by Dr. Martin Luther King and Ghandi, to use examples from other religions. He told us to stay strong in the faith and spirit.

Victor Hunt informed us that he did not believe we had a basis to proceed any further with the case. He said that the United States Supreme Court ruled in *Turner v. Safely* (1987) that if prison policies provide some kind of accommodation (as the exemption policy does in Carnes) they will not be struck down. He said at least we had accomplished three things: (1) we forced them to formulate an exemption policy when they would never have otherwise granted religious exemptions; (2) the trial court ruled that our religion is a recognized religion within the meaning of the exemption policy, and (3) that long hair is a tenet of our religion. Victor said he could no longer participate in our struggle, but he wished us well. We will always remember his hard work and dedication to our cause; we, too, wish Victor Hunt well.

The Brothers were filing applications for exemption all over the prison, but one by one each and every application was denied. Joe, the Indian who had been granted an exemption in June of 1988 had his exemption confiscated in June 1989. He was thrown in the hole and had his head forcibly shaved for the second time. He was told his exemption was "out of date," but the goon squad guards would not tell him what he was supposed to do to get it updated.

I applied for exemption, and it was promptly denied. I appealed to the warden, and finally the director granted my exemption. The Department of Corrections received more than 3,000 letters, phone calls and telegrams from all over the world from people who supported my exemption. The support had been coming in for three years. So far as I know, I have the only exemption at the Oklahoma State Penitentiary as I write this (in the fall of 1991).

The exemption clause was just a sham to fool the court into believing the prison authorities intended to protect the constitutional rights of the prisoners by granting exemptions to sincere adherents of traditional religion. They never intended to give exemptions, and as is so often the case, the deception worked. I grieve for my Indian Brothers who are being bullied, intimidated

and forced to cut their hair. I know there are many Indians denied the right to practice their religion in prisons and jails throughout the united states and especially in the deadlocked holes called "Special Housing Units." To them I want to give these words:

What is in your heart they cannot take. Do they forbid you to have a sweat lodge? You are sitting in one every day. The roof of your prison is the sacred covering; the bars the Sacred Willows; the stone floor is your Mother; the Sacred rocks are heated in the fire of your Indian heart. Take the water from the sink in your cell and pour it over your head and you shall be purified. Do they take away your Pipe, your feathers, your medicine, or your privileges? Who can take your power? Who can take your dream? Who takes your visions? Your Pipe is your soul. It has no form. Yet, look at your Brother. Do you see the living Pipe? You have no feathers? They are invisible, yet Wakan Tanka knows you wear them and pray with them. Your holy medicine is your tears. It is good to cry like a man for wisdom. When you see your Brother crying, go to him and lick the tears from his cheeks and you shall have medicine. These are your privileges. Your power is to resist through your will. Strengthen your will. With every blow, with every curse and with every tear you are stronger because they fear your will to endure. They are already defeated because they abuse what they cannot conquer. Your Life is their defeat!

I have never been able to figure out what harm our jailers seem to find in our religion. There is no question they would not have banned the wearing of long hair if it was of religious significance in the Christian faith, and if the wearing of it by Christians served as an expression of their faith and as a spiritual comfort to them. History teaches that religious suppression leads to rebellion. Why would our keepers want to promote rebellion, anger and unhappiness? Do the jailers of america fear our religion, or do they try to stamp it out because at times it seems to be the only thing we have and they would rather see us completely empty? Whatever their reasons, they have tried to suppress our religion for nearly 500 years, but they continue to fail. Our Mother the Earth will continue to give comfort to women and men and other animals long after this experiment called america has consumed itself by its own greed, and the religion of my grandfathers will live on in the hearts of my children's children's children because it is truth, and truth can never die.

CHAPTER NINE

Some Common Grievances: Glimpses of Subtle Discrimination

**Statements by Oowah Nah Chasing Bear
Stormy Ogden Chavez, Bernie (Wolf Claws) Elm,
Terry Provost, Little Rock Reed, Diane White
and Perry Wounded Shield
with interspersed commentary by Little Rock Reed**

The previous chapters have focused on some of the very obvious and explicit ways in which Indians are persecuted and discriminated against in the prison setting. There are also many forms of discrimination which are more subtle than those described in the previous chapters. For example, in the state of Nebraska the Department of Corrections has one of the best Native American spiritual/cultural programs in the United States as a result of a consent decree which was entered into force by the U.S. District Court in Lincoln, Nebraska in 1974, yet the Native prisoners in Nebraska complain that they are still being discriminated against. The programs in the Nebraska Department of Corrections are described somewhat by Perry Wounded Shield in a letter he wrote to me in 1989, which is reproduced below:

I am a Sicangu "Burnt Thigh" Brule Sioux from the Rosebud Sioux Tribe, Rosebud, South Dakota. I was born and raised on that reservation. I had dropped out of school at the ripe old age of 15. I was not put into school until I was almost 11 years old, so I started late in school and never could catch up with my younger classmates. As a result, I only went to 3rd grade in a government day school in Parmalee, South Dakota. Fortunately, nothing really exciting happened until I was in my early twenties, then the roof fell in on me in my early thirties. I was passing alright until I landed in here in the Nebraska State Penitentiary on January 22, 1973.

When I first arrived here, I could hardly speak, read or write the English language. This was in 1973 with a sentence of 5 to 15 years. As you can see, I am still struggling with that sentence today, which is one of the reasons why I totally agree with you on this wasicu system of keeping brothers in these prisons longer than absolutely necessary. I have litigated my case and am still fighting them in the Eighth Circuit Court of Appeals in Saint Louis, Missouri. At this point, all I can do is hope for a better tomorrow.

Finally, I will be released in November of this year. I

am doing what they call "dead time." So once this summer is gone, I will prepare my moccasins for my journey into a new life.

During my stay here, I have experienced many struggles with my brothers. The administrative personnel here gave us all kinds of hassles in the beginning, but after a lawsuit was filed and won, things settled down to subtle methods and underhanded policies. Still and all, we have made progress throughout the intervening years.

To be quite frank, the Nebraska Penal System has one of the better designed programs for Native American Religion and Self-Betterment towards traditional values. Though, being part of the system, one doesn't see these programs in the same light as those from other places. Perhaps this advantage comes from the fact that the Nebraska correctional system was one of the first in the United States prison system to have a Native American Religious and Spiritually sanctioned program through the sweat lodge. The lodge is where purification ceremonies are held on a weekly basis. From these weekly sweat lodge purification ceremonies, the Native Americans have developed a wide range of programs dealing with Native American traditions and customs, including the visitation rights on quarterly basis by various Native American medicine men, quarterly cultural events, bi-annual symposium on Native American tradition of sharing, and annual pow wows during the Spring season. All of these activities are done under the office of the Native American Religious Coordinator, who is a Native American himself. This office was established in 1979. Through this office, the Indian prisoners may obtain approval and permission to attend Annual Vision Quest and Sun Dance ceremonies in the state of South Dakota during the summer months. The extensive programming within the Nebraska prison system was implemented under a sanction of a United States Federal Court consent decree issued on October 31, 1974.

Though the Native American program in Nebraska is one of the better ones within a prison systems in the United States, there are problem factors that need to be addressed even with a successful program. In many instances, these problems are caused by both administration and Indian prisoners, but I suppose this is true of all prisons within the United States.

There are Native American people in here who would like nothing better than to defeat some of our purposes. Things like this have been happening among our people for the last two or three centuries. Therefore, we should be able to handle these things with ease, as long as we are careful. It must be admitted that problems and behavior of this type among our own people can be real touchy and difficult to deal with effectively.

The most important thing that I can relate at the moment is that, even though some of our own people are trying to destroy our sacred ways with their ideas of doing things their own personal way, we are still surviving. This I find to be more damaging than what the alcohol, drugs and the B.I.A. [Bureau of Indian Affairs] have failed to do in their attempts to obliterate Indian people from the face of the earth for the last couple hundred years. In the midst of these types of behavior among our people, this is the real challenge to test our sincerity and integrity, and the will to carry on with this message and teachings to our young people.

Let me refocus on some of the things that have occurred with our programs. In 1981, a Native American prison administrator who was hired due to our lawsuit, went to bat for us and arranged for three of us to go to a Sun Dance in Rosebud, South Dakota. Since that time, some of the brothers were allowed to go attend the Sun Dance in Rosebud every summer. But in 1985, some non-Indian inmates walked away from a furlough program. So the prison administrators decided to formulate new policies on furloughs at that time, which greatly restricted our Sun Dance Program. We filed an injunction, yet eventually the prison won the case due to reasons of prison security ideology. We brought out the fact that we had six years of successful Sun Dance trip experiences, with no infractions of any kind, yet the prison used the Sioux Falls, South Dakota prison Sun Dance program as a possible instance in our situation and won the case. They now allow only inmates with minimum custody level to attend the Sun Dance.

The Sioux Falls, South Dakota Penitentiary obtained permission after our program was successful to also go attend the Sun Dance ritual at the Rosebud Reservation. Then during a trip to Rosebud under the pretention of attending the Sun Dance, some of the bro's went all over the Pine Ridge Reservation as well, and to make matters worse, they got drunk and returned to Sioux Falls two or three days late. So their program was shut down. This eventually affected our own program here in Nebraska. Though, today, bro's from here still are able to go if custody level is met. I am not blaming the bro's in Sioux Falls, but actions like this could affect brothers all over the United States Prison System, so I say to all my younger brothers throughout the system, please be careful and think of the way your actions may affect your relations before doing something.

Another experience that is worth mentioning is our family participating in prison programs. In 1975, through negotiation, we obtained permission to have our family members come and participate in cultural activities. But this too has come to an abrupt end in 1986. This was due to some non-Indians who walked away from a prison

self-betterment program. Today, we are still allowed to invite our tribal brothers and sisters but no one on our visiting list can come into these cultural activities. These programs are greatly restricted due to actions not our fault but the faults of others.

When the lawsuit was won in 1974, three Native American Medicine Men came in and erected a sweat lodge for us. This significant portion of our program is still going very strong. We have had purification ceremonies on Saturdays and Sundays each week since 1974. From the beginning of April to the end of November each year, we are allowed to have extra sweats each Wednesday evening.

As mentioned earlier, we also have a Native American Religious Coordinator, who is a Native American. This person himself was at one time a prisoner here. He is hired by the Department of Correctional Services, so in that sense, he has power equal or above the administrative personnel here. Still, they try to deal with him underhandedly at times. One good thing is that he cannot be fired because of our consent decree. We have our own office and an Indian clerk to do all our paper work.

These things sound good but there is a high price paid for having them. Two of our brothers died for the cause and many have suffered long stays in the segregation unit.

Although Nebraska has one of the better spiritual/cultural programs in the country for Indian prisoners, the U.S. District Court in Lincoln, Nebraska recently designated a law firm to serve as a clearing house for complaints by Indian prisoners in Nebraska because of numerous allegations that the consent decree of 1974 was not being complied with by prison officials. Many of the types of complaints made by the Indian prisoners in Nebraska are common across the country where Indian spiritual/cultural programs exist. For instance, there are at least three lawsuits pending in the state of California because the Indian prisoners allege that prison officials refuse to comply with previous court orders requiring prison officials to accommodate religious practices through the use of the sweat lodge and access to spiritual leaders and sacred objects. Likewise, there is currently litigation pending in the federal court in Utah because Utah prison officials will not comply with previous court orders.

This chapter will focus on some of the common grievances Indian prisoners have across the country whether or not the issues identified are being litigated. Such grievances include, but are certainly not limited to, the following:

- * Policies which serve to break up Indian families or to terminate parental rights of mothers who go into the criminal justice system, as discussed by Stormy Ogden-Chavez, Little Rock Reed and Terry Provost.

* The misuse or desecration of sacred objects and ceremonies by not only prison officials, but some prisoners themselves, as discussed by Oowah Nah Chasing Bear, an anonymous prisoner in New York, Bernie (Wolf Claws) Elm, and Little Rock Reed.

* Issues of particular concern to American Indian women who are incarcerated, such as those discussed by Stormy Ogden Chavez and Diane White.

* The mishandling of sacred objects by prison guards, as discussed by just about everyone.

* Prison officials' refusal to accord Indian spiritual leaders the same respect they accord Christian chaplains and volunteers, and their unwillingness to sit down with Indian people to discuss these types of issues in good faith, as discussed by Oowah Nah Chasing Bear, Bernie (Wolf Claws) Elm, and Little Rock Reed.

I will begin with one of my personal experiences while in the Southern Ohio Correctional Facility (SOCF) -- an experience that almost all Indians face at one time or another while incarcerated. This particular issue relates to the cultural bias in mandatory psychological testing of prisoners and is illustrated in a letter I wrote to the prison psychologist at SOCF in 1990. Here is that letter:

Dear Doctor:

Hello. I'm the American Indian you summoned to your office last Monday to inform me that I am once again being considered for parole and that I will be required, once again, to complete that 563-item psychological test (the Minnesota Multiphasic Personality Inventory, or MMPI) so that the parole board will once again have a current psychological evaluation on me.

As you will recall, Doctor, you and I held quite opposing views with respect to the validity of the MMPI, and you suggested I return to my cell to think about it, and to perhaps study up on the MMPI before voicing any further uneducated opinions about it. Okay, I have followed your advice, Doctor, and I feel that I am prepared to comment now. Please bear with me.

First of all, let's focus on the origins of the MMPI. According to my *Abnormal Psychology* text, the MMPI was "originally administered to a large group of normal individuals (affectionately called the 'Minnesota Normals') and several groups of psychiatric patients." Yeah. Right. The text conveniently fails to offer any specifics about these individuals this allegedly "large group" was comprised of or what criteria, if any, were applied in determining whether each of these individuals

was indeed "normal." I would also be interested in knowing just what the hell "normal" means. I'm quite sure that the average traditional Indian living on the reservations in Minnesota has "normal" Indian characteristics that are perceived as "abnormal" by the average Saint Paul or Minneapolis city-dweller, especially since the state of Minnesota is recognized by the Indian population as one of the most anti-Indian states in the country. I wonder how many traditional Indians were included in this sample of "Minnesota Normals."

Okay, okay. That's an invalid argument now that they have revised the MMPI to distinguish between racial and ethnic groups, right? -- We'll see in a minute. Hold your pony.

Assuming the so-called "Minnesota Normals" did in fact adequately represent the United States population, let's examine some of the items on the inventory:

Someone has it in for me. True or false.

Hmmm. Let's see now. What about the "normal" guy who happens to be the salesman who graduated at the top of his class in business school. He's got competitors who are pooling their efforts to put him out of business because he is simply monopolizing their field of business. This is reasonable to assume, being's how competition is so highly espoused in this capitalistic dog-eat-dog country. The businessman answers "true" to the item because it is true. And for this same reason, he must likewise indicate that it is true that he is "being plotted against," which is another item on the MMPI. There is no opportunity for him to explain the factors involved in his circumstances. Without consideration being given to these factors, his response will automatically fall within the category which indicates tendencies to respond in a "psychologically deviant way," just like any "normally" paranoid individual. You claim that this is "insignificant" because it is merely one out of 563 items in the inventory. But what of the other 562 "insignificant" items? What if this "normal" businessman has a "normal" explanation for why he might respond to a number of these "insignificant" items in a psychologically deviant way? So long as the evaluator of the inventory fails to assess the factors in each of the "abnormal" yet "insignificant" responses to these items, how can we be sure the responses to these items really exemplify a "psychologically deviant" characteristic? And how many "insignificant" responses to these items does it take before they collectively become "significant"? Where do we draw the line, Doctor?

When I told you that a number of the items on the

inventory are absolutely inapplicable to my life experiences, you asked me which of the items were inapplicable. I used "my father was a good man" as an example. We would have to virtually go down the complete list of items before I could give you a specific number that are inapplicable to me, but I can assure you that the number is quite significant. But do you really think you were being fair in saying I am "rationalizing" when I say that I should not respond to the item concerning whether or not my father was a good man because I never knew my father? You said that I should respond to the item on the basis of what I have heard about my father. Okay. Let's assume there are 20 items on the inventory that I am unable to respond to without relying solely on what I have heard from other sources because I have no personal knowledge about the information sought in the items. And let's assume further that I "insignificantly" respond to these items in a psychologically deviant way. What then? Will I "insignificantly" be classified as having a personality disorder on the basis of hearsay? And may you possibly have been "rationalizing" when you stated that the MMPI is "valid because it has been used by thousands of social scientists around the globe" because you are unable to meet my arguments on their merits?

What is "normal," Doctor? Can we agree that an individual is deemed to be normal when he or she functions in a manner which corresponds to the median or average of a large group? I think that's a fairly reasonable definition. I will apply it here. Now let's turn to Stanley Milgram's experiments which were conducted at Yale University.¹ You know the ones I'm talking about. The ones that revealed that the "normal" guy will murder another human being, a total stranger, without reason or logic so long as he is ordered to do so by an "authority" figure. According to the results of those famous experiments (which are discussed in almost every general psychology text in the world) he whose conscience will not allow him to commit cold-blooded murder for the sake of conformity is psychologically deviant. Abnormal.

Yes, Doctor. I admit it. I'm abnormal. Psychologically deviant. And proud of it.

Would it have been fair for the "authority" figure in the Milgram experiments to accuse the non-conforming "subjects" of "rationalization"? Would those subjects be correct in asserting that the accusation was invalid?

I am a human being. What distinguishes human beings from the other animals of the world, Doctor, is our ability to reason, or so they say. So why should I spinelessly wave my inherent right to reason and lay my destiny totally in the hands of those who would use an

allegedly "scientific" test which has already been used to admittedly misdiagnose me as having a passive-aggressive personality disorder² in the past? Why should I trust the test again, Doctor, and again? You say that the results of the test aren't really important and that the parole board doesn't really pay any attention to them. If this is so, why then does a purportedly moralistic society permit so many millions of tax dollars to be wasted on these tests while there are hungry and homeless women and children wandering through the streets of America? Would I merely be "rationalizing" if I said that this in itself is reason enough for me not to cooperate with the testers because I don't want to contribute to such human suffering?

There's a whole lot more to me than the number in my file, and there's much more than an insignificant "true" or "false" involved in any response I make to an item that I am unable to identify with, and which was created by someone who doesn't even know Christopher Columbus didn't really "discover" this land that holds the blood and bones of my grandmothers and grandfathers whose lives were insignificant to Columbus and his followers. I'm very sensitive about your superficial little test, and I won't be taking it any more for the sake of the parole board.

And with this you might suppose I have stepped over the line which distinguishes the "normal" from the "deviant," the "ordered" from the "disordered," as I now place myself in the position of possibly staying in prison a little longer. Of course, this would depend upon your perception of the situation. You can look at it from the "normal" American's perspective which is rooted in a materialistic value system. From this perspective I would certainly be "crazy" for not "playing the game" just to get out of prison, for to remain here is to inflict pain upon myself since that materialistic freedom is ultimately the price I pay.

Or you can look at it from a traditional Indian perspective which is rooted in a spiritual value system. From this perspective, yes, I hurt myself in this choice I make, because I, too, value my secular freedom. But it's what you psychologists refer to as the ol' "avoidance-avoidance conflict," you see. Although I love my secular freedom, if I must choose between it and my spiritual freedom, I must choose the latter. And I could never be spiritually free knowing that I have evaded my principles which are deeply rooted in my spirituality and "played the game" which causes so much suffering to my people. As long as everyone "plays the game," no change will come. As long as no change comes, this morally wrong game will continue. Maybe by not playing the game, I can get people to look at how wrong the game really is, and the generations who follow me won't have to play the

game. That is my goal. I may succeed. I may fail. But I will go to join my grandfathers knowing that I have not forsaken them or the generations to come.

So, Doctor, are my actions taken in a "psychologically deviant" way? What is self-destructive to one person may be a sacrifice for the betterment of humanity to another. It all depends on the perspective from which you choose to focus on it.

Now, they say the new revised MMPI is much better than the original because "efforts were made to include representative groups from different racial and ethnic backgrounds, age groups and social classes," yet the grand total of subjects randomly sampled in these efforts only comes to 2600 from merely six different communities. Let's be realistic here. There are not six communities in the United States that could adequately represent the U.S. population. In fact, if we realistically divide 2600 into the multitude of "racial and ethnic backgrounds, age groups and social classes" that exist in the United States, we would be lucky if we could manage to produce one representative/subject from every "racial and ethnic background, age group and social class." If we randomly sampled 2600 Indians from the over 400 distinct indigenous nations that exist in the continental United States, we'd probably be lucky to get 10% of them to even respond to any of the items on the MMPI. This is ridiculous. And the people who "validate" this kind of test actually call yourselves "scientists"? -- What an insult to the intelligence of the human beings who haven't "progressed" to the "civilized" level of blind conformity -- we human beings who have retained our God-given instinct to reason!

If the MMPI has been validated by the thousands of social scientists who have used it around the globe, why then has it recently been revised? And if it took half a century for the "experts" to determine that the original version was in need of modification, how can we be certain the new revised version is indeed valid until the "experts" have had another half a century to mull it over?

I look forward to receiving your educated point of view, Doctor.

Sincerely,

#621-259

The dear doctor never did acknowledge receipt of my letter or send me a pass so that we could resume our discussion. And then several months later I was told by another dear doctor in the same

department that my failure to cooperate with them in this testing was clear evidence that I have a passive-aggressive personality disorder because I was evading the problem of facing up to who I really am which would be revealed in the test results. So then I wrote a letter to the supervisor of the psychological department explaining that in my view, the entire staff of the psychological department has a passive-aggressive personality disorder because they persistently refuse to discuss the merits of my "Dear Doctor" letter. Finally, the supervisor called me to his office and told me that while my letter was well written, it was invalid and showed signs of paranoia. He also sided with the other shrink in claiming that I am "passive-aggressive" which is indicated by my failure to cooperate with them in this, as my behavior is totally "obstructionistic." He also told me that the reason I feel the way I do about the MMPI is because I'm not educated. He suggested that I read at least "forty more psychology books" before I attempt to discuss what he assured me all professional psychologists know to be a perfectly valid test. I told him that a lot of the items on the test are inapplicable to me, and he told me that there is not one single item on the test that I shouldn't be able to "take a position on" (as if I hadn't taken a firm position), and that if I really couldn't answer "true" or "false" to each and every question, I am absolutely neurotic. This is the man who is in charge of the Psychological Department for Ohio's maximum security prison. I finally asked him why the MMPI had recently been revised if it had been valid all this time. His response was, "Why do people change clothes?" You figure it out.

I decided that any further attempts at communicating with the man would be futile, and as I returned to my cell, I couldn't help but wonder if he was aware that about fifteen years ago the American Psychological Association issued a statement that tests such as the MMPI should not be used on minorities. I would imagine that the forty books he was referring to have been revised just as the MMPI has been.

The remainder of this chapter is much like some of the earlier chapters in that it is comprised of "glimpses." It was originally planned that each "glimpse" would focus on a specific type of grievance, but because many types of grievances overlap each other, it is impossible to do this in every instance.

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Stormy Ogden and Little Rock Reed:

We are losing our children. Not only are Indian women getting lost in the "system," the children are also being affected. The problem as we see it, is that not enough attorneys, probation officers and social workers are familiar with the Indian Child Welfare Act of 1978,³ which recognized:

...that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct

interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

...that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by non-tribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

...that the states, exercising recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

The primary intent of the Indian Child Welfare Act can be summed up in the following passages of the Act:

Sec. 102. (d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child....

Sec. 105. (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also

be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with--

- (i) a member of the Indian child's extended family;*
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;*
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or*
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs....*

Sec. 201. (a).... The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. (our emphasis.)

Many Indian women who are getting lost in the criminal justice system are single mothers, with one to three children at home. What happens to these young Indian children as their mothers are being sentenced to county or state time? We see social workers stepping in and recommending that these children be placed in foster homes. Most of the time these foster families are non-Indian and have several other foster children in their homes. In California and elsewhere, after one year of being in the foster home, the foster parents have the right to adopt the children. Is anyone acting as an advocate for the Indian mother? We believe not in many cases. We believe that she is made to understand that the child is better off without her.

We again stress that we are losing our children. All county agencies involved in social service programs and the courts must be made aware of the Indian Child Welfare Act and apply it to Indian women who find themselves in the criminal justice system. The clear intent of the Act and the specific provisions cited above, indicate that the courts are obligated to see to it that Indian children are not taken away from their mothers who go to prisons, jails or any other type of institution involuntarily. Indian mothers should clearly retain the right to have their children returned to them upon release from prison unless it is established in the child custody proceeding that such return of the child to the mother after the release is, beyond a reasonable doubt, likely to result in serious physical or emotional damage to the child. This evidence, according to the Act, must include qualified expert witnesses, and so we would like to point out that no one is a qualified expert on what is in the best interest of Indian children except for people who are familiar with the culture and heritage of the tribe to which the child belongs. This must necessarily be

either an Indian or someone who has majored in Indian studies who is acceptable as an expert by the Indian community.

One final thing we'd like to say about the Indian Child Welfare Act: the Act basically focuses on two different types of proceedings with respect to child custody. First, there is foster care placement, and second, there is the termination of parental rights. These two types of proceedings are not inclusive, but we believe the courts generally see them as inclusive of each other, meaning the placement under foster care necessarily means the parent's right to custody should be terminated. This is wrong. The courts should be obligated to see that when an Indian woman is incarcerated, her parental rights are not necessarily terminated but are fully retained until she is released, at which time a further proceeding concerning her parental rights may be held if necessary. The courts should be obligated further to assure that the Indian women who are criminally charged are made aware of their rights under the Indian Child Welfare Act, and every measure should be taken by criminal justice workers both in and out of the prisons to assist the incarcerated Indian mother in maintaining as much contact with her child or children as possible during incarceration. This would certainly be consistent with the guiding principles for the treatment of prisoners established by the United Nations which are discussed in the forthcoming chapter on "Some Relatively Simple Solutions."

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Diane White, Warm Springs, Montana (1990):

The common images of prison life, and the majority of encounters that most people have with prison, involve institutions for men. The needs, conditions, medical care and prison treatment in general for women are a different story and should reflect just that. The housing in the institutions for women should differ from those that house men. Women are unique and should not be rated second to men, which is usually what happens. The needs of men are tended to first while women come next or are totally ignored.

Women prisoners fulfill roles as wife and mother. Many are family-oriented while some are single and are candidates for career training or some type of meaningful vocational or educational training or other programs. In order for an individual to be rehabilitated and re-enter mainstream society, an "educational setting" and "tools" are necessary - a setting which meets constitutional standards set for a well-formed, compliant and guideline institution.

The women in this facility are not given such a chance. For example, one room in this building is used for dining, visiting, and when not in use for these purposes, a classroom. There is one day room - if all of the women should decide to sit and relax, there wouldn't be enough places to accommodate everyone even if the facility wasn't over-crowded. The fact that it has exceeded its

designed capacity by nearly 60% only compounds this problem. Some women are smokers, and for those women who may be asthmatic, the lack of non-smoking areas for them to congregate could prove detrimental to their health. -- Some of the women are allowed to go into the back yard, but even that depends on the individual's status, or classification; you may or may not have that privilege. Isn't it a constitutional right to have access to sunlight, or an opportunity to go outside for recreation, exercise or leisure?

To warehouse women in a dilapidated building and expect any kind of rehabilitation is absurd. You get the same results throwing a handful of worms into one small can. There is very limited space. Psychologically, this environment builds tension among the women. For those who have suppressed anger, what do you think it does to them?

When a woman is sentenced to incarceration or imprisonment, it should entail a stable, healthy and consistent rehabilitation. But this is difficult when the overall environment and conditions are not conducive to this. Lack of adequate space for classrooms, visiting or recreation, and other conditions of one's surroundings, make an enormous difference in attitudes and perspectives.

If there is to be any rehabilitation for women so that they can realize their individual roles and their societal roles, educational programs are needed to enhance their growth. But first, a viable setting conducive to learning is imperative.

Some women need to be taught basic caretaking and homemaking skills. Pregnant women who come into the correctional facility should have available to them pre-natal classes. Some come in with the disadvantage of a dysfunctional family and have not had the opportunity to learn about family planning, pregnancy, etc. Courses in family planning, health education -- obstetrics, gynecology, abortion, pre-natal and parental skills would all prove valuable and should be made available. Women prisoners have minimal educational opportunities to begin with. And available work opportunities also reflect a pattern based on traditional male-dominant role expectations, such as "food service," "sewing," "house-keeping," "laundry," "clerical work," and "maintenance."

As for the treatment programs that are available at this facility, they are totally inadequate. We have questioned over and over again why the institution is not managed by a female. We believe that if it were managed by a female, many of the problems we face as women could be more adequately addressed. Although our Treatment Specialist/Social Worker is a woman, there have been questions as to the validity of her credentials. Due to unknown reasons, she is the counselor, social worker, treatment specialist, and she also facilitates the sex-offenders' treatment program and *the child abuse and sexual abuse treatment programs*. As a result of this woman serving in all these capacities, the women are destined to receive improper and inadequate counseling.

All of these problems are compounded for the Native Americans and other minorities. Time and time again the subject of the

problems Native Americans face within the prison system have been brought up, and time and time again, they are ignored. Maybe one day someone will hear and acknowledge us, again?

In this institution, the Native American women are discriminated against in many ways:

- * There are no Native American counselors, teachers or administrative staff.
- * Native Americans are denied rights to religious freedom as guaranteed under the First Amendment and the American Indian Religious Freedom Act of 1978.
- * Native Americans are denied cultural activities, such as pow wow gatherings, speakers, feasts, and culturally relevant literature.
- * Native Americans are prohibited from implementing or participating in culturally sensitive treatment programs similar to the Thunder Child Treatment Center in Wyoming; Fort Peck's Spotted Bull Treatment Center, etc.

Studies have always indicated that Native Americans are over-represented in the courts and prisons, and we wonder why when we enter the prison system we are expected to learn and live within a society which is totally foreign to us. Because of misunderstanding of each other's cultures, non-Indian and Indian, a barrier and total lack of communication forms, which at times is the cause of much negativity toward anything the other says, does or represents.

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Stormy Ogden Chavez:

During my incarceration in the women's facility at the California Rehabilitation Center at Norco, I held the position of Chairperson of the American Indian Women's Cultural Group. Many times I would be asked by an Indian woman to go with her to the Lieutenant's Office to request that the dorm staff stop the harassment she was receiving. It was always for the same reason: the sacred objects that she held in her locker or around her assigned sleeping area were being mishandled by the staff. Once again there would be the need to explain why this Indian woman had "tobacco ties" hanging from her bunk, or to promise that the eagle feather would not be sharpened at the quill to be used as a weapon. Then there was always the question about "getting high" off the smoke that came from the sage, cedar or sweet grass that she was burning. If this Indian woman was not "getting high" off these "weeds," then she must certainly be using it to cover up the smell of marijuana.

After too many of these conversations with staff, tired of trying to explain what these sacred objects meant to me and the

other Indian women, it seemed that the only explanation that these non-Indians would understand was the comparing of our sacred objects to non-Indian religious objects. An example of this would be the comparing of tobacco ties with the Catholic rosary, eagle feathers with the crucifix, and sage, cedar and sweet grass with religious incense. Of course, none of these sacred objects could be compared with the other, but explained in this way, some of the staff would then understand that our sacred objects meant something to us.

Nevertheless, these frequent conversations between me and the staff never seemed to influence them, for they made it a habit of ransacking the lockers and the sleeping areas of the Indian women. For each Indian woman a "chrono" was typed, stating that she was allowed to have in her possession, locker and assigned sleeping area sacred objects that are used in her religious belief. It was also explained on this "chrono" that if for any reason dorm staff wanted to examine any of these objects, they must do so in front of the chairperson of the group and the Indian woman whose possessions were being examined. There were three copies of the "chrono": one filed with the Lieutenant's Office, one for the dorm staff, and one in plain view on the outside of the Indian woman's locker.

It was an endless circle; as soon as one dorm staff member would begin to understand that our sacred objects were to be respected and left alone, he or she would be transferred and the problems would begin all over again with a new staff member.

After a long day of putting in my "incentive," my only peace would come from the knowledge that I would be able to return to my room and pray, something that the white man has not been able to take away from us. Too many times upon entering my room I would find my feathers thrown on my bunk along with all my material and tobacco everywhere. With anger in my heart and tears in my eyes I would search the walls above the bunk of my roomie, to see her rosary and crucifix still in place.

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Little Rock Reed:

Prison officials and guards are not the only people responsible for mishandling or misusing sacred objects, as is clearly illustrated in the following letter which was published in the June 29, 1989 edition of the *Sho-Ban News*, written by an Indian prisoner in the Orofino, Idaho state prison:

Sho-Ban people:

A few lines that concern our sweat lodge at Orofino, Idaho. We are having a problem with the participation of our sweat. The administration is allowing everybody to sweat. I'm talking non-Indians who are using it the wrong way. Just today (6-21-89) I went outside and seen our sweat lodge messed up and I also heard from concerned

Indian inmates that the protective custody inmates are using it as a playhouse. I know there isn't a full-blooded Indian in there to sweat. I am terribly upset about the situation. We do need a response from outside medicine men to tell me how to approach this matter. I'll relay the information to the deputy warden who doesn't know how the sweat lodge is supposed to be run. I know there are a lot of true believers in sweat lodges out there.

Any information concerning my letter will be greatly appreciated by me and the rest of the Indian inmates and the deputy warden....

May Grandfather watch over you and my three sons and family....

Many Indians feel so strongly about it that they feel that sacred objects and ceremonies shouldn't be brought into the prisons at all:

I was brought up with the conviction that there are certain things that can be revealed to non-Natives, and a plethora that cannot. I strongly feel that this is an influential part of why our native customs and rituals are being exploited to this day. Today, we have the desecration of our ancestors' burial grounds, the open display and sale of sacred objects, the publication and sale of our sacred rituals and ceremonies. Take a close look at these "plastic medicine men" perpetrating fraud in the world. It's almost as if it's become a fad being an Indian, or of Indian ancestry. Even though I am in a controlled atmosphere, these people in charge cannot dictate my beliefs or conscience. My beliefs underlie one of the few traits that might be applied overall to most Natives; my belief, or their beliefs, in a personally acquired power. Which brings on my next thought, which may seem incongruent with most nationalist natives in prison, but they are my convictions and I stand by them. There are various sacred objects that I strongly feel should have no place within a prison setting. They are sacred masks, medicine bundles, the calumet, or pipe, sweat lodge and certain ceremonies. I wish to clarify the sweat lodge thing before I go any further. The preparation of one for the sweat bath is something that should not be interrupted or desecrated. In a prison atmosphere there are many variables which make it impossible to guarantee that the ritual will not be interrupted. And the area and lodge itself are something of spiritual significance and not something to be left to the scrutiny of security personnel. The same goes for the sacred masks, medicine bundles and ceremonies. Which of you incarcerated Natives can positively guarantee that during a prison lock-down, or random shake-down, the security personnel will not disgrace these objects that we are to hold so dear to our religion and traditional

beliefs? I have been through numerous lock-downs and the random harassment shake-downs where if a medicine bundle were in my cell, it would have been dumped haphazardly onto my bunk or floor and thoroughly searched. I personally have had my family pictures dumped on the floor and scattered about as if they were rubbish. These guards aren't concerned about my beliefs when they are searching my cell for contraband. All they care about is doing their job. Granted, there are many security personnel in prisons who are sympathetic to Native American ideals. But can one guarantee that they will be the ones shaking the cells down? I think not. I have had beads and beadwork destroyed by these people over the years, all in their duties of searching for contraband. There is one realistic truth that must be scrutinized in contemplation of this endeavor: these people, these administrators, are in the business of controlling people, and controlling people is always going to be their main objective. My traditional teachings are of the essence that all cannot be shared with non-Natives. They are not ready or willing to accept them as yet.

In the state of New York, the Council of Chiefs has signed an agreement with the Department of Corrections stating that they will sponsor a Native American cultural awareness program for incarcerated Natives. They have designated Auburn, Attica and Albion prisons as places for these programs. To date, Auburn is the only prison in New York to have the program. But the chiefs do not recognize the program any more. You can draw your own conclusions as to the reason why. I have been in Auburn prison and a member of its program, yet my heart is sad in seeing what goes on there. There are some who are of sincere heart and true Indianness, yet there are those who are there for other reasons, and they are the ones who ruin it for others. "The Bad Apple Syndrome." What it boils down to, where my thoughts run, is that I am an Indian, a Native of this creation, twenty-four hours a day, three-hundred sixty-five days a year. I am not an Indian only one day of the week as some of these Christians who sin and do evil six days a week and repent for their evil deeds in a place they are to hold in such high standing on the seventh day. That is not the way I was brought up in this creation. My prayers greet each new day with thanks for living to see a new dawn. With prayer I thank the end of each day for allowing me to see the beauty of sunsets again. My prayers are for the safety and guidance of the people, leading them from the darkness encountered during life's ordeals. The burning of tobacco and sweet grass allows my prayers to be lifted to the powers of the four sacred directions. I am not a pipe carrier and having one in prison would only bring untold harm to the people. Something the old ones have asked me not to do.

There will always be those who laugh and ridicule

the Native American. But when I reach into my power I laugh at their powerlessness, their own lack of understanding, giving me clarity to see myself feeling pity for them, for they will never be free; they are and will be captives of their own ignorance. Some say that I am a traditionalist. In many ways I am, but I respect the lessons; the teachings that have been handed down with my people, this will never change within my heart or my mind. My coming to prison has not changed my beliefs, nor do I think it ever will. Another lesson, however unfortunate it may be, that is revealed for me to learn from....

-- Anonymous, Anishnabe, 1990

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Oowah Nah Chasing Bear, Indiana (mid-1989):

I am involved in trying to help our brothers in the prisons. Here in Indiana the state still refuses to allow Natives to practice our spiritual ways. It took a six-year struggle for me to have the pipe permitted into Pendleton prison for one brother. That did set a precedent, *BUT* since then truly nothing has changed.

There is also the complication of those who suddenly are Indian and those who wannabe, demanding the pipe, sweats, crystals, horns, hides, herbs and exotic ideas obtained from some publication, which clouds the issue. While no one is saying they cannot join a prayer circle, their demands cause much pressure to the Indians. I am faced with this every day in my work, people viewing our religion as a hobby or a means to exploit. The administration siezes on this to refuse our spiritual rights.

There is a situation in the State Farm prison in Greencastle - A Miami Native there with roll number and legal status is being singled out for harassment and is being refused permission to wear traditional headband and long hair - but that is the least of it. Because he has refused to back down and refute his heritage, he has lost much "good time." I have met with the warden, Mr. Hanlon; Assistant Warden, Mr. Badger; grievance officer Mrs. Lovett; Chaplain Rev. Swanson; and state Superintendent of Religious Volunteers Reverend Sheldon Grame. Each will assure me that this Miami man (Thad Trigg) will not be harassed and restricted because he does indeed have legal status. Yet the moment I am out of sight the whole thing resumes.

Now there is a Lakota, formerly a federal prisoner, who is inside the state farm. He has gathered about him a group of wannabes claiming all sorts of rights. Now the

Lakota oddly enough experiences no kind of harassment, and openly wears long hair, head band, and has the ear of the assistant warden, Mr. Badger. Mr. Badger is also a Christian minister having served a while in South Dakota.

All my efforts recently to have a conference with the officials are ignored; even my registered letter to the warden. Though I have letters from former Governor Orr of Indiana stating seven years ago that he was giving instructions to ombudsman John Nunn to implement the freedom of religion for Natives, nothing has changed....

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**Oowah Nah Chasing Bear,
a couple months later:**

I want to tell you of this brother, Thad Trigg. He is currently at Indiana State Farm. For several years I have visited with him and try to help him in his struggle to follow his spiritual path. He has been very sincere and strong. He has been harassed for wearing long hair and headband, being told he must have documented proof in his "packet" - so I went to the Miami Nation and got his roll number card, paper verifying his heritage. Still he was refused permission to wear the head band or medicine bag while a Lakota (apple - meaning red on the outside, white on the inside) openly wore long hair, headband, and recruited his own tribe of wannabes who elected him Chief. I asked the grievance officer to speak with me. She barged into the meeting and interrupted. I told her that Thad has legal papers. She said, "Well, he does not look like an Indian. That is why he is harassed. He doesn't look like you or this man (the Lakota)." I of course let her hear my response to that racist comment - she is a black woman. Again I talked to Warden Hanlon about the rights of this man, and I questioned why one man can openly wear traditional headband while another was denied. Mr. Badger, the Assistant Warden, again stated, "He doesn't look like an Indian." I again wrote the Miami Nation questioning about heritage and the wearing of the headband. I asked Mr. Badger why the discrimination, that one man was permitted to wear traditional religious things while another could not. He said, "I made a mistake. I will issue a letter." He said this in the presence of a witness, a professor friend of mine. But he then changed his mind and said it would cause problems if he issued such an order. We are suspicious that the Lakota is a snitch, for he certainly gets better treatment - he and his followers. I again sent a registered letter to Hanlon, Badger and Swanson demanding an audience.

At this meeting I inquired as to why the instant injuns were not asked to document their heritage. He replied, "We can't do that. It is against the law and Department of Corrections Policy. We can't refuse to allow any to practice the religion of his choice." QUOTE. This statement was made in presence of Randy Dragon, the recreation supervisor. I asked again why Thad Trigg then was being questioned. He said, "He doesn't look Indian."

I also told Badger I had talked to the Lakota and told him if he continued to exploit the sacred way with his wannabes he was on his own. I will be no part of desecrating sacred things. These people are playing and using the Native religion to manipulate the system. It is a hobby to them. I will not hand over what our people fought and died for. I know the spirits will take care of them and the Lakota. But I also will stand against any desecration.

I have copies of the letters from the Secretary of the Miami Nation, letters from the former governor and wardens about freedom of religion for Natives in prison.

I hope you can use this in your writings. Use anything I send. If it will help our people I will send my life.

I have also seen the guitar thumpers - heard them below us in the big chapel while we sit in a hot, tiny cramped room above them at Terre Haute federal prison. Once as I was leaving, they were too, and one approached me and asked if I were visiting a prisoner. I replied, "No, I come as a spiritual person to visit the Native group." She come close and pushed her Bible into my chest asking if I were "saved." I asked from what. And she said, "Are you lost?" I say, "No, I been here a lot and I know my way around." She say, "There is a lake of fire waiting for you!" -- Well, it was so hot on that parking lot and after sitting 1 1/2 hours in that wretched room, I was in no mood. I say, "You mean there's some place hotter than right here?" We had had a drought and the winds were like santanas - hot, scorching to skin. I left her standing with mouth open, clutching her Bible.

I never said I was nice.

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Little Rock Reed:

In my capacity as director of the Native American Prisoners' Rehabilitation Research Project (NAPRRP), I wrote to the warden expressing my concern for the problems Oowah Nah had shared with me about the Indiana State Farm. The letter was five pages long and

looked pretty much like a legal brief, explaining the controlling law as discussed in the chapter on "White Man's Law. The letter ended like so:

Oowah Nah Chasing Bear is a spiritual advisor, Mr. Hanlon. We ask you to please listen to her, for she has the knowledge and wisdom to speak about Native American religion. We ask that you give her the same show of respect that you would give to, say, Chaplain Swanson, if he were to approach you and complain about prisoners entering his Christian religious services and walking up and spitting on the cross of Jesus. Would you then tell Chaplain Swanson that you have no choice but to let those prisoners continue going and spitting on the cross because they claim to be Christians, or would you respect the rights of the true Christians by leaving it in the chaplain's discretion whether those disrespectful and irreverent prisoners must leave or stay? We ask that you show our spiritual leaders the same respect you show to yours. Oowah Nah Chasing Bear is one of ours.

If you have any questions about any of this, or would like for me to give you any further information or point you to someone else who is able and willing to help you out with this matter (such as prison officials from other prison systems who have addressed these same issues in the past), please don't hesitate to contact me. I would be happy to assist you in any way I possibly can. This situation must be handled with care, and in good faith by all concerned, because as it stands, the situation brings much pain and distress to my people who live with the traditions, and who love these ways that were given to us by the Great Spirit. Please consider it all very carefully.

May God guide and guard you in this matter....

Copies of this letter were also sent to the assistant warden, Mr. Badger; Chaplain Swanson; Indiana Governor Evan Bayh, the Indiana Attorney General's Office; and the Associated Press of Indiana. Although my letter was five pages long and only the first page made reference to Thad Trigg and the headband issue, no action was taken with respect to any aspect of the letter except for the implementation of a policy allowing Indian prisoners to wear headbands. The only response I received to this extensive letter was the following note from then assistant warden Badger:

Dear Mr. Reed:

This is to acknowledge receipt of your letter of August 22, to Mr. Hanlon concerning Thad Trigg and the wearing of the headband. We believe this problem has been resolved and Mr. Trigg and all other Native Americans will be allowed to wear the headband.

I immediately wrote to Mr. Badger expressing my appreciation

for their having decided to let Thad and other Indians wear the headbands, and I inquired into whether any kind of action was being taken with respect to all the other complaints I raised in my August 22 letter, for I was still receiving complaints from Oowah Nah and the Indian prisoners at the State Farm concerning the insincere non-Indians and the Lakota apple who were causing such distress by their misuse and disrespect toward Oowah Nah and the traditional Indians. My letter was ignored, so I wrote to Mr. Hanlon and this letter was ignored. Copies of these letters were sent to administrators at central office, including John Nunn. These letters were totally ignored. Within a couple of months, the headband policy was rescinded so that Thad and the Indians were not allowed to wear headbands according to their religious beliefs. Additional letters of concern to Indiana officials have been totally ignored. When Mr. Badger took Hanlon's place as warden, I wrote to him and sent him a copy of the first draft of the chapter in this book entitled "White Man's Law" along with the model consent decree described in the chapter on "Some Relatively Simple Solutions." Copies were sent to numerous officials. I asked that a conference be arranged so that we could resolve these issues, for I had received complaints from Indians in prisons throughout the state of Indiana that they are being denied their religious freedom. I asked the officials to focus on establishing a program for the Indian prisoners - a program modeled after the programs in numerous other prisons throughout the U.S. and Canada. My requests were totally ignored. And then about eight months after I sent the chapter manuscript and letter/proposal to Badger and all the officials, I received a form letter which was identical to a letter the prison officials sent to a congressman who had inquired about the complaints of Oowah Nah and Thad Trigg. This form letter did absolutely nothing to address the issues I raised in all my correspondence, or my request that we focus on a program proposal based on models in other state and federal prisons. When I received a copy of the letter which was sent to the congressman a couple weeks after I received my copy of the same form letter, I immediately wrote to the congressman. The letter was dated October 4, 1990, and is reproduced here in its entirety:

The Honorable Andrew Jacobs, Jr.
441A Federal Bldg.
46 East Ohio St.
Indianapolis, IN 46204

Att'n: Cynthia Mahern, Staff Assistant

*RE: American Indian religious freedom violations within
the Indiana Department of Correction*

Dear Congressman Jacobs:

I have in my possession a copy of a letter dated September 7, 1990, addressed to you by John Nunn, Deputy Commissioner of Operations for the Indiana Department of Correction. In his letter, Mr. Nunn claims that there was a thorough, extensive investigation into the concerns you had directed to Commissioner Aiken regarding prisoner

Thad Trigg and the practice of Indian religion within the Indiana Department of Correction. He has stated further that "the Department does recognize the Native American religion and does extend to approved practitioners of that religion the opportunity to observe their culture and traditions as much as possible without jeopardizing the safety and security of the institution."

The information Mr. Nunn has relayed to you as set forth above is, to be quite frank, a lie. Mr. Nunn is well aware of the fact that the policies and practices of the Indiana Department of Correction with respect to the practice of Native American religion are, in fact, in blatant violation of Article 18 of the Universal Declaration of Human Rights, as well as the First Amendment to the United States Constitution and the equal protection of the laws. There are many people who have written to both Commissioner Aiken and Mr. Nunn describing numerous instances of religious discrimination and deprivation within the Department of Correction. Most of these letters go unacknowledged by Mr. Nunn and Commissioner Aiken, as well as other correctional administrators and chaplains throughout the state of Indiana. My personal communications to these officials serve to illustrate.

Over the past year and a half I have sent numerous letters to prison officials concerning complaints I have received from Indian prisoners in several of the prisons in the Indiana Department of Correction. Rather than to reconstruct the history of my dealings with the Indiana departmental officials, I will set forth only enough facts with which to demonstrate that Mr. Nunn's letter to you was misleading, to put it very mildly. If you would be interested in further documentation, please contact me and I would be more than happy to provide additional information and documentation verifying my claims.

Our organization has conducted surveys and compiled directives and regulations which set forth the extent to which American Indians may practice their religious beliefs inside the prisons throughout the United States, and what we find is that the Indiana Department of Corrections is about the most restrictive prison system in North America with respect to the religious needs of American Indian prisoners. I have personally written to the departmental officials, including Mr. Aiken and Mr. Nunn, with absolutely no results other than to receive a letter similar to the one Mr. Nunn had written to you. Their responses failed to acknowledge all of my questions and the majority of my claims.

For example, I had provided a copy of the enclosure [the chapter, "White Man's Law"] to Mr. Nunn and a number of other prison officials in the Indiana Department of Corrections earlier this year [identities omitted]. This

manuscript thoroughly examines the subject of religious freedom in the prisons as applied to American Indians from a legal standpoint, and as applied to the law which controls the subject matter as set forth by the U.S. Supreme Court in the case of *Turner v. Safely*, 107 S.Ct. 2254 (1987). This manuscript also indicates that there are fully adequate Native American religious programs in many prison systems throughout the United States, and it includes excerpts from policy directives of numerous prison systems which address a long list of religious issues that the Indiana Department of Correction administrators totally refuse to even consider addressing, although they have been asked to work with the Indian community on resolving these issues over the years repeatedly and consistently.

In the letter I sent to Mr. Nunn and all the prison officials in which I had provided them with copies of the enclosure, I had, for the umpteenth time over the past year and a half, asked that departmental officials cooperate with us in addressing these issues so that the Indiana Department can implement religious programs and policies for the Indian prisoners which are modeled after the programs and policies in the dozens of other prison systems throughout the United States that have already addressed the issues of religious freedom for American Indian prisoners. My requests, and similar requests by Indian prisoners and volunteers from Indiana, have been totally ignored by Mr. Nunn and the other prison administrators throughout the Department of Correction who we have made these requests to.

In order to determine the validity of the claims made by Mr. Nunn in his letter to you on September 7, 1990, several questions should necessarily be directed to the Indiana Department of Correction:

1. Why have the officials of the Indiana Department of Correction, including Mr. Nunn and Mr. Aiken, failed to acknowledge receipt of the enclosed manuscript, or to respond to my requests that we address these issues?

2. What makes the Indiana Department of Correction sufficiently different from the Federal Bureau of Prisons and the dozens of state departments of correction that the numerous American Indian religious practices and policies in all these other well-run penal systems are incapable of being implemented in the Indiana Department of Correction without jeopardizing the safety and security of the prisons?

3. If there was a thorough and extensive investigation into the subject matter, as alleged by Mr. Nunn in his letter to you, who conducted the investigation, who was interviewed by the investigator(s), what documentation was examined by the

investigator(s), and what criteria were applied by the investigator(s) and/or administrators to determine that the Department does, in fact, extend to approved religious practitioners the opportunity to observe their culture and traditions as much as possible without jeopardizing the safety and security of the institutions?

The last question set forth brings us to another important question: how does the Department go about deciding which Indian prisoners will receive "approval" to practice and observe their culture and traditions and which ones will be denied such "approval"? -- In the past several months I have received complaints from Thad Trigg and other Indian prisoners at the Indiana State Farm, as well as from Oowah Nah Chasing Bear, the spiritual leader referred to in Mr. Nunn's letter to you, to the effect that they are not permitted to have their medicine bags, yet the prison officials are permitting one Indian prisoner to have his medicine bag at the Indiana State Farm. The prisoner who is allowed to wear his medicine bag is a known informant and he is believed by the sincere adherents of traditional Indian religion at the Indiana State Farm to be non-religious. This indicates that the Indiana Department of Correction officials possibly determine who shall be approved to practice Indian religion on the basis of a willingness to be police informants, and it indicates that the wearing of medicine bags at the Indiana State Farm is not a security risk since they will allow that particular prisoner to wear one. I have proposed solutions to these types of problems, based on the policies at other prisons throughout the United States, but I am persistently ignored by prison officials.

Two months ago I received a complaint from Oowah Nah Chasing Bear and the Indian prisoners at the Indiana Reformatory at Pendleton, claiming that the Indian prisoners are being discriminated against. They state that they have been attempting to receive permission to have religious meetings, but that the chaplain refuses to recognize any of them as being Indians and has stated they are not entitled to practice their religious beliefs as of right. I had written to the chaplain (Reverend Samuels) two months ago, perhaps a little longer, expressing my concern for the matter and offering to help work the matters out, using existing policies at other prisons around the country as a basis to guide us in addressing the complaints of the Indian prisoners and Oowah Nah Chasing Bear. He has failed to acknowledge receipt of my correspondence. Additionally, I have received complaints from Ms. Chasing Bear that she has complained to the warden about these matters, as well as to Mr. Aiken and Mr. Nunn, but they all refuse to respond to her pleas.

So perhaps I was too harsh when I stated that Mr.

Nunn lied to you in his letter of September 7, 1990, for the Indiana Department of Correction may very well "extend to approved practitioners of that religion the opportunity to observe their culture and traditions," and the "Catch 22" is that the departmental officials refuse to designate anyone as an "approved practitioner of that religion" except for a few select individuals who (1) are not recognized by the Indian community as being sincere adherents of Indian religion; (2) are police informants; and (3) promise not to make any religious requests that will amount to an adequate religious program for the sincere adherents of Indian religion.

The issue of American Indian human rights violations in the Indiana Department of Correction is an issue that must be addressed. The claims against Mr. Nunn need to be investigated by someone other than Mr. Nunn. If the Department does not establish policies and practices which will safeguard the constitutional rights of the Indian religious practitioners, there will be several lawsuits filed in the various federal districts within the state of Indiana. It would be an utter waste of Indiana taxpayers' dollars, for the enclosure clearly indicates that the Indiana Department of Correction does not have a legitimate reason to continue ignoring these matters (and complaints), as the officials of that Department have been doing for the past several years.

Again, if you would be interested in additional information and documentation verifying these claims, please contact me.

Thank you very much for your attention to this very important matter.

Sincerely Yours,

Little Rock Reed
Associate Director
NAPRRP

cc: Thad Trigg, Indiana State Farm;
Enrique Feliciano, Indiana State Reformatory;
Oowah Nah Chasing Bear, Bainbridge, IN;
file;
Commissioner Aiken;
Deputy Commissioner Nunn;
Indiana Governor Evan Bayh;
Mr. Badger, Sup't, Indiana State Farm;
Rev. Samuels, Indiana State Reformatory;
Mr. Jack Duckworth, Sup't, Indiana Reformatory.

I never did receive a response to that letter. But for some reason, I never expected one.

Two years after I wrote that letter, I was out of prison, serving as director of the NAPRRP. I had occasion once again to write to prison officials in Indiana expressing my concern over some discrimination against the Indian prisoners. I had greater hope this time, as now I was out of prison and could personally meet with prison officials, if necessary, and I could pick up the telephone and let them know that I'm opposed to doing a disappearing act. But I also had greater hope because practically the entire prison administration had changed. Several weeks after I wrote to them, I received a letter from Doris Woodruff, the current supervisor of religious and volunteer services for the Indiana Department of Correction. She was asking if the NAPRRP could provide any resources to assist in the religious services for Indian prisoners. I responded by letting her know that Oowah Nah Chasing Bear is the one she should be working with, and I suggested that since Oowah Nah has for several years been trying to get the prison administrators there to establish a policy that would address the spiritual needs of the Indian prisoners, it would be a good idea for us to have a meeting between members of the Indian community and Indiana prison administrators with this objective in mind. I explained that Lenny Foster, a spiritual leader and director of the Navajo Corrections Project with extensive experience in correctional programming for Indian prisoners, would be in the area in late October 1992. I suggested that we have the meeting when he was in the area so as to take advantage of his expertise. She agreed and the meeting was set for late October.

Those present at the meeting were Doris Woodruff, Lenny Foster, Oowah Nah Chasing Bear, Amos Cloud Man (a Lakota spiritual advisor who is now attempting to assist Oowah Nah with the spiritual needs of the Indian prisoners in Indiana), and a couple other people whose names I don't recall. At the meeting, we asked Doris Woodruff to work on getting a policy directive established which would be statewide and would require prison officials to allow the same type of religious practices that are currently allowed in many prisons across the country. Lenny talked about his experiences and described what the spiritual programming consists of in the many prisons he goes into to counsel with the Indians. Ms. Woodruff said that it would be no use to seek statewide policy directives because the prison wardens couldn't be forced to comply with them anyway (which doesn't speak too well of their respect for the law). She was very diplomatic, however, and made us believe she would do everything in her power to see that our wishes came to pass. Then in February 1993, here is what Oowah Nah Chasing Bear wrote to me:

A couple weeks after our meeting [referred to above], I went to the monthly meeting of Governor Bayh's so-called "Indian Council" -- which consists of about two and a half Indians, about eight archeologists and one scholar who claims to be an "expert" on Indians -- if you can imagine. Doris [Woodruff] didn't know that we were gonna be there. We got there early so we could sign up to speak.

Doris spoke early in the meeting and said that she needed

the Indian Council's advice on where to go to locate a true Indian spiritual leader. This was right after the meeting with Len Foster. When I spoke I mentioned this, and reminded her she had also already met Red Horse [Gerald Center, a Lakota spiritual leader], and right here is Amos Cloud Man. I told her she couldn't find more honorable or experienced men; I also wrote to her and told her point blank that she insults the Indian people.

Also, the Department of Correction sent a contingency to the U.S. prison at Marion, Illinois -- the United States' super-maximum security prison where the sweat lodge and long hair are permitted -- to look into these issues, because they didn't believe what Lenny Foster had told them about spiritual practices in federal prisons. At Marion, sage may only be kept at the prison chaplain's office. So when the contingency returned, prison officials in Indiana confiscated all the brothers' sage and said it will now be against the rules.

I have been struggling with the Indiana Department of Correction for twenty years now. They have no respect. Our only hope is for Congress to pass the legislation Senator Inouye has promised to introduce.

Aside from the outright religious discrimination that is so evident in the Indiana Department of Correction, this illustration delves into three major grievances that are common throughout the United States and Canada where Indian prisoners are concerned:

- * *The disparity of treatment that is accorded religious leaders.*
- * *The prison officials' unwillingness to sit down at a table with Indians to work out solutions to problems that are brought to their attention by the Indians.*
- * *Prison officials' unwillingness to consider establishing specific policies that will resolve the problems.*

With respect to the latter two grievances, here is a prime example of what length prison officials will go to avoid sitting down at a table with Indians or addressing the grievances of Indian prisoners. I contacted the prison chaplain and officials at the federal prison in Milan, Michigan in 1989 after having received hundreds of pages of documentation verifying that the Indian prisoners there were having religious practices and sacred objects disrespected. I wrote a lengthy letter to the chaplain and asked if representatives of the Indian community could meet with him and other officials there to work out the problems. One of the issues was quite serious, as many of the prisoners had filed grievances complaining that the wood they were required to use to heat the rocks for the sweat ceremonies was contaminated, causing the rocks to emit a nauseous odor which was getting the Indian prisoners sick during ceremonies. Their grievances were not taken seriously. When

I wrote to the chaplain offering to provide wood to the prison for the Indian prisoners' use, he merely responded by saying that the prison officials in Washington D.C. would be happy to address my concerns and that he had forwarded my letter to them. No response came from Washington, however, so I wrote to the head chaplain of the Federal Bureau of Prisons about it. He failed to answer every single question I asked him, so I asked him in another letter, this time pursuant to the Freedom of Information Act. He never did respond to my Freedom of Information requests, but within the next several weeks, nearly every one of the over fifty Indians at the federal prison in Milan were transferred to other prisons throughout the country. Coincidence?

The disparity of treatment that is accorded Indian spiritual leaders by prison officials and chaplains is pretty well exemplified by Oowah Nah Chasing Bear's experiences with the Terre Haute federal prison officials and the Indiana Department of Correction. Her experiences are not unique, however. Prison officials' treatment of Leonard Crow Dog at the Leavenworth prison because of the shirt he was wearing (as discussed in a previous chapter) is another good example of the disparity of treatment that exists with respect to spiritual leaders, as was the Oklahoma prison chaplain's treatment of Pat Moss. Another example is the experience of Bedeaux Wesaw and the California Department of Corrections. Had he been a Christian, and if it were a Christian religious practice to cut one's hair as a show of bereavement, he would still be permitted into the prisons because it would never have been considered a security risk for him to take the brother's hair out of the prison.

~ ~ ~

STORMY OGDEN CHAVEZ:

As the Indian women at the California Rehabilitation Center (CRC) gathered to discuss and plan the starting of a support group, guards surrounded the group expressing that we could not gather in the outside corridor. Someone in the group wanted to know why, since the corridor was not out of bounds and there were other prisoners in the same corridor. Of course, this question was never answered. The guards watched as the women left to sit out on the grass and to continue the talking circle. We thought that the guards would realize we were causing no harm and would just leave us be. No such luck. Maybe they were put off and made to feel uneasy by all the laughter and good spirits coming from our circle. Once again we were harassed and told to leave the area, in threat of being "written up."

Weeks later the first official meeting was held by the American Indian Women's Cultural Group. This was accomplished due to our having received copies of the by-laws of the men's Indian group. One Indian woman spent many sleepless nights re-writing these by-laws to explain the purpose of our support group for the Indian women. It goes without saying that the paperwork was not

kept in one place more than once, in fear of the paperwork being destroyed and the men also suffering from the backlash.

With any group that is trying to get off the ground, there will be problems. I noticed this with all the other groups (of color) in C.R.C. What I didn't see was the strict attendance requirement on the other groups as it was on our group. Each week it was required of the chairperson to type several copies of the minutes of the meeting, to be distributed among the staff and the administration. Another requirement for our group to be able to continue (without fear of being told to disband), was the regular attendance of fifteen or more Indian women. At that time there were only ten or twelve Indian women that were being housed at C.R.C. This problem was taken to our sponsor, a non-Indian man who taught vocational training to the prisoners. His solution was to open the group to non-Indian women. Of course, this did not sit well with any of the women. We were caught between a rock and a hard place. If we wanted any outside activities or our cultural or spiritual leaders to be allowed inside the prison, or to even have a voice at the "inmate advisory committee" meetings, we had to be recognized by the administration.

We met as a group; the four council members explained to the rest of the women that the administration was trying to break us up - why else would there be a "head count" on us? Some of the Indian women wanted to quit the group if there were going to be such requirements on us and the possibility of non-Indian (white) women in our group. The council members expressed "strongly" that this was just what the administration wanted. We as Indian women were strong enough to throw their plan back in their face and laugh at them as we did it.

The outcome: non-Indian women were allowed in the group, but never to sit on council, have any voting rights or any voice in any matters of the group.

Of course, there are many more problems that have and will face Native American prisoners that the administration puts in our way, in hopes that it will break our spirit. But as long as we stay strong and know our rights and are not afraid to fight for them, we will move past any objects that they put in our way.

~ ~ ~

Little Rock Reed:

This requirement of a specified number of people being involved in a group in order to receive recognition of constitutional rights is not unique to the prison Stormy was in. At the Southern Ohio Correctional Facility, religious groups are denied access to space for religious services or to have spiritual leaders enter the prison unless there are at least five prisoners in the general population who are adherents of the respective religion (an explicit policy of discrimination against

"minorities").

These limit-requirements pose a real problem for Indian prisoners in many states where the Indian population is extremely small. If the prison officials were to put one Indian prisoner in each prison in the state of Ohio, they would run out of Indians before they run out of prisons! So this is a way prison officials can avoid establishing, or allowing the establishment of spiritual programs for Indian prisoners: simply disperse the Indians so that they can never meet the arbitrary limit of five in any given prison.

This "minority" problem brings with it some significant ramifications which are touched upon in an "information sheet" published by the Native American Prisoners' Rehabilitation Research Project (NAPRRP) in the fall of 1989:

In June, 1989, we initiated a survey of the extent to which cultural and ethnic factors are taken into account and incorporated into the administrative approaches to the evaluation, classification, placement, rehabilitation and reintegration of Indian adult and juvenile offenders within federal and state correctional and rehabilitation departments. The following are two excerpts from letters we sent to the directors of one adult state department of corrections and one state department of youth services. These excerpts illustrate two of the major problems we have discovered are prevalent in most of the eastern states, and what we are trying to do about it.

To the adult Department of Correction director:

... We feel that for the very reason you suggest your participation in our survey would not be meaningful, it would in fact prove invaluable. Unfortunately, we have found that in those prison systems where the Native population is in the extreme minority, such as is the case within your Department, very little, if any, attention has been paid to the unique needs of the Native population. For example, the very fact that the ten Native offenders within your jurisdiction are "scattered throughout the department's 32 institutions" comprising 16,077 offenders indicates that the very vital need of the Native offenders to be associated with one another as Native people has been overlooked. This situation would be tantamount to scattering ten Anglo offenders throughout 32 institutions comprising 16,077 Black, Hispanic, Native and Asian American offenders. We urge you to consider the alienating impact such a situation would have on the ten Anglos....

To the Department of Youth Services director:

... The responses to our surveys indicate that because there are so few Indian youths who are received by many of the state departments of youth services, very little, if any, consideration is usually given to their special needs. You have indicated that there are no Indians currently in your agency. We would like to share some information and suggestions with you that may serve to prevent a situation that could prove to be detrimental to the welfare of any Native youths who might find themselves in the care of your agency in the future.

It is absolutely essential that cultural and ethnic differences be taken into consideration in any approaches to the evaluation, classification, placement and efforts toward the rehabilitation of Native American youths. It is our experience that with very few exceptions, efforts toward the rehabilitation of Native people, both adult and youth, prove to be a failure when cultural and ethnic factors are not taken into account. This is especially true with respect to chemically dependent Native people.

I am enclosing a research paper prepared by Eliseo Guajardo...which discusses cultural differences and counseling with minorities, including Native Americans, Blacks, Hispanics and Asian Americans. We would deeply appreciate your examining this paper and having consideration given to establishing a policy that would require it to be studied by Department of Youth Service employees as part of their pre-service and in-service training.

We would also urge you to consider the possibilities of establishing some type of policy that will enable the Native youths who find themselves in your agency in the future to have regular contact with a Native counselor, spiritual leader or some other Native role model. We would be happy to assist in any such efforts you would be willing to make toward this end, such as by locating a Native person...who could volunteer to spend a few hours a week or so with the Native youths in your agency, and to teach them about their culture and traditions. So much good can come from this type of contact -- it can foster pride and strength in the Native client as no other therapy can, while too often our Native

youth are lost, with no true sense of identity, and this is what usually leads them to drugs and alcohol and eventually to prison....⁴

The requirement that a specified number of Indians participate in a program or group before it will be recognized was discussed above. Here is a grievance that is just the opposite, described in a letter I received on October 11, 1990 from Oowah Nah Chasing Bear:

This hypocritical government! I watch on t.v. the restriction on U.S. forces in Sadan so as not to offend the Islamic-Muslim peoples. No alcohol, no magazines or newspapers, etc., with people in swimwear, underwear, semi-nude or nude. Restrictions on music, food. Even the women in Army cannot show their arms. Bush says he wants armed forces to show respect for their religion and culture -- while people in this country have to beg just to gather to pray....

Whoops. Wrong paragraph. Here we go:

I intend to stand firm and fight Reverend Samuals at Pendleton. He told Carol he would not permit more than fifteen at the meeting. Am I to tell them that they cannot come to pray - that you can - you can't!? Are Catholics restricted from Mass? No.

Samuals is trying to say that I can't meet with more because I am a woman and women can't come behind the walls. He told me it was because there were other groups meeting at the same time(????).

~ ~ ~

Bernie Elm, Cayuga elder:

The following are some common grievances that I have found here in the New York State penal system.

First of all, let me say that if we are allowed to have an Indian culture group here it will be the first time in a medium security prison in this state. There was one in Auburn prison, but I cannot find out how that one is going due to lack of contacts. Of course, we must deal with paranoid administrations who justify any denial by saying "it is for security reasons that you can not do this or that." Since Auburn is a maximum security prison, they can say it is not the same here. Don't ask me where the logic comes in, as I have tried to figure that out for over a year.

So perhaps this would lead us to the problem that the administration is reluctant to allow Native American cultural classes because they have a complete lack of knowledge as to what

it is and so try to discourage it from starting in their prison. What is so strange to me is that they are in very close proximity with the Chatteraugus Indian Reservation (about 2 miles away), and they have three or four guards who live out there and work here. I have spoken with these guards and civilian employees and they deny any knowledge of Native American culture. I suppose they are what we call "apples" (red on the outside and white on the inside). Then too, perhaps they fear losing a good job. I really don't know.

We have tried to get a group going here and while the administration has acknowledged our asking, they now seem to have put up a wall of silence, perhaps hoping that we will just go away. It is quite clear to me that they have never had to deal with the subject before. Of course, we are in a minority here as far as wanting to start culture/education classes and have a sweat lodge and sacred objects brought in. I have also given thought to the administration's fear of drugs being brought in and how they would accept herbs and sweet grass, etc.

So then I find that there is a general lack of knowledge by administration as to Native American cultures and that would bring about reluctance by them to allow the sacred objects to be brought in and used in sacred ceremonies. I have found a profound ignorance among officials that truly borders on paranoia and fears of militant groups being formed with their sanction. Of course, I cannot imagine any militant group consisting of four people. Such prejudice builds walls between prisoners and administration that are not easily removed or torn down. We must keep in mind that we are "on their turf" and must proceed with caution in trying to introduce something new and foreign to them.

The ministerial services and personnel are of no help either. They offer little or no assistance in the matter. Since they too are paid by the state, they display a general lack of knowledge of traditional ways. Therefore they try to counsel in the Christian ethic and in doing so attempt to break you away from Native American traditions.

In view of the foregoing, it becomes necessary to solicit help from the outside, and even this becomes difficult with visiting regulations, etc. This can be overcome with time and persistence. A whole lot of time, and a whole lot of persistence.

This would bring us to the differences between Indians in prison. The Indians in many prisons are for the most part young and have been introduced and seduced by the drugs and alcohol of the white society. They are not willing to turn away from the materialistic world of young whites. They are more comfortable swaggering around with the "jailhouse gangster" ways of the youthful whites in the prison. Their attitude is that traditional ways are for old men and ladies. Without their support the number of Indians who are in favor of traditional teachings and ceremonies is greatly reduced and it weakens the structure of Native American involvement towards establishing cultural/educational groups.

Then there are the wannabes who are never in sight until the

group has been formed and then suddenly appear and want to be a part of it. They soon back away again when they learn there is no materialistic gain in the group, not even coffee and donuts. Suddenly they forget how their great great grandmother was a Blackfoot or Apache "princess." I often wonder why they never bring up their great great grandfather. I suppose the movies they have seen depict the men as savages and ignorant males.

This would then bring up the administration's lack of knowledge about differences between Indians. Since the younger Indians in the prison choose not to be a part of traditional teachings, the administration uses this as an example to those who want the teachings and ceremonies. This is especially true in the immediate case where we are attempting to start traditional teachings/education. The administration seems to believe there must be a 100% agreement among the Indians in the population before they will act on any proposal. This, of course, is absurd, as the Christian population as a whole cannot agree upon the types of church service that would best serve the Christian population! But since that sort of division is common among Christians, it is accepted. However, when it occurs among minorities it can very well become a tool for denial of its existence in the prison.

These have been some of the grievances that have come to light since we have tried to get a cultural/educational program together here at Collins. There are more, but perhaps they are only common in New York jails and prisons and not anywhere else....

~ ~ ~

Little Rock Reed:

Another common grievance in the state of New York, as well as many other states and in the Federal Bureau of Prisons, was described by another New York prisoner. In an article he had published in *Akwesasne Notes* a few years ago, he explained that any Indian prisoner in the state of New York wishing to practice his religion would have to be transferred to the maximum-security prison in Auburn in order to do so. This poses a problem of great significance to many Indian prisoners, as explained in another *Akwesasne Notes* article that was published in 1989:

Native American inmates of the Federal Correctional Institution in Petersburg, Virginia, formed a spiritual council in November 1987. Since this time, efforts to secure their right to worship in the traditional manner have largely been stymied.

Requests for the construction of a sacred sweat lodge have reportedly been met with threats of transfer. The administration "offers" to transfer any inmate who wants to participate in the sweat lodge ceremony to another institution which currently has a sweat lodge. Since there exists no other Federal Correctional Institution

with the same level of security in the East Coast, the inmates must choose either an institution with a stronger security level or one further from their families....

Luckily, as a result of a lot of outside support, a sweat lodge has since been constructed at FCI-Petersburg. The problem persists, however, in the Federal Bureau of Prisons and in many states. From a letter I got from Oowah Nah Chasing Bear in the fall of 1990:

A brother that was at Terre Haute contacted me. He's at the federal prison in Marianna, Florida. He states the prison denies all Native religious programs and ships out anyone who objects (the ole ship-n'-silence act!).

He asks help for the bro's.

I know Mark. He is a stand-up Brother. He was always fighting for the group up at Terre Haute. I sure missed him when he was shipped out - and it was because he dared to challenge their discrimination.

You know, he had given me a pair of earrings, and I was holding them thinking, "Mark! Where are you?" Then Julie called to say Mark sent a letter to her for me. We must help!....

Ha ha. I love Oowah Nah. She's so sweet and loving. I don't see how those chaplains and prison officials can be so mean to her, but they are.

But can you imagine the public uproar there would be if Christian prisoners had to go to do their time in maximum-security prisons hundreds, or even thousands, of miles from their families in order to be able to take part in Christian religious services and programs? Simply put, America wouldn't tolerate that kind of shit.

~ ~ ~

**Terry Provost, Milan Michigan:
1990**

Two of the top five poorest counties in the United States are located in South Dakota on Indian reservations. Most reservations throughout the U.S. fare no better. The issue I'll be dealing with pertains to all Indian prisoners, not just my people the Sioux.

The chances of any of us receiving a visit from relations are very low. It's not because they don't want to come see us; it's because they can't afford to. The distances are too great.

I am sure you are aware of my people's high mortality rate due to poor health care facilities, bad diets and numerous other social ills that plague poor people in particular, so I'll not go into

that at this time. But there is a situation that we repeatedly face because of these things that you may not be aware of.

We face the death of our loved ones at a highly accelerated rate. Higher than any other group of people in America. When a family member dies, it is conceivable that the prisoner may attend the funeral, on one condition: that his family be able to pay for the two armed guards that will be escorting him, air fare for all three of them, hotel accommodations, meals, etc. This is a good policy and shouldn't be changed, but when your family ekes out a living on four or five thousand dollars a year, it means nothing. It would cost two or three thousand to attend.

Were we kept in our home regions when incarcerated, maybe a few of us could make it home to say goodbye.

The government is aware of how poor our people are, yet they still send us to places where they know we'll never see our relatives until we get out. Is this part of our "punishment," to be isolated away from our people? If it is, why, when we go to parole hearings do they ask us how our ties are with home and communities? And why does this lack of "ties" count against us?

There are federal prisons of all levels in our home regions. Why aren't we kept there?

I want to thank you for your time. Any effort from you in helping us back to our home regions is greatly appreciated.

Endnotes to Chapter Nine

1. In Stanley Milgram's experiments, individuals were randomly selected and asked to induce shock treatments to people they did not know. They were simply told to pull a lever which would send shock-waves through people who were strapped into electric chairs. As they pulled the levers, the victim would scream out, writhing in pain. The instructor, an authoritative looking figure, would then boost the voltage and instruct his "subject" to pull the lever again to induce even greater electric shock to the victim, who again would scream out, writhing in pain. Although not understanding why they were being ordered to shock their victims, the "subjects" pulled the lever again and again because they were told to do so by an authority figure. Ultimately, the experiments indicated that the average U.S. citizen will kill a total stranger if an authority figure orders him or her to do so.

2. A "passive-aggressive personality disorder" is characterized by never confronting a problem situation directly. Individuals with this disorder "typically express hostility in indirect and non-violent ways, such as procrastination, pouting, 'forgetting,' or being obstructionistic, stubborn or intentionally inefficient" (Carson, 1988:233), such as the janitor who is angry at his boss and expresses it by smiling and saying "Yes, Sir!" when ordered to sweep the floor a second time, and then sneakily "putting one over" on the boss by intentionally leaving dirt on the floor where the boss won't see it. I am certainly not one to avoid confronting a problem situation or I wouldn't have spent so many years in prison for confronting the prison officials and their human rights violations! And, as this book makes clear, I'm very direct.

3. Public Law 95-608, 92 Stat. 3069 (1978).

4. Excerpted from an "Information Sheet" distributed through the NAPRRP's official newsletter, the *Iron House Drum*, Vol. 1, No. 2, 1989, pp. 10-11.

CHAPTER TEN

WHITE MAN'S LAW IN THEORY & PRACTICE: *A Travesty of Justice*

by

Little Rock Reed

In theory, the First Amendment to the United States Constitution guarantees to all people the absolute right to whatever religious beliefs they wish,¹ and so does the International Bill of Human Rights.² There is, however, a distinction between religious beliefs, which are absolutely protected, and religious practices and activities, which are not.³ The government is empowered to impose restrictions or limitations on religious practices and activities if it can establish a valid government interest of sufficient magnitude to justify the restrictions or limitations imposed; however, mere assertions of a government interest are insufficient to override constitutionally protected rights.⁴

And in theory, "convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison.... Inmates clearly retain protections afforded by the First Amendment ... including its directive that no law shall prohibit the free exercise of religion...."⁵

Theoretically, therefore, the same constitutional standards that apply to the restriction or limitation of religious freedom in the free communities of the United States extend to the prisons.

In practice, however, courts hearing Indian prisoners' First Amendment claims generally demonstrate that they are either unaware of the theory or they simply have no respect for the theory. Thus the practice of white man's law in relation to the religious rights of Indian prisoners (and all other prisoners for that matter) is a travesty of justice.

In this chapter I will demonstrate that the controlling law requires all prison administrators to permit the religious practices either practiced or desired by Indian prisoners as described in the chapters of this book. In addition, I will show that the majority of the courts ignore the law when American Indian prisoners file lawsuits regarding religious freedom deprivations. In fact, because most Indian prisoners who attempt to litigate these issues must proceed without the assistance of legal counsel, or are appointed legal counsel who are notoriously deficient in representing their clients, the courts often summarily dismiss the Indian prisoners' lawsuits on procedural (or technical) grounds. As a result, many Indian prisoners never have their First Amendment claims decided on their merits.

Some excerpts from the record in my own lawsuit concerning religious freedom deprivations serve as a case in point.⁶

I filed suit against Ohio prison officials in the beginning of 1987 challenging their policy prohibiting virtually all outward expression of Indian religious beliefs. Later that year, I submitted a proposed consent decree (settlement) to the state of Ohio which would resolve the entire matter. I asked for no money although under the law I was clearly entitled to punitive and compensatory damages due to the deliberate and unlawful suffering imposed on me by the prison officials as punishment for my peaceful attempts to peacefully practice my religious beliefs (as discussed in a previous chapter). The relief I sought in the case was simply for the Ohio Department of Corrections to allow the practice of Indian religion in a manner consistent with the religious programming in numerous other prisons around the country. My proposed consent decree was modeled after a consent decree that was entered into force in January 1987 in the case of *David Guy Brown, et al. vs. Arvon J. Arvae, et al.*, Case No. H.C. 2490 in the district court for the 4th judicial district of Idaho, Ada County, and which was published in the Idaho Department of Corrections' Policies and Procedures Manual. The text of that consent decree is examined in an upcoming chapter on "Some Relatively Simple Solutions."

Right after I proposed a consent decree in my case, the court appointed an attorney to represent me. I will allow the record to speak for itself. This first excerpt from the record in my case is taken from a motion I filed on January 23, 1990, asking the Court to dismiss the court-appointed attorney and to allow me to proceed *pro se* (on my own behalf):

I have never asked this Court to appoint counsel to represent me in this case because I have always felt that I am competent and knowledgeable and articulate enough to represent my own interests in the case. In the time that Mark Ruehlmann has represented me, several things have occurred that make me believe that it is in my best interest to have him removed as my counsel and to proceed *pro se*. There are relevant issues of law I have asked Mr. Ruehlmann to raise in various motions he has filed which he has failed to raise. He had assured me at the beginning of this case that he would let me see any and all motions or briefs he files in this case, and to get my prior approval before filing them. He has not kept his word and I have been very disappointed with several approaches he has taken in this case because of this, as well as relevant issues he has failed to raise in those briefs. He does not answer my mail which shows he is not interested in cooperating with me, and I don't want him handling this case any longer. I believe I can do a better job at representing myself in this case than he has been doing....

As soon as I filed this motion, the court-appointed attorney filed a motion to withdraw from the case (which I never did see). What follows is the order of Magistrate Steinberg issued on

February 15, 1990, in response to these motions:

This case is before the Court upon plaintiff's motion to dismiss his court-appointed counsel and a motion to withdraw filed by plaintiff's counsel.

Plaintiff alleges he is "competent and knowledgeable and articulate enough to represent my own interests in the case." (Doc. 87). Plaintiff alleges he is disappointed with "several approaches" his counsel has taken in the case and believes "I can do a better job at representing myself in this case than he is doing." *Id.* Plaintiff also states that he does not want any court appointed attorney to handle this case.

Several years ago this Court was able to secure the agreement of a number of excellent Cincinnati law firms to provide *pro bono* representation to *pro se* litigants (including prisoners) because the litigants, such as the instant plaintiff, were woefully inadequate in representing themselves. The firms agreed to assign qualified attorneys to a certain number of cases per year. One of these firms was Taft, Stettinius & Hollister, which enjoys a reputation as one of the finest law firms in the State. Attorney Mark Ruehlmann, working under the supervision of partners Joseph Parker and Robert Stachler, accepted the court appointment. Attorneys Parker and Stachler, have extensive federal trial experience over a period of many years. Attorney Ruehlmann is a younger attorney who also has significant trial experience and enjoys an excellent reputation in the legal community.

Since his appointment in January 1988, Attorney Ruehlmann has diligently represented the interest of his client. He has filed a number of lengthy, complex legal briefs, has appeared at a number of hearings and has doggedly pursued discovery. He has put forth greater effort on this case than any attorney appointed by this Judge during twelve years on the bench. Attorney Ruehlmann has succeeded in narrowing the issues and putting this case in a posture best suited for success at trial.

At the time the instant motions were filed, the immunity issue had been resolved, the Court was in the process of resolving discovery disputes, and the case was ready to schedule for trial. The attorneys had engaged in settlement discussions which, although the subject of the discussions was unknown to the Court, appeared might have a favorable result for plaintiff. Had settlement discussions failed, plaintiff had a reasonable possibility of prevailing on the merits with Attorney Ruehlmann representing him. Further, Attorney Ruehlmann and Taft, Stettinius & Hollister were prepared to incur the expense of what might have been a lengthy trial on

plaintiff's behalf.

An old adage, well known to the legal profession, declares that he who chooses to represent himself in a legal dispute has a fool for a client.⁷ The Plaintiff, in seeking to discharge his extremely competent attorney and the resources of one of Ohio's finest law firms, has conspicuously demonstrated the continuing validity of the adage.

Because no legitimate reason exists for plaintiff's motion to discharge his attorney, said motion is DENIED.

Because irreconcilable differences now exist between plaintiff and his attorney, Attorney Ruehlmann's motion to withdraw is GRANTED, and he is directed to forward to plaintiff copies of all pleadings filed in this case (if not already furnished), and any records or other evidence secured during discovery.

The Court expresses its appreciation to Attorney Ruehlmann and Taft, Stettinius & Hollister for their competent and exhaustive efforts on behalf of plaintiff during the last two years.

When I received a copy of the Magistrate's Order, I prepared and filed a response which is reproduced here in its entirety:

Comes the Plaintiff, by and through *pro se*, and respectfully responds to the Magistrate's ORDER as follows:

Sir, you have stated that I am a fool and that you had appointed Mr. Ruehlmann to represent me in this case because I am woefully inadequate at representing my own interests. I want you to know that I am thankful that you had appointed this counsel to represent me, and I realize that you did so because you believe it would have been in my best interest. It is also possible that I am a fool, and I admit that I am possibly inadequate at representing myself in this case. However, the decision I have made in this matter was based on my sincere belief that Mr. Ruehlmann wasn't handling this case effectively or adequately. While I don't wish to burden you with a lot of details, I think that you will have a better understanding into why I made this decision if I bring to your attention a couple of the major reasons for my decision to proceed on my own behalf.

First of all, this case has lagged for several years now while I suffer irreparably. When Mr. Ruehlmann first took this case, he promised me that he would move the court for some temporary relief. He has made absolutely no attempt to do so. The reason this case has been

lagging is because the defendants have refused to comply with my discovery requests. Their sole defense in refusing to cooperate with these discovery requests is based upon their assertion that the particular issue these requests relate to has already been resolved by this Court in the case of *Pollock v. Marshall*.⁸ For nearly two years now, Attorney Ruehlmann has had documentation which I laid in his hands which verifies that these Defendants in the *Pollock* case had used the testimony (affidavit) of a fraudulent Indian chief of a non-existent Indian tribe to discredit the plaintiff in that case [and] by fabricating lies about the Lakota religion.⁹ Now, I may be wrong, but I sincerely believe that Mr. Ruehlmann would have brought this fact to the Court's attention so as to have the "discovery disputes" resolved in my favor if he had been as diligent as you have been led to believe he has been in representing my interests, for the *Pollock* decision is the only basis upon which the Defendants have adamantly refused to respond to my discovery requests for the past two or three years.

Another major factor that has made me feel Mr. Ruehlmann has not been able to represent me adequately is the fact that he allowed the sweat lodge issue to be dismissed summarily, even before discovery was under way. Do you realize that he is the only attorney in the country who has been that ineffective at handling the sweat lodge issue? This issue has been handled in numerous other prison cases around the country. Mr. Ruehlmann is the first attorney to ever have it dismissed without a fight. Every other attorney who has handled this particular issue [to date] had either resolved the issue favorably through consent decree, or had prevailed at trial or on summary judgment. That is a fact I am unable to discard, Mr. Steinberg.

I'm not going to repeat what I said in my affidavit attached to Doc. 87, but I will say that what I said in it was the truth. I haven't lied. Mr. Ruehlmann has not made me aware that anything has been happening with this case for over a year now, and when I wrote to him in early December, he failed to respond to me.

The final and most important factor that has made me believe it would be in my best interest to proceed on my own behalf in this case is this: The day I met this court-appointed attorney, I handed him a proposed consent decree for this case. I had also given copies to the defendants, and it was also filed with the attorney general's office. At any rate, this proposed consent decree is modeled after hundreds of other agreements around the country and is consistent with that which is a very routine part of the religious programming in the great majority of the prisons in the United States and Canada. Despite this fact, Mr. Ruehlmann has consistently

tried to persuade me to settle out of court for far less than that which is a very routine part of the religious programming at all these other prisons in North America. I have not been unreasonable, for I have stated from the very beginning that I have no desire for monetary compensation and that I would be more than happy to settle this case by simply having the defendants implement policies and practices in this prison that have been in effect in most of the other maximum security prisons in the country for years. I have personally provided Mr. Ruehlmann with more documentation and information than has been used in other prison cases to successfully win summary judgment on every single issue in this case, and he has had this information and documentation for some time now, yet has done nothing with it. And now he has stated to you in his motion to withdraw that my interests render it "unreasonably difficult for plaintiff's court-appointed attorney to carry out plaintiff's representation effectively." Since my interests are merely consistent with that which is provided for in hundreds of other prisons around the country, and since the defendants in this case have introduced absolutely no evidence with which to substantiate their claims or to demonstrate what makes this prison sufficiently different from all the other state and federal maximum security prisons in the country that permit the religious practices I seek, I am now quite convinced that I have made the right decision in determining that Mr. Ruehlmann was not able or qualified to provide me effective representation. He has [indicated] so himself in [his] above statement.

Additionally, I would like to note that I have repeatedly informed Mr. Ruehlmann that I have no intention of "negotiating" away my inalienable rights as a human being. I am not interested in wasting millions of tax dollars that could feed hungry children to let this case lag while we play "let's make a deal" with my human rights. It is unfortunate that the most effective lawyer you have appointed to any case during your twelve years on the bench feels that a client who refuses to waive the right to practice integral and central aspects of his religion in a manner consistent with that which is protected in ...other states in the United States is being "unreasonable." It is no wonder to me now why human rights violations go virtually unchecked in the Southern Ohio Correctional Facility.

Mr. Steinberg, I am sincere in my beliefs, and what I am doing is right. I may be a fool, and I may not be able to represent my interests as adequately as could an experienced attorney; but I am sincere, I do know very thoroughly the law which controls every aspect of this case, and I do want to resolve this case as soon as possible. While this case pends I suffer irreparably. I'm not going to try to explain to you what it feels like

to be ridiculed and persecuted every day for my religious beliefs, by these Defendants and their agents. I'm not going to try to explain what it feels like because I realize that because you are an upper-middle-class Anglo American, all the explaining in the world would not be able to convey the reality of this persecution because it is simply a reality that does not exist in the upper-middle-class Anglo American's universe. I just hope that you will try to understand that it is very painful. Every single day it hurts. But you don't have to take that at face value, and you can presume I'm a liar before we even get started simply by virtue of my being a convicted felon. But I would like for you to understand that it is also a felony to commit perjury and fraud, such as by employing the assistance of a phony "Indian Chief" of a non-existent "Indian Nation" or "tribe" who will tell lies to the court so as to successfully defeat a prisoner who seeks merely to practice his religion in peace. These Defendants and their counsel have all been aware that a perjurer and fraud was used in their behalf in the Pollock case, so even if they weren't personally responsible for the actual fraud and perjury in the Pollock case, they are personally responsible for constructive fraud by virtue of their reliance upon the Pollock decision to justify their continuing denial of my inalienable human rights. Just because these Defendants and their counsel haven't been convicted doesn't mean they are not criminals, for a criminal only needs to have committed a crime, not be convicted for it, and constructive fraud is a crime. According to the law, my court-appointed attorney Mr. Ruehlmann has been obstructing justice and is an accessory during the fact with respect to these Defendants' and their counsel's ongoing commission of the crime of constructive fraud, for an accessory during the fact is "one who stands by without interfering or giving such help as may be in his power to prevent the commission of a criminal offense" (*Black's Law Dictionary*); and he has obstructed justice in this case by failing to report this perjury and fraud to you so that you may administer proper justice in this case by ordering the Defendants to comply with the discovery requests which by law should have been complied with two years ago.

Since this Court has ordered Mr. Ruehlmann to furnish this Plaintiff with copies of only pleadings filed in this case, and since I have entrusted Mr. Ruehlmann with hundreds of pages of documentation I have obtained for use in this case which he has never filed, I guess I can expect never to see the documentation I have entrusted him with. Because of this, I do not have the documentation with which to prove my allegations about the fraudulent Indian chief. Therefore, I respectfully request that you look through the pleadings in the Pollock case and locate the affidavit of one Hugh Gibbs, "Principal Chief of the Etowah Cherokee Nation," and

examine it carefully. If you will contact the Cherokee Nation and the Eastern Band of Cherokee Indians (in Oklahoma and North Carolina, respectively), they will verify that Hugh Gibbs is not a "Principal Chief" of any "Cherokee Nation" and that they don't even know the man. They will also verify that "Etowah Cherokee Nation" is no more than a misleading title applied by Hugh Gibbs to his buckateer outfit which is used by him and the Ohio government to exploit the grassroots Native American people of this land, to undermine the struggle of Native American people to protect the sacred sites of their people (such as sacred burial grounds which Hugh Gibbs feels should be desecrated in the name of "science") and, of course, testify as some kind of "expert" against prisoners. And if you contact the Bureau of Indian Affairs, they will verify that Hugh Gibbs is unknown to them, and that his "Etowah Cherokee Nation" is non-existent. And if you send a copy of his affidavit to the Lakota people, they will verify that he had perjured and created lies about Lakota religion and that he has absolutely no authority to speak for any Lakota people about Lakota religion. He is a fraud and a perjurer, and these Defendants, their counsel and my court-appointed attorney have known it for at least 2 years now and still refuse to let this case proceed because they assert that the *Pollock* decision is the law of the land! That is constructive fraud!

I could go on, but I think I've said enough to clarify the error of your ruling that "because no legitimate reason exists for Plaintiff's motion to discharge his attorney, said motion is denied." I believe that had I been able to litigate without the impedance of Mr. Ruehlmann, this case would have been to trial by now and I would have prevailed on each of these relatively simple issues which counsel has made appear "complex."

I am sincere in my beliefs, Mr. Steinberg, and I only ask that you be fair and impartial. I am submitting simultaneously with this response a motion for a temporary restraining order and/or a preliminary injunction. I am entitled by law to the relief I am seeking. The brief in support and attached supporting documentation clearly show that I am sincere in my religious beliefs, that I continue to suffer irreparably so long as the relief is not granted, that the Defendants will not be harmed in any way by the granting of the relief sought, that the restraining order will be consistent with the public interest, and that my likelihood of ultimate success in this lawsuit is overwhelming.

I will try not to over-burden you with inadequate pleadings in this case, Mr. Steinberg. Thank you for your time and patience....

The court never did respond in any way to the above, other than to notify me that it had been filed. And several days later I gathered evidence that I had written to the court-appointed attorney and that he would not acknowledge receipt of my correspondence. I submitted this evidence to the court along with a motion for reconsideration of the ORDER denying my motion to dismiss the attorney and granting his motion to withdraw, but the court never did respond to my motion. At that point, I realized that I would never receive fair treatment in the court - or even a day in court where I could present my case to a jury. The motion for a temporary restraining order referred to above was a request that I be permitted to meet for prayer circles with the Indians in the Southern Ohio Correctional Facility, that we be permitted to have spiritual advisors come inside the prison to share the sacred pipe with us, and that we be permitted access to sacred objects such as an eagle feather and a drum, and herbs including sage and cedar for our prayer meetings. These issues are so basic that it would be an insult to the readers' intelligence for me to argue why these practices should be permitted in the prisons. (Another issue raised in the motion for a temporary restraining order which is worth examining here pertains to hair length. Thus it will be discussed in some depth in a later part of this chapter.)

I not only filed a motion for a temporary restraining order. I also filed a motion for summary judgment, since according to the law, I was entitled to summary judgment.

The defendants in my case never did contest any of the facts set forth in my motion for temporary restraining order or for summary judgment. Their response to my motion for temporary relief was on one sheet of paper. The truth is, they did not address a single issue raised in my factual allegations or supporting evidence or my legal arguments. Rather they stated that my motion should be denied because I am "abusing the judicial process" by filing such a motion since the court already denied a motion for temporary restraining order that I had filed in early 1987 before the court appointed an attorney to represent me (the attorney said he would appeal that right away since I was barred from the court, except through him, now that he was appointed to the case; however, he never did appeal for temporary relief). As for the motion for summary judgment, the defendants didn't even file any kind of response to that, but apparently, they didn't need to since the magistrate refused to entertain the motion, which is discussed a little more below.

On November 9, 1990, Magistrate Steinberg dismissed my lawsuit and ordered that an October 30, 1990 pleading I filed with the court be "stricken from the record." Here is a reproduction of my October 30 pleading:

First, I wish to clarify the current status of my outstanding discovery requests.¹⁰ On June 1, 1990, this court ordered the defendants to respond to the following discovery requests which the defendants have still not responded to per the court's order:

- (1) PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS, numbers 9 and 10
- (2) PLAINTIFF'S FIRST SET OF INTERROGATORIES, numbers 11(b), 11(c), 15(c) and 22(c).

Additionally, the defendants have failed to answer the interrogatories that the court ordered them to respond to in place of depositions. Not a single question has been answered by any defendant in this case.

The magistrate in this case has issued orders which he has later ignored as if he had never issued them to begin with. Whether this is due to the magistrate's prejudice or senility is beyond me. All I know is that the magistrate's neurotic behavior has totally prejudiced my case.

For example, in the court's order of July 19, 1990 (Doc. 101), the magistrate stated that:

... Basically, plaintiff expresses dissatisfaction with the manner in which his former court-appointed attorney conducted discovery and indicates his desire for additional discovery through an extension of the discovery deadline.

It is therefore ORDERED that plaintiff is given an extension of time of sixty (60) days from the date he receives interrogatory responses currently due to conduct further, nonduplicative discovery....

The "interrogatory responses currently due" which are referred to in said ORDER include the interrogatories listed above which are not only currently due, but quite overdue.

Despite the fact that the court's above-cited order clearly extends the discovery deadline to sixty (60) days from the date I receive interrogatory responses currently far overdue, and despite the fact that the court's order clearly states that I may conduct further, nonduplicative discovery until that deadline, the magistrate has now issued an order (Doc. 115) which states that I may not conduct any discovery at all as set forth in that previous order. Pray tell, what did the good magistrate intend when he said that I may conduct further, nonduplicative discovery if I am at the same time prohibited from submitting any further, nonduplicative document requests, interrogatories or requests for admission to any of the defendants in this case?

The dear magistrate has limited my discovery in this case to the following:

- (1) that which was conducted by the incompetent court-appointed attorney whom I had discharged from this case because of his ineptitude: and
- (2) the total of forty (40) interrogatories.

If I choose to have one defendant answer forty (40) interrogatories, I may not submit any further interrogatories to any of the other defendants. If I wish to distribute these interrogatories proportionately among the defendants then this means I am allowed to ask the first two defendants thirteen questions each, and I may expand to ask the third defendant the grand total of fourteen questions. Whew-wee. Gosh. I should be utterly grateful for the dear magistrate's willingness to let me conduct such exhaustive discovery in this case. Never mind that the *Federal Rules of Civil Procedure* require the defendants to answer as many questions as I may submit to them so long as each question is within the scope of discovery.

The magistrate in this case refuses to allow me to submit one single request for admission to the defendants even though the *Federal Rules of Civil Procedure* require the defendants to respond to as many requests for admission as I choose to submit to them so long as they fall within the scope of discovery.

And the magistrate in this case refuses to allow me to submit any more than the grand total of 40 interrogatories (including subparts) to all the defendants put together. Never mind that there is no limit to interrogatories under the *Federal Rules of Civil Procedure* so long as the interrogatories are relevant to the case and nonduplicative.

With respect to the interrogatories, this latest court order effectively abrogates the order of August 28, 1990 (Doc. 104), where the magistrate stated that "because Plaintiff is not permitted to depose witnesses in this case, we will allow him to address 40 interrogatories in addition to those [40] which were the subject of this Court's June 1, 1990 order." Is this another example of senility, or may this possibly be a passing hint of amnesia on the dear magistrate's part?

None of the discovery requests I have submitted to the defendants have been duplicative, and each request has fallen within the scope and limits of the *Federal Rules of Civil Procedure*. The defendants have not once disputed this, so why is there a blanket denial on all my discovery requests? The dear magistrate states that the requests are all "voluminous and unreasonable." How can the magistrate come to such a determination without so much as an inquiry into what the requests might consist of, as I have suggested the magistrate do? Why

have my assertions that the defendants' counsel has lied to the court about the amount of discovery I have requested not been considered by the good magistrate? Either the defendants' counsel is a liar or I am a liar. A simple perusal over the discovery requests would be sufficient to determine who is lying and who isn't -- must it be taken for granted by the good magistrate that I am the liar? Certainly not - it is neither fair nor proper when the evidence is the discovery requests themselves, which the dear magistrate has determined to be "voluminous and unreasonable" without so much as a glance at them. The fact is, every single discovery request I have submitted to the defendants can be easily answered, in full, by all three defendants, in a matter of a couple of hours. That is hardly unreasonable in light of the number of years they have made me suffer - with the aid and support of the good magistrate.

The magistrate can hardly be said to be exercising his power in a fair, impartial and legal fashion. The civil process demands that I be permitted to conduct discovery in this case, yet the magistrate has issued what amounts to a blanket prohibition on all discovery by this *pro se* plaintiff except for a dozen interrogatories per defendant. The dear magistrate has quite clearly made of this court a farce and a travesty of justice.

The magistrate has ruled further that my motion for release of inmate records should be denied because it was filed without an attached affidavit. The decision here is certainly biased, for the dear magistrate granted the original motion (without attached affidavit) when it was filed by the court-appointed lawyer who was so inept that he didn't even inspect the records after the magistrate granted the motion. (Docs. 34 and 35). Now that I have attached the requested affidavit, the dear magistrate suggests that the records are irrelevant to my case. If this is so, pray tell, why was the court-appointed attorney's motion for these same records granted? -- And the defendants have never disputed my assertion that the records are relevant to this case, so why did the good magistrate decide that they were irrelevant? There is absolutely no connection to reality that records relating to me and my religion which are contained in the defendants' files are irrelevant to this case which is based on the defendants' denial of my religious freedom rights.¹¹

I could go on and on, but I'll save it for the complaint I intend to prepare when I receive the forms and the rules relating to judicial misconduct which I've sent out for. Until then I have no intention of wasting any more time with this case, for certainly, my efforts would be as futile as they have been to date. A copy of my letter to Judge Weber is attached.

I would generally sign off with the words, "respectfully submitted," but it's quite impossible for me to put on the pretense of respect for a magistrate or a government lawyer whose tyranny is a mockery of Justice, Law and Order....

My complaint of judicial misconduct referred to above was returned to me by the Sixth Circuit Court of Appeals stating that they don't investigate the type of judicial misconduct I had complained about. I decided not to waste my time appealing my case to the Sixth Circuit Court of Appeals for obvious reasons.

Clearly, prisoners don't get fair treatment in these courts. And my case is not exceptional. I am aware of another case, regarding deliberate indifference to a prisoners' serious medical needs, that was dismissed by Magistrate Steinberg on the technical grounds that the prisoner had failed to attach a required affidavit to a legal document filed in response to the prison officials' motion for summary judgment -- and the affidavit was attached to the legal document, a fact that was conveniently ignored by Steinberg when brought to his attention at a later date.

Furthermore, I have examined the record in numerous civil cases that have been litigated by *pro se* litigants for the human rights violations that are a part of everyday life in prison, and my case is just one more example of the systematic suppression of prisoners' rights and underhanded denial of access to the courts (which is another constitutional right) at the hands of corrupt and unethical judges, magistrates, prison officials, government attorneys and court-appointed attorneys. And it is not this way only in the Southern District of Ohio. You will find the same thing happening -- as a matter of course -- in Florida, Utah, Oklahoma, California, Indiana, New York, Texas - wherever you look.

Moreover, when prisoners are lucky enough to have the actual merits of their claims entertained by the courts, their claims are seldom entertained in good faith. This fact is clearly illustrated in a petition to the United States Supreme Court that I prepared for a *pro se* prisoner, Stephen (Greywolf) Kemp, in the state of Missouri. Before going into detail on Greywolf's case, however, an understanding of the law that controls the subject matter of religious freedom in the prisons of the United States, and the way in which that law is to be applied, is necessary.

The Controlling Law

The subject of religious freedom in the prisons is governed by the principles enunciated by the U.S. Supreme Court in the 1987 case of *Turner v. Safely*.¹² In this case the Court held that prison regulations infringing on prisoners' constitutional rights are valid if they are reasonably related to legitimate penological interests. The Court outlined four factors to be examined in determining whether a regulation is reasonable. These factors are:

1. Whether the regulation infringing on the prisoner's

rights has a logical connection to the penological interests invoked to justify it.

2. Whether reasonable alternative means of exercising the asserted right remain open to the prisoner.

3. Whether the accommodation of the asserted right will have an adverse impact on guards, other prisoners, and the allocation of prison resources.

4. Whether ready alternatives that fully accommodate the prisoner's rights could be implemented at *de minimis* cost to valid penological interests.

To date, there are few cases I am aware of in which the courts have actually applied the four factors in *Turner* to their analysis of the issues involved. In fact, few courts have even analyzed the issues involved. In those cases that have, however, the prisoners have prevailed in their claims.

One such case, for example, the opinion of which was unpublished,¹³ arose in the spring of 1986, when Indian prisoners at Utah's minimum-security Point of the Mountain facility petitioned the administration to grant them permission to practice their religious beliefs. The petitioners sought the construction of and access to a sweat lodge, long hair, traditional smoking tobacco and cedar, the sacred pipe, medicine pouches, and access to medicine men and spiritual leaders. Numerous lawyers, newspaper editors, prison officials in other states, and the general public suggested that Utah prison officials consult with prison officials elsewhere before denying the requests of the Indian prisoners, because what the Indian prisoners were asking for "is a very routine part of the correctional religious programming that is available in virtually every prison in the country that has any [sizeable] Indian population at all" (Sisco 1986a), according to Walter Echo Hawk, an attorney with the Native American Rights Fund who has dealt extensively with religious freedom litigation for Indian prisoners. Carol Sisco, a Salt Lake Tribune journalist who closely followed the case, interviewed Mr. Echo-Hawk regarding the issues raised in the Utah litigation:

"Other correctional departments have already dealt with those issues," said Mr. Echo-Hawk, who suggested Utah officials talk to them. Asked which Western states do have [these] Indian services, Mr. Echo-Hawk replied that most do. "Most of your federal prisons have them," he said, "as do the prison systems in Idaho, Nevada, California, Washington, Arizona, New Mexico, Montana, North and South Dakota, Nebraska and Iowa" (Sisco 1986a).

Nevertheless, Utah prison officials publicly stated that they would not allow the sweat lodge at their prisons for reasons of prison security. They even went so far as to suggest that the prison systems that would allow it are "inferior." Litigation became necessary, and after three years of the Utah Department of

Corrections' adamant refusal to consider the issues, Judge Thomas Greene held a summary judgment hearing. Steven Moore, an attorney with the Native American Rights Fund, prepared an *amicus curiae* (friend of the court) brief in support of the Indian prisoners at the Point of the Mountain, which stated:

Ample evidence exists in the record before the court to expose the judgment of [corrections] Director [Gary] DeLand and his colleagues as nothing more than unsubstantiated fear....[Their] claims are not unlike the fears expressed in numerous cases the Fund has handled where after the development of a full record it became clear that such fears were penological myths created by prison officials to avoid the administrative hassle of accommodating prisoners' religious freedom claims" (Sisco 1989).

Indeed, in applying the four factors in *Turner* to this case, Judge Greene found:

- (1) There was no valid connection between the policies that prohibited the sweat lodge and any legitimate penological interests asserted to justify the policies;
- (2) there were/are no alternative means for the Indians to adequately practice their beliefs;
- (3) the evidence before the court indicated that there would be very little, if any, adverse impact on prison staff, other prisoners and prison resources and that there may, in fact, be a positive influence on other prisoners because of the positive impact and rehabilitative effect on the Native American prisoners; and
- (4) the fourth factor was no problem because the prison officials may reasonably regulate how, when, where and who may participate in the religious ceremonies involved.¹⁴

In holding that the policy banning use of the sweat lodge was arbitrary, Judge Greene noted that:

Nineteen prison systems as well as the Federal system have concluded that the sweat lodges are a manageable accommodation and that there is no significant infringement on any legitimate penological interest. We talk about state-by-state but the Supreme Court of the United States in *Turner* did rule that the practices and experiences of other correctional institutions are critical evidence in evaluating the reasonable necessity of a regulation in another setting.

It is worth noting that at the time these issues arose in Utah, George E. Sullivan, the warden of the maximum-security Penitentiary of New Mexico and a 30-year veteran of the prison

system in Oregon, when asked by Carol Sisco if the sweat lodge poses a security problem at his prison, stated:

I can't believe you're asking me the question. Fifteen years ago in Oregon we allowed our first [sweat lodge] and it was the most valuable, least offensive problem for administrators of anything we do....There is no problem and everything is to be gained.... If Utah is talkig about drugs being used in the ceremony, I can guarantee you that they have conjured ghosts in closets. There's no merit, no substance to it. All they have to do is contact their fellow professionals across the country to learn that. All the imagined torment is simply that.... Inmates so highly value it that they protect it themselves. Some of them may be scoundrels away from the program but they will do nothing offensive in the sweat (Sisco, 1986b).

Sullivan further noted that absolutely no extra staff or resources are needed to run the sweat, and that the lodge can be watched by one guard or placed by a guard tower. And the Secretary of Corrections for New Mexico, Michael Francke, also at that time stated that "sweat lodges and long hair have been in our system for ten years and they haven't been a problem" (Sisco, 1986b).

Other corrections officials also supported the prisoners' position, as Judge Greene noted in his decision:

Warden Robert Tansy of the New Mexico Penitentiary; Warden Robert D. Goldsmith of the Arizona State Prison, Florence; former Nebraska correction Director and Warden Joseph Vitek, all stated [that] in their experience sweat lodges impose no additional cost, staff, safety and security problems beyond those associated with any other prison activity and that there has been no problem with other religions wanting their own facilities as a result of the installation of the sweat lodges. Actually, the only evidence indicating otherwise consists of speculative self-serving statements regarding unfocused fears of the Utah prison officials. Accordingly, this Court finds that there is no valid, rational connection between the regulation banning sweat lodges altogether and any legitimate penological interest. As to the lack of neutrality in the matter, the Court notes that other religions have access at the prison to facilities suitable for their religious ceremonies....

The "facilities suitable for" the religious ceremonies of non-Native prisoners for religious services are basically Christian churches. While prison officials prefer to call these facilities "inter-denominational religious facilities," in the majority of the prisons in the United States, these facilities are, in fact, Christian chapels, from the pews that face the crucifix to the Romanesque-style painted-glass windows to the steeple spires. If you were to take a tour of several randomly selected prisons in the United States you wouldn't find many without a chapel that is

identical to those used by the Catholics or Protestants in the free world--and these are more often than not the "inter-denominational religious service facilities" provided for the prisoners. These facilities (or any other in-door facility for that matter) are unsuitable for Indian religious ceremonies because they block out the very "church" and "altar" that God created for the Indian to worship in: The earth and sky.

Carol Sisco also noted that since "a sweat lodge can be built for \$50, expense is hardly an issue" (1988), and she noted that "prison wardens in other states have discovered that allowing Native Americans to practice their religion has lowered rates of disciplinary action, improved prisoner attitude and advanced the rehabilitation process" (1986a).¹⁵

For those prisoners who are not in the general prison population, there is another court decision that properly applied the controlling law of *Turner v. Safely* which is of great significance to Indian prisoners. The sweat lodge and associated practices and activities are basic to the religious programming for the prisoners in the general prisoner population. Many of these practices, however, are not possible for the prisoners who are segregated from the general prisoner population. Segregated prisoners may include those who are in protective custody, those who are on death row,¹⁶ or those who are in some type of punitive confinement for alleged rules infractions or for any other "administrative purposes" (those other "administrative purposes" are discussed at length in the chapter on "The Fear of Reprisal").

In December 1987, Chief Judge Karlton of the U.S. District Court for the Eastern Division of California applied the four factors of the *Turner* test to claims raised by an Indian prisoner in segregation.¹⁷ In Judge Karlton's findings of fact and conclusions of law, he stated:

...That the question of religious freedom in prison is raised in this case by a Native American simply compounds the lamentable character of cases of this nature, since it cannot be gainsaid that the destruction of American Indian culture and religious life was for many years a conscious policy of this nation. See, e.g., First Annual Report to the Congress of the United States from the National Advisory Council on Indian Education (March, 1974). Moreover, and independent of the special poignancy derived from the fact that this case is brought by Native Americans, it is a terrible comment upon our society that a serious question exists as to whether the security of a prison is compromised by permitting inmates to engage in legitimate religious practices....

The plaintiff in this case is a sincere adherent of his religion, and seeks the right to celebrate various religious rites and possess various religious artifacts, all of which are deeply rooted in the Native American religious experience. Three themes are central to Native American religious life: purification, offering, and

vision. The ceremonial manifestations of these three aspects of Native American religious life are of such a character that the deprivation of one (for whatever reason) makes more crucial, from a spiritual standpoint, the need to participate in another. Thus, for Native Americans who are unable to participate in a sweat lodge ceremony (a purification rite) by virtue, for instance, of their physical impairment, participation in a pipe ceremony (an offering rite) becomes more important....

[P]laintiff seeks to participate in a pipe ceremony when visited by a medicine man at his cell door [in a segregated housing unit]. The plaintiff suggests that the pipe could be passed between the participants through the food port in the door. The defendants' objection to the pipe ceremony as proposed by plaintiff appears to be two-fold: first, a fear that the pipe could be used as a weapon, and second, a fear of the ripple effect caused by granting Native Americans this opportunity. Although defendants have had difficulty articulating both concerns, the court cannot find that the restrictions are completely irrational. Thus one can imagine that permitting a pipe to be passed through the port would in theory provide the worshipper in the cell with a weapon to employ against his cell mate, at least for the period of time until it was returned to the medicine man. Moreover, permitting the ceremony might well lead to demands by Catholics, for instance, that they be given Communion.¹⁸ I have suggested above that the relationship between the rule prohibiting a pipe ceremony and common sense is not wholly absent; nonetheless, the question remains as to whether it is "reasonably related to legitimate penological interests." ... To determine the answer to that question, I turn to the four-factor test articulated in *Turner*.

First, is there a 'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it?... Of course, security and the safety of a cellmate are legitimate governmental interests. Yet upon analysis, the relationship between that interest and the regulation is so remote as to make it difficult to find it "valid." Surely, if a prisoner wishes to attack his cellmate, he can use another homemade weapon, or use his bare hands.¹⁹ Moreover, permitting the adherents of other religions to participate in such religious rites as may be conducted at the cell door through the food port does not appear to represent any more significant burden to the staff than does permitting the religious visit in the first place. While I cannot say the relationship between the rule and its purported justification is wholly irrational, I find it is so "remote" as to be "arbitrary." *Id.*

Second, I must determine whether there is an "alternative means of exercising the right [which]

remain[s] open to prison inmates." *Id.* The exact dimension of this factor is uncertain. As the [Supreme] Court has since explained, "[i]n *Turner* we ... examined whether the inmates were deprived of 'all means of expression'.... We think it appropriate to see whether under these regulations [prisoners] retain the ability to participate in other ... religious ceremonies." *O'Lone v. Shabazz*, [107 S.C.T. 2400 (1987)].... As I noted above, under the regulation plaintiff is deprived of all outward manifestations of his religious commitment. While it is true that he may engage in solitary and inward religious conduct such as prayer and meditation, to hold that the availability of such practices is sufficient to uphold the ban [on pipe ceremonies] would render the second factor meaningless. Put another way, since the state cannot deprive plaintiff of his ability to pray alone and in silence, it is meaningless to ask whether the state's failure to deprive the plaintiff of that opportunity supports a finding that its deprivation of other religious rites is reasonable. I have noted above that the state has deprived plaintiff of the sweat lodge ceremony, thus making the spiritual need for participation in the pipe ceremony more urgent. The state argues, however, that an alternative means of purification, namely fasting, demonstrates that there are available alternatives. This court must reject that argument. "Permitting" fasting is not evidence of the reasonableness of the state's rules because, like solitary silent prayer, the plaintiff can engage in fasting without the state's permission.²⁰ Given the state's ban on all religious ceremony it can prohibit, I conclude that consideration of the second factor suggests that the state's rule is an exaggerated response to its real security concerns.

The third factor to be considered is "the impact accommodation [of the religious practice]... will have on guards and other inmates, and on the allocation of prison resources generally." ... Because the prison already allows visits by clergy, it is difficult to see that permitting the pipe ceremony will have any significant direct impact upon guards, other inmates... or other resources.²¹ On the other hand, as I have noted above, it may well be that inmate adherents of other faiths will demand that they be permitted to engage in such religious rites as may be practiced through the food port. Nonetheless, there is no evidence of what burdens such demands would have on the resources of the institution. Surely, fundamental constitutional rights cannot be curtailed on the basis of unsubstantiated, and indeed, unfocused fears.²² Whatever the degree of deference owed prison officials, it must be accorded only "the informed discretion of corrections officials." *Turner*....

The final factor to be considered relates to whether alternatives to the rule, in this case a complete ban, exist. "[T]he absence of ready alternatives is evidence

of the reasonableness of a prison regulation," while the existence of "an alternative that fully accommodates the prisoner's rights at *de minimus* cost to valid penological interests" may be "evidence that the regulation is not reasonable, but is an 'exaggerated response' to prison concerns." *Id.* As noted above, plaintiff's proposal to permit the pipe ceremony at the door is an alternative to the total ban and from all that appears of record will have a *de minimus* impact on the prison personnel, other inmates, or the budget of the prison. For all of the above reasons, it does not appear to this court that the state has struck a constitutionally appropriate balance between the plaintiff's First Amendment rights and prison administrative needs concerning its rule banning celebration of a pipe ceremony at the door of plaintiff's cell....

In addition to the pipe ceremony issue, Judge Karlton found that the total ban on American Indian prisoners' possession of tobacco ties while incarcerated in segregation violated free exercise rights, and that the "burden on prison personnel to inspect ties could be made *de minimus* by limiting [the] number of ties": "[L]imiting tensile strength of [the] string minimized danger of [the] tie being used as [a] weapon; and requiring [the] tie to be kept in [the] inmate's cell minimized [the] potential for conflict between staff and [the] ripple effect as to other prisoners." The plaintiff had also sought the right to possess a medicine bag in the Security Housing Unit. With regard to this issue, Judge Karlton stated:

[Prison officials] object because of fear that the bag may be used to contain the makings of weapons (pebbles, dried berries, and the like), and for fear that inspections by guards to insure the contents were not contraband could result in violent confrontation. Defendants also assert fears that disputes concerning such items could lead to violence between cellmates. I noted above that at trial Defendants proved the remarkable ability of prisoners to turn the most innocent of objects into weapons. While I must confess a suspicion that defendants' response is exaggerated, I cannot say in light of the evidence that such is the case. Given the deference I am enjoined to apply, I must find against plaintiff's claim in regard to medicine bags.²³

It should be noted that in Judge Karlton's decision there is no indication that the prison officials in that case consulted with informed prison officials at other institutions regarding medicine bags. Had they done so, they would indeed have found that fears concerning the medicine bag are unsubstantiated and unfocused. (See the details in the chapter on "Some Relatively Simple Solutions" and in the survey contained in the appendix.)

Unfortunately, the decisions of Judges Greene and Karlton as set forth above are unusual, as the following petition to the U.S.

Supreme Court demonstrates. Greywolf's petition was a petition for a writ of certiorari to the Eighth Circuit Court of Appeals. It was filed with the Supreme Court in February 1992. The questions presented for the Supreme Court's review are as follows:

1. When a prison regulation or practice offends a fundamental constitutional guarantee, may the regulation or practice be upheld when prison officials are unable to produce any evidence which substantiates a reasonable relationship between the regulation or practice and the penological interest asserted to justify it?
2. Does the mere fact that prison officials allow a prisoner to practice "some" tenets of his religion render it constitutionally permissible for prison officials to prohibit the prisoner from practicing other tenets of his religion, or are the courts required to determine whether said prohibition is reasonably related to a penological interest asserted to justify it?
3. When the judgment of prison officials offends a fundamental constitutional guarantee, should the courts accord deference to said judgment notwithstanding the fact that the prison officials are inexperienced and uninformed about the subject matter of the judgment?
4. If a reported court decision in a given jurisdiction holds that a prison hair regulation impermissibly infringes upon a Native American (or other) prisoner's First Amendment right to freely exercise his religion because the institutional needs of the penitentiary can be served by less restrictive means, and if that decision has never been reversed, modified, superceded or vacated, are prison officials in that jurisdiction immune from liability when they forcibly sheer the hair off a Native American (or other) prisoner's head without regard for his sincerely held religious beliefs?
5. In a civil rights complaint brought by a prisoner under 42 U.S.C. Section 1983 for deprivation of fundamental constitutional rights, is summary judgment in favor of prison officials proper when the prison officials have not articulated any reasons for their deprivation of the prisoner's rights?

In the petition to the Supreme Court, the Petitioner pointed out that Greywolf, a member of the Chickasaw Indian Nation and a sincere adherent to the traditional religion of his people, was confined in the maximum security Missouri State Penitentiary for four years without a haircut because, according to his sincerely held religious beliefs, his hair is not to be cut. After four years in the Missouri State Penitentiary, he was then transferred to a less secure prison in Missouri, the Farmington Correctional Center. At the time he was transferred to the Farmington Correctional

Center the Missouri Department of Corrections' hair length regulations (which contained an exemption provision for American Indians) was disregarded by the prison officials, as was the exemption permit Greywolf had previously obtained from the officials at the Missouri State Penitentiary. Greywolf was ordered to get his hair cut. He refused and presented verification of his exemption from the state-wide hair length regulation pursuant to departmental regulations. Nonetheless, the Farmington Correctional Center superintendent then ordered prison guards to sheer Greywolf's head, which they did by brute force. They then pressed formal disciplinary charges against Greywolf which resulted in his state wages being reduced as punishment for refusing to cut his hair.

On September 2, 1988, Petitioner filed a *pro se* lawsuit seeking a declaratory judgment, a preliminary and permanent injunction and other appropriate relief regarding the hair issue, and he also sought the construction of and access to a sweat lodge which was being denied by prison officials. Subsequently, after counsel had been appointed to represent him, he filed an amended and subsequently a second amended complaint, adding as additional bases for his legal action the First, Eighth and Fourteenth Amendments to the United States Constitution. Thereafter depositions were taken after which the prison officials filed a motion for summary judgment, which the district court granted on October 22, 1990.

Greywolf appealed the decision, and on October 7, 1991, the Eighth Circuit Court of Appeals affirmed the district court's decision, stating that, with respect to the hair length issue, the cases of *Turner v. Safely* and *Iron Eyes v. Henry*²⁴ "require the result ordered by the district court." In the Court of Appeals' decision, Senior Circuit Judge Heaney stated in his concurring opinion:

I concur only because our opinion in *Iron Eyes*...leaves me no other alternative. I continue to believe that our opinion in *Iron Eyes* was not required by *Turner v. Safely*....

This case smacks of harassment and religious persecution to me.... The sooner our court *en banc* considers this question and resolves to do away with the penological myth that the director of this institution perpetuates, the better.²⁵

In the case of *Iron Eyes v. Henry*, which also arose out of the Farmington Correctional Facility, the prison officials set forth two reasons to "justify" their short hair policy: they claimed that long hair enables prisoners to conceal contraband, and that long hair makes it difficult to maintain the identities of prisoners. *Iron Eyes* argued that contraband had never been found in any prisoner's long hair. The prison officials did not refute this or produce any evidence to the contrary. Moreover, the Court of Appeals stated in *Iron Eyes'* case:

Iron Eyes argues that ... he was never photographed with short hair, despite the fact that his hair was forcibly cut twice while incarcerated. We cannot deny the strength of Iron Eyes' argument here. If identification concerns are so important for security, it is *incredulous* that the prison officials, after forcibly cutting Iron Eyes' hair, failed to photograph him.

Iron Eyes, at 814. (Emphasis added.) What is even more incredulous is that the court ruled in favor of the prison officials anyway. And then the same court, in Greywolf's case, stated (in Judge Heaney's concurring opinion):

This case is even stronger than *Iron Eyes*. Here, [Greywolf] was permitted to wear his hair long at the Missouri State Penitentiary. It was only after he was transferred to the Farmington Correctional Center that the director of that facility told Kemp he had to have his hair cut. No rational reason has been advanced as to why it was permissible to wear long hair in the Missouri State Penitentiary but not at the Farmington Correctional Center, even though the former is a more secure prison than the latter.²⁶

The Court of Appeals in Greywolf's case nevertheless ruled that *Turner* and *Iron Eyes* "require the result ordered by the district court.... We, accordingly, affirm on the basis of the well-reasoned opinion of the district court."

However, the district court didn't even give any reasons for its finding that the hair length regulation satisfies the *Turner* factors and is constitutional. The prison officials claimed that the regulation is necessary for security and identification purposes, but no evidence was presented to substantiate their claim, and the district court did not address any of the factual evidence presented in the case. Not any of it.

As to the sweat lodge issue raised in *Kemp*, there is no indication in the record of the case that the sweat lodge was being prohibited for any security or other legitimate penological objectives. However, the district court simply held that since petitioner has access to some religious practices (such as the pipe ceremony), any remaining prohibition on religion is constitutionally permissible under *Turner*, including prohibition of the sweat lodge.

In Greywolf's petition to the Supreme Court, he also pointed out that according to a report by the Native American Prisoners' Rehabilitation Research Project (NAPRRP), all of the states in the Eighth Circuit that responded to a survey conducted by the NAPRRP indicated that they allow the wearing of long hair by male prisoners for religious purposes and/or as a matter of personal preference, including Missouri, North Dakota, South Dakota, Nebraska, Minnesota, and Iowa (Arkansas did not respond to the survey).²⁷

In his petition to the Supreme Court, Greywolf also stated the following:

A brief examination of the decisions by the Circuits that are in conflict over the hair length issue indicates that the small handful of prison officials who prohibit the religious wearing of long hair do so on the basis of unsubstantiated claims of security, safety or health of prisoners and that no prison official in the country has yet come forward with any evidence to substantiate the claims.

The Third Circuit:

In the Third Circuit, a district court ruled, after careful examination of the issues, that the forceful cutting of hair is unconstitutional because the prison officials were unable to present any evidence with which to substantiate their self-serving claims that long hair poses a problem for security. The prison officials appealed and the Third Circuit Court of Appeals reversed the district court's decision, holding that prison officials need not present any evidence except for their "expert" opinions and fears in order to trample on prisoners' religious practices. *Wilson v. Schillinger*, 761 F.2d 921 (3rd Cir. 1985). The Supreme Court has observed, however, that "on occasion, prison administrators may be 'experts' only by Act of Congress or of a state legislature." *Bell vs. Wolfish*, 99 S.Ct. 1879 (1979). And to quote Chief Judge Karlton of the Eastern District of California when he quoted this Court's decision in *Turner*, "Whatever the degree of deference owed prison officials, it must be accorded only 'the informed discretion of corrections officials,'" *Sample v. Borg*, 675 F.Supp. 574 (E.D. Cal. 1987), citing *Turner*, *supra*, at 2262. Judge Karlton properly ruled that:

fundamental constitutional rights cannot be curtailed on the basis of unsubstantiated, and indeed, unfocused fears....

If the answer to that assertion is "yes, they can," then the assertion that "when a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights," *Turner*, 107 S.Ct. at 2259 (quoting *Procunier v. Martinez*, 416 U.S. at 405-06, 94 S.Ct. at 1807-08 {1974}), is a promise without substance....

The [Supreme] Court's resolution requiring [court's to defer to the judgment of prison officials] is premised, in substantial part, on the assertion that "courts are ill-equipped to deal with the increasingly urgent problems of

prison administration and reform...." Assuming the observation is relevant, it hardly seems sufficient to justify the kind of deference both explicitly and implicitly required by the cases. Examining the problem from the limited perspective of competence to administer a prison fails to recognize the obverse, which is that prison officials, preoccupied as they must be with matters such as security concerns, are ill-equipped to make judgments about the exercise of constitutional rights. For assuredly, just as a court decree intrudes on judgments made by prison administrators concerning the area of their responsibility, a failure of the court to act, premised on undue deference, permits the prison authorities to make judgments of a constitutional character.

Sample, supra, at 850-51.

As a final point with respect to the Third Circuit's decision in *Wilson, supra*, the court did observe that the prison officials testified that they "did not enforce the grooming regulation against American Indians." *Id.* at 923-24. (The prison officials started forcing Indians to get their hair cut only as a result of the decision in *Wilson*, not because of any security problems.)

The Seventh Circuit

The Seventh Circuit Court of Appeals upheld a short-hair policy in the case of *Reed v. Faulkner*, 842 F.2d 960 (7th Cir. 1988), which arose out of the Indiana Department of Corrections. It is worth noting that the state of Indiana, as well as all of the other states within the Seventh Circuit, allow Indians to wear long hair in their prisons for religious purposes....

The Sixth Circuit

In the Sixth Circuit, the Court of Appeals upheld a grooming policy which forbids the religious wearing of long hair where Terry L. Morris, former warden of the Southern Ohio Correctional Facility (maximum security prison), won summary judgment on the basis of an affidavit in which he stated that long hair presents problems with security, health, safety and identification of prisoners. *Pollock v. Marshall*, 845 F.2d 656 (6th Cir. 1988). Subsequently, Terry L. Morris had admitted under oath that he is unaware of any incidents where contraband has ever been found in prisoners' long hair, or where any escaped prisoner has cut off his long hair to alter his appearance and thereby defeat capture, or where any other problems have arisen as a result of any prisoner wearing long hair.... Meanwhile, according to the [NAPRRP survey], all of the prison systems within the Sixth Circuit, including

the Ohio Department of Corrections and the maximum security Southern Ohio Correctional Facility, allow [some] prisoners to wear long hair for religious purposes and/or as a matter of personal preference.²⁸

The Eleventh Circuit

... In *Brightly v. Wainwright*, 814 F.2d 612 (11th Cir. 1987), the Eleventh Circuit Court of Appeals consolidated the appeals of prison officials in numerous cases where the district courts ruled unanimously in favor of the prisoners on the hair length issue. In those cases, the prison officials argued that the restriction on the prisoners' rights was a reasonable one designed to 1) aid the recapture of prisoners following their escapes; 2) establish a uniform grooming policy (i.e. eliminate individuality of prisoners); and 3) reduce the security risk inherent in maintaining prisons. These claims are nebulous at best, and were totally unsubstantiated by the prison officials except for their self-serving "expert" opinions. The *Brightly* court ruled, however:

Each district court rejected [the prison officials'] justifications and determined that the before-and-after practice of photography ... would constitute a less restrictive alternative adequately satisfying the department's legitimate concerns. The [prison officials'] appeals then ensued and the cases were consolidated for our consideration....

... [T]he district court in each of the cases now before us erred in failing to accord appropriate deference to the judgment of prison officials.

Id. at 613. The Eleventh Circuit Court of Appeals also reversed [another] district court's decision which was almost identical to that of the *Brightly* decision in *Martinelli v. Dugger*, 817 F.2d 1499 (1987). The Court of Appeals for the Eleventh Circuit apparently is of the opinion that the "appropriate deference" courts are to accord prison officials is absolute deference. The Eleventh Circuit did not analyze any factual issues or evidence, whereas the district courts did. Petitioner asserts that the Eleventh Circuit Court of Appeals has erred in failing to accord appropriate deference to the lower courts that unanimously agreed that the short-hair policies, as applied to prisoners whose sincerely held religious beliefs include the wearing of long hair, are unconstitutional. The Eleventh Circuit's decisions in these two cases have the effect of barring prisoners from the courts and allowing prison officials to make all constitutional judgments.

Several circuits that previously prohibited prison officials from forcing prisoners to have their hair cut in

violation of their religious beliefs because there are less restrictive means of meeting institutional needs, have now changed their position on the basis of the *Turner* decision. See, e.g., *Weaver v. Jago*, 675 F.2d 116 (6th Cir. 1982); *Pollock v. Marshall*, 845 F.2d 656 (6th Cir. 1988); *Teterud v. Burns*, 552 F.2d 357 (8th Cir. 1975); *Iron Eyes v. Henry*, 907 F.2d 810 (8th Cir. 1990). In those cases, the *Turner* test was cursorily applied, if applied at all, to the factual issues attached to the hair length issue. Whereas, this Court's *Turner* standards were painstakingly applied to the issues by the Court of Appeals for the Second Circuit. In *Benjamin v. Faulkner*, 905 F.2d 571 (2nd Cir. 1990), the court affirmed the district court's decision where the district court held:

The decisive factor in the analysis of the haircut issue is the availability of an obvious, easy alternative. The photographs that were submitted to the court showing the inmates' hair pulled back in a rubber band or hair net, demonstrate that such photos are adequate for security purposes. They show clearly the facial structure and features.... The availability of this easy and practical alternative demonstrates that the regulation is an exaggerated response to the perceived escape threat.

Benjamin v. Faulkner, 708 F.Supp. 570 (S.D.N.Y. 1989), aff'd, 905 F.2d 571 (2nd Cir. 1990). As to the other alleged security, safety and health claims of prison officials, as noted above, various circuits have held that those penological objectives may be served through less restrictive means. See *Teterud, supra*; *Weaver, supra*; and the still-standing decision in the Fourth Circuit, *Gallahan v. Hollyfield*, 670 F.2d 1345 (4th Cir. 1982). Of utmost significance is the fact that the mere existence of less restrictive means of maintaining the interests asserted by the prison officials than the grooming policy at issue, is clear evidence that the regulation is not reasonable, but is an exaggerated response to prison concerns. In developing the standard of review which controls this case, this Court has ruled that:

[T]he existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an "exaggerated response" to prison concerns....

... If an inmate claimant can point to an alternative that fully accommodates the prisoners' rights at *de minimis* costs to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship [test].

Turner v. Safely, at 91. Courts should be required to

consider such evidence, for certainly, a less restrictive means *is* an obvious, easy alternative, which is clear evidence that the regulation is not required, especially when no prison official is able to produce evidence with which to substantiate his asserted justifications for the regulation.

As a final point where the hair issue is concerned, Petitioner asserts that if to allow male prisoners to wear long hair creates a real threat to prison security, or to the safety, health and welfare of the prisoners, then certainly these same penological interests are applicable to the wearing of long hair by female prisoners whose convictions and sentences render them, for all practical and legal purposes, every bit as criminal and potentially dangerous as their male counterparts. The fact that every female prisoner in the United States is allowed to wear long hair for reasons that are not even protected under the Constitution makes it quite apparent that the forcible cutting of male prisoners' hair in violation of sincerely held religious beliefs that are theoretically protected by the Constitution, is in no way related to any legitimate penological objective. No prison official in the country has yet produced any evidence, except for self-serving "expert" testimony, to the contrary. Is it asking too much that prison officials produce some evidence that shows a compelling need to trample on the constitutional rights of prisoners?

As to the sweat lodge issue, all of the foregoing arguments apply. In this case, the district court's entire discussion on the sweat lodge issue is summed up in two paragraphs. It was given absolutely no consideration by the court, and the prison officials have not even set forth any reasons for prohibiting the sweat lodge. The court's reasoning behind its upholding of the ban on the sweat lodge (which the court recognized is "an important structure in plaintiff's religion"), is simply that the "prison does not preclude Kemp from practicing some tenets of his religion." According to the "well-reasoned" decision of the district court in this case, if the prison officials decided to demolish the prison chapel and prohibit all Christian leaders from tending to the spiritual needs of the prisoners, their actions would not be unconstitutional so long as they toss a Holy Bible into each prison cell, thereby affording all Christian prisoners an opportunity to practice "some tenets" of their religion. Of course, we don't have to worry about that happening, because Christianity is the established religion in the American prison systems....

Notwithstanding the above, the United States Supreme Court refused to hear Greywolf's case.²⁹ But, of course, their refusal to consider the issues was expected, as they have refused to consider these issues in many other appeals, including those of most of the

cases referred to above.

Even during the several months that Greywolf's petition for writ of certiorari was pending, dozens of court decisions were issued which adversely affect the religious freedom of American Indian prisoners, and which are very similar to the cases cited in the foregoing.

For example, on March 19, 1992, the Fifth Circuit Court of Appeals affirmed the decision of a district court in Texas where the district court had consolidated 24 separate lawsuits challenging the constitutionality of the hair length policy in the Texas Department of Criminal Justice.³⁰ In that decision the district court had rejected the prison officials' claim that allowing prisoners to wear long hair would cost millions of dollars (e.g., for extra camera equipment, etc.) and would be a set-back to rehabilitation efforts. The court upheld the policy, however, on the grounds that:

the state presented extensive testimony from various prison officials about the various methods prisoners could use to hide weapons and contraband in long hair and beards. There was testimony about experiences in other state prison systems which tended to show that it is quite easy for prisoners to secrete these items and that extensive searching is required to counteract the safety risks.³¹

The Native American Prisoners' Rehabilitation Research Project (NAPRRP) completed a new survey in February 1993³² which conclusively reveals that the Texas prison officials' testimony was dishonest and misleading. According to the survey, which included the Correctional Services Canada, the Federal Bureau of Prisons and all fifty state prison systems, every prison system that has ever allowed the wearing of long hair (including the federal system, the Correctional Services Canada, and the majority of the state prison systems) have indicated that there is not one documented instance in which weapons or contraband have ever been found in a prisoner's long hair. The Texas prison officials' claims are based entirely on speculation and each of their claims are patterned after the self-serving statements made by the prison officials in the cases cited in the foregoing (*Pollock v. Marshall*, *Iron Eyes v. Henry*, etc.).

In its decision to affirm the Texas district court's ruling, the Fifth Circuit Court of Appeals cited the cases I have cited throughout this chapter as supporting caselaw. The court also noted that there was no indication in the record that the lower court considered any reasonable alternatives to the complete ban on long hair. And, indeed, it did not.

Another case decided in 1992 by the Fifth Circuit Court of Appeals was one which arose out of the Mississippi Department of Corrections.³³ It is similar to all of the others, and, again, the court relied on the case law set forth throughout this chapter to justify its decision.

Many other cases have been decided also, in state and federal courts, which are similar to the ones described in this chapter. Many of them are published, others are not. A review of these cases, whether published or unpublished, indicates that when prison officials are sued for these constitutional violations, they read the published cases and proceed to develop testimony which is modeled, almost word for word, after the testimony which appears in the published cases. For example, Terry Morris of Lucasville, Ohio, modeled his affidavit (in *Pollock*) after the testimony of the prison officials in Pennsylvania (in *Wilson*), and added a few illusions of his own. The former prison director of Utah, Gary DeLand, in an unpublished case,³⁴ thought so much of Terry Morris' affidavit which appears in the *Pollock* case, that he modeled his claims after Terry Morris, as have the prison officials in *Iron Eyes*, *Powell*, *Scott*, *Kemp*, and many other cases. All of these prison officials have one thing in common, according to their responses to the survey conducted by the NAPRRP: none of them are able to produce any evidence that these legitimate American Indian religious practices have ever created any of the security problems, health problems, safety problems, or any other outrageous problems they talk about in their testimony.

And this is why it is necessary for legislation to be passed which will protect the fundamental religious rights of American Indians in the prisons of the United States. Until such legislation is passed, the violations will continue -- with the full endorsement of the courts.

I'd like to conclude this chapter with a sprinkling of reality put forth by Chief Judge Karlton of California:

In regard to the third factor [in *Turner*], the court[s] are to defer to the informed judgment of prison officials ... while the presence of the fourth factor is evidence that a regulation, rather than being reasonable, constitutes an 'exaggerated response' to prison concerns....I pause here only long enough to note that such a formulation does not even allow [for] the possibility of malevolence. I know of nothing in the history of prison administration in this country to provide such utter confidence. Moreover, this formulation does not recognize that extreme deprivations and perceived unfairness may themselves create profound security problems, as the histories of prison rebellions from Attica to the recent incidents involving Haitian detainees clearly demonstrate. It may well be that considerations of this sort are initially for the responsible prison authorities, and that their determinations should be treated with deference. Nonetheless, as has been observed, deference to supposed expertise may be no more than a fiction.³⁵

Endnotes to Chapter Ten

1. *Wisconsin v. Yoder*, 406 U.S. 205, 219-20 (1972).
2. Article 18 of the *Universal Declaration of Human Rights*, adopted and proclaimed by the United Nations' General Assembly resolution 217 A (111) on 10 December 1948; Article 18 of the *International Covenant on Civil & Political Rights*, entered into force 23 March 1976.
3. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
4. *Sherbert v. Vernor*, 374 U.S. 398, 403 (1963).
5. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, (1987). Incidentally, while ruling that prisoners "clearly retain protections afforded by the First Amendment ... including its directive that no law shall prohibit the free exercise of religion," the Supreme Court in *O'Lone* nevertheless upheld a prison rule forbidding Muslims to participate in congregate worship services at the prison if the scheduled services conflicted with the slave labor prisoners are required to perform.
6. *Reed v. Seiter*, et al., Case No. C-1-87-247, U.S. District Court for the Southern District of Ohio, Western Division.
7. I wonder if the magistrate was aware that the "old adage" he is apparently so fond of originated with William Shakespeare, who is also known to have said, "The first thing we do is kill all the lawyers...."
8. 656 F.Supp. 957 (S.D. Ohio 1987), aff'd 845 F.2d 656 (6th Cir. 1988).
9. Incidentally, I had an opportunity to break into the prison chaplain's office and go through some files, and I snatched a copy of a letter dated June 5, 1984 addressed to the chaplain. The letter was written by the fraudulent Indian chief, Hugh Gibbs, when he was still only a "vice chief" of the so-called "Etowah Cherokee Nation." He had written this letter per the request of "the State of Ohio, through Assistant Attorney General Solomon Kravitz, to give [his] expert opinion as to the religious beliefs" of a prisoner he had never met in his life. In this letter, Gibbs stated that:

I am Vice Chief of the Etowah Cherokee Nation, the Eastern (East of the Mississippi) traditional Cherokee Band. The Etowah Cherokee Nation is one of the four legal bodies of the 1835 Cherokee Nation, and is recognized by the state and federal governments....

To help in my determination, I have been provided with a deposition of Mr. Weaver taken in the case of *Weaver v. Jago*, C-1-79-394 [675 F.2d 116 (6th Cir. 1982)], and a copy of a death certificate of Mr. Lewis Molton. I have reviewed these documents, and feel that I can offer an informed expert opinion as to Mr. Weaver's beliefs....

Hugh Gibbs, in an exhaustive letter to the chaplain, went on to describe statements made by Mr. Weaver that he claims prove Mr. Weaver is not a true Cherokee and does not have any sincere beliefs in traditional Cherokee spirituality. Among those statements made by Weaver were the following:

1. "That Indian ways are a part of life, an expression, and that a common foundation exists between all American Indian religions." This, of course, is true; however, Hugh Gibbs, in his "expert opinion," stated that this proves Mr. Weaver doesn't know about Indian religion because, to use Hugh Gibbs' words, "No commonality exists between Indians. Federal agencies even recognize this fact."
2. Mr. Weaver "states that aspects of the Cherokee religion are hidden to the public ... and that Jesus, Allah, and the Great Spirit are all the same," which again is true, since Indians recognize that there is but one Creator, regardless of what name the Creator is

given by a particular faith group. However, Hugh Gibbs stated in his "expert opinion" that this was all a misrepresentation of Cherokee beliefs and that "Mr. Weaver's statement that Jesus, Allah and God are the same is directly contrary to Cherokee teaching."

3. According to Hugh Gibbs, "Mr. Weaver talks about prayer being an important part of his belief, and that it is done for acceptance, recognition, confession, guidance, communication, expression and foresight. These are not Cherokee beliefs. Prayer is a part of Cherokee faith, but it is also a part of many faiths. Cherokees do not pray for any reasons stated by Mr. Weaver."

4. "The afterlife to Mr. Weaver is a circle complete," stated Chief Gibbs. "I can verify that traditional Cherokee afterlife is much more complex."

5. According to Hugh Gibbs, "Mr. Weaver further mistakes Cherokee beliefs as to the body. The Cherokee belief as to the hair is purely cultural, not religious. Since 1760, the hair has been cut.... If Mr. Weaver somehow does hold belief as to hair length, he would also have to let his beard and nails grow, which he does not do. Furthermore, according to many of the elders of the Cherokee people, individuals with visible black features (being part Afro-American) should have short hair so as to identify themselves with the Indian rather than the black community...."

Hugh Gibbs closed by stating that because of the above findings, he can safely say as legal Cherokee Vice Chief that Mr. Weaver is not a Cherokee and has no Cherokee beliefs. There are three brief things I'd like to say about the above that may not be apparent to those who are unfamiliar with Indian beliefs and teachings. First, I don't know of any traditional Indian who would disagree with the fact that the afterlife is a circle complete. Second, I don't know of any traditional Indians who would agree with Hugh Gibbs' assertion that Indian religion and Indian culture are distinguishable from each other. And third, you will not find a traditional elder anywhere who will say that individuals being of both black and Indian descent "should have short hair so as to identify themselves with the Indian rather than the black community." Simply put, Hugh Gibbs is a fraud and a liar who will say anything the government wants him to say. He had also provided a similar sworn statement in the case of *Pollock v. Marshall*, *supra*, note 25. In that case he claimed to be an expert on Lakota religion.

10. Under the Federal Rules of Civil Procedure, Rule 26 (General Provisions Governing Discovery) states:

(a) **Discovery Methods.** Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) **Discovery Scope and Limits.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) **In General.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence....

In my case, the magistrate allowed the defendants to obtain a wealth of discovery, and I never objected to any of their discovery requests. I spent endless days laboring over numerous requests for admission and written interrogatories submitted to me by the defendants, and I cooperated in an extensive deposition in which I spent an entire day answering questions even though the defendants failed to give me proper advance notice that they wished to take my deposition. On the other hand, the defendants objected to each and every discovery request I made during the pendency of my lawsuit, and they even refused to comply with the court's repeated orders to respond to my discovery requests. When they refused to comply with the magistrate's repeated orders, the magistrate apparently decided to change his mind about the orders and pretended they were never issued in the first place.

11. The taped proceedings referred to in note 20, *supra*, are one of the records referred to here which the magistrate ruled to be "irrelevant" to the lawsuit.

12. 482 U.S. 78 (1987).

13. *George Roybal, et al. v. Gary W. DeLand, et al.*, Case No. C87-0208, U.S. District Court for the District of Utah, Central Division. Decided 16 March 1989.

14. *Id.* In his decision, Judge Greene noted that the state had "the right reasonably to regulate the use of the sweat lodges; to regulate as to how, when, where and who may participate." This particular point raises concerns about prison officials' failure to use informed discretion in determining who may or may not be permitted to participate in the ceremonies, and who may or may not conduct the ceremonies. This issue is addressed further in the chapter on "Some Relatively Simple Solutions."

15. The U.S. Supreme Court has consistently noted that the rehabilitation of prisoners is a valid penological objective. *Pell v. Procunier*, 417 U.S. 817 at 822-23 (1974); *Procunier v. Martinez*, 416 U.S. 396, 412 (1974); *O'Lone v. Estate of Shabazz*, *supra* note 5.

16. The fact that there is a sweat lodge available for use by an Indian on Death Row in the state of Tennessee (and possibly other states) is a strong indication that the sweat lodge is possible for those in lock-down.

17. *Sample v. Borg*, 675 F. Supp. 574 (E.D. Cal. 1987).

18. Judge Karlton's own note: "This court must observe that I can hardly believe that anyone would regard this as an untoward result: nevertheless, as noted above, in matters of security and burdens on resources, I am to defer to the judgment of the prison authorities."

19. Judge Karlton's note: "In this trial, the defendants proved the remarkable ingenuity prisoners demonstrate in fabricating weapons out of anything they can lay their hands on. Indeed, it is difficult to fully credit this as a justification for the rule adopted by prison officials since it is they who have decided to double-cell inmates in the SHU [segregation]. While the history of cellmate violence since the opening of the SHU gives no cause for complacency, that violence is the direct result of the decision to double-cell under the conditions of SHU incarceration."

20. Author's note: It is not necessarily true that prisoners may engage in fasting without the state's permission. The taped recording of a Rules Infraction Board hearing held at the Southern Ohio Correctional Facility on December 11, 1986, indicates that I was placed in solitary confinement for 180 days solely and expressly as punishment for refusing to stop fasting [author's note].

21. Judge Karlton's note: "At the trial the court learned that plaintiff's cellmate is also a practitioner of Native American religion; thus fears concerning religious strife between cellmates also appears irrelevant to this case."

22. Judge Karlton's note: "If the answer to that question is "yes, they can," then the assertion that "when a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights," *Turner*..., is a promise without substance."

23. Judge Karlton's note: "Having made my determination under the applicable law, I will urge the prison administrators to further consider the question as to whether some rule regulating content or otherwise short of an absolute ban would not serve their security needs."

24. 907 F.2d 810 (8th Cir. 1990),

25. *Kemp v. Moore*, 946 F.2d 588, 588-89 (8th Cir. 1991).

26. *Id.* at 589.

27. To show the relevance of these facts, Greywolf alleged:

Of significance to both the hair length issue and the sweat lodge issue are this Court's previous statements to the effect that the practices and experiences of other correctional institutions are critical evidence in evaluating the reasonable necessity of a regulation in another setting. *Turner v. Safely*, 107 S.Ct. 2254 (1987); *O'Lone v. Shabazz*, 107 S. Ct. 2400 (1987); *Procunier v. Martinez*, 416 U.S. 396, 414 n. 14 (1974) ("While not necessarily controlling, the policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction").

Greywolf also pointed out that according to the NAPRRP's survey, to which the Federal Bureau of Prisons and forty-two state prison systems responded by providing copies of their grooming policies, of those who responded, 70% (the Federal Bureau of Prisons and twenty-nine state prison systems) allow male prisoners to wear long hair. We also pointed out that the sweat lodge is the central component of any adequate religious program in prison for Indians and was at that time in use in the Federal Bureau of Prisons and at least twenty state prison systems, including its being available for some death row prisoners.

28. It should be noted that in my own case (see note 6, *supra*), Terry Morris claimed that he had sent representatives to the federal prison in Ashland, Kentucky, to see how those officials address the religious needs of Indian prisoners. Morris claimed that neither long hair nor the sweat lodge were permitted at Ashland due to security reasons. This was false. Long hair is permitted in all federal prisons, and the federal prison in Ashland had a sweat lodge throughout the pendency of my lawsuit. My claims concerning the lies of Terry Morris were ignored by Magistrate Steinberg.

29. Certiorari denied, 112 U.S. 1958 (1992).

30. *Powell v. Estelle*, 959 F.2d 22 (5th Cir. 1992).

31. *Id.* at 25.

32. The survey results are contained in the book's appendix.

33. *Scott v. Mississippi Department of Corrections*, 961 F.2d 77 (5th Cir. 1992).

34. *Gardner v. DeLand*, et al., Case No. 88-C-0388G, U.S. District Court for the District of Utah, Central Division.

35. *Sample v. Borg*, see note 17, *supra*.

CHAPTER ELEVEN

The Fear of Reprisal

by

Little Rock Reed

with a contribution from Tony Nieto

"I believe that the day has come when we can combine sensory deprivation with drugs, hypnosis and astute manipulation of reward and punishment to gain almost absolute control over an individual's behavior. It should then be possible to achieve a very rapid and highly effective type of positive brainwashing that would allow us to make dramatic changes in a person's behavior and personality...."

-- James V. McConnell¹

There are many Indian prisoners around the country who would like to tell their stories, but who fear reprisal by vindictive prison officials. There are many Indian prisoners throughout the country who would like to file lawsuits because of the persecution and discrimination they are experiencing today, but who will not file the lawsuits because they fear reprisal by vindictive prison officials.

Fears of reprisal are not without merit, for prisoners are able to see quite clearly the unlimited forms of retaliation prison officials may take without having to be held accountable for their actions. For example, prison officials can stop a prisoner's incoming and outgoing mail whenever they feel like it, unless the mail is sent registered, which prisoners cannot afford. It's illegal to interfere with the flow of U.S. Mail, but this is one thing prison officials can easily get away with so long as they deny that they are doing it. It is virtually impossible to prove mail is being interfered with. In the fall of 1990 I had a letter smuggled out of the Southern Ohio Correctional Facility (SOCF) addressed to the U.S. Postal Inspector explaining that my incoming and outgoing mail with numerous people was disappearing and that this was not just a coincidence. The response I got was that since my complaint was with the officials at the prison, he had forwarded my letter to the officials at the prison, and it was up to them whether or not they would take action against themselves. Of course, I never heard back from the officials about it, and my mail continued to be tampered with up to the day I was released from prison. And this same problem is common for all prisoners throughout the United States who are "notorious" among prison officials for fighting for their human rights.

Other forms of reprisal by prison officials cover a wide range of retaliation: solitary confinement, starvation, tear gas, beatings, more time in prison, fabricated misconduct reports, withholding of visits, excessive cell searches where personal property, such as family photographs, is totally destroyed. It's not uncommon for the prisoners in J-4 cell block (solitary confinement) in the Southern Ohio Correctional Facility, for example, to be chained down, naked, in their cells and fire-hosed by the giggling guards and then left to dwell in their damp, cold misery for several days. It is also not uncommon for prison officials to start rumors about prisoners who resist the conditions, labeling the resisters as informants and homosexuals so that they will have a hard time with prisoners who don't know any better.

The Federal Bureau of Prisons is notorious for its "proverbial merry-go-round." Many resisters and organizers know it as "life on wheels," or "life in transit." One Sioux prisoner at the joint in Phoenix expressed it well when he recounted in a letter to me a conversation between the prison chaplain and several Indian prisoners who suggested they would file a lawsuit for discrimination against the Indian prisoners. According to the brother:

The chaplain's response was no different than any other one I have heard in here. 'Go right ahead.' - Knowing full well that whoever got that far would disappear off the compound on the proverbial federal merry-go-round. The apathy and/or stupidity in here astounds me at times, and to see a so-called man of God act in such a manner is a mockery of Jesus Christ's compassion and servitude.

Another federal prisoner writes in the *Prisoners' Legal News* (1991), "Since my imprisonment in 1986, I have been transferred thirty times, I have been imprisoned at eighteen different federal prisons, and I have spent over 900 days in the hole. All of this time I have accumulated 40 boxes of legal materials that the feds must store for my research. The above 'diesel therapy' is for my jailhouse lawyer work."

Can you imagine doing the rest of your life in the back seat of a car on the highway, in handcuffs and shackles? That's the proverbial federal merry-go-round. It serves several purposes: to rehabilitate you by breaking you psychologically; to keep you away from other prisoners who you are likely to organize for the purpose of resisting inhumane conditions; and to keep you from being able to maintain litigation in the courts. Solitary confinement on wheels. It is a very effective brainwashing technique.

Brainwashing. Interesting subject. The statement by James V. McConnell at the beginning of this chapter was quoted by Dr. Stephen L. Chorover, former board member of the National Institutes of Mental Health, in his book *From Genesis to Genocide* (second paperback edition, 1983), whereupon Dr. Chorover proceeded to expound on the subject like so:

Brainwashing, it might be argued, is a marginally less

severe treatment than brain destruction. Its aim is to change behavior not by destroying the integrity of the brain but by depriving the individual of various social and environmental conditions up to an arbitrary point of severity. Brainwashing begins with inflicting pain and discomfort; this is followed by deprivation of such things as food and mail, and a program is specified in which these things are restored to the individual as rewards for correct behavior....

Let me tell you how I became familiar with Dr. Chorover's book. In the mid-1980s, while held captive in Ohio's maximum security prison, I sent letters out to all the major newspapers in Ohio to inform them that I was initiating a hunger strike as a means of protesting the Ohio Department of Rehabilitation and Corrections' failure to allow American Indian prisoners to practice our traditional spiritual ways. My captors responded not by considering the validity of my claim of religious deprivation. Their response, rather, was to place me in a control unit designed after the brainwashing chambers used on American POWs in North Korean and Chinese prisoner of war camps during the Korean War.

While confined in the control unit, a friend of mine smuggled me a copy of Chorover's book. Chorover wrote the book after having served for many years on the board of directors of the National Institutes of Mental Health (NIMH). He wrote it, in part, to expose some experimentation and activities funded by the NIMH which he felt violated fundamental human rights. For example: the performance of lobotomies on leaders of the Civil Rights Movement and other political dissidents; and the chemical destruction of the brains of prisoners and others who actively challenge the legitimacy of government policies and practices.

One particular project of the NIMH which has probably had more influence on the design of today's prison systems than any single activity in history is a conference the NIMH organized for the United States Bureau of Prisons in the 1960s.² The purpose of the conference was to educate prison administrators and officials about the development of behavior modification technology and its application to the prison system. A key speaker at the conference was Dr. Edgar H. Schein, a professor of organizational psychology at the Massachusetts Institute of Technology. His presentation encouraged the development and implementation of brainwashing methodology employed on American POWs in North Korean and Chinese prisoner of war camps. Said Schein to the prison officials:

These Chinese methods are not so mysterious, not so different and not so awful, once we separate the awfulness of the Communist ideology and look simply at the methods used.³

In a special edition of the *Journal of Prisoners on Prisons* which examines the ways in which Dr. Schein's techniques have been implemented in prisons throughout the country, Eddie Griffin (1993) points out that Schein provided the prison administrators with a

list of specific examples of how to achieve their end:

- 1) Physical removal of prisoners to areas sufficiently isolated to effectively break or seriously weaken close emotional ties.
- 2) Segregation of all natural leaders.
- 3) Use of cooperative prisoners as leaders.
- 4) Prohibition of group activities not in line with brainwashing objectives.
- 5) Spying on prisoners and reporting back private materials.
- 6) Tricking men into written statements which are then showed to others.
- 7) Exploitation of opportunists and informers.⁴
- 8) Convincing prisoners that they can trust no one.
- 9) Treating those who are willing to collaborate in far more lenient ways than those who are not.
- 10) Punishing those who show uncooperative attitudes.
- 11) Systematic withholding of mail.
- 12) Preventing contact with anyone non-sympathetic to the method of treatment and regimen of the captive populace.
- 13) Disorganization of all group standards among prisoners.
- 14) Building a group conviction among the prisoners that they have been abandoned by and totally isolated from their social order.
- 15) Undermining of all emotional supports.
- 16) Preventing prisoners from writing home or to friends in the community regarding the conditions of their confinement.
- 17) Making available and permitting access to only those publications and books that contain materials which are neutral to or supportive of the desired new attitudes.
- 18) Placing individuals into new and ambiguous situations for which the standards are kept deliberately unclear and then putting pressure on them to conform to what is desired in order to win favor and a reprieve from the pressure.

19) Placing individuals whose willpower has been severely weakened or eroded into a living situation with several others who are more advanced in their thought-reform whose job it is to further undermine the individual's emotional supports.

20) Using techniques of character invalidation, i.e. humiliations, revilements, shouting to induce feelings of guilt, fear and suggestibility; coupled with sleeplessness, an exacting prison regimen and periodic interrogational interviews.

21) Meeting all insincere attempts to comply with cellmates' pressures with renewed hostility.

22) Repeated pointing out to the prisoner by cellmates of where he has in the past, or is in the present, not even living up to his own standards or values.

23) Rewarding of submission and subserviency to the attitude encompassing the brainwashing objective with a lifting of pressure and acceptance as a human being.

24) Providing social and emotional supports which reinforce the new attitudes.

Following Schein's presentation, James V. Bennett, then-director of the Bureau of Prisons, stood before the prison officials and stated that the Federal Bureau of Prisons provides a "tremendous opportunity to carry on some of the experimenting to which the various panelists have alluded." He said, "We can perhaps undertake some of the techniques Dr. Schein discussed." And he assured his subordinates that Bureau headquarters in Washington are "anxious to have you undertake some of these things: do things perhaps on your own -- undertake a little experiment of what you can do with the Muslims, what you can do with some of the psychopath individuals (sic)" (Chorover, 1988).

Without exception, all of Dr. Schein's suggested brainwashing techniques, plus some, are utilized in the federal and state prisons across the country. The "plus some" includes good old fashioned brutality and the forcible administration of drugs such as thorazine and prolixin. And it is of more than passing interest that the United States Supreme Court ruled on February 27, 1990, that prison officials may administer any kind of powerful, mind altering drugs they wish to any prisoner whose behavior, rebellious or otherwise, they find to be undesirable. The decision as to whom these powerful, mind altering drugs may be forcibly administered to is totally in the discretion of the prison officials and no outside review is allowed, so long as the prison psychiatrist states that it is in the prisoner's best interest. And it is also of more than passing interest that most prisons have prisoners walking around in a stupor, not knowing whether they're coming or going, as a result of too many doses of prison "treatment."

After a lengthy discussion of Dr. Schein's experimentation in

action at the United States Penitentiary in Marion, Illinois, Griffin concludes with a brief discussion of Marion's Long-Term Control Unit:

Segregation is the punitive aspect of the Behavior Modification program. It is euphemistically referred to as "aversive conditioning." In short, prisoners are conditioned to avoid solitary confinement, and to do this (avoid solitary that is) requires some degree of conformity and cooperation. But the "hole" remains open for what prison authorities and Dr. Schein call "natural leaders." These prisoners can be pulled from population on "investigation" and held in solitary confinement until the so-called investigation is over. During the whole ordeal, the prisoner is not told what the inquiry is about -- unless he is finally charged with an infraction of the rules. If the prison authorities think that the Behavior Modification techniques will eventually work on the prisoner, he is sent to short-term segregation. If not, they use ... the long-term control unit.

The long-term control unit is the "end of the line" in the federal prison system. Since there is no place lower throughout all of society, it is the end of the line for society also. Just as the threat of imprisonment controls society, so is Marion the control mechanism for the prison system; ultimately, the long term control unit controls Marion. Prisoners in the unit can feel the heaviness of this burden, knowing that it is a long way back to the top.

Usually a prisoner doesn't know specifically why he has been sent to the Control Unit, other than that his ideological beliefs or his personal attitude toward prison authority is somehow "wrong." And he usually doesn't know how long he will be in the control unit.... [An] indefinite period in the unit ... is the case with most prisoners.

In the control unit a prisoner does only two things -- recreate and shower.... The prisoners spend twenty-three and a half hours a day locked in their cells (which are smaller than the average dog kennel). According to what state a man's mind is in, he may read or write. He sees the control Unit Committee for about thirty seconds once a month to receive a decision on his "adjustment rating." He may see a caseworker to get papers notarized, the counselor to get an administrative remedy (complaint) form and a phone call authorization (on a "maybe" basis). He may see the educational supervisor for books. Other than that, he deteriorates. The cell itself contains a flat steel slab jutting from the wall. Overlaying the slab is a one-inch piece of foam wrapped in coarse plastic. This is supposed to be a bed. Yet it cuts so deeply into the body when one lays on it that the body literally reeks with pain. After a few days, you are

totally numb. There is no longer intercommunication between sense organs and the brain. The nervous system has carried so many pain impulses to the brain until obviously the brain refuses to accept any more signals. Feelings become indistinct, emotions unpredictable. The monotony makes thoughts hard to separate and capsule. The eyes grow weary of the scene, and shadows appear around the periphery, causing sudden reflexive action. Essentially, the content of a man's mind is the only means of defense in terms of his sanity.

Besides these methods of torture (which is what they are), there is also extreme cold conditioning in the winter and lack of ventilation in the summer. Hot and cold water manipulation is carried out in the showers. Shock waves are administered to the brain when guards bang a rubber mallet against the steel bars. Then there is outright brutality, in the form of beatings. The suicide rate in the Control Unit is five times the rate in general population at Marion.

At the root of the Control Unit's Behavior Modification Program, though, is indefinite confinement. This is perhaps the most difficult aspect of the Control Unit to communicate to the public. Yet a testament to this policy was a man named Hiller "Red" Hayes. After thirteen years in solitary confinement (nearly six in the Control Unit), he became the "boogie man" of the prison system -- the living/dying example of what can happen to any prisoner. The more he deteriorated in his own skeleton, the more prisoners could expect to wane in his likeness. He died in the unit....

In essence, the unit is a Death Row for the living. And the silent implications of Behavior Modification speak their sharpest and clearest ultimatum: CONFORM OR DIE. (Griffin, 1993.)

What should be disturbing to the public is that a recent survey conducted by the staff at the Marion prison indicates that thirty-six states now operate control units modeled after the Marion Control Unit. I can assure you, their survey came up short, for there is long-term and short-term segregation unit used to control prisoners in every state, whether specifically modeled after Marion or not. One of the units that is modeled after Marion's control unit was described by Chief Judge Karlton of the United States District Court in California in a previous chapter, and as he notes, many prisoners are there not for having violated any prison rules, but rather as a matter of their status, or their associations. As noted by Dowker and Good (1993), many prisoners are sent into these long term control units for "filing grievances or lawsuits or for otherwise opposing prison injustices." Dowker and Good state:

Conditions such as those at the SHU [described by Judge Karlton] and Marion are replicated in state control units

throughout the country. Many of these prisons feature their own innovations in controlling and dehumanizing prisoners. At a second California Control Unit prison at Corcoran, armed guards control the Plexiglas cell walls. At Colorado's Centennial Prison in Canon City, the administrative segregation unit is being expanded to include the whole prison. A priest hired by the prison delivers communion through the small, knee-high food slot in a solid steel cell door. "If you ain't wrapped too tight, 23-hour lock-down can be enough to make you explode," says the priest. Guards are armed with "nut-guns," wide-bore guns that fire wildly caroming, acorn-sized "nuts" at prisoners from close range. "It's a miniature cannon," the priest explains. Prisoners hit by the nuts can be maimed. "One guy lost his eye, and since I arrived here three years ago, an acorn took off a guy's nose and plastered it to his cheek."

At Lebanon, Ohio, prisoners under administrative control are held in eight-by-six-foot isolation cells. Each cell has a second door so that prisoners can be locked in the extreme back, darkened portion of the cell. A prisoner described being leg-shackled, having his arms cuffed to a belt about his waist and being escorted by three guards whenever he is moved from his cell. Other prisoners are forbidden to speak to him.

Prison officials at the Missouri State Prison at Potosi apply the "double-litter restraint" to "recalcitrant" prisoners. The prisoner's hands are cuffed behind his back, his ankles are cuffed, and he is forced to lie face-down on an Army-type cot, his head turned to the side. A second cot is then tightly strapped upside-down over the prisoner and the ends are strapped shut, totally enclosing and immobilizing him...

These are only a couple of the many examples set forth by Dowker and Good (1993). I would highly suggest that those interested in prisoners' rights and control units obtain a copy of the Spring 1993 edition of the Journal of Prisoners on Prisons, as it is probably the most comprehensive work to date on the subject of control units and brainwashing techniques employed on prisoners in the United States today, with contributions from many of the most prolific prisoner-writers in the world.

Getting back to the validity of prisoners' "fear of reprisal," I will now turn to several examples of reprisal by vindictive prison officials. An Indian prisoner in the State of Alabama pursued civil litigation a couple of years ago (and continues to struggle today). Among other brutalities he has described to me as a result of his failure to "change his religion," I have received a statement which appears to be signed by fourteen prisoners in the administrative segregation unit of Alabama's St. Clair Correctional Facility describing the following scene which the statement indicates they all personally witnessed:

On January 9, 1990, [Officer] Graves came to inmate James K. Johnson's cell and asked him did he want to talk to Warden Deloach. Inmate Johnson answered he don't have anything to say to Deloach. Graves left returning fifteen minutes later with Chaplain Smith who asked Johnson to change his religion because it's not recognized at St. Clair. He then gave Johnson a religion preference sheet which Johnson refused to sign. When Chaplain Smith left, Sgt. Sanders came and told Johnson [that] Deloach wanted to talk to him. Johnson said "I got nothing to say to Deloach until we are in court."

One hour and a half after Sgt. Sanders left, Lt. Jones, Sgt. Sanders, [officers] Stone, Kelly, Mashburn, Graves, Malone and Bright, in full riot gear, entered Johnson's cell and beat him for about ten minutes. Let the records show that in no way was Johnson being a security hazard or causing any confusion for the officers to come in full riot gear and beat Johnson.

After the officers handcuffed and shackled Johnson, the officers dragged him out of the block. Five minutes later Officer Woodall entered Johnson's cell without Johnson being present and destroyed his legal papers and some art supplies. After Woodall finished, he made a statement to Officer Stone that all legal papers have been destroyed. Woodall left, and Mashburn, Graves and Bright entered Johnson's cell and continued to destroy the rest of Johnson's artwork and supplies. The officers stripped Johnson's cell, took bed and all, and placed Johnson back in the cell without medical attention. We know that Johnson hadn't had any medical attention because he was still bleeding when the officers brought him back to his cell. From our eyesight, these are the medical problems that are visible: Multiple scrape marks on left shoulder, multiple knots on forehead, scratches on forehead, left wrist cut and swollen, left heel lacerated, both ankles lacerated and both elbows scratched.

We the [prisoners] of St. Clair's Correctional Facility Administrative Segregation do swear that the above statement is correct and true and we are ... willing and ready to testify in a court under oath that the above statement is true and happened as written. We are also willing to face the circumstances we will face from the administration because of testifying in the behalf of James K. Johnson.

Another example of why prisoners' fear reprisal by vindictive prison officials is illustrated in an article that appeared in the first 1992 edition of the *Iron House Drum*, a quarterly newsletter published by the Native American Prisoners' Rehabilitation Research Project (NAPRRP):

The NAPRRP received an urgent call for support in early January for the brothers in the Montana State Prison in Deer Lodge, Montana. As this issue of the *Drum* goes to press, we are unsure of the status of the situation, as the prison officials seem to be cutting off the prisoners' communication with the outside world. According to the missive we received, a hunger strike to confront judicial racism and the inhumane conditions at MSP was to commence in January (we must assume that the hunger strike is currently in effect). The hunger strikers named in the missive are Scott Seelye (Anishnabe Ojibwa), Don Spotted Elk (Northern Cheyenne), Harold Jr. Gleed (Assiniboine Sioux), Dan Lopez (Chicano/Indian), Mike Buck (Assiniboine Sioux/Flathead), Rock Road (Northern Cheyenne), Mike Birth Mark (Assiniboine Sioux), Kenneth Allen (German American), Joe Milivonich (Lithunian American), James Shields (English American), and Robert Wild (English American). Additionally, prisoners from several of the maximum custody cell blocks are contributing by fasting for a selected number of days -- Indians, Chicanos and whites.

As the Establishment Media has let everyone know, there was a riot at the Montana State Prison on September 22, 1991. Now, being a good little media (as in "good little doggie"), they are following the dictates of the government officials and hyping the public up to support the execution-slaying of those selected for prosecution for the deaths of five protective custody inmates (state and federal informants) on the day of the riot. The hunger strikers are now striking in protest against what they reasonably believe to be the politically and racially motivated selective prosecution that is following in the aftermath of the riot. Here are a few things that the good little media has failed to deliver to the public.

For a long time prior to the riot in September, and right up until the riot, prisoners at MSP have been bombarding federal and state government officials with complaints about the inhumane conditions and treatment imposed on them, and demanding that investigations take place with respect to their complaints. ALL OF THE COMPLAINTS WERE IGNORED.

Among the many issues that they wanted investigated were 1) the suicide of Billie Brown (the Brothers state that Brown was targeted for intensive harassment by max-custody staff prior to the suicide, and that the cause of death was the guards' deliberate indifference to his situation; that the guards "failed to open his cell door while he was still alive, choking and thrashing about in his cell; that no CPR was attempted by guards or medical staff; guards commented that 'he wanted to die so we let him die'"); 2) the "deep-seated racial prejudices and discrimination that are imbedded within the fabric of

this remote cowboy/Indian style community"; the Brothers complained that "Native Americans are denied and forbidden to practice their religion; the sacred pipe and the sweat lodge are denied max-custody Indians; tobacco, as a prayer sacrament, is forbidden in A-Block, and presently in all of max-custody Indian literature is confiscated and destroyed; the punishment section of max-custody (A-Block) is being used as a discriminatory apparatus by max staff against Indian and Chicano prisoners; numbers reaching sometimes as high as 75-90%! Native American, Chicano and other minorities are referred to by staff as 'dog eaters, prairie niggers, wet backs,' etc. on a regular basis"; 3) a wide range of ill treatment such as the use of excessive force on prisoners, and regular and unnecessary use of chemical mace and tear gas; the practice of stripping prisoners naked and placing them in cells void of bed, bedding, hygiene items, toilet paper, etc., chained in leg irons, waist chains and handcuffs for periods of up to ten days in cells where the temperatures are the same as outside, regardless of the time of year, as behavior modification techniques -- and the use of these same practices on mentally handicapped prisoners; 4) physical and psychological health issues: "Indian prisoners are being denied medical treatments, operations, eye glasses, therapy, therapy weights, x-rays, etc. -- no doctor ever makes rounds in the max-building, nor psychological interviews for long-term, isolated-24-hours-per-day-locked-up prisoners"; 5) the withholding of nutrition -- max-custody prisoners do not receive the same diet, portion, quantity or quality of food served to the general population, and they are given no beverages; and 6) the systematic withholding of mail.

Congressman Pat Williams was contacted in reference to racial discrimination and brutality by max-staff, including the assaults (by max-staff) on a Cuban prisoner prior to the riot. An Indian prisoner sent a complaint to Williams on behalf of the brutally beaten Cuban prisoner and asked that he file the complaint with the United States Immigration Office in Washington D.C. requesting that they investigate the allegations and remove him to a prison where there are more Cuban prisoners or send him back to Cuba immediately.

The Brothers also state that "during a state employee pay strike in May 1991, the National Guard took over the duties of running the prison while prison guards were on the picket line. Prison guards solicited Guardsmen to create a disturbance with max prisoners while they were on strike [of course, a disturbance would add credence to the prison guards' claims that they weren't being paid enough for such a dangerous job]. Prison guards approached max prisoners suggesting that they 'trash the building and create a disturbance with the National Guardsmen.' These same prison guards," state the

Brothers, "were later quoted during television interviews, stating that they would cross the picket line in the event there was a disturbance in the prison." The prisoners also state that the prison administrators and government officials had prior knowledge that a major disturbance was to take place concerning these human rights complaints of the prisoners but took no measures to alleviate the tensions, but did take measures to foster riot-type conditions prior to the actual event.

During the disturbance, a five-page statement with the complaints was confiscated by the prison officials. The confiscated statement demanded media participation and called for the involvement of nationally and internationally recognized Indian leaders....

The Brothers state that the five protective custody killings that occurred on the date of the uprising were unrelated to the uprising -- the intentions of the militant prisoners involved in the uprising were to damage property, not people, and to demand that these human rights complaints be addressed once and for all.

In keeping with the traditions of american repression and bureaucracy, the government officials and prison administrators ignored all the cries for justice until the victims "committed a riot." Now it is time to investigate, or at least to put on a good pretension of an investigation, so government officials affiliated with the prison officials who instigated the riot conducted an investigation at the prison in late October because they were allegedly concerned with "how" prisoners in maximum security custody were able to take control of the max-custody buildings, death row, segregation, and three maximum security cell blocks. We don't know what their investigation revealed, but the brothers indicate that it concealed plenty. ("Upon taking back control of the max-custody building," state the brothers, "prison employees and investigators from the Attorney General's Office went on a rampage of destruction of prisoners' property, entering cells and throwing belongings into a common area -- loading two dump trucks and removing this evidence from a crime scene!!") An FBI probe from November 5 through November 15, while uncovering evidence of official brutalities, abuses and torture, failed to address racial claims of discrimination by Indian and Chicano prisoners. According to the Brothers, top officials, including the governor of Montana, the director of the Montana Department of Corrections, and the Warden at MSP, are implicated in the allegations of abuses. Five of the prisoners suspected in the initial take-over "were tortured on October 9, 10 and 11, 1991, subjected to V.C. (Viet Cong) guerilla-style chainings, which deprive the recipient of even a moment's sleep, for three days on a cold, concrete floor; shoulders, wrists and ankles swollen to twice their size from unrelenting

pressure [caused by] the chains, leaving the body, mind and spirit scarred, fatigued, damaged!!!" The Brothers state further that one of these torture victims "succumbed to convulsion; another asked to speak to the investigator present from the state attorney general's office to confess to five slayings of protective-custody in exchange for letting all of those being tortured out of the chains! Not connected with the militants or the take-over were the five deaths of protective custody inmates by unknown assailants." The Brothers also state that the staff members of the state attorney general's office who were investigating "were involved in or had knowledge of torture being inflicted" upon those prisoners they were interviewing. Five of the six prisoners tortured were named as suspects in the initial takeover. The tortured were displayed for all other prisoners to view, allegedly as a 'tongue-loosening' tactic!"

Another example of the treatment prisoners receive for asserting their rights is illustrated briefly in a letter I received in January 1993:

I am in hopes you can be of assistance to me and some of the other Brothers here at the Washington State Penitentiary -- specifically those of us confined in this control unit called the "Intensive Management Unit."

The conditions here, though anticeptic in appearance, are little more than well planned and designed means of torture. We are confined alone twenty-four hours a day. We never have contact with other people. We are allowed no personal property or clothing. Our cells are brightly lit twenty-four hours a day. And they offer us no programs for cultural education, spiritual growth, or mental or medical care by Native American workers. Some of us are kept in this gulag for years on end for non-disciplinary reasons. Their reasons vary from "confidential information" to vague claims that we're a "threat to the institution." Brother Clif "Rock" Briceno is in here for trying to educate brother Native Americans about their heritage. The administration tagged him for organizing an "Indian gang"! When he began asserting his legal rights and hitting the law books, they came up with "confidential information" that he was going to have something else done. It's impossible to defend yourself against "confidential information." In his case it's simple discrimination and retaliation for asserting his legal rights and putting them to pen and paper.

I was asked to find out whether you have been receiving his correspondence. He has written a few scribes your way, but again, due to his litigation his mail does not always reach its destination. So please let us know whether or not you have received his correspondence.

In my case I have been in this torture chamber for the past three years, and others like it in Illinois and Nevada before this one -- totaling about nine years now. I am litigating the eighth amendment cruel and unusual punishment claim in that this type of long-term solitary confinement causes severe sensory deprivation, mental, emotional and physical damage.

Brother Rock wants to litigate a class action to end this warehousing completely. His claims would range from the religious deprivations for Native Americans, discrimination, lack of due process, and sensory deprivation. Our biggest need now is documentation -- research on the ill effects of long-term isolation/solitary confinement and sensory deprivation. If you can help us by providing that material it will be of considerable help in our cause. Because I am moved to a new tier and cell every week (another tactic at alienation), we would need separate copies. Also, policy forbids us to send each other or possess each other's legal papers. Also they have been moving Rock from prison to prison as retaliation and so he won't be in the same jurisdiction long enough to litigate properly.

Is it any wonder that most prisoners are afraid to tell their stories, or to initiate litigation against prison officials for religious freedom violations and other inhumane treatment?

Nevertheless, there are those who continue to fight for their rights, and there are those who have been murdered by prison guards for their struggles for freedom of religion. Where relatively good cultural and spiritual programs do exist for the Indian prisoners today, it never came easy. For as Perry Wounded Shield pointed out in an earlier chapter, "these things sound good but there is a high price paid for having them. Two of our brothers died for the cause and many have suffered long stays in segregation unit."

Indian prisoners shouldn't have to worry about being killed by prison officials for their struggles for religious freedom, but such killings are not outside the scope of methods used by prison officials as a means of discouraging prisoners from struggling for their rights. One case illustrates to just what extremes some prison officials will go to kill an Indian activist in prison. Fortunately, this attempted assassination of an Indian activist was a failure, but it nevertheless illustrates the lengths some officials will go. First, a bit of a background is called for.

Ritchie Blake is a Hupa/Yurok Indian who was arrested at age 22 for an alleged homicide that was committed while under the influence of alcohol. He doesn't remember committing the crime. He was convicted of the homicide in 1974 and has been in California's prison system ever since. In 1973, in reaction to the early 70's prisoner's rights movements, all of the California prisons were in lock-down and part of the response was not to allow any more groups to function. Nevertheless, Ritchie has been instrumental in organizing the Indian prisoners in the struggle for

religious freedom in California's prisons. The March 8, 1988 legal opinion of attorney Brad Nelson of Vacaville pretty well describes the situation:

Ritchie Blake is a 38-year-old Hupa Indian who has been incarcerated in California's prison system since 1974. Presently, he is awaiting trial on a death-penalty case involving the prison stabbing of another Native American Indian at the California Medical Facility in Vacaville. Despite being in administrative segregation for over four years since this incident, Mr. Blake continues to steadfastly deny his guilt.

The prosecution's case is built almost entirely on the testimony of inmate informants, each of whom has something to gain by testifying against Mr. Blake. The prosecution has elected not to call many of these informants because they contradict other informants upon whose testimony the prosecution hopes to rely.

We believe that Mr. Blake has been singled out by the California Department of Corrections as a particularly troublesome prisoner because of his constant lobbying for Native American religious rights in prison. At the time of his arrest, Mr. Blake was one of the most prominent and persistent members of the Native American Religious Group at Vacaville's prison. Despite his lengthy lockup status, and the threat of the Death Penalty hovering above him, Mr. Blake continues to press for the Equal Rights of all Native American prisoners.⁵

Fortunately, the Department of Corrections' attempted assassination of Ritchie Blake via the Death Penalty was a failure, for not long ago a jury returned a verdict of not guilty. Defense attorney Dennis Honeychurch, who defended Ritchie Blake with attorney Brad Nelson, was expectedly pleased with the verdict: "I've been practicing here for about 18 years and I can't remember a case where there was a not-guilty verdict when the prosecution was seeking the death penalty," Honeychurch said. He said that the defense called about 20 to 25 witnesses and a total of about 70 witnesses were called during trial. "It's really unfortunate that they spent millions of dollars prosecuting this case...and he was innocent," Honeychurch said.

It is also unfortunate that most death penalty defendants (as well as other kinds of defendants) don't have defense attorneys who care whether they are guilty, innocent or convicted, as is demonstrated in the chapter on "A Jury of Peers, and all that Bull."

Sometimes the Department of Corrections doesn't take as much time or care in attempted assassinations of prisoners, but is successful in the plot, which is made clear in the statement of Tony Nieto, a Mescalero Apache whose activist son, Angry Bear, was shot in the back by a prison guard:

First I want to give you a little background of myself. I was born an illegitimate child in Houston, Texas of an Apache Cauhuilla Mexican mother. My upbringing was as a Mexican child and through most of my life I wondered about my American Indian ancestry. When my beloved son, Angry Bear, began to grow up, he was so much different than his brothers and sisters. While the other kids had an interest in American history, it seemed that Angry Bear was only interested in the history of what the white-eyes did to our relations.

It was about the time that Angry Bear was twelve years old that I questioned my mother about the Indian side of my life. That's when I found out about my grandfather, Vincente, who was a strong Apache leader in the Council. When I shared this with Angry Bear, his face just lit up. So one day he told his mother and I about his desire to go to the reservation in the mountains above Santa Fe, New Mexico. Angry Bear was twelve years old at the time. He told us that he felt it was time for him to become a man. Both his mother and I were taken by surprise by his statement, but we allowed him to live on the rez. Months later he returned home and immediately we noticed that he was no longer a young boy for now he was or had become a young warrior. Angry Bear had climbed a mountain called Potacah Peak and meditated with the Great Sacred Spirit Grandfather....

My son Angry Bear entered the California Department of Corrections (CDC) madness of the white-eyes' iron cages as a teenager in 1981. From the beginning he became an activist for Native Americans' rights which he saw were being violated under the constitutional laws set for everyone in this country.

About the time Ritchie Blake was pressing the Soledad prison administration to let the Indians (skins) build a sweat lodge was when Angry Bear arrived at Soledad State Prison and just missed Ritchie Blake who had been bussed out most likely for making waves.... What the P.A. (prison administration) didn't know was that as one warrior was leaving, Grandfather already had another warrior (Angry Bear) on his way. Haha!

Upon his arrival at Soledad, Angry Bear became aware of the problems the skins were having with building a sweat lodge. His routine was tuning in his body (pumping iron) throughout the day and studying the wasichu law at night. He was successful in filing a habeas corpus action on the federal law that states that an Indian cannot be institutionalized in any institution for any length of time except there be a sweat lodge for spiritual meditation to Grandfather, and at the same time, he won the middle-weight championship in the boxing ring. As a result of his successful habeas corpus action, my son Angry Bear endured a railroad of prison transfers that

included beatings at two California state prisons, and which eventually ended with his being executed/murdered by a spineless coward prison guard on June 2, 1988 at New Folsom State Prison.

But let us back up one year before his death when he was in San Quentin. This was the mid-summer months of 1987. Angry Bear's mom and I were visiting him in the S.H.U. (Security Housing Unit), which meant no contact visits -- it's all about glass partitions separating the visitors, and communicating over a telephone. It was at this time that our son said, "Dad, I'm not going to make it to the streets." I said, "Why not, Son - is it the cliques?" And he said, "No way, Dad, 'cause I can deal with the cliques. The P.A. is going to take me out." So I said, "Why would they do that, Son?" And he said, "Because I've become a threat to them, Dad." So I said, "I don't understand, Son." And then he told me about the writ he filed on the sweat lodge at Soledad, and a pending lawsuit against San Quentin for taking his Indian religious artifacts, his photographs and letters, and medication given to him by the prison doctor. He said, "Dad, I've become a prison lawyer. The system don't like anyone to beat them with their own laws." When I heard this, I could only say to him, "Son, I don't believe there is anything I can do for you at this time, but I will promise you that they best not make any mistakes," and he smiled and said, "I know, Dad, 'cause you're a taking-care-of-business kind of dad," and he smiled at me.... That smile will remain a picture memory of my son, for this was the last time his mother and I would see him alive.

Later that year he was transferred to Old Folsom State Prison where he won the light-heavyweight championship. Then all of a sudden he found himself at New Folsom in the S.H.U. supposedly because a prison shank (knife) was found in his guitar as he was going out to the yard where problems were expected between rival factions of the prison cliques.

Then came the fateful day that I received the telegram from the warden at Folsom stating that my son had been shot through the chest, resulting in his death. This would be the first of many lies by the prison administration to cover up the execution/murder of my son.

After I had made arrangements for my son's body to be sent back to me, I decided to call the prison to find out what happened. The phone was answered by a woman C.O. (correctional officer) who was more than glad to explain to me what happened that day. She stated to me, "Well, Mr. Nieto, your son was shot through the chest and killed because he failed to heed a warning shot, but he did fulfill the purpose that he set out to do." So I asked,

"And what purpose was that?" And she said, "Your son stabbed another inmate." I asked if the other inmate was going to be okay, and she said, "yes, he is going to make it."

When I hung up the phone, my heart was in deep pain as thoughts ran through my mind about my son making an attempt to kill someone when his own life was taken. I thought, would the Creator receive his spirit? Would my son be separated from our ancestors? I hadn't cried up to that point, and I felt a deep want in my heart to shed tears for my son.

I had been sober for ten and a half months, but when that female C.O. told me my son had stabbed someone, I turned to the wasichu poison (a 12-pack of Budweiser) and drank for three days straight, until I received the letter from the brother George Walker, who stated, "Brother Tony, the coward K-9 shot your son in the back. Don't let them get away with it!"

This fire-smoke (letter) brought a lot of tears to my eyes. These were tears of sorrow, pain and mysterious joy as I realized that my son had been murdered/executed by the P.A. just as he had told me he would in our last meeting in San Quentin. The prison administration had lied from day one and I was determined to seek justice in my son's death.

I called my employer and asked for a three-month leave of absense and started my own one-man crusade to conduct my own investigation which was aided by a 4-man wrecking crew (prisoners who were on the yard when the shooting death occurred). All this time I had almost daily conversation with the associate warden, C.J. Johnson, who kept insisting that my beloved son Angry Bear was shot through the chest and not through the back. The day after the murder-execution, my hometown newspaper had an article statement from the Folsom spokeswoman saying that my son had failed to heed a warning shot and was shot through the chest and killed as he was observed trying to stab another prisoner. Her statements began to change over time.... Where she had earlier stated that Angry Bear had failed to heed a warning shot, now less than a month later her press statements were that he failed to heed a verbal warning. Both of these lies were later disputed under oath in a deposition in my lawsuit by the killer himself that he gave no kind of warning!

Another lie which was exposed was the statement that my son was observed making stabbing motions at another prisoner when their own prison investigation revealed no knives or contraband was found on the yard....

The prison investigation was a farce and was no more than an attempt to cover up the execution/murder of my son

Angry Bear. Upon my request to the prison, I was given the investigation report which included a photo posture of a male (front and back views). The photo showed an arrow pointing to a hole in the chest with the words "entry wound." Another arrow pointed to a hole in the bicept of his left arm, with the words "exit wound." This is all on the front view. Now, on the back view there is a small hole in his back with an arrow pointing to it, and the words "small puncture wound," but no indication as to whether it is an "entry wound" or an "exit wound." Now, isn't that strange? -- It is quite obvious that the true "entry wound" is in the back and the "exit wound" (which is much larger than the "small puncture wound" in his back) is the hole in his chest that they are trying to say is the "entry wound." The wound on the bicept certainly was not the "exit wound" as they claimed it was, for the gunner himself stated in a deposition that he shot my son in the left bicept to disable him (I don't know why, as the gunner had no sight of my son's fist, much less of a knife in his hand!). And there were two shots fired, both direct hits on my son, both from about 10 yards away, with a mini-14 high-powered rifle.

The prison administration even went as far as to widen a gap in my son's left bicept to make the entry wound hole in his arm look like an "exit wound", all the while ignoring the true entry wound in his back, as if the "small puncture wound" was perhaps a mosquito bite or something! The K-9s didn't do their homework, as they must have thought this Apache was asleep in his tipi on the rez, but they underestimated my determination, wisdom, strength, knowledge and boldness to expose their Satan-filled blood-thirsty hearts for the murder/execution of my beloved son Angry Bear who was my chosen son. He knew I wouldn't let these sick-minded white-eyes get away with his murder. After all, like my son said, "Yeah! Dad, I know that they best not make any mistakes 'cause you are a taking-care-of-business kind of dad. Aho! Mitakuye Oyasin!..."

I would like to mention that twice my son was beaten by these heartless K-9's and twice I contacted the F.B.I. -- Both times I received a form letter stating that there were not enough prosecutive merits to continue the investigation (as if there was any investigation) and that they were closing the case. When my son was murdered/executed, I sent a package to the F.B.I. with news clips, prisoners' letters and other evidence of a cover-up. Again, I received a copy of the same form letter I got the first two times. This makes it clear that the government is free to assassinate activists inside the prison walls, and that if anyone wants something to be done about it, we must pick up the responsibility!

Before closing, I would like to appeal to all prisoners in whatever prison that holds you, that you get all your yard reps together and bring peace among the cliques, for your worst enemies aren't the prisoners but the men with the guns who wait with blood-thirsty hearts to either take you out or to brutalize you any time they choose. More times than not these men instigate the problems that come between you. It's all a chess game and you are the pawns.

My fight will never bring my beloved son Angry Bear back, but I am praying it will eventually get an indictment against the coward who murdered him. But far more important is that I don't want one of your loved ones to endure the pain and sorrow that my family and I have been experiencing because the man with the badge decides to play God with your lives. The system hated my son because he was an activist always fighting for his rights and the rights of the other prisoners. Nonetheless, they should not have killed him.

In August 1993, a civil jury decided that the death of Angry Bear Nieto did not violate Angry Bear's constitutional rights, but they awarded Angry Bear's mother, father and sister thousands of dollars because it was felt that their rights were violated. I would say that's quite a contradiction in itself. Tony says he doesn't want the money because no amount of money can be placed on his son's life. He says the monetary award is merely an attempt to "oil the squeaky wheels." He wants JUSTICE, NOT MONEY. Will there ever be justice for Angry Bear and his family and the many of us who have come to love him for his dedication and commitment to help his people? I say, no, not unless we all take up our responsibility to ACT.

These circumstances being as they are, I can almost sympathize with all the prisoners who fear reprisal to such an extent that they dare not stand up for their human rights. But almost doesn't count. I therefore address the poem on the next page to all prisoners, and I dedicate it to Tony Nieto and his son, Angry Bear, whose spirit will never die.

NO NEUTRAL GROUND

"Ain't no real convicts left,
they snivel
in feigned reminiscence
of a time
when they were real ones.

Respect.
A word without substance, that.
It cannot extend
to others from those who
lack it for themselves,
much less bounce back again.

Inmate.
Nasty word, that.
Denoting diseased
psychopath receiving treatment.
But it escapes even
those so classified
as they feign reminiscence
of a time when they weren't.

"Correctional Facility."
Another antiseptic lie.
This is a prison.
We are prisoners.
We are oppressed,
dehumanized,
repressed out of existence.

Resist.

If we don't,
we perpetuate
the grinding forces
that crush the spirit
of those who do.
Thus
we become the oppressors,
the dehumanizing
agents of repression.

There is no neutral ground.

Endnotes to Chapter Eleven

1. James v. McConnell, "Criminals Can Be Brainwashed--Now," *Psychology Today*, April 1970, p. 14.

2. For an in-depth examination of how the conference has influenced the design and operation of prisons today, see generally, the *Journal of Prisoners on Prisons*, vol. 4, no. 2, 1993. It is available for \$7.00 at P.O. Box 60779, Edmonton, Alberta, Canada T6G 2S9.

3. Edgar H. Schein, "Man Against Man: Brainwashing," *Corrective Psychiatry and Journal of Social Change* 8 (1962):92.

4. For the reader who may be unfamiliar with the complexities of "informing," they are somewhat clarified in the following statement made by Aaron Two Elk of the American Indian Movement as quoted in Churchill's and Vander Wall's *Agents of Repression*:

There are reasons why snitches and infiltrators are considered to be the worst scum on the face of the earth, and it has nothing to do with the people holding such opinions being guilty of any crimes. All you have to do is look at the reality of the profession involved. I mean, what kind of person is it who makes his living trading on the friendships he develops in order to invent reasons to railroad his friends to prison, even when he knows them to be blameless? What kind of man uses the trust he gains in political work to get those who trust him killed? What is the character of an individual who has so little conscience or principle that he will tell any lie to destroy a movement that even he believes is socially needed and in the right? And what kind of agency is it that habitually employs [i.e. exploits] people of this type for such purposes? (Churchill and Vander Wall, 1988)

5. Iron House Drum, 2848 Paddock Lane, Villa Hills, KY 41017. Subscriptions are \$15 per year (quarterly) (\$20 for institutions). Sample copies are \$5.

6. Quoted in a brochure distributed in 1988 by AMERICAN INDIANS AND THE DEATH PENALTY, now defunct.

CHAPTER TWELVE

More Cause for the Fear

by

Deborah L. Garlin*

Unfortunately, the "fear of reprisal" does not end with the individual's release from prison. The case of Little Rock Reed, and what happened to him once he was released on parole recently, is a prime example of why, upon release from prison, there is more cause for the fear. As a personal friend and as an attorney working with him on behalf of the Aboriginal Uintah Nation of the Uintah & Ouray Indian Reservation in Utah, I am impelled to write about his personal circumstances which continue to impede the progress of our work.

On July 5, 1993, several well known and highly regarded social scientists and attorneys¹ submitted a petition for clemency/pardon to George Voinovich, Governor of Ohio, on Little Rock's behalf. In their petition, they stated:

After having carefully reviewed the enclosed "Statement of Facts Regarding Little Rock (aka Timothy) Reed's Situation With the Ohio Adult Parole Authority" and supporting documentation attached thereto, it is our informed opinion that Little Rock Reed, an articulate human rights advocate for American Indians and prisoners, has been made to serve many years in Ohio's maximum security prison *solely and expressly because of his legitimate and peaceful activism.*

In our opinion, the enclosed evidence indicates that because Little Rock Reed, while on parole, was exposing civil and criminal violations which have been and continue to be committed by the Ohio Adult Parole Authority (APA), the Ohio Department of Rehabilitation & Correction, and other agencies that have influence with the APA, the APA intends to use its power to place Little Rock back in prison for up to fifteen more years in order to silence his voice. In fact, the evidence is so overwhelming that on June 4, 1993, after reviewing only a very small portion of [Little Rock's sworn affidavit and supporting documents], a Kenton County, Kentucky judge [acknowledged] that Little Rock's life is [indeed] in danger due to the fact that the APA has plans to politically imprison -- and very possibly to politically

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assassinate -- Little Rock if and when he comes out of hiding

The petitioners also told Governor Voinovich that even though under Ohio law petitions for clemency or pardon are to be submitted to the APA for their review and recommendation, "in light of the APA's apparent conflict of interest in this particular case, such procedure would be entirely inappropriate" and "would preclude Little Rock from being given real consideration for pardon or clemency."

Notwithstanding the above, on July 28, 1993, Governor Voinovich forwarded the petition to the APA for their recommendation. On July 30, 1993, the Ohio Parole Board denied the petition, stating that it will be given no consideration until Little Rock is back in the APA's custody.

For those of us familiar with the facts set out in the petition, the Ohio Parole Board's response is outrageous. Little Rock's affidavit, which is reproduced below, speaks for itself:²

1. I was convicted for aggravated robbery and sentenced to 7-to-25 years in the Ohio Department of Rehabilitation and Correction (ODRC). My sentence began in May of 1982.

2. Under Ohio law, I became eligible for parole after less than 4 1/2 years. Accordingly, I appeared before the parole board in 1986. Because I was serving a 180-day term in solitary confinement for having committed the offense of going on a hunger strike to protest the ODRC's refusal to recognize and respect the religious rights of American Indian prisoners, I was brought before the parole board clad in handcuffs and [shackles]. The members of the parole board stated to me at that time that if I were released on parole I could practice my traditional religious beliefs, the implication clearly being that if I were to drop the religious issue and impending lawsuit against the prison officials for religious deprivations, I would be granted a parole. I explained to the parole board that as a result of my hunger strike, I was denied the right to attend my brother's funeral, a privilege enjoyed by all other prisoners in Ohio; I was sprayed in the face with a fire extinguisher; I was kicked and punched by prison guards while defenselessly handcuffed and shackled; I was incessantly ridiculed by prison staff; and I received extensive sensory deprivation in solitary confinement. I told the parole board that if I forsook my brothers they would have to go through what I have gone through merely for asserting the right to pray in the manner that was given to our people by God. I told the parole board that I could not forsake my brothers.

3. When I refused to drop the religious issue as set forth above, the parole board denied my parole and told

me I would become eligible for parole again after five more years. The "official" reason given me for the denial of parole was that in the parole board's opinion I was an alcoholic and drug addict and they wanted me to participate in Alcoholics Anonymous and/or Narcotics Anonymous (AA/NA), and if I expected to be released at any time in the future I would have to participate in these programs. This official reasoning was entirely inappropriate, for nothing in my recorded history was indicative of my having an alleged drug or alcohol problem, and I stated as much to the parole board.

4. Under Ohio law, when a prisoner is given a 5-year extension by the parole board as I was given in 1986, the prisoner is given a review after 2 1/2 of the five years. Accordingly, I appeared before the parole board after 2 1/2 years (this was in 1988 or 1989). At this time the parole board expressed their dissatisfaction with the fact that I had failed to get involved in the AA or NA programs. I stated to them (and this statement is recorded in the files of the parole board because I mailed them a written copy of the statement in advance), that I clearly had no drug or alcohol problem, a fact that was demonstrated by the work I had been doing in the field of Indian Affairs during my incarceration. I stated further to the parole board that if I had a drug or alcohol problem and if the parole board was sincerely concerned about my need for treatment, then the appropriate treatment for me could not be found in the AA or NA programs, but rather in the traditional American Indian religious traditions of my people. I stated further that the philosophies of AA and NA are contrary to my own religious, cultural, social and political philosophies and beliefs, and that to force me into AA or NA would therefore be a violation of my rights as are clearly established under international law and United States law. Every aspect of my statement to the parole board was verified in letters the parole board received from social scientists and legal scholars who are experts on the subject matter.

5. Notwithstanding the documentation and statements presented to the parole board as described above, I was again denied parole and told by the parole board that if I ever expected to be released from prison I must participate in AA and/or NA.

6. My statement to the parole board regarding AA and NA and the adverse effects those programs have on American Indians due to conflicting values and beliefs was expanded into a major thesis on the subject matter. This thesis, entitled "Rehabilitation: Contrasting Cultural Perspectives and the Imposition of Church and State," was published in the *Journal of Prisoners on Prisons*, a publication used as a pedagogical tool by professors of criminology and criminal justice in the United States and

Canada. The first page of the article, which is attached hereto as exhibit-A, contains a footnote in which I stated that a "special thanks goes to each and every member of the Ohio Parole Board whose inhumanity inspired this work." This thesis (and the footnote) was presented at various conferences such as those of the Academy of Criminal Justice Sciences, the American Society of Criminology, and the International Conference on Penal Abolition, among others. The members of the parole board were aware of this article and the high acclaim it was receiving at these conferences and by the professors who were making it required reading for their students majoring in criminal justice. For example, Dr. Robert Gaucher, a professor of criminology at the University of Ottawa (Ontario) personally contacted the parole board and made them aware of the article's use at these conferences and universities. Dr. Gaucher will verify this if contacted. See exhibit-S.

7. The article referred to in paragraph 6 above is only one of a long list of articles I have had published in which I have been exposing human rights violations committed by the Ohio Adult Parole Authority and other officials within the ODRC and Ohio government. Another example of my work that the Adult Parole Authority was aware of is an article, "The American Indian in the White Man's Prisons: A Story of Genocide," which was published in the mid-to-late 1980s in Humanity and Society, the official journal of the Association for Humanist Sociology and in The Other Side magazine and in the Journal of Prisoners on Prisons. This particular article, which is attached hereto as exhibit-B, exposes various crimes committed by ODRC officials and their attorneys, such as the Ohio Attorney General and ODRC having knowingly employed a fraudulent Indian chief of a non-existent "Indian Tribe" to testify -- on more than one occasion -- as an "expert" against Indian prisoners who have filed lawsuits against the ODRC for religious freedom deprivations. My having such articles published in various magazines and journals throughout North America caused the Parole Board to hold contempt for me, a contempt expressed through their treatment of me which has been unlike the manner in which they routinely treat prisoners and parolees in the state of Ohio, which I will now attempt to describe.

8. During my incarceration in the ODRC, I watched other prisoners with convictions and sentences similar to mine come and go. If I had been treated by the Adult Parole Authority in a manner consistent with the way in which all other prisoners with my record, my history, my sentence, and my behavior within the prison system are treated, I would have been granted a parole after serving 4 1/2 to seven years. To use some cases in point, I am able to identify two prisoners who were convicted and sentenced after me who I knew well. Both of these

prisoners were sentenced to at least 7 to 25 years for aggravated robberies, and they were both repeat offenders. The only significant difference between these two prisoners and me was that I maintained a fairly clean conduct record while incarcerated, my greatest offense during incarceration being the hunger strike described above, while both of these prisoners had been found guilty of such serious offenses as stabbing other prisoners with knives -- on more than one occasion in one of these prisoners' cases. Both of those prisoners were released on parole several years before I was.

9. Many people -- family, friends, social scientists and lawyers and the like -- wrote letters to the parole board expressing their feeling that I was a political prisoner because the parole board's reason for keeping me in prison no longer had anything to do with my original conviction and sentence, but was the result, rather, of my political activities as described above. I believe that it was because of this enormous public pressure that the parole board decided to drop the AA/NA issue and to reduce the five years they had previously given me to four years so that I would be eligible for parole in 1990. Accordingly, I appeared before the parole board in October of 1990 and without any discussion whatsoever, they notified me that they had decided to grant me a parole and I was scheduled for release from prison on December 21, 1990.

10. After the parole board notified me that I was to be released on parole on December 21, 1990, one of their agents approached me and demanded that I sign a contract in which I would relinquish constitutional rights which I had retained, and which all prisoners retain, even while incarcerated in maximum security prison. I complained that this contract was illegal, that to force my signature to be executed on the contract would be a violation of clearly established law, and that the Ohio Adult Parole Authority had no lawful authority to impose this contract on me. I supported my complaint with case law as well as with sections of the United States Code, and I asked the parole board to identify any error in my presentation of the law or any law upon which they relied to impose the terms of this contract on me. I told them that if the law did, in fact, authorize them to impose this contract on me, I would certainly be willing to cooperate.

11. During the process of my complaint as set forth in paragraph 10 above, I was in a pre-release program at a minimum security prison to which I was transferred when granted parole at the October 1990 meeting with the parole board referred to in paragraph 9.

12. The chairman of the parole board met with me in regard to my complaint described above. He told me a lot

of things that I won't repeat here in detail. I will, however, say that he assured me that he was going to do everything in his power to see that I serve each and every day of my 25 year sentence in prison. He also stated that he doesn't give a damn about my so-called constitutional rights. At the conclusion of that meeting he handed me a piece of paper which stated in his own handwriting that my parole was being taken away from me because "this inmate said the conditions [of the parole board's contract] as they stand violate his constitutional rights." This stated reason for taking my previously granted parole was in direct violation of clearly established law. According to what the parole board had now been stupid enough to put in writing, I was being held in prison for no reason other than asserting my constitutional rights. I was then shipped back to maximum security.

13. I filed a petition for writ of habeas corpus against the parole board in the case of *Little Rock Reed v. Arthur Tate, Jr., and Ohio Parole Authority*, case number 91-CI-122 (Scioto County Court of Common Pleas), in which I presented evidence [substantiating] the factual allegations I have made in paragraphs 10-12 above. The record in that case will reveal that the Ohio Adult Parole Authority admitted that each and every one of my factual allegations set forth in paragraphs 10-12 above are true. In that case, they admitted further that the contract they attempted to force me to sign was illegal and they had no lawful authority to impose such a contract on me. They admitted further that all of my legal arguments were entirely valid and that they had no statutory or case law upon which to rely as a defense to my claims. They argued, however, that because I was originally sentenced to a maximum of 25 years in prison, they should be able to make me serve every day of it in prison without having their motives examined by any court of law. The judge in that case agreed with them: since I was originally sentenced to [an indeterminate sentence of] 25 years, the court held, I have no right to ask any court to examine the parole authority's actions against me until I have actually served 25 years in prison. All of what I am saying here is documented in the court record in the case cited above.

14. So that my appeal in the habeas corpus action described above would become moot, the parole board granted me a parole and I was released in May of 1992. Within a couple of weeks after my release from prison, my parole officer granted me permission to travel to South Dakota, unsupervised, for two weeks, so that I could participate in the Sun Dance, a religious ceremony. Not long after this, my parole officer granted me permission to travel to Utah to speak at the 43rd annual conference of the Governors' Interstate Indian Council, an organization comprised of commissioners of Indian Affairs

in the approximately thirty-eight states that have such councils or commissions established for consultation to the state governors. My purpose for speaking at the conference was to address religious freedom issues on behalf of American Indian prisoners throughout the United States. Attached as exhibit-C is a letter I received from Wil Numkena, host of the conference in Salt Lake, thanking me for the important role I played at the conference. Exhibit-D is a resolution strongly supporting Indian prisoners' rights which was adopted by the **Governors' Interstate Indian Council** as a direct result of the information I presented at the conference -- much of which exposed what participants at the conference perceived as criminal behavior of the Ohio prison officials and Parole Authority.

15. My parole officer allowed me to speak at other conferences as well, including, for example, a state-wide gathering of Indian organizations at the Ohio University at Columbus in October 1992. The content of my speech was arousing many people's concern about the atrocities being committed against American Indians by the officials within the ODRC. See, for example, the affidavit of Lance Kramer, Assistant Provost at the Ohio State University and assistant director of the Ohio Center for Native American Affairs, attached as exhibit-E.

16. Within several days after the state-wide meeting referred to in paragraph 15, my parole officer called me to his office and told me that my public speaking was getting high-ranking ODRC officials upset. He told me that the chief of the Adult Parole Authority contacted him and ordered him to see to it that I stop speaking. He told me that the chief of the Adult Parole Authority told him to order me to cease all correspondence with prison officials in Ohio on behalf of American Indian prisoners or my parole would be revoked. This last order was a direct result of correspondence I had initiated with Ohio prison officials in which I was able to get them to unwittingly admit to their human rights violations against Indian prisoners. A true and accurate copy of such damaging correspondence is reprinted in a chapter of a book soon to be published by *Vintage Books*³, a division of *Random House, Inc.* A copy of that chapter is attached hereto as exhibit-F. One of the authors of the correspondence I refer to which is contained in exhibit-F, Marlo Karlen, Administrator of Religious Services for the ODRC, implied in said correspondence that my parole would be revoked if I continued this activity. Lenny Foster, spiritual leader and director of the Corrections Project of the Navajo Nation, also told me that Marlo Karlen told him that he was outraged that I would force prison officials to meet with Indian representatives to discuss ODRC policies, and that I belong in prison for causing these problems and making his job difficult. Foster told me that Karlen stated to him that Karlen

intended to contact the ODRC's legal counsel to see what could be done in the way of having my parole revoked. Karlen made these statements to Foster, as Foster will attest if contacted, approximately one day before my parole officer ordered me to stop corresponding with prison officials as set forth above.

17. When my parole officer told me I would no longer be able to travel to speaking engagements (even within the state of Ohio), I was forced to cancel several engagements, including some conferences I had been scheduled to speak at, such as the annual conferences of the Catholic Committee of Appalachia (approximately a 2-hour drive from my home), the Commission on Religion in Appalachia (approximately a 2-hour drive from my home), a Christian conference at the Ohio State University in Columbus (approximately a 2-hour drive from my home), and a Christian conference at a church in Covington, Kentucky (approximately a 5-minute drive from my home). I also had to cancel plans to testify before the United States Senate Select Committee on Indian Affairs concerning the religious rights violations and persecution of American Indian prisoners. My parole officer told me that if I appeared to speak at any of these conferences, he would be forced to revoke my parole as ordered by the chief of the Adult Parole Authority. He said he was sorry, but that this was being controlled by the highest ranking officials in the Parole Authority and he was only following orders. He also told me that this was the only time in his career as a parole officer that he had ever been personally contacted by the chief of the Adult Parole Authority and given such orders regarding any parolee.

18. It is the standard policy and practice of the Ohio Adult Parole Authority that if a parolee wishes to travel for any purpose, the parole officer is the person who decides whether or not the parolee may do so. Such decisions are never made by officials at the central office in Columbus -- except in my case. My parole officer admitted that he had absolutely no control over my travel requests and that these decisions in my particular case were being made by his superiors. In addition to admitting this to me, he admitted it to William Weathers, a reporter for the Kentucky Post. See exhibit-G, an article by William Weathers in which he reports such a statement by the parole officer.

19. When an Ohio parolee's job requires that he travel (for example, a parolee who drives a truck for a living), the parole officers as a general practice allow the parolee to travel. The travel requests I made which were denied were job-related, as I was to speak at conferences in my capacity as the director of the Native American Prisoners' Rehabilitation Research Project (NAPRRP). In denying my job-related travel requests and in having such

decisions made at central office in Columbus rather than by the parole officer, and clearly so as to suppress my speech, the Ohio Adult Parole Authority violated my rights to free speech and to petition the government for redress of grievances and to equal protection of the laws, as well as to due process.

20. While on parole, I was doing everything in my power to comply with the conditions of my parole and I was working hard full-time as well as attending college full time. My academic goals were clearly set and I was in the process of completing my bachelor's degree with a major in Criminal Justice and Indian Affairs, with plans to begin working on my doctoral dissertation (a text book entitled *An Introduction to Indian Studies*). The plans were certainly realistic, as I have written various papers that are used as required reading in college courses in the United States and Canada, and professors of Indian Studies and of Criminal Justice have already informed me that they plan to use a book I have just completed as a text in courses they teach. See, for example, letters of confirmation from Cindy Kasee, an Indian Studies professor in Florida, and Hal Pepinsky, a criminal justice professor in Indiana, attached hereto as exhibits H and I, respectively. See also the affidavit of Bill Williams, my academic advisor at the Union Institute, attesting to the hard work I was doing as a student at the Union Institute while on parole. (Exhibit-J.)

21. While working full-time and attending college full-time, I had been fortunate enough to meet some sincere people who believed in what I was doing and who wanted to support the objectives of the NAPRRP. One such person was Dinah Devoto, a city council member in Villa Hills, Kentucky, the same town that the offices of the NAPRRP are located in. Ms. Devoto's husband, however, did not see eye to eye with Ms. Devoto, and he expressed a concern that her affiliation with me and the NAPRRP (an ex-convict and an organization that supports criminals) would damage the reputation of [him] and his family in the minds of the community members of Villa Hills. He demanded that she stop affiliating with me and the NAPRRP and she refused to do so. Accordingly, he threatened my life, unprovoked, over the telephone. He contacted me and told me to stay away from his wife, children and house, and he cussed at me. I hung up on him but was very upset by his call and I immediately called him back and said that perhaps we could meet somewhere and resolve the matter right now. At that time, he yelled, "I'll blow your fuckin' head off you sunuvabitch!" I responded that during my thirteen years of imprisonment I have learned to deal with people like him (meaning people who make threats from afar), and I told him that if he came near me with a gun I would take it away from him and stick it up his ass. I then hung up on him and that was the end of

it as far as I was concerned.

22. A week after I was threatened over the telephone by Steven Devoto as described above, I was served a summons to appear in court to answer charges he had placed against me for allegedly threatening his life. A copy of his sworn statement is attached hereto as exhibit-K.⁴ If his statement is to be taken at face value, I am obviously an idiot who threatens to kill people for no reason at all, without any apparent motive. If his statement is to be believed, he never implied that he would blow my head off. However, his 6-year-old daughter, Grace, stated later that she personally heard him threaten to blow my head off. She made the statement in the presence of both her mother and her father. See the affidavit of Dinah Devoto attached hereto as exhibit-L.

23. After I was served a summons as set forth above, I was told by Claudia Aylor that Steve Devoto stated to her a couple of weeks previously that he would do something to me. He clearly threatened me in conversation with Ms. Aylor, but Ms. Aylor never told me about it previously because she was afraid I would confront Devoto about it and possibly get into trouble. See Ms. Aylor's affidavit attached hereto as exhibit-M.

24. After I was served the summons as set forth above, I was told by Dinah Devoto that Steve Devoto had threatened me on numerous occasions in conversations with her, but she withheld this information from me for the same reason Claudia Aylor did. See the affidavits of Dinah Devoto attached hereto as exhibits L and N.

25. I was served the summons referred to above in the evening at the Villa Hills office of the NAPRRP. The police arrived to serve me the summons at approximately 8:00 p.m. Actually, I know that Claudia's clocks said 7:55 p.m. when the police arrived because we both checked the clocks at that time. The police who served the summons [who are friends of Steve Devoto] claim that they arrived at 8:10 p.m. I won't attempt to argue about the variance because I was at the Villa Hills address until about 8:40 that night anyway because my brother, Matthew Scull, didn't arrive to pick me up until 8:40 p.m. He would generally pick me up at 8:00 p.m. and we would catch the last ferry across the river (a couple minutes past eight is when the last ferry runs). He has been late to pick me up on several occasions, and the night I was served the summons was one of those occasions. See the affidavit of Matthew Scull attached hereto as exhibit-O. The reason Matt would usually pick me up at 8:00 p.m. is because I had written permission from my parole officer to be in Villa Hills, Kentucky at that address from 8:00 a.m. to 8:00 p.m. seven days a week to work for the NAPRRP. And the reason I mention all of this is that my parole officer has stated that the Adult Parole Authority

feels that because I was at the Villa Hills office after 8:00 p.m., I have violated the conditions of my parole and these are grounds to return me to prison. I'll bet I'm the first parolee in the United States ever to have parole revocation proceedings initiated against me for the crime of working at the office ten minutes over-time.

26. At 9:00 a.m. on the morning after I was served the summons as described above, I was on the telephone to contact my parole officer to inform him about the charges Steve Devoto placed against me. I stated to the parole officer all of the above facts relating to the threat and to the charges except at that time I was unaware that Devoto's daughter, Grace, personally heard him threaten to blow my head off. For this reason, that is the only information I didn't give to the parole officer. I also informed him that Steve Devoto had stated to his wife that he was going to drop the charges, and that they were not accurate. I also told the parole officer that I had in my hand the sworn affidavit of Dinah Devoto, swearing that Steve set me up and that the charges against me were false. The parole officer told me that I must turn myself in to his office on the following Monday morning at 9:00 a.m. so that he could take me into custody and place me in jail and initiate parole revocation proceedings. I couldn't believe what he was telling me, and I asked if he would arrest me even if Steve Devoto and Dinah Devoto came in with me on Monday morning to verify that I had never made a threat against Devoto. The parole officer told me it didn't matter. He said he was going to arrest me anyway because that is the policy regardless of any evidence of my innocence. Matthew Scull was sitting at the kitchen table with me during my phone call to the parole officer and he heard my end of the conversation and can attest to the same. See the affidavit of Matthew Scull attached hereto as Exhibit-O.

27. At approximately 7:00 p.m. on the day after I was served the summons as set forth above, Dinah Devoto called my parole officer to verify that the charges against me were false and that her husband threatened me -- I didn't threaten him. At this time the parole officer informed Dinah Devoto that the parole board holds contempt for me because of my political activities, and they would now have an excuse -- regardless of my innocence -- to revoke my parole and force me to serve the remaining years of my 25-year sentence in prison. See the affidavit of Dinah Devoto attached hereto as Exhibit-L.

28. If I had showed up at my parole officer's office on the following Monday morning as he ordered me to do, I would have been arrested and placed in jail. The parole officer stated as much to me as set forth above, and to Dinah Devoto (see Exhibit-L), and to my grandmother, Gladys McAllister (see Exhibit-P).

29. Prior to the Monday morning that I was to turn myself in, my parole officer told Dr. Hal Pepinski over the telephone that when I report to his office on that Monday, he planned to pick up the telephone and contact his superiors in Columbus, Ohio, to receive instructions as to what action to take against me. See the affidavit of Harold (Hal) Pepinski attached hereto as Exhibit-Q.

30. The day after Dinah Devoto and I contacted the parole officer to inform him of Steve Devoto's false charges, Devoto's attorney contacted my parole officer's superiors in Columbus. As a result of that contact, the Adult Parole Authority issued a warrant for my arrest. This action against me by the officials in Columbus was contrary to the routine procedures of the Adult Parole Authority. The arrest orders, and the decision to issue such orders, are as a matter of standard procedure (as well as statutory law -- see section 2967.15 of the Ohio Revised Code) carried out by the parole officers, not the officials in Columbus.⁵

31. Since my parole officer planned to contact the officials in Columbus (the same officials who issued the arrest order) for instructions as to what actions to take against me as set forth in paragraph 29 above, my right to due process was violated from the beginning. No one directly involved in my arrest is allowed to participate even indirectly in the decision-making process that was to occur when the parole officer sought instructions from his superiors in Columbus. See *Morrisey v. Brewer*, 92 S.Ct. 2593 (1972). My due process rights as set forth by the Supreme Court in *Morrisey v. Brewer* were also violated in that the decision-making process is to be performed by a "neutral and detached" decision-maker. Because of the contempt for me which is harbored by the Adult Parole Authority in Columbus, and because of the long-standing pattern of abuse toward me which has resulted from that contempt, it is my contention that no parole revocation procedural hearings conducted by the Adult Parole Authority or anyone appointed by the Adult Parole Authority [in my case] can possibly be conducted in a "neutral and detached" fashion.

32. I have been told by several people who have been in contact with my parole officer, including Kentucky Post reporter Bill Weathers, that two additional reasons exist as grounds to revoke my parole [according to the parole officer]:

- 1) I had moved to the Villa Hills address and was living there without having first notified my parole officer or sought his permission to change my residence; and
- 2) I failed to report to traffic court in Cincinnati to answer for a ticket I received

as a result of a car accident.

33. There is absolutely no evidence that I was living at the Villa Hills address. I was there working from 8:00 a.m. to 8:00 p.m. seven days a week, and I had permission to do so. I was living at my mother's address in Cincinnati. See the affidavits of Nancy Scull, Matthew Scull, Gladys McAllister and Claudia Aylor, attached hereto, respectively, as exhibits R, O, P and M.

34. The reason I didn't pay the fine for the ticket I received (for "failure to control") as a result of a car accident referred to above is that I was going to be found not guilty of the violation. The cause of the accident was the slush on the road. I was driving 10 MPH in a 35 MPH speed zone. I violated no law, and the woman I bumped into as well as the officer who issued the ticket, were prepared to come to court to testify on my behalf. The reason I failed to appear at that traffic court is that the court date was subsequent to the date I failed to turn myself in to the parole officer so that I would be jailed as a result of Steve Devoto's false charges against me. Ultimately, my grandmother paid the traffic fine and the case in traffic court was closed.

35. There are many documents contained in the files of the Ohio Adult Parole Authority which substantiate my claims [against] the Adult Parole Authority. For example, there are copies of correspondence between me and members of the Adult Parole Board, the chief of the Adult Parole Authority, and my parole officer. If the parole officials deny that such documents exist, I will locate the copies I have stored away....

36. I declare that the foregoing statement of facts is true and accurate to the best of my knowledge and belief, and I hereby affix my signature to it under penalty of perjury.

Anyway, much has happened since the above affidavit was executed on April 28, 1993. On June 29, 1993, Little Rock was tried in absentia on the Kentucky charge. The trial only lasted an hour, in which Steven Devoto testified that Little Rock, without provocation, threatened Devoto's life. Devoto's testimony was the only evidence against Little Rock. Testimony for the defense included the following:

* Dinah Devoto, the wife of Steven Devoto, testified that on numerous occasions her husband had told her that he was going to "get rid" of Little Rock if she continued to support Little Rock's organization, the Native American Prisoners' Rehabilitation Research Project. Mrs. Devoto also testified that on the day her husband threatened to blow Little Rock's head off, he (Devoto) bragged to her about his having threatened to blow Little Rock's head

off.

* Grace Devoto, the 6-year-old daughter of Steven Devoto, testified (through stipulation) that she personally heard her father threaten to blow Little Rock's head off.

* Claudia Aylor, assistant director of the Native American Prisoners' Rehabilitation Research Project, testified that prior to the telephone conversation in which Little Rock is alleged to have threatened Devoto, Steven Devoto told Aylor that he would do anything he could to have Little Rock placed back in prison and that he would call on favors owed him by Villa Hills police officers, if necessary, to accomplish it.

On cross-examination, Steven Devoto again swore that he had never threatened Little Rock and that neither his wife, his daughter, nor Claudia Aylor were telling the truth. Accordingly, the judge found Little Rock guilty as charged.

Little Rock, upon hearing of the verdict, immediately filed a *pro se* motion for a new trial based on the ineffective assistance of trial counsel. His motion was based on the fact that trial counsel, without consulting with Little Rock (which he is required by law to do), decided not to elicit testimony from Claudia Aylor regarding her having witnessed Little Rock's end of the telephone conversation. She is the only first-hand witness, aside from Little Rock, to Little Rock's end of the phone conversation. Without her testimony to this, there was no evidence with which to refute Steve Devoto's claim that Little Rock threatened his life. Additionally, Little Rock's pleadings in support of a new trial indicated that his trial attorney failed to elicit further testimony and evidence (which he was aware of prior to the trial) that would have served to vindicate Little Rock, including:

* Dinah Devoto made trial counsel aware (through affidavit) that she contacted the Acting Regional Administrator of the Ohio Adult Parole Authority who verified that Steve Devoto, in an initial state of remorse for having pressed false charges against Little Rock, called the Parole Authority to inform them that he was going to drop the false charges, and asked that they take no action against Little Rock.

* Dinah Devoto made trial counsel aware (through affidavit) that when Steve Devoto learned that Little Rock had filed a counter claim against Devoto for threatening Little Rock's life, Steve Devoto retained a lawyer who persuaded him that the best legal strategy would be to maintain the charge against Little Rock notwithstanding Little Rock's innocence, since Little Rock was an ex-convict on parole.

* Dinah Devoto made trial counsel aware (through affidavit), as did Little Rock through telephone conversation, that Steve Devoto and his lawyer made

Little Rock believe that Little Rock was to meet with Devoto and his lawyer for the purpose of signing an agreement whereby the charges would be dropped, while in reality Devoto's lawyer was on the telephone getting Ohio Adult Parole Authority officials to issue a warrant for Little Rock's arrest. The testimony of Dr. Hal Pepinsky would have collaborated with this as well, which trial counsel was aware of prior to trial.

* Trial counsel had in his possession affidavits and other extensive documentation demonstrating that Little Rock had over the years become a nationally recognized advocate for peace, including evidence that he was personally responsible for keeping prisoners from rioting at the prison in Lucasville, Ohio; yet counsel made no effort to introduce any evidence or character witnesses that would have indicated that the threat he was alleged to make against Devoto is directly contrary to his nature.

In addition to bringing this evidence to the court's attention in his *pro se* pleadings, Little Rock pointed out that the charge itself was inapplicable to the case according to Kentucky law, something his trial counsel failed to point out to the court, which indicates that trial counsel did not even do any legal research in Little Rock's case. From Little Rock's *pro se* motion:

The evidence in this case...indicates that Steve Devoto did in fact threaten to blow Defendant's head off, which was a threat against Defendant's life. [The] evidence indicates further that in response to Devoto's threat against Defendant's life, Defendant reacted by stating that IF Devoto came after Defendant armed with intent to kill Defendant as threatened, and IF Devoto did not succeed in killing Defendant, Defendant would A) take the gun away from his attacker and "stick it up [his attacker's] ass" or B) kill his attacker.⁶

Assuming, *arguendo*, that the latter response is the response Defendant made to Devoto's threat against his life, this Court must nevertheless dismiss this case. In *Thomas v. Commonwealth of Kentucky*, 574 S.W.2d 903, the [Kentucky Court of Appeals], in discussing the legislative intent of the statute Defendant is charged with, explained that the statute [Kentucky Revised Statute section 508.080 (1) (A)]:

... is taken from section 211.3 of the Model Penal Code (10 ULA), p. 539 entitled "Terroristic Threats." ... The drafters' comments following this section of the Model Penal Code ... explain the application of this section: "... In drafting legislation penalizing threats, we would not wish to authorize ... sanctions against the kind of

verbal threat which expresses transitory anger rather than settled purpose to carry out the threat or to terrorize the other person...." (74 S.W.2d at 907.)

Thus it is clear that the Kentucky Supreme Court and the Kentucky legislature did not intend for this statute to apply to cases such as the instant one, where the Defendant's alleged threat against Devoto was merely an expression of transitory anger and fear after having his own life threatened rather than a settled purpose to carry out a threat or to terrorize the other person.

Little Rock's motion for a new trial was denied. The conviction, therefore, constitutes an uncontestable technical parole violation authorizing the Ohio APA to place Little Rock back in prison for fifteen years if and when apprehended. The effect of the conviction in Little Rock's case, therefore, is equivalent to more than two consecutive life sentences under Kentucky law, as parole eligibility on a life sentence in Kentucky arrives after only seven years. Little Rock is appealing the conviction and has stated that, where taxpayers are concerned, this case will very likely be the most expensive misdemeanor case ever tried or litigated in United States history.⁷

Since the day Little Rock went underground, the APA and other prison officials who want him in prison have discovered even greater cause for wanting his voice silenced. As stated in a May 25, 1993, affidavit signed by Dr. Harold Pepinsky, a board member of the American Society of Criminology who has been monitoring some of the conditions at Ohio's maximum security prison in Lucasville for several years now:

The prison wing [Little Rock] would have undoubtedly been sent back to in Lucasville had he reported to his parole officer this past March 22 shortly thereafter broke out in a riot. There he would have been a likely choice of rioting prisoners to be their spokesperson. Had he survived the riot, he would now be a prime candidate for murder prosecution simply by having been in the prison at the wrong time. I believe he might well have died instead. Mr. Reed's fellow writ-writer and defender of American Indian religious freedom, Dennis Weaver, was brought out of the riot area and later found dead in his cell long before the riot ended with signs of having been beaten.

During the Lucasville riot, prison warden Arthur Tate, Jr., and the other prison administrators refused to allow the media to interview the prisoners even though the prisoners stated that they would kill their hostages if they could not speak with the media. When Little Rock learned of this, he traveled to Ohio and spoke with the media on behalf of the prisoners whose voices were

being silenced. He was interviewed by the Columbus, Ohio, ABC television news affiliate which was aired throughout the United States, and the *Plain Dealer*, Ohio's largest newspaper, ran a story in which they exposed some of the facts documented in a lawsuit filed by Little Rock on behalf of Lucasville prisoners which indicated that warden Arthur Tate basically did everything in his power to instigate the riot that occurred. The record in the case further revealed that Tate was warned that the riot was impending, yet he stated to the media during the riot that the administration had no prior warning that a riot was imminent. (Tate also told the media that the rioting prisoners' claims of religious freedom deprivations were not true, but the untruthfulness of Tate's media statement to that effect was revealed in the chapter on "A Couple of States that Start with an O," where in his own correspondence which is reproduced in that chapter, he made it quite clear that no Indian spiritual leader will ever enter the walls of his prison.)

Throughout all of this, Little Rock has been busy as legal consultant and spokesman for the Aboriginal Uintah Nation, a group of American Indians terminated by an Act of Congress in 1954 who asked Little Rock to assist them in their struggle. The Ute people were one of more than a hundred Indian tribes that were terminated in the 1950s and 1960s, yet while the other tribes were entirely terminated, Congress only terminated about one-third of the Utes, based on racial blood quantum, the result being to divide and destroy not only the tribe, but families.⁸ The effect of termination of the Utes was to dispossess them of billions of dollars worth of land and resources through fraud and deceit; to eliminate their right of self-determination and self-government so they would become subject to state laws and taxes; and to eliminate their identity as Indian people so that as individuals they may receive no protection of their rights as Indians under U.S. laws. For example, they may not invoke the Indian Child Welfare Act to enjoin the Mormon State of Utah from ripping their children away and placing them in white Christian (Mormon) homes, which, according to Mormon doctrine, is more or less a religious duty.

Because of his status as a political fugitive -- a status which has been discovered by some of the Aboriginal Uintah Nation's foes -- Little Rock was recently forced to leave the reservation and go back into hiding. Meanwhile, I am continuing, by myself, the extensive factual and legal investigation that we started together and were hoping to finish together -- an investigation which, even though not complete, has exposed the crime of genocide that has been and continues to be perpetrated against the aboriginal people of the Uintah & Ouray Indian Reservation....

Afterword

After writing this chapter, I showed it to Little Rock. This was his response:

The Adult Parole Authority probably thought that when I was released from prison the fire in my spirit would die and I'd be quiet, content with my new freedom. But freedom is a relative term, and so long as one human being is oppressed or unjustly imprisoned, no human being is free. So long as my heart beats, I will ask questions, I will write, and I will speak the truth about government officials' atrocities against humanity, and now I think the Adult Parole Authority realizes it. With that realization comes the common sense conclusion that the only way to silence my voice is to make my heart stop beating. Whether or not the Adult Parole Authority has that much common sense, I do not know. But I'm certainly not taking any chances....

Endnotes to Chapter Twelve

1. The petitioners were attorney Ed Kagin of Covington, Kentucky; Dr. William Williams of the Union Institute in Cincinnati, Ohio; Dr. Lance Kramer, assistant provost at the Ohio State University at the time of the petition's filing, now vice president of the Ohio Center for Native American Affairs; and Dr. Harold Pepinsky, a retired attorney currently teaching at Indiana University and serving as chairman of the Division of Critical Criminology, American Society of Criminology.

2. Due to space limitations, the nineteen exhibits attached to Little Rock's affidavit, and which are referred to throughout his affidavit, are not included here. However, the petition to the governor with all attached exhibits, as well as the governor's and the APA's responses, are available from the Native American Prisoners' Rehabilitation Research Project, 2848 Paddock Lane, Villa Hills, KY 41017, for \$10.50 which will cover the costs of copying and postage. Any other contributions with which to carry on the campaign to free Little Rock would be appreciated as well.

3. At the time this affidavit was drafted, this book was under an optional contract with *Vintage*, but due to *Vintage*'s slowness and the need to get this book out to promote legislation that will protect the rights of Indian prisoners, Little Rock terminated the contract with *Vintage*.

4. According to Devoto's sworn statement, Devoto politely asked Little Rock to leave Devoto's children alone (Dinah Devoto would often bring her children to the NAPRRP office with her, and Little Rock would play with them and tell them stories, give them ice cream and the like). In response to Steve Devoto's "polite" request, Devoto claims that Little Rock told Devoto that "because he [Little Rock] had been in prison for 13 years, he knew 'how to deal with people like you --I'll kill you, motherfucker.'"

5. In an April 28, 1993, affidavit of Dr. Harold Pepinsky, he stated:

I confirmed by telephone call to [Little Rock's] mother that local police had searched her home Saturday, March 20, for [Little Rock] under the authority of an arrest warrant which under Ohio law could only lawfully have been signed by the parole officer. Nonetheless, the parole officer on Sunday, March 21, denied any knowledge of an existing warrant for [Little Rock's] arrest, and tried to reassure me that a decision whether to arrest Mr. Reed would not be made until he checked with Columbus the following morning.

6. As a matter of fact, if Devoto would have attempted to carry out his threat against Little Rock, and if Little Rock would have killed Devoto in response to such attempt, Little Rock's killing Devoto would have been permissible under Kentucky's self-defense law. Accordingly, even if Little Rock told Devoto that he would kill Devoto if he attempted to carry out his threat against Little Rock, Little Rock's counter-threat would have been permissible under Kentucky law. Had Little Rock's trial attorney taken the time to research the law concerning the matter, he would have known this and brought it to the court's attention, which he did not do.

7. Although the trial court is required by law to provide a copy of the trial transcript to Little Rock so that he may exercise his right to appeal the conviction, as of the date of this book's first printing (November 1993), the court clerk has ignored Little Rock's repeated requests for his transcript.

8. Approximately 89% of the terminated Utes were Uintah, one of the three bands of the Ute Tribe. The Uintahs were the original land holders whom the reservation belonged to, while the other two bands were relocated by military force to the Uintah's reservation more than a decade after the Uintah Reservation was established in 1861.

CHAPTER THIRTEEN

*Rehabilitation:
Contrasting Cultural Perspectives
&
the Imposition of Church and State**

by

Little Rock Reed

"We, the International Indian Prisoner Support Network, on behalf of all Native men, women and children incarcerated in Canada and the United States, fully endorse and support only those spiritual advisors who are sanctioned by our traditional elders and spiritual leaders. It is clear that current rehabilitation programs have failed to serve the needs of Native peoples. On behalf of our elders and spiritual leaders, we demand the establishment of a rehabilitation structure designed by and for Native Americans in all correctional facilities based on our spiritual teachings. The words of our spiritual advisor, Art Solomon, embodied our beliefs in self-determination when he said, 'We, as Native people, will take hold of the present and make the future what we want it to be.'"

-- Native American Delegation
Fifth International Conference
on Penal Abolition
Indiana University - Bloomington
May 26, 1991

* This paper first appeared in the *Journal of Prisoners on Prisons* (Spring 1990), the only refereed academic journal containing the writings of prisoners. This paper was later presented at the 1990 conference of the Association for Humanist Sociology; the 1991 International Conference on Penal Abolition; and the 1991 conference of the Academy of Criminal Justice Sciences.

The author wishes to express a special thanks to each member of the Ohio Parole Board whose inhumanity inspired this work.

Dr. Thomas W. White, Administrator of Psychology Services for the North Central Region of the United States Federal Bureau of Prisons, has observed that In the Beginning, and indeed throughout Judeo-Christian history, the desire for retribution has

characterized society's response to criminal behavior. The imposition of mutilation, torture, or even death was universally accepted as appropriate punishment for a wide range of social transgressions. The roots of this philosophy were inextricably entwined in our Judeo-Christian tradition and reinforced by years of biblical teaching which stressed the notion of an eye for an eye and a tooth for a tooth. However, by the beginning of the 18th century the more humane practice of imprisonment slowly began to replace branding, corporal punishment, and execution as the preferred method of dealing with lawbreakers. Under this new doctrine punishment actually served two purposes: to exact society's retribution and to deter the offender as well as others who may consider committing future crimes. Finally, the early 19th century saw the forerunner of the modern day prison system with the development of the Walnut Street Jail, a uniquely American creation designed to not only punish and deter, but to rehabilitate offenders by making them penitent (the penitentiary) for their actions through forced solitude and biblical reflection (White, 1989:31).

This forced biblical approach actually continues as a matter of American correctional policy, though the force is employed in very subtle forms so that the policymakers and rehabilitators may, as they steadfastly do, contend that their rules and procedures do not violate the First Amendment's clause forbidding the establishment of religion by forcing Judeo-Christianity upon the prisoners of America. This forced Judeo-Christianity comes under the guise of "rehabilitative" programs in which prisoners are required to participate. Thus, in examining the contrasting cultural perspectives on rehabilitation from a Native American standpoint, the "imposition of church and state" inherent in the government-sanctioned "rehabilitative" programs inevitably becomes a fundamental aspect of the discussion.

Many of the existing policies and practices relating to the rehabilitation of prisoners in the various prison systems of North America are in fact producing results which are the opposite of the rehabilitative objectives asserted to justify their existence. This can be attributed, in great part, to the administrators, counselors, and treatment personnel's general lack of knowledge and understanding of the contrasting values, attitudes, customs and life experiences of a great many of those for whom the existing "rehabilitation" programs have been established.

The implementation and maintenance of Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) programs in most prisons, and the unequivocal sanction placed in them by the legislatures, prison administrators, and parole authorities provide a case in point. In most states and in the federal Bureau of Prisons, for example,

prisoners are given a reduction in the time required for parole eligibility or discharge dates and/or are given special privileges or lower security status for their faithful participation in AA and/or NA.¹ These types of policies serve to corrupt the incentive of the prisoners to participate in the programs, effectually transforming the nature of the programs from rehabilitative to mere shortcuts to freedom. Indeed, at least one prisoner in the Southern Ohio Correctional Facility has disclosed to me that he has never been involved with alcohol or drugs, but he is a faithful participant in both AA and NA because of the good-time credit he receives. It is common knowledge among most prisoners that these programs -- due to their high standing with the parole boards -- are,

as stated by one prisoner who is a veteran of these programs,

a complete farce, man. They're a joke, because the majority of the men who are there, including myself, are only there because we were told by the parole board or the classification committee that we should get into the programs. You've got a few guys in there who are sincere, but this just makes it hard for them 'cause they're intimidated by the fact that the majority of us think the whole thing is a crock (we call it the "snivelers' club").... This causes the sincere ones to clam up and not really get anything out of the programs because they're uncomfortable around [those of] us who are only there for parole or good-time reasons, or so we won't have to wait as long to be transferred to a minimum-security joint....

In many prison systems, the parole boards have such confidence in the AA and NA programs that they require prisoners to participate in them as a prerequisite to parole consideration even when there is nothing in the prisoner's record to indicate any involvement with alcohol or drugs other than the prisoner's own admission upon entering the prison system (when filling out questionnaires) that she or he has experimented with drugs or alcohol at some point in her or his life. Once such an admission is made, it is, as standard procedure, used against the prisoner so long as the prisoner refuses to participate in the AA or NA programs after having been directed to do so.² In the view of the Ohio Parole Board, for example, all evidence the prisoner might submit which indicates that he or she has no affiliation with alcohol or drugs is deemed irrelevant and is given absolutely no consideration by the parole board.³ The prisoner's failure to participate in AA or NA after being advised to do so by the parole board or the classification committee is automatically taken to indicate that the prisoner is uncooperative and incorrigible.

It is worth noting that AA has had a great rate of failure on a global scale. According to Carson, Butcher & Coleman⁴:

AA ... does not keep records or case histories.... The generally acknowledged success of [AA] is based primarily on anecdotal information rather than objective study of treatment outcomes. One recent study..., however,

included an AA treatment in their extensive comparative study of treatments of alcoholics. The AA treatment method had very high dropout rates compared to other therapies. Apparently many alcoholics are unable to accept the "quasi-religious" quality of the sessions and the group testimonial format that is so much a part of the AA program. The individuals who were assigned to the AA program subsequently encountered more life difficulties and drank more than the other treatment groups (Carson, et al., 1988:383).

Assuming that AA isn't the failure it appears to be, let's take a look at this program from an Indian point of view to see if one needs to be "incorrigible" to reject it. I certainly cannot speak for all Indians, but I think the voice of a quite significant portion of the Native population will ring through in this discussion of how and why AA concepts, philosophies and principles are inapplicable to Indians in general. This presentation is in no way intended to offend those individuals who agree with the concepts of AA or to attack the program itself. Indeed, the concepts are excellent for people from many different walks of life. I simply intend to show that AA is not the "universal" program it is claimed to be, and that coerced participation in the program as a prerequisite to having one's liberty restored is morally, ethically and legally wrong.

A passage from *Alcoholics Anonymous*:

Selfishness -- self-centeredness! That, we think, is the root of our troubles. Driven by a hundred forms of fear, self-delusion, self-seeking and self-pity, we step on the toes of our fellows and they retaliate. Sometimes they hurt us, seemingly without provocation, but we invariably find that at some time in the past we have made a decision based on self which later placed us in a position to be hurt.

So our troubles, we think, are basically of our own making... (1976:62).

Those who know the historical and contemporary realities facing Native Americans will agree that this particular point does not reflect those realities.

Step Two of the Twelve Steps of AA requires the belief that a Power greater than ourselves, and only a power greater than ourselves, may restore us to sanity. To adopt this belief is to make an admission of *insanity*, which is pretty hard for most Indians to accept, and understandably so. Assuming that we are willing to accept it, this Step contradicts the concept (cited above) that "our troubles ... are basically of our own making." If we and we alone are capable of bringing about our own troubles without any external influences, how does it logically follow that we are absolutely incapable of restoring our alleged lost sanity -- i.e., correcting the "root of our troubles" -- without utter

dependence upon an external power? This idea is ludicrous to most Indians, not because we lack a dependence upon or belief in external powers, but simply because there are such gross inconsistencies between these two concepts, concepts which must be adopted in order to fit into the AA program. Are non-Indians not also aware of these inconsistencies?

I would like to illustrate the totally unrealistic nature of another AA proposal for Indian people. The AA program requires participants to list persons, institutions and principles that they are angry at or consider to be enemies. "We go to our enemies," state the authors of the AA book:

in a helpful and forgiving spirit, confessing our former ill feeling and expressing our regret. Under no circumstances do we criticize ... or argue. Simply we tell them that we can never get over our drinking until we have done our utmost to straighten out the past. We are there to sweep off our side of the street, realizing that nothing worthwhile can be accomplished until we do so, never trying to tell him what he should do. His faults are not discussed. We stick to our own. If our manner is calm, frank and open, we will be gratified with the results. In nine cases out of ten the unexpected happens. Sometimes [our enemy] admits his own fault, so feuds of years' standing melt away in an hour ... (*ibid.*: 77-78).

When shown this passage from the AA book, one of my Cherokee friends said, "Do you really think that if our people go to the white man's leaders in a helpful and forgiving spirit and take the blame for everything and say we're sorry, that they will begin to honor perhaps nine treaties out of ten?"

No response was necessary.

It is a rule of AA that the individual must remain free of anger. *Under no circumstances* is anger to be expressed, and if ever anyone offends the individual, he or she is simply to say, "This man [or government or agency or mineral company?] is sick. How can I be helpful to him [it]? God save me from being angry. Thy will be done" (*ibid.*:67). If we do not have the "strength" or the "courage" to do this, and if instead we express any anger, according to the philosophy of AA, it is because we are selfish and dishonest. On the contrary, some people, including Indians, feel that the expression of anger can be pretty healthy at times, not to mention it being consistent with human nature. On the other hand, to uncompromisingly suppress one's anger as a matter of rule, regardless of the justification for the anger or the circumstances from which it arises, can lead to an accumulation of frustrations that can prove to be quite unhealthy, especially in light of 1) the discriminatory actions that Indians are faced with day after day in the course of non-Indian custom, and 2) the stressful situations that are so commonplace in the prison environment where the potential for violence is magnified, and often encouraged by the prison administrators and guards.,

According to the concepts of AA:

Resentment is the "number one" offender. It destroys more alcoholics than anything else. From it stem all forms of spiritual disease, for we have not only been mentally and physically ill, we have been spiritually sick... (*ibid.*:64).

When hearing such language, one cannot help but wonder if it has ever occurred to the founders and proponents of AA that some people drink not because they are "insane," "mentally ill," or "spiritually sick," but because they are trying to numb the pain caused by the fact that they are religiously, politically, socially, culturally and economically oppressed by an alien government and people who are imposing their religious, political, social, cultural and economic values and laws on them without their willful consent and in direct violation of the majority of the human rights and fundamental freedoms that appear in the various international human rights instruments. To this end, it is the view of many prisoners (regardless of race or ethnicity) that the AA and NA programs are no more than social control mechanisms -- that is, mediums through which the ruling class effectively subdues the discontent of the lower classes and underprivileged by having their attention diverted from the true sources of their problems (poverty, inequality, unemployment, despair, etc.). "What other reasons can there be," asks one black prisoner from the Cleveland slums,

for them to force us into programs that are known to be failures in the treatment of substance abuse? Not only are we being forced into these programs here, but every day the under-privileged are being ordered by the courts to participate in the same programs in the free world if they wish to stay out of prison. The programs are failures, so why? I believe the answer is because the programs aren't really failures at all -- they are highly effective at controlling the lower classes by having individuals within those classes accept personal responsibility and blame for social conditions imposed by the power elite. That must be why the government sanctions them as it does. In other words, if the elite can make us think we're to blame for this mess that we're in, then they have placed the burden of guilt on our shoulders while they comfortably wallow in the fruits of our pain; it's too horrible a realization to face, so they cope with their sins by a process psychologists like to call "denial" while coercing us into these ridiculous programs where we are to accept the responsibility for their sins....

I want to examine another aspect of the AA/NA format -- the very principle of anonymity itself from which these programs have taken their names. Anonymity denies to an individual the social and cultural identity which research has indicated is essential to the successful treatment of Native Americans with substance abuse problems. As was stated by Grobsmith, a leading authority on

substance abuse treatment for Native Americans, particularly within the prison setting:

... Indian people for the last century have been lost. When their religion and languages and cultures were taken away from them in the period of forced assimilation on the part of the U.S. government, Indian people's knowledge of their own ways was largely disappearing.

Because of the introduction of alcohol, the lack of a strong economic base [and] tremendous unemployment, the situation has become very, very drastic and very depressing; drug use at an early age and so on. Indian people have, I believe, lost themselves.

The return to Native religion -- and there are other sources that document this, and I'm not the only person who's observed this -- indicate[s] that this return to [their traditional native] spirituality helps them in ways that other kinds of programs do not, by giving them something strong to identify with that is Indian, giving them pride....

Indian people are not comfortable in AA. They're not comfortable in a large rehabilitation program that's not basically Indian, because many of them are embarrassed or ashamed to admit their problems and their dependence on alcohol with people who are not going to understand them, and who may have prejudice against them.

And AA is an approach that requires an attitude of an admission of guilt. You get up, and you give self-confessions. You admit guilt and shame. It is not suitable to the Indian culture. It is not effective. AA is notorious ... [for its] great rate of failure with Native Americans, and this is nationwide (Grobsmith, 1987:281-84).

In wrapping up the discussion on AA and NA, it is also worth noting that these programs unquestionably qualify as "associations" and that Article 20(2) of the *Universal Declaration of Human Rights* states that "no one may be compelled to belong to an association." It appears, therefore, that all policies and practices that demand the participation of prisoners in these programs as a prerequisite to the restoration of their liberty or as a stipulation in their parole programs are in need of an overhaul. Not only do such policies and practices violate the above-cited right, but when the individual who is coerced into the programs holds cultural, social, political or religious values or beliefs that are in conflict with those propounded by the programs, such policies and practices may violate most, if not all, of the rights guaranteed by the following laws:

From the *Universal Declaration of Human Rights*:

Article 18: Everyone has the right to freedom of

thought, conscience, and religion; this right includes 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. [The freedom of manifestation is impaired when conflicting beliefs are imposed on the individual.]

Article 22: Everyone is entitled to realization ... of the ... social and cultural rights indispensable for his dignity and the free development of his personality.

And the *United States Constitution*, Amendment One, declares that no law shall be made which respects an establishment of religion or which prohibits the free exercise thereof. As used in constitutional provisions forbidding the establishment of religion, the term *religion* means a particular system of faith or belief in the existence of a superior being or beings having power over human beings by volition; man's submission to mandates, precepts, rules of conduct, etc., imposed by supernatural or superior beings; these concepts shared, recognized and practiced by a particular church, denomination, association, group or sect. According to the legal and functional definitions of *religion*, AA and NA are in fact religions. When I suggested this to a social worker in the Southern Ohio Correctional Facility and emphasized that these programs are "Christian-oriented," he and his colleagues became very perturbed and summoned me into an office where I suppose they expected to intimidate me. They confronted me with my "accusations" that these programs are Christian-oriented, and the conversation that ensued only served to illustrate that they indeed are. They insisted that these programs have absolutely no connection with religion and are suitable for everyone, regardless of ethnic or religious affiliation, including atheists. This is absurd since an atheist rejects all religious belief and denies the existence of any god. When I stated this to these social workers, they told me I was being unreasonable and "copping out" for not wanting to participate in the programs. They insisted that the AA program doesn't really have anything to do with religion because the individual participant is to consider this "god" to be in whatever form or manifestation with which the individual is comfortable, i.e., "God as you understand Him."

Regardless of what image this "God" takes, however, the fact remains that it is a religious symbol; a superior being with supernatural powers; a superior being that sets standards of conduct for us to live by and believe in, and which happen to be standards of conduct which clash with the standards of conduct *my god has set for me to live by and believe in*. These social workers, or anyone, may conjure up all the abstract theories they wish in an attempt to make someone believe that the "God" in these programs is not really the religious kind. The abstractions do not and can not eliminate the supernatural quality that makes it religious. According to the dominant society's own standards and rationalizations with which Native Americans are so familiar, the AA and NA programs are either religious in nature or superstitious in nature -- take your pick. And it should also be noted that the AA and NA meetings in the Southern Ohio Correctional Facility, as

well as in other prisons, which these social workers and prison officials insist are in no way related to religion, conclude with the Lord's Prayer. Amen.⁶

And returning to some additional Rights guaranteed under the *United States Constitution*, we must not overlook the Fifth or the Thirteenth Amendments. The Fifth Amendment states that no one shall be deprived of liberty without due process of law, while the Thirteenth Amendment declares that no involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist in the United States (and all prisoners are forced to do slave labor of one kind or another). The refusal of a prisoner either to participate in AA or NA or similar programs, or to agree to accept a stipulation requiring such participation upon release in order to secure his or her liberty, is not a crime. If his or her liberty is delayed or denied on the basis of such refusal, the delay or denial constitutes involuntary servitude without due process of the law since the question of his or her original crime is no longer at issue.

In addition to the laws set forth above, many other similar laws and administrative regulations are violated when programs such as AA and NA are imposed on prisoners against their will. Such practices and policies are a direct offense against the inherent dignity of the human being and are clearly demonstrative of the policy-makers' and enforcers' intolerance of and contempt for the pluralism and self-determination that are claimed to be held in such high regard in those societies that are allegedly "democratic."

It should also be noted that this imposition of AA and NA is discriminatory. *Black's Law Dictionary* (1979) defines discrimination as follows:

In constitutional law, the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a larger number of persons, all of whom stand in the same relation to the privileges granted and between whom and those not favored no reasonable distinction can be found. Unfair treatment or denial of normal privileges to persons because of their race, age, nationality or religion. A failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored.

It logically follows that the effect of a statute or established practice which gives "good-time" credits or any privileges (e.g. trustee status or the option to transfer to lesser security) only to those prisoners whose beliefs correlate with the AA/NA programs, or to those who are willing to sit through the programs in violation of their beliefs, is discrimination and constitutes a violation of the equal protection of the laws. In order to adhere to the *International Bill of Human Rights* and American constitutional law, it is necessary to neutralize such statutes and practices so that the privileges presently granted by participating in these programs will become available to all prisoners. For

example, if a state statute or regulation credits good-time to prisoners who participate in AA or NA, then such good-time must also be credited to Indian prisoners who participate in programs such as the Red Road Approach to Recovery, P.I.P.E.S. (People In Prison Entering Sobriety), or the United Native Alcohol Program, which I will discuss in greater depth in a moment.

I am emphasizing substance-abuse treatment because it is time for some concrete measures to be taken to alleviate the problem. Alcohol-abuse has long been recognized by social scientists as "the foremost medical and social problem" among contemporary Indian populations (see Beauvais and La Boueff, 1985; Grobsmith, 1989a; Hall, 1986; Mail and McDonald, 1981; Pedigo, 1983; Price, 1975; Snake et al., 1977; Task Force Eleven, 1976; Weibel-Orlando, 1984; Weibel-Orlando, 1987). It has been well-documented that Indian youth suicide, which is double that of the national population, is alcohol-related (French, 1982; Grobsmith, 1989a; Rosensteil, 1989; Shore et al., 1972; Weibel-Orlando, 1984); that the leading causes of death among the American Indian population are attributed to alcohol use (Grobsmith, 1989a; Indian Health Service, 1989) and that almost all arrests of Indians are alcohol-related, including juvenile arrests (Grobsmith, 1989a; Grobsmith, 1989b; Lex, 1985; Mail & MacDonald, 1981; Weibel-Orlando, 1984). As stated by Dale Smith, a former spokesman for the Tribe of Five Feathers (Indian organization at the federal prison at Lompoc, California), "if we have, say, fifty guys, forty-nine of them are here because of alcohol problems" (Thornton, 1984). And the president of the Native American Council at the Southern New Mexico Correctional Facility, Harvey Snow, has stated that "of our twenty members, nineteen of us are in for alcohol or drug-related offenses."

And the problem is not going to be alleviated through the use of "rehabilitative" programs that fail to take cultural factors into account, as observations and research have clearly established. The failure of non-Indian programs to successfully treat Indian substance-abuse problems has been well-documented (Grobsmith, 1987; Heath, et al., 1981; Kline and Roberts, 1973; Native American Rights fund, 1978; Pedigo, 1983; Stevens, 1981; Weibel-Orlando, 1989). Despite these observations, most substance abuse intervention programs offered to Indians (including those on the reservations) are designed by non-Indians and are "based on Western schools of thought that have little to do with Indian values and beliefs" (Beauvais and La Boueff, 1985; Butterfield, 1989; Stevens, 1981). "Increasingly, evaluators, treatment personnel, and potential clients deplore the Anglo cultural bias of existing alcoholism intervention programs and call for the integration of more traditional [Indian] forms of healing practices into programs with ... Native American clients" (Weibel-Orlando, 1987:264).

Over a five-year period, the Alcohol & Drug Study Group of the American Anthropological Association visited and observed over forty Indian alcoholism recovery homes as well as traditional Indian healers in California, South Dakota, New Mexico, Arizona and Oklahoma. The alcoholism treatment programs were categorized across a range of six different types running on a continuum from

that can be described as culture-sensitive to assimilative. They found that "Indian alcoholism programs with the highest rates of sustained client sobriety are those that integrate a variety of traditional Indian] spiritual elements and activities into their treatment strategies" and suggested further that "involving the concept of sacred separation as a viable ethnic stance and insistence as one of its demonstrable forms may be a culturally appropriate intervention strategy and the effective first step toward sustained sobriety for contemporary American Indians..." (Weibel-Orlando, 1985:219-23, my emphasis).

In his visits to various prisons throughout the country to conduct sweat ceremonies and spiritual counseling with Native American prisoners, Lenny Foster, director of the Navajo Corrections Project, hands out the *Twelve Steps in the Native Way*. The distinctions between these steps and those of AA are very pronounced. The following chart compares five of the twelve AA steps with five of the twelve steps the Native Way, *Sobriety Through the Sacred Pipe*:

| | ANGLO AA STEP | THE NATIVE STEP |
|---------|---|---|
| Step 2 | We come to believe that a Power greater than ourselves can restore us to sanity. | We come to believe that the Power of the Pipe is greater than ourselves and can restore us to our Culture and Heritage. |
| Step 5 | We admit to God, to Ourselves, and to another human being, the exact nature of our wrongs. | We acknowledge to the Great Spirit, to ourselves, and to the Native American Brotherhood, our struggles against the tide and its manifest destiny. |
| Step 6 | We are entirely ready to have God remove all these defects of character. | We are entirely ready for the Great Spirit to remove all the defects of an alien culture. |
| Step 8 | Make a list of all persons we have harmed and become willing to make amends to them all. | Make a list of all the harm that has come to our people from alcohol, and become willing to make amends to them all. |
| Step 11 | Seek through prayer and meditation to improve our conscious contact with God as we understand Him, praying only for knowledge of His will for us and the power to carry that out. | Seek through prayer and meditation to improve our conscious contact with the Equality and Brotherhood of all Mother Earth's children and the Great Balancing Harmony of the Total Universe ⁷ |

In studies conducted by Westermeyer and Neider, they found that "those [Indians] ... engaging in more traditional Indian activities ... tended to have better outcomes a decade later. It

appears that more intense contact with one's own culture ... favors a better outcome among Indian alcoholics" (1984:183).

The importance of cultural differences must be recognized in any program that is to be successful with Native Americans (Boweckop, 1970; Guajardo, n.d.; Jilek and Jilek-Aall, 1974; Miller, n.d.; Pedigo, 1983; Task Force Eleven, 1976; Topper, 1976; Weibel-Orlando, 1987). The programs must be based on Native values (Alda, 1971; Grobsmith, 1987; Jilek and Jilek-Aall, 1972; Jilek, 1974; Reed, 1989; Topper, 1976; Underhill, 1951). Native American involvement and staffing are essential to the success of substance-abuse treatment programs for Indians (Ferguson, 1976; Leon, 1968; Native American Rights Fund, 1978; Pedigo, 1983; Provincial Native Action Committee, 1974; Shore, 1974; Task Force Eleven, 1976; Turner, 1977). Where such involvement and staffing are not feasible, it is imperative that any non-Indian attempting to counsel effectively (whether or not such counseling is related to substance-abuse), should have some knowledge of the historical and contemporary realities facing Native Americans and the differences in Indian and Anglo values (Guajardo, n.d.). As Guajardo pointed out, "what is a positive value for the Anglo (e.g., being outgoing, competitive) can be a negative value for the American Indian. Calling values 'positive' or 'negative' is always relative to those who espouse [them]," and to approach any type of counseling or therapy from the "'textbook'... [which] emphasizes white middle-class values, is both improper for, and antagonistic to, the Native American client" (*ibid.*:3). Guajardo, in citing Richardson (1973), listed examples of the contrasts between Indian and Anglo values as shown below.

| <u>NATIVE AMERICAN</u> | <u>ANGLO AMERICAN</u> |
|------------------------|-----------------------------|
| Uncritical attitude | Critical attitude |
| Cooperation | Competition |
| Sharing | Ownership |
| Humble | Outgoing if not arrogant |
| Happiness | Success |
| Honor elders | No respect for elders |
| Silence | Verbalism |
| Tribal values | Individualism |
| Simplicity | Complexity & sophistication |
| Tradition | Innovation |
| Spiritual values | Material values |

| | |
|--|---|
| <u>Learning from elders</u> | <u>Learning in schools</u> |
| <u>Few rules</u> | <u>Multiplicity of laws</u> |
| <u>Mysticism</u> | <u>Empiricism</u> |
| <u>Smallness</u> | <u>Bigness</u> |
| <u>Natural Medicine</u> | <u>Synthetic medicine</u> |
| <u>Unity of animal kingdom with humanity</u> | <u>Separateness of animal kingdom from humanity</u> |
| <u>Accepts others as they are</u> | <u>Change or proselytize others</u> |

In returning to the discussion of substance abuse, the most effective approach to the problems among Native Americans is simply that of refamiliarizing them with the traditional values of their culture, and strengthening those cultural values and norms (Albaugh and Anderson, 1974; Pedigo, 1983), for as was observed by Lex (1987:298), "the erosion of traditional behaviors [and values of Indians] accompanies drinking problems." As stated by Dale Smith, founder of the United Native Alcohol Program (UNAP) at Lompoc, "we try to say to [the Brothers], 'Hey, the Pipe is good, and the Pipe is strong'.... The difference [between our philosophy and that of Alcoholics Anonymous] is that they dwell on the negative aspects of alcohol, while we prefer to accentuate the strength of our traditional ways" (Thornton, 1984). Some of Dale's further insights about UNAP are as follows, in response to some questions I asked him:

What is UNAP?

Dale:

UNAP is a substance abuse rehabilitation and prevention program. It is designed specifically for Native Americans. UNAP employs traditional Indian spiritualism and culture as well as appropriate up-to-date behavior modification techniques applied in a traditional Indian context.

UNAP breaks with conventional rehabilitation programs in many areas. For instance, UNAP does not treat alcohol or substances as problems. Those are simply symptoms of the real problems which are deeper underlying turmoils.

Additionally, the program focus of UNAP differs from the conventional in that it chooses to focus on the positive nature and spiritual strengths of mankind rather than on negative case histories. Focusing on guilt complexes and personal shortcomings is not a

practice of UNAP.

The ultimate goal of the UNAP project is to repair and rebuild the damage of substance abuse, prevent abuse from occurring, and to provide a lasting sense of direction through encouragement, support and instruction in the Native spiritual practices of regional tribes. Suggestions on uses of work and leisure time, an important aspect of program aftercare, are also provided in the UNAP program.

When and how did UNAP start?

Dale:

The UNAP concept was conceived in 1978. Research and development, as well as a large degree of self-education on my part, continued for five more years until 1984 when the first draft of the UNAP program was completed.

I participated in AA back in those days, but somehow could not bring myself to say the standard AA greeting, which is, "Hello, my name is _____ and I'm an alcoholic." I always felt that in the context of that greeting, the phrase was unnecessarily demeaning and demoralizing. It was like being asked to slap myself in the face then follow that with a few psychological kicks in the butt for my past indiscretions. I said, "no way buddy!" Besides, what was AA giving me?

I still had difficulty understanding how the AA concept applied to me. And it didn't help that I didn't believe in the Christian concept of God. Eventually, it became a real problem for me to sit and listen to other people's testimonials about their loss of things I never had, like big brick homes and high society girlfriends, and to hear of their salvation through religious concepts which were alien to me.

Finally, I listed the problems conventional rehabilitation programs failed to address for Native people. I spoke to many different Indians about substance abuse and listened with an Indian ear for the deeper meanings within the stories I heard. And after more than four years of studying the problems, I put together UNAP and offered it as an alternative solution.

Where is/was UNAP developed?

Dale:

UNAP was first introduced at the federal prison at Lompoc, California. The very first sessions were conducted for the Tribe of Five Feathers, the Indian prisoners' group there.

Like an underground movement UNAP travelled through the federal system. It surfaced at facilities in Phoenix, Arizona; Lewisburg, Pennsylvania; and Terre Haute, Indiana.

It's unfortunate, but for the most part, federal administrators uniformly resisted the development of UNAP. Their spoken reasons ultimately revert to security concerns. However, even a streamlined UNAP proposal which addresses every conceivable security consideration meets with resistance. So, one must presume that other motives for the resistance exist.

Outside the institutional setting, UNAP has been made available to several organizations and tribes. The Sho-Ban tribes in Idaho and Fort Peck tribes in Montana are among the list. Additionally, the Indian Center in Kansas City and a clinical psychologist of Indian descent at Berkeley use concepts taken from UNAP.

Your vision for UNAP?

Dale:

The UNAP concept is such that it projects its own future. The Medicine Wheel is an integral part of UNAP and it tells the story.

As the outer circle of the wheel is symbolic of the cycle of life in our universe, I see UNAP as having limitless potential. It has the potential of reaching people from all age groups and nationalities, if not directly, then by proximity to those it does touch.

And as the cross intersects with the wheel, UNAP has the potential to draw people together. I see Indian people one day looking at each other as one nation, regardless of tribal or political affiliation and regardless of historical animosities, because it is my belief that we Indian people, and all indigenous people of the world, will see a day in the future when our unity will be the only thing that stands between us and the final

holocaust.

My vision of UNAP? In a word, it is HOPE.

And Dale certainly isn't alone. Other people with the same vision have been pushing to see the implementation of similar programs throughout North America. The Red Road Approach to Sobriety, another culturally specific program developed by Gene Thin Elk, another Sioux, is an example, and so is the P.I.P.E.S. program, which was developed by members of the Native American Council of Tribes at the South Dakota State Penitentiary in Sioux Falls. These programs are now being used in prisons in several states, as well as by various Indian centers and tribes. It is unfortunate, however, that these programs are being met with resistance not only by most prison administrators but by funding agencies upon whom Indian people must rely for assistance in keeping the programs alive in Indian communities.

In the discussion of substance abuse in the first volume of the *Operations Guide Manual for the Cheyenne River Swift Bird Project*, the Native American Rights Fund clarified what is probably the most important distinction between Native American and Anglo attitudes and approaches toward the problem:

We have made a special effort not to compartmentalize substance abuse problems. The problems of alcohol and drug abuse are not singular problems that can be identified and isolated out of the total life context of the [individual]. Other social, medical, spiritual and personal problems have not been adequately addressed in non-Indian correctional facilities. [We must be] careful not to disassociate these problems from the total context of the [individual's] life. Indian culture and tradition are not a distinct aspect of Indian life but form an integral set of qualities which pervade daily life. In the same way, the problems that exist for Indians can not be addressed as isolated problems, but must be viewed in the cultural context as an integral part of the larger whole.

Substance abuse programming [must be] developed from this integrated cultural perspective ... (Native American Rights Fund, 1978:32).

To this end, all approaches to counseling at the Swift Bird Project, whether substance-abuse related or not, were designed from this integrated cultural perspective and within the framework of traditional Indian concepts and methods of handling antisocial behavior:

The project integrates acceptable concepts from the field of counseling with the use of traditional Indian values and practices.

The primary goal of the counseling program is to meet the personal needs of the individual resident at Swift

Bird and upon release and re-entry to his home community. Traditional Indian approaches combined with [acceptable] non-Indian approaches form the basis of a successful program. In conjunction with basic counseling techniques this approach has the potential for an effective and comprehensive counseling program for [Indians].

Counseling is conducted on both an individual and group basis. The total approach to counseling allows cultural flexibility and adaptability to accommodate the cultural beliefs and experiences of residents.

Important objectives of the program include:

1. Assisting the resident in developing and maintaining a positive self-image and sense of self-worth.
2. Assisting the resident in developing his psychological functioning, aptitude, interests, interactions, and personal goals.
3. Enabling the resident to identify his immediate and long-term goals.
4. Identifying and affirming strengths, achievements, and successes for building fulfillment of self and fulfillment of significant others.

The traditional Indian approach to counseling [differs from] current non-Indian counseling practices ... in the way ... services are delivered. Traditional Indian counseling is an ongoing process which is not characterized by sessions or meetings. Traditional counseling services are delivered informally, by providing positive models and examples, and by integrating supports and models into all aspects of daily life. Native American practitioners (medicine men) are essential to the counseling program ... (*ibid.*;28-9).

It becomes evident, then, that the development of traditional Indian components to the greatest extent possible within the prison setting would serve to enhance the rehabilitation of Indians.

The principles of Gestalt psychology and other types of contemporary psychology that white men have taken credit for have been employed by Native American tribes since time immemorial. The ideas underlying Gestalt psychology have been absorbed and continue to have a significant impact on psychology (Saccuzzo, 1987:15). Carson, et al. (1988) have pointed out that various comparative sociocultural studies of the incidence of psychological disorders have indicated significant contrasts between those in the United States and those in native tribal populations. For example, while major depression is rampant in the mainstream United States, it is almost non-existent among native tribal peoples until their cultures are disrupted by Anglo influence (*ibid.*:303-4). It seems

probable that this is as it is, at least in great part, because the same ideas that are the core of Gestalt psychology are in fact integral concepts held within the religions and cultures of tribal peoples; whereas, in the mainstream USA these holistic concepts are generally ignored if not intentionally rejected.⁸

For example, while such things as the interpretation of dreams are often thought to be ridiculous, this Gestalt technique used to increase self-awareness and self-acceptance has been practiced by Native Americans for thousands of years. As a matter of fact, fundamental aspects of Gestalt therapy can be found in all the major individual and organizational functions of Native American cultures and religions. The vision quest, the sun dance, the pipe ceremony, the medicine wheel, the sweat bath -- all are essentially Gestalt. And the definition of Gestalt Psychology ("the school of thought that emphasizes the importance of studying the whole -- that the properties of the parts depend on their relation to the whole" [Saccuzzo, 1987:14]), is merely one way of defining the fabric of traditional Native American philosophy.

It must be understood that I am not suggesting that Gestalt Psychology as applied in the contemporary field is suitable for Indians, because it is not. Definitionally and theoretically, Gestalt psychology suggests a holistic approach to analysis; however, the application of Gestalt therapeutic techniques can hardly be said to exemplify holism. For example, the Gestalt therapist places emphasis on the immediate present -- the here and now -- while consciously rejecting both past and future. This cannot be done in the application of a truly holistic-oriented theory or philosophy, for "the properties of the part (which is the present) depend on their relation to the whole (which includes both past and future)." If we ignore the past or neglect the future in our present, then we ultimately neglect our present responsibility for recognizing our relationship with the past and the future. It is this very negligence inherent in the dominant society's value system which causes much distress to Indian people. For example, consider the rejection of the future consequences of raping and poisoning the earth for a present dollar bill. When our grandchildren have been robbed of their inheritance of a healthy environment to live in as a result of our present negligence and irresponsibility, and when they go to the Gestalt therapist to seek help for their distress, will the Gestalt therapist have an adequate solution in striving to have our grandchildren block out their past (our present), upon which their well-being (our future) depends?

At this point I would like to delve into a most critical aspect of the contrasting cultural perspectives on rehabilitation of criminal offenders from an American Indian standpoint. I will do this first by pointing to some research by Peggy Reeves Sanday (1982), an anthropologist who studied ninety-five tribal societies and found that forty-seven percent were free of sexual assault. She compared elements present in the rape-free societies (where rape is unthinkable) with those present in rape-prone societies (where rape is common), and what she found was that the cultural differences between the rape-free societies and the rape-prone

societies are analogous to the differences between traditional American Indian cultural values and those of the dominant North American society, much as those illustrated in the table earlier in this chapter. Additionally, I would like to expand on Sanday's findings by quoting Fay Honey Knopp (1991), whose summation of Sanday's findings are nicely put:

Commonalities among rape-free societies provide us with this prevention agenda:

1. In rape-free societies, women are treated with considerable respect, and prestige is attached to female reproductive and productive roles. Women are respected and influential members of the community.
2. Interpersonal violence is minimized and in some cases virtually absent.
3. The people's attitude regarding the natural environment is one of reverence rather than one of exploitation.
4. The relationship between the sexes tends to be symmetrical and equal, particularly in terms of power. Female power is valued as much as male power. Decision-making is usually by common consent.
5. The source of energy and creativity in the universe is often attributed to a female figure.

In the societies in Sanday's study that were unambiguously rape-prone (17 percent), certain themes are revealed that we must avoid and reverse if we are to control and reduce sexual aggression and violence:

1. In the rape-prone societies, men as well as women view sexual relations in violent terms. Women expect to be hurt, and men believe that their virility is proved through hurting.
2. Sexual aggression is a means by which men control women and mark themselves as men.
3. Violence is tolerated, and men and boys are encouraged to be tough, aggressive and competitive.
4. Women take little or no part in public decision-making and do not figure prominently in religious ritual or thought.
5. The relationship between the sexes is unequal.

6. A man's potential sexual rights over the woman he chooses must be respected.

Sanday's studies reaffirm the notion that our behavior is not male or female because of anything inherent in human nature. How we behave is programmed culturally; much of what is undesirable must be deprogrammed. Being female or male, says Sanday, is very much a characteristic of the culture in which we live; that is, male nature has not been selected genetically for violence. Male nature is not, as it has been depicted, an ever-present struggle to overcome baser impulses bequeathed by our apish ancestors. *In rape-prone societies, rape is explicitly linked to the control of women and to male dominance.* These perspectives are central to any program geared toward preventing sexual assault. We must learn how to articulate these perspectives and make them operational in creative programs that reflect the values found in rape-free societies. (Knopp, 1991:189-90)

Interestingly, in her book *The Politics of Rape*, Russel (1975) notes that as strongly as violence and masculinity are associated in the dominant American society, rape can be viewed as an overconformance to the male stereotype instead of a deviation from it. This quite arguably can be said of just about every act of violence which is codified as a crime in North America.* That is precisely why in narrowing our scope of this chapter to substance-abuse treatment, a critical aspect of the contrasting cultural perspectives on the rehabilitation of criminal offenders would be neglected, for programs such as the Red Road Approach to Recovery, P.I.P.E.S., and UNAP are much more than substance-abuse treatment programs. They are cultural restoration programs which are conducive to those values which make rape, women-beating, sexual abuse, child abuse and every other act of violence virtually unthinkable, because they teach the person to return to his/her humanity, to live as a relative with all of Creation, and to discard those harmful values and attitudes that have been introduced by the Euroamericans -- those values that have us forgetting how to respect the sanctity of all living things. When we respect all life and we truly walk on the Good Red Road, then we can't do any wrong against others because we understand that the only good way is the respectful way. And that is the bottom line. Many Indian prisoners are in prison for violent acts. Murder, assault, rape, child abuse.

I've made reference to the sweat bath, or the sweat lodge. The purification ceremony of the sweat lodge and its associated practices is a critical ritual that is virtually universal among

* Likewise, it can arguably be stated that as strongly as material wealth is equated with success in the dominant North American society where the capitalist ideology mandates competition in the form of stepping on each other to get to the top, robbery, burglary and other forms of theft which place material gain as the primary motive can be viewed as an overconformance to expectations of success instead of a deviation from it.

Native American tribes throughout North America. For Indian people, the sweat lodge has long been a center for spiritual, physical and psychological healing and strength, and is seen as a fundamental rehabilitative tool:

It has been a major means of spiritual support for many young people. Its rehabilitative effects on troubled young men is particularly evident.... It is frequently used to combat the effects of alienation, such as alcoholism and other destructive, anti-social behavior... (Walker, 1985:32-3).

The positive rehabilitative effects of the sweat lodge have been well documented (Hall, 1986; Hanson, 1983; Johnson, 1988; Navajo Nation, 1989; Nebraska Parole Board member, personal correspondence, 1989; Reed, 1989; Seven, 1988; Specktor, 1983; Spotted Eagle, 1983). Prior to the March 1989 decision by the federal court in Utah discussed in the chapter on "White Man's Law," Lee Bergen, staff attorney with the Navajo Department of Justice, pointed out that "Utah's ban on the sweat lodge ... effectively destroys the only successful rehabilitative tool available to Indian inmates" (Sisco, 1989). Statistics compiled by the Navajo Corrections Project, which serves the rehabilitative and religious needs of prisoners in at least thirty-six state and federal prisons, indicate recidivism of 7% for prisoners involved in sweat ceremonies as opposed to a national average of thirty to fifty percent.

The Native American Church and its associated practices have been described as the most successful Indian alcoholism program of all (Bergman, 1971; Pascarosa, 1976; Roy, et al., 1970; Underhill, 1951; Wagner, 1975; Weibel-Orlando, 1989). "Most Indian people working in alcoholism programs say, usually away from the funding agency, that the most successful Indian alcoholism program is the Native American Church" (Stevens, 1981:141).

In the mid-70's, when the people involved in the Seattle Indian Alcoholism Program recognized that over 90% of the Indians in jails and prisons are there for alcohol-related offenses, they set up culture-specific programs in Washington's four major prisons. Within four years after these programs were established, the proportion of Indian prisoners in the state's prisons had dropped from 5% to 3.5% (Walker, 1981). While this decline (of nearly 1/3) in the Indian prisoner population cannot be claimed as the direct result of the implementation of the programs in Washington's prisons, that possibility must not be ruled out, especially when these statistics correlate with other research cited here. And as observed by Seven:

For prison officials, the [purification ceremony of the sweat] lodge and other religious programs are ways to reduce the high rate at which released inmates commit crimes.

Robert Lynn, religious program manager for the Department

of Corrections, says inmates in Oregon's prisons who were actively involved in religious programs over several years in the late seventies had a recidivism rate of 5%, compared with the national rate of close to 75% at the time... (1988).

With statistics like these, the relevance of and need for spiritual/cultural programs for Indian prisoners can hardly be refuted. In fact, it would seem that such statistics would encourage prison officials and administrators to actively seek the development of such programs with the tax dollars they are currently wasting in their attempts to defend the suppression of the religious practices which would be accommodated through the programs. As was stated by Hoffstetter in Scott:

It has been my experience based on twenty years of juvenile and adult correctional work, both as a clinical psychologist and program administrator, that ... the more an inmate is involved in his own rehabilitation process the more effective will be the outcome (1973:140).

We Indians think that's pretty sound logic. How can a prison official or administrator know what rehabilitation process will be effective for any prisoner when the values and beliefs held within the cultural context of the prisoner are contrary to those of the culture to which the prison official belongs? It is impossible unless the prison official is willing to sit down with the prisoner in an attempt to bridge that cultural gap. Repeated displays of insensitivity and indifference to the laws and to the basic human needs of the prisoners by prison officials such as those who force Indians into programs that propagate philosophies, values, principles and beliefs that clash with those of the Indians serve only to enhance the alienation of the Indians and make them more bitter and resentful toward the society those prison officials represent. In other words, such practices not only fail to rehabilitate, but to the contrary, they serve to increase conflict -- and undoubtedly the criminal recidivism rates. Consider what must run through the minds of many prisoners who are continually faced with these ethnocentric displays and attitudes. Better yet, consider what would reasonably run through your own mind under the same circumstances. Perhaps something to the effect of, "the officials themselves have no regard for my human dignity or for the laws they have made -- so why should I?"

CONCLUSION

It is worth noting that while we are focusing primarily on the contrasting cultural perspectives on rehabilitation of Native Americans, the fundamental concept involved -- the concept of giving consideration to historical, ethnic, cultural, socioeconomic factors and the like in approaching rehabilitation techniques, rather than taking the textbook approach which emphasizes middle-class Anglo values -- is also applicable to substance-abusers and prisoners of other cultural and ethnic minorities. If prison administrators throughout the country were to apply this concept to

their approaches in the treatment of prisoners, there would undoubtedly be an overwhelming reduction in recidivism since the majority of prisoners in the country are members of cultural and ethnic minorities rather than the Judeo-Christian group upon whose ethos the contemporary American prison systems are admittedly based. Grobsmith (1989b:17) summed this up well when she said:

[Many] correctional systems make no pretense of offering real therapeutic rehabilitation. Overcrowded and underfunded, they do not consider themselves ... rehabilitation center[s] ... but place[s] to house inmates and secure their isolation from society and protect the public for a time. One cannot help but wonder, however, whether investment in better therapy and the prospect of reduced recidivism rates might be more cost effective by paying for therapy now and helping the inmate NOT to return again....

In conclusion, I want to point out that all of this has tremendous significance not only to Indian prisoners, but to the entire Native American population, and as Dale Smith would say, "all age groups and all nationalities, if not directly then by proximity to those it does touch."

According to the Indian Health Service (IHS), "75% of all Indian families have at least one alcoholic member, and ... nearly 100% have been affected in some way by alcoholism" (Butterfield, 1989). Meanwhile, the IHS has primary responsibility for funding tribal substance abuse treatment programs, yet the IHS doesn't seem to want to provide funds for programs that are culture-specific. In light of the evidence I have presented here that our own programs are the answer to our problems, and that the non-Indian programs are not, we wonder why that is?

~ ~ ~

Hey, Dale. A lot of social scientists have wasted billions of dollars over the years trying to answer the question, "Why do Indians drink?" I personally know a lot of Indians who drink because of the poverty conditions imposed on our people while these social scientists waste all that money that could be used for real solutions rather than abstract contemplations and rhetoric. But, of course, I'm not an "expert" (I don't tote a Ph.D.), so my opinion doesn't count for much. Also, some folks think I'm just too hostile to be taken seriously. So let me ask you, Brother. We talked with thousands of Indians and listened with an Indian ear for the real causes. Why do you think Indians drink?

Dale: This is a good question. Why do Indians drink? Try to follow me.

Indians of modern times are born with a "soul wound." From the first moment of life we begin learning to understand Tunkasila's purpose for us. Indians are the

guardians of Ena -- Mother Earth. Tunkasila gave us logic and separated us from our animal relations. With logic we are capable of helping to regulate corporal activities on earth as a means of protecting the natural balances.

Look around. We have failed our mission. Moreover, as we have grown toward adulthood we consciously and subconsciously assume the suffering of all our ancestors.

The Trail of Tears, Sand Creek and Wounded Knee, the Nez Perce run for Canada. These events. The thought of them bring tears to my eyes, for the pain of our people, and for the shame mankind deserves for committing such atrocities.

Those are the cause aspects of the Indian soul wound. The soul wound is the cause of spiritual imbalance. Spiritual imbalance is the cause of substance abuse.

Those are the problems. The solution is to achieve spiritual balance and a clear understanding of our unique Indian psychological patterns. Indians have got to be damn smart to survive in this world today! Some assimilate, and if they find peace in that, I say that's great. But the ones who either don't want to assimilate or who have tried and find no spiritual peace in it, those are the people I am here to help find their way home.

Thank you, Dale.

Endnotes to Chapter Thirteen

1. 'Good-time' is a term used to indicate a reduction in actual time that must be served by the prisoner. For example, many states automatically give good-time credit to prisoners when they enter the prison system, and this good-time will only be taken away if the prisoner violates prison rules. For instance, in some states, if a prisoner is sentenced to five years, he will only have to serve an actual three years because he is automatically given two years good-time credit. On the other hand, in some states (such as Indiana), when good-time credit is taken away for rules infractions, it can be regained for faithful participation in AA or NA. Other states have different kinds of good-time laws and regulations. Ohio's House-Bill 261 is a good example. It offers good-time to prisoners for their faithful participation in 'programs' -- AA and NA are the only programs this good-time law is applied to in the Southern Ohio Correctional Facility (SOCF), and it is probably the same way at the other Ohio prisons. When this law was passed and the prisoners found out it would become effective, there was a mad race to the sign-up line! Coincidentally, because of the limited capacity for participants in these programs, there are far more people on the waiting lists than there are in the programs, and the wait runs into the years (unless the policies and practices have changed since 1990).

2. For example, one of my friends saw the parole board for the first time in sixteen years. He hadn't had a drink in sixteen years and claims that he's never been an alcoholic. His work evaluations have been above average the whole time he's been in prison, but the parole board has taken it upon itself to evaluate him as needing treatment because he has a "serious disruption of functioning" as a result of an alleged "frequent abuse" of alcohol.

3. My own parole was denied on the sole basis of my refusal to get into AA or NA. It was denied despite the fact that a substantial portion of this chapter was submitted to the parole board verifying that the AA and NA programs propagate values and beliefs that clash with my own, that I do not use alcohol or drugs, and that those programs as they are maintained in the Southern Ohio Correctional Facility are almost completely without rehabilitative value. The members of the parole board decided that despite the evidence, they believe I have a "severe" drug and alcohol problem which renders me unable to function in my daily affairs. When you finish reading this chapter, you decide who's functioning properly and who isn't.

4. Carson, Butcher and Coleman's textbook is the most widely used in Abnormal Psychology courses in the United States.

5. One must also wonder if such strict adherence to this rule may not enhance the probability of one's development of a passive-aggressive personality disorder. A "passive-aggressive personality disorder" is defined in endnote #1 of the chapter on "Some Common Grievances."

6. In an article recently published in *Sociological Analysis*, Rudy and Greil argued that "both the religious features of A.A. and the denial of A.A.'s religious nature are integral to the structure and functioning of the organization" (Rudy and Greil, 1989). They also observed that "a number of students of A.A. have noted analogies between the structure, activities, dynamics and ideology of A.A. and those of religious organizations (Cain, 1963; Fichter, 1976; Gellman, 1964; Greil and Rudy, 1983; Jones, 1970; Petrunik, 1972; Taylor, 1977; Thune, 1977; Whitley, 1977; Wilson, 1977)."

7. It should be noted that these Twelve Steps in the Native Way were contrived strictly as an alternative for Indians in prisons where AA is "encouraged" by prison officials who at the same time resist the development of substance abuse programs that are suitable for Indians.

8. This failure of the mainstream USA to acknowledge holistic concepts (realities) can be seen by turning to the medical model's view of criminality as a "sickness" which could be treated, and the offender as a person who, once treated, could be returned to the community cured of his social disease" (White, 1989:31) (emphasis added). To face the holistic reality of the situation, one must begin by acknowledging the possibility that social diseases are manifested

by the societies in which they manifest, rather than isolating the "sickness" from that society in an attempt to examine it. As noted by Pedigo (1983:274), "the holistic [Gestalt] value system necessary for tribal existence cannot regulate behavior where daily life is controlled by a society with an isolationistic value system." And I note that prior to the disruption of our tribal cultures by Anglo influence, we had no need of prisons.

CHAPTER FOURTEEN

Some Relatively Simple Solutions

by

Little Rock Reed

Action needs to be taken to put an end to the fundamental human rights violations illustrated in the preceding pages of this book. What follows is a discussion of four very simple specific forms of action that would be effective and appropriate. It is up to state and federal prison administrators, legislators and the American Correctional Association to take the particular forms of action suggested here, and they are certainly obligated to do so. These four forms of action are:

1. Legislation needs to be passed which will require prison officials to afford American Indians the same level of recognition and respect for their religious practices as that afforded Christians.
2. All prison systems that don't currently have administrative regulations and policy directives that set forth, in specific terms, the way in which the religious rights of American Indians should be recognized and respected, and the intendant programs and procedures carried out, should be implemented.
3. The American Correctional Association and other accrediting agencies should adopt standards that address the fundamental human rights of American Indians, and they must stop giving accreditation to prison officials that are violating the fundamental human rights of American Indians as set forth in the preceding pages.
4. Prison administrators need to incorporate into the pre-service and in-service training of all prison administrators and employees, materials which serve to educate and sensitize the employees about the religious practices and beliefs of American Indians and the appropriate manner in which to conduct themselves with respect to these matters so that their actions in relation to American Indian religious practices and beliefs will demonstrate the respect due them.

I will now address each of these four areas in some detail.

1. THE NEED FOR CORRECTIVE LEGISLATION

In the first chapter I pointed out that on May 25, 1993, Senator Daniel Inouye, chair of the Senate Committee on Indian Affairs, on behalf of himself and Senators Baucus, Campbell, Feingold, Hatfield, Pell and Wellstone, introduced a bill entitled "The Native American Free Exercise of Religion Act" (S.1021). If passed, S.1021 would amend the American Indian Religious Freedom Act of 1978 so that it will have some teeth. A significant portion of S.1021 addresses the religious rights of American Indian prisoners in federal and state prisons. The following is that portion of the bill:

TITLE III -- PRISONERS' RIGHTS

SEC. 301. RIGHTS.

(a) IN GENERAL. --

(1) ACCESS. -- Notwithstanding any other provision of law, Native American prisoners who practice a Native American religion shall have, on a regular basis comparable to that access afforded prisoners who practice Judeo-Christian religions, access to --

(A) Native American traditional leaders who shall be afforded the same status, rights and privileges as religious leaders of Judeo-Christian faiths;

(B) subject to paragraph (6), items and materials utilized in religious ceremonies; and

(C) Native American religious facilities.

(2) MATERIALS. -- Items and materials utilized in religious ceremonies are those items and materials, including foods for religious diets, identified by a Native American traditional leader. Prison authorities shall treat these items in the same manner as the religious items and materials utilized in ceremonies of the Judeo-Christian faith.

(3) HAIR. --

(A) RIGHT OF PRISONER. -- Except in those circumstances where paragraph (B) applies, Native American prisoners who desire to wear their hair according to the religious customs of their Indian tribes may do so provided that the prisoner demonstrates that:

(i) the practice is rooted in Native American religious beliefs;

and

(ii) these beliefs are sincerely held by the Native American prisoner.

(B) DENIAL OF REQUEST. -- If a Native American prisoner satisfies the criteria in paragraph (3)(A), the prison authorities may deny such request only where they can demonstrate that the legitimate institutional needs of the prison cannot be met by viable less restrictive means which would not create an undue administrative burden.

(4) DEFINITION OF "RELIGIOUS FACILITIES". -- The term "religious facilities" includes sweat lodges, teepees, and access to other secure, out-of-doors locations within prison grounds if such facilities are identified by a Native American traditional leader to facilitate a religious ceremony.

(5) DISCRIMINATION PROHIBITED. -- No Native American prisoner shall be penalized or discriminated against on the basis of Native American religious practices, and all prison and parole benefits or privileges extended to prisoners for engaging in religious activity shall be afforded to Native American prisoners who participate in Native American religious practices.

(6) SCOPE OF SUBSECTION. -- Paragraph (1) shall not be construed as requiring prison authorities to permit (nor prohibit them from permitting) access to peyote or Native American religious sites.

(b) COMMISSION TO INVESTIGATE RELIGIOUS FREEDOM. --

(1) IN GENERAL. -- The Attorney General shall establish the Commission on the Religious Freedom of Native American Prisoners (hereinafter in this section referred to as the "Commission") to investigate the conditions of Native American prisoners in the Federal and State prison systems with respect to the free exercise of Native American religions.

(2) REPORT. -- Not later than 36 months after the date of enactment of this Act, the Commission shall submit to the Attorney General and the Congress a report containing:

(A) an institution-by-institution assessment of the recognition, protection, and enforcement of the rights of Native American prisoners to practice their religions under this Act; and

(B) specific recommendations for the promulgation of regulations to implement this Act.

(3) COMPOSITION OF COMMISSION. -- The Commission shall consist of 5 members, at least 3 of whom shall be Native Americans and --

(A) at least 1 of whom shall be a Native American traditional leader;

(B) at least 1 of whom shall be a Native American ex-offender; and

(C) at least 1 of whom shall be a Native American woman.

(4) NOMINATIONS. -- The Native American members selected under paragraph (2) shall be appointed from nominations submitted by Indian tribes, Native Hawaiian organizations and Native American traditional leaders.

In addition to the above, the prisoners' rights section of S.1021 provides for compensation to the Commission members for their work and related expenses, and it authorizes the Commission to hire and pay such staff as necessary to fulfill its duties under the prisoners' rights section of the bill.

In my opinion, the above portion of S.1021 would for the most part -- although not entirely -- put an end to the religious freedom deprivations currently being experienced by American Indian prisoners and spiritual leaders.¹ If the discussions in the preceding pages of this book are any indication of how prison officials will regard S.1021, some prison officials will make a conscious effort to violate the spirit of S.1021 where they believe they can get away with it. It is also foreseeable that some courts will uphold such efforts by prison officials.

For instance, let's look at S.1021's provision regarding the wearing of long hair by Indian prisoners. This provision is modeled after a constitutional test that most courts applied to prisoners' constitutional rights claims prior to 1987. That test required prison officials to allow a prisoner to wear long hair if such practice was rooted in the prisoner's sincerely held religious beliefs UNLESS the prison officials could demonstrate that "the legitimate institutional needs of the prison cannot be met by viable less restrictive means which would not create an undue burden on the administration." Granted, that is a much better test than the current test which was established by the U.S. Supreme Court in the 1987 case of *Turner v. Safely*, as was discussed at length in the chapter on "White Man's Law." But even under the old test which now appears in S.1021, many courts upheld prison officials' short-hair requirements against prisoners whose religious beliefs included the wearing of long hair.² What's more,

in none of those cases were prison officials required to produce, nor did they produce, any evidence with which to substantiate their claims that the wearing of long hair by prisoners would cause any legitimate concerns. While the old test, like S.1021, required prison officials to "demonstrate that the legitimate institutional needs of the prison cannot be met by viable less restrictive means which would not create an undue administrative burden," the courts that ruled against prisoners under that test decided that the unsubstantiated "expert" testimony of prison officials "demonstrated" that there were "no less restrictive means," or that any less restrictive means were not "viable" because they would create an undue administrative burden for prison officials.³

Another major problem with the language of S.1021 is that before any prison officials are even required to "demonstrate that the legitimate institutional needs of the prison cannot be met by viable less restrictive means which would not create an undue administrative burden," the Native American prisoner must first prove to the prison officials that the practice of wearing long hair "is rooted in Native American religious beliefs" and that "these beliefs are sincerely held by the Native American prisoner." Such a burden as this should not be placed on the prisoners. How does one "prove" sincerity, particularly when prison officials have so often "judged" Indian prisoners to be insincere in their asserted religious beliefs either because they committed crimes to get in prison, or because they didn't practice traditional Indian beliefs prior to incarceration? (Tenets of the Christian religion may be practiced by any Christian prisoner in the country regardless of his/her crime and regardless of whether he or she was a Christian prior to incarceration.) I am unaware of any prisoner in the history of the United States who was dealt the burden of "proving" religious sincerity in order to receive permission to practice tenets of the Christian faith.

The imposition of such a burden upon Indian prisoners, therefore, is a violation of the Fourteenth Amendment's Equal Protection Clause of the United States Constitution. Moreover, the imposed burden of demonstrating sincerity is unnecessary and unreasonable since prison officials may punish an Indian prisoner and cut the prisoner's hair in the unlikely event he abuses the right to wear long hair.... These problems would be eliminated if the language in S.1021 was changed to read like section 2(D) of New Mexico's Senate Bill 61 which was passed into law in February 1993. Section 2(D) of that law states:

No native American inmate shall be required to cut his hair if it conflicts with his traditional native American religious beliefs.

As was clearly demonstrated in the chapter on "White Man's Law," prison officials are simply unable to justify the forcible cutting of an Indian prisoner's hair (or any other prisoner's hair for that matter).

In my opinion, the remaining provisions of the prisoners' rights section of S.1021, if passed by Congress with the bill's

current language, will sufficiently protect the religious rights of Indian prisoners -- at least to the extent that those religious rights are expressly identified in the bill. Some religious rights that are not expressly identified in the bill should be. For example, the discussion in chapter 13 very clearly demonstrates that Indian prisoners across the country are being forced into "rehabilitation" programs based on Christian ethos, a practice which violates the religious freedom of American Indians. Nothing in S.1021 is capable of protecting those specific rights. Such language needs to be included in the bill as suggested in chapter 13; otherwise those types of violations will continue.

As this book goes to press, the Senate Committee on Indian Affairs is seeking comments on S.1021 by government agencies (e.g., prison officials), many of whom are opposed to the bill. For that reason, we face an uphill battle in getting Congress to pass the bill into law. There is no guarantee that it will be passed -- and if it is passed, there is no guarantee that its current language won't be altered so that prison officials can do cartwheels through the loopholes. For this reason, the individual states should pass legislation similar to S.1021 or New Mexico's Senate Bill 61.⁴

Concerned individuals and organizations interested in what action -- even very limited action -- you can take that would effectively support the passage of federal or state legislation to end most of the prisoners' human rights violations discussed in this book, should write and send a self-addressed stamped envelope to: Native American Prisoners' Rehabilitation Research Project (NAPRRP), 2848 Paddock Lane, Villa Hills, KY 41017.

The guiding principles underlying all correctional legislation and policies that relate to Indian prisoners should necessarily be consistent with the *Standard Minimum Rules for the Treatment of Prisoners* adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva, 1955. The following are a few of those Standard Minimum Rules which should serve as a guide:

PART 2
RULES APPLICABLE TO SPECIAL CATEGORIES
A. Prisoners Under Sentence

Guiding Principles

* The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim...

* Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as

incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

* The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a self-supporting life.

* To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

* The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

* Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society...

* The treatment of prisoners should not emphasize their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners...

* The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

* To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character

in accordance with the individual needs of the prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release. [Emphasis added.]

* The purpose of classification shall be: (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

* As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

* Recreational and cultural activities shall be provided in all institutions for the benefit of mental and physical health of prisoners.

* From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

The fundamental principles underlying the above United Nations' Standard Minimum Rules for the Treatment of Prisoners are violated when:

1. Indian spiritual leaders who are either prison volunteers or are under contract with prisons for the purpose of providing religious counselling, performing religious ceremonies and related duties, are prohibited from having contact with Indian prisoners' relatives and community members.

2. Indian prisoners are shipped to prisons such great distances from their home communities that they are unable to maintain ties with their relatives and communities except through correspondence.

The latter of these two, if not both, constitutes cruel and inhumane punishment, not only for the Indian prisoner, but also his/her family. In addressing these two concerns, Congress and the individual states should pass correctional legislation, embodying the United Nations' principles, which could take the following form:

That the Indian prisoner shall be incarcerated in reasonable proximity to his or her home community so far

as possible, and

That no law or policy shall be made which prohibits or discourages Indian elders, spiritual advisors and ceremonial leaders who provide spiritual counselling, perform religious ceremonies or related functions for Indian prisoners, from maintaining a relationship with the Indian prisoners' relatives and community members.

It would be economically beneficial to all American taxpayers if Congress assumes the responsibility for protecting the fundamental rights of Indian prisoners as discussed in the foregoing pages. Many prison officials and politicians who are opposed to such legislation will undoubtedly argue that if constitutional issues are in fact involved here, then the responsibility should lie with the judiciary, not the legislatures, to protect the fundamental rights of Indian prisoners. While this may be so, it is also true that the courts have had their chance to correct these problems, but they haven't done so, and Indian people continue to suffer. As was stated not long ago by Judge Carlton of the U.S. District Court for the Eastern Division of California:

That the question of religious freedom is raised ... by ... Native American [prisoners] simply compounds the lamentable character of cases of this nature, since it cannot be gainsaid that the destruction of American Indian culture and religious life was for many years a conscious policy of this nation....

The founders [of this nation] had a profound understanding of both the importance of religion in an individual's life, and its potential for divisiveness in public life. To that end the First Amendment protects the former and limits the latter. Much current litigation [throughout the United States] symbolizes how far we have strayed from the founders' understanding. The test of our dedication to constitutional values is not insuring rights for majorities whose practices and symbols as a practical matter do not require legal protection.... Rather, dedication to our constitutional system is tested by the cases of minorities. As so much of the current litigation concerning religious practices [of American Indian prisoners] suggests, that dedication is subject to reasonable doubt....

We, the authors and artists who have contributed to this book, on behalf of ourselves, our spiritual leaders and the thousands of Native American prisoners and their families who we speak for in this book, petition the Congress of the United States of America. Under United States law, Indian tribes and nations are said to be the permanent "wards" or "beneficiaries" of a "guardianship" or "trusteeship" established and administered by the United States government. Today, this relationship is most commonly referred to as "The Indian Trust Relationship" or the "Indian Trust Responsibility."

The Indian Trust Responsibility is a legal concept asserted by the U.S. Government which gives that government the authority to exercise exceptional powers over all Indian affairs, in whatever manner it considers to be 'in the best interest' of Indian people.

The U.S. Government - Congress - has assumed this authority on thousands of occasions over the years in the name of "moral legal duty" in keeping this "trust" with Indian people.

The existing policies and practices of prison administrations in the United States, on a collective level, are intrinsically an act of cultural and religious genocide. Therefore, it is our contention that the U.S. Congress is legally and morally obligated to adopt enforceable legislation that will safeguard the fundamental religious and cultural rights of Indian prisoners.

It is our contention that until such time as the aforesaid legislation has been ratified by Congress, the United States of America is in violation of the provisions of numerous laws, including those set forth in the *United Nations Declaration of Human Rights*; the *International Covenant on Civil and Political Rights*; the *United Nations Standard Minimum Rules for the Treatment of Prisoners*; Public law 95-341, commonly known as the *American Indian Religious Freedom Act*; Title 18, sections 1091 (Genocide), 241 (Conspiracy against rights), 242 (Deprivation of rights under color of law), and 247 (Damage to religious property; obstruction of Persons in the free exercise of religious beliefs), of the *United States Code*; the *United Nations Declaration on the Elimination of All Forms of Racial Discrimination*; Amendments One and Fourteen of the *United States Constitution* and corresponding state constitutional laws; and The Golden Rule, Matthew 7:12 and Luke 6:31, the *Holy Bible*.

2. A NEED FOR THE ADOPTION OF PRISON REGULATIONS AND POLICIES WHICH ADDRESS INDIAN CONCERNs

The following are suggested administrative regulations, policies and procedures which should serve as models for the Federal Bureau of Prisons and the state prison systems that do not have such policies. They are modeled substantially after consent decrees that have been negotiated between the Native American Rights Fund and prison officials in about a dozen states where Indian prisoners have filed lawsuits, but they are somewhat modified in areas where other existing models (e.g. administrative regulations, policies or state laws from various states) are more appropriate because of their specificity to the particular problem addressed by the directive. Each paragraph contained in this suggested codification of policies and procedures is followed by an endnote number. The corresponding endnote identifies the existing policy the paragraph is modeled after.

1. The Department of Corrections recognizes the spiritual

and religious practices of American Indians as a religion subject to the protection of the First and Fourteenth Amendments to the United States Constitution, and thereby duly accords American Indian beliefs and practices a parity of treatment with the other religions practiced by prisoners within the Department.⁶

2. The Department of Corrections shall not use race or tribal enrollment as a basis to restrict any prisoner's access to, belief in, or practice of any recognized religion. The Department recognizes that the beliefs and practices of American Indian religion may differ between tribes depending on geographic location, cultural and historical factors.⁷

3. The Department of Corrections shall recognize American Indian elders, spiritual advisors and ceremonial leaders as having the same status, protection and privileges as religious officials of other religions for the purposes of providing religious counselling, performing religious ceremonies and other related duties.⁸

4. Where numbers warrant, correctional institutions will provide an American Indian spiritual leader with the same status, protection and privileges as an institutional chaplain.⁹

5. Each institution shall permit the American Indian prisoners to form an organization which shall be accorded the same rights and privileges as other organizations and groups within the Department of Corrections. These organizations shall be permitted access to a place designated by the Warden for the purpose of counselling, classes and study groups, subject to the same rules governing other organizations and groups. Such meetings shall be supervised in a manner consistent with the manner in which other meetings are supervised.¹⁰

6. If the sincerity of a person's religious belief is in question, outside volunteers (i.e. medicine men or spiritual leaders approved by the Warden and the American Indian organization or group within the prison, with input from other members of the religion who are familiar with the individual) will have the responsibility of determining that person's eligibility to practice and participate in religious ceremonies and activities described herein.¹¹

7. The Department of Corrections recognizes that ritual purification is a necessary and central element in the practice of American Indian religion, and that the sweat lodge ceremony is one of the principal means by which purification is accomplished. Therefore, the Department shall allocate funds on an equal basis with other religious groups to maintain a religious facility for American Indians; namely, the sweat lodge. The Warden of

each prison with at least one Indian who requests same shall permit the construction of a sweat lodge at a location designated by the Warden after consultation with a medicine man, spiritual leader or other representative of the Indian prisoner(s).¹²

8. The Department of Corrections recognizes that the sweat lodge and sweat lodge area are sacred; therefore, the Warden shall designate the sweat lodge area as a restricted area which shall be off limits to all persons except for American Indian religious practitioners and participants, and correctional personnel. Whenever sacred sweat lodge ceremonies are taking place, they shall not be disturbed for any reason short of a situation which might be considered life threatening or a major security breach.¹³

9. The sweat lodge and area shall at all times be subject to observation and inspection by the security personnel on the same basis as other religious observances, ceremonies and religious structures (such as Christian chapels) at the institutions; such personnel shall, however, conduct themselves with respect for the sacredness of the sweat lodge and sweat lodge area in the same manner they would during observation or inspection of other religious structures.¹⁴

10. The Warden shall supply an amount of firewood adequate to conduct ceremonies in the sweat lodge, and tools, including an ax and chain saw if required, to cut and split wood, as well as clean water for showering and drinking during its use. The Warden shall continue to supply wood so long as it may be obtained at no cost to the Department of Corrections other than for transporting it where transporting it does not cause undue expense. American Indian believers and practitioners shall supply other materials used in their religious ceremonies. These materials shall include, but shall not be limited to: Medicine pipe, pipe bag, kinnikinnick, eagle feathers, sage, cedar, sweet grass, animal skulls, river or lava rock, water dipper (metal or shell).¹⁵

11. The gathering of stones for the sweat lodge ceremonies shall be the exclusive responsibility of the spiritual leader or sweat holder with appropriate prayers for the gathering process; provided the Warden shall provide for the transportation of the stones into the prison when necessary.¹⁶

12. American Indian believers and practitioners shall be given scheduled access to the sweat lodge for religious use at least once per week. The Warden shall provide a sufficient period of time for the designated fire tenders, normally two to three hours, to prepare the fire and sweat lodge for use, and four to six hours for all the practitioners to change clothes, and to fully participate

in the sweat and pipe ceremonies and prayers. This routine access shall be available so long as at least one American Indian believer and practitioner requests the same. Participation in the sweat lodge shall be at least equal to the participation allowed other prisoners to other religions for the ceremonies, but not less than necessary to conduct the sweat, pipe and other ceremonies for prayers.¹⁷

13. The Warden may temporarily suspend usage of the sweat lodge at any time it presents a threat to prison security; in making this determination, the Warden shall apply the same criteria he or she would with respect to other religious observances at the prison.¹⁸

14. The Department of Corrections recognizes that the use of the ceremonial pipe is central to the sweat lodge ceremony, and that the pipe ceremony itself is of such independent religious significance that it may be performed separate from the sweat ceremony. Therefore, American Indian believers and practitioners may have access to and possess a medicine pipe for use during sweat lodge ceremonies and for use during prayer offerings. The medicine pipe is of religious significance to believers and practitioners and accordingly shall be treated with the same level of respect as religious ornaments held sacred to other groups. A pipe holder will be responsible for the care and disposition of the medicine pipe. The pipe holder will be a medicine man, another recognized spiritual leader, or a prisoner who is a believer and practitioner who is designated a pipe holder by the medicine man or spiritual leader according to tradition.¹⁹

15. Pipe, sweat and other ceremonies may be held at and upon special occasions, such as religious holidays and at times of the death of a relative of an American Indian prisoner.²⁰

16. The Department of Corrections recognizes the religious significance American Indian believers and practitioners attach to the following practices and sacred objects: the wearing of traditional hairstyles, the wearing or possession of medicine bags, the possession of tobacco pouches (or ties), the wearing of headbands, prayer feathers, shells, cedar, sweet grass, sage, beads and beaded personal clothing. Therefore, it shall be the policy of the Department of Corrections to:

- (a) permit the religious wearing of traditional hairstyles. While hair may grow over the ears to any length desired by the prisoner, the hair must be kept clean at all times and must be kept in a tail or in braids.²¹

(b) permit American Indian religious believers and practitioners to wear and possess medicine bags and tobacco pouches. These articles shall be no more than six square inches. Although it is understood that these bags contain spiritual objects of the greatest significance to individual believer and practitioner, they may be opened and they shall be subject to inspection in the presence of the individual pursuant to the provisions of paragraph 20 below.²²

(c) permit American Indian religious believers and practitioners to wear headbands at all times. The headbands shall be subject to reasonable inspection as set forth in paragraph 20 below.²³

(d) permit American Indian religious believers and practitioners to possess and use cedar, sage and sweet grass according to their religious beliefs and practices, in receptacles approved by the Warden. These substances shall be subject to reasonable inspection as set forth in paragraph 20 below, including chemical testing at the expense of the prisoner if found to contain contraband.²⁴

(e) permit American Indian religious believers and practitioners to have as their personal property sacred objects, including, but not limited to, beads and beaded personal clothing, feathers, and shells. These items shall be subject to reasonable inspection as set forth in paragraph 20 below.²⁵

17. All American Indians shall be allowed to possess a personal pipe (which shall be clearly identified as a ceremonial pipe), tobacco, kinnikinnick cedar, sage, sweet grass and a pipe bag. The use of personal pipes shall only be permitted in the cell or room and in the sweat lodge area. Generally, the personal pipe will not exceed twenty four inches in length.²⁶

18. The American Indian organization or group shall be permitted to have the following objects, in addition to those described above, for group use: Prayer sticks and supports, shells (larger than authorized for personal retention), drums, rattles, prayer wheels, and head dresses. These objects shall be subject to reasonable inspection as set forth in paragraph 20 below.²⁷

19. The Warden shall allow American Indian believers and practitioners to possess religious materials and literature on an equal basis with other faith groups. The Warden shall provide such materials and literature as

part of the prison's general and/or chapel library purchases. The American Indian organization or group shall provide the Warden with a list of suggested materials and literature.²⁸

20. All employees shall respect the sacred status of the religious articles. A visual inspection of the articles will be performed periodically by correctional staff. Pipe holders will dismantle the pipe and display the tobacco mixture to any staff member upon request. The inspecting officer will not handle the pipe or any other religious article unless probable cause exists to assume that contraband is present,²⁹ in which case staff shall hold the pipe for verification and action as set forth in paragraph 21 below.³⁰ A shakedown of an individual's room or cell will be performed periodically. The same considerations will be observed when inspecting religious articles within the room or cell.³¹

21. If, upon inspection, security staff reasonably believe contraband is present, they may have the herbs further analyzed or the pipe or medicine bag further inspected by a spiritual leader or medicine man.³²

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3. THE NEED FOR THE AMERICAN CORRECTIONAL ASSOCIATION TO INVOLVE TRADITIONAL INDIAN LEADERS IN DRAFTING STANDARDS

Most prison systems have a tendency to place Christianity so far above other religions that their practices and policies often amount to a violation of the First Amendment's prohibition on the Establishment of Religion. As one example, the job description of the full-time chaplains for the Ohio Department of Corrections specifically states that the Catholic religion should be the chaplain's primary concern. There is no mention of any other religion in the position description. With policies and position descriptions such as these, it is no wonder that some of the chaplains have such a lack of respect for non-Christian religions, and especially Indian religions. It is also of more than passing interest that the American Correctional Association (ACA) holds its annual conferences in conjunction with the conferences of the American Correctional Chaplains Association (ACCA), and that the standards concerning religious freedom of prisoners that prisons are to comply with in order to receive and maintain accreditation by the ACA are designed by the ACCA. The ACCA is comprised of Christian, Jewish and Muslim religious clergy who generally have no knowledge about Indian life or Indian prisoners' spiritual needs. Thus, their standards lack any consideration of the spiritual needs and customs of Indian prisoners.

The great majority of the prisons in the United States that

have accreditation by the ACA discriminate against Indian prisoners and spiritual leaders and may do so without violating the standards of the ACA or the ACCA because these standards simply do not protect the religious rights of Indian people. ACA and ACCA standards are based upon Judeo-Christian concepts of religion and the sacred. There is nothing in it for the Indians. In order for the standards to truly protect the religious rights of Indian people, it is necessary that Indian people (traditionals and their lawyers) be invited to participate in the drafting of the standards.

The American Correctional Chaplains Association claims to serve as an advocate for prisoners whose religious rights are being violated. However, this simply is not true. For example, several letters were sent to the officials of the ACCA concerning the total ban on Indian religion in the Southern Ohio Correctional Facility when it was learned that the facility was applying for ACA accreditation. We asked that the ACCA intervene on behalf of the Indian prisoners, and to help us get the state of Ohio to recognize Indian religion as a religion deserving protection under the First Amendment to the U.S. Constitution and ACA standards. None of the various people who wrote to the ACCA and sent documentation verifying these claims received any kind of response from the ACCA.

Additionally, similar letters and documentation were sent to the American Correctional Association. Ginger Wright, former board member of the Native American Prisoners' Rehabilitation Research Project (NAPRRP), asked that the accreditation process be halted until the prison officials in the Southern Ohio Correctional Facility corrected their policies and practices which amounted to a total ban on Indian religion. The ACA's response to this was to totally ignore all the claims and to reprove the NAPRRP for suggesting that the accreditation process be halted. This makes one wonder if the American Correctional Association is more interested in receiving all those thousands of dollars prison administrations must pay the ACA for accreditation, as opposed to actually seeing to it that its members and the prisons it grants accreditation to uphold the ethical code which all accredited members swear to uphold. That code of ethics follows:

CODE OF ETHICS
AMERICAN CORRECTIONAL ASSOCIATION
Preamble

The American Correctional Association expects of its members unfailing honesty, respect for the dignity and individuality of human beings, and a commitment to professional and compassionate service.

To this end we subscribe to the following principles.

Relationships with clients, colleagues, other professions, and the public:

Members will respect and protect the civil and legal rights of all clients.

Members will serve each case with appropriate concern for purpose of personal gain.

Relationships with colleagues will be of such character to promote mutual respect within the profession and improvement of its quality of service....

Subject to the client's rights of privacy, members will respect the public's right to know, and will share information with the public with openness and candor.

Professional conduct/practices:

....Each member will report without reservation any corrupt or unethical behavior which could affect either a client or the integrity of the organization.

Members will not discriminate against any client, employee or prospective employee on the basis of race, sex, creed or national origin.

On January 10, 1991, after carefully reviewing the ACA's Code of Ethics as shown above, the Native American Prisoners' Rehabilitation Research Project) sent the following letter to Anthony Travisono, Executive Director of the ACA, inviting him or other representatives of the ACA to the Fifth International Conference on Penal Abolition and a conference of the Academy of Criminal Justice Sciences to hear the concerns of the Native American community:

Dear Mr. Travisono:

There are numerous prisons throughout the United States that have accreditation by the American Correctional Association yet which maintain policies and practices which in many ways violate the fundamental human rights of the American Indians confined in them. In most cases this is not because of non-compliance with the ACA Standards, but rather it is because the ACA Standards fail to take into account the unique needs of the Indian population. This is the result of the ACA's lack of awareness about some fundamental differences between Indian cultural and ethnic value systems and world views and those of the dominant society which are based upon western schools of thought. The ACA Standards lack in this area because the U.S. Indian population has never had adequate, if any, representation in the American Correctional Association. This lack of representation is very unfortunate and quite devastating when we consider that the ratio of Indian people in prisons is grossly disproportionate in comparison to every other ethnic group in the United States - so much so that Indians are

twice as likely to wind up in prison as Black Americans.

I write to you now in hopes of changing the situation of Indian people in America's prisons. With the cooperation and support of the American Correctional Association, we can bring rapid, productive change in this coming year of 1991.

I have enclosed a few pages of our organization's upcoming newsletter which describe two conferences in which the concerns of the Indian population will be examined in some depth. The first of these conferences is the 1991 annual conference of the Academy of Criminal Justice Sciences which will be held in Nashville this March. The second of these conferences will be held at the University of Indiana this coming May: the 5th biennial International Conference on Penal Abolition.

Indian prisoners and their people and supporters throughout North America would be very grateful if you would send representatives of the American Correctional Association to these conferences. We feel that these conferences will be a very educational and productive experience for everyone concerned with correctional issues involving Indian people, and the ACA's participation in the sessions on Indian issues would be a significant step in the direction of recognizing that it is time for Indian people to be included and to actively participate in the decision-making processes which affect Indian people who come in contact with the criminal justice system.

Please read the enclosures and give consideration to our invitation for the ACA's attendance at these conferences. If you are interested, please contact Dr. Z.G. Standing Bear at the below address or telephone number for further information about the conference of the Academy of Criminal Justice Sciences in March, and contact Dr. Robert Gaucher at the below address or telephone number for further information on the International Conference on Penal Abolition in May....

Thank you very much for your consideration, Mr. Travisono. We are all looking forward to hearing from you soon and to working with the American Correctional Association on making the much needed changes for the betterment of the members of the Indian population who come into contact with the correctional systems in the U.S.

The above letter was returned to us, unopened, so we re-sent it to Mr. Travisono after checking to be sure the address was correct. It was returned to us once again unopened. Why? I sent a similar letter of invitation to the American Correctional Association's director of standards and accreditation, W. Hardy Rauch. Also no response.

Prison officials obtain accreditation from the ACA for two purposes: 1) so that the public will be assured that their prison policies, practices and prison conditions comply with minimal standards of human decency; and 2) so they will be eligible and more effectively compete for government funding. Thus, when the ACA sells accreditation to a prison or prison system knowing that the prison or prison system is in flagrant violation of the human rights of prisoners, is the ACA not committing fraud?

4. THE NEED FOR MANDATORY PRE-SERVICE AND IN-SERVICE TRAINING OF PRISON OFFICIALS AND CHAPLAINS

The religious deprivation and discrimination against Native American prisoners which exists in the prison systems is due in large part to prison administrators', employees' and chaplains' lack of knowledge and understanding of the unique spiritual beliefs and practices of Native Americans, and the stereotyping that has been a part of their upbringing. The problem, therefore, could be significantly reduced through the education and sensitization of prison administrators, employees and chaplains about Native American religious practices.

Robert Lynn, Religious Coordinator for the Washington Department of Corrections, saw this problem not only with Native American religious practices, but also with the practices of those prisoners belonging to other minority faiths. He has addressed the issue by working with spiritual leaders of the Native American and other minority faiths on a 47-minute video documentary, *Minority Religions: Beliefs and Practices*, which is now required viewing in the pre-service and in-service training of prison employees in the Washington Department of Corrections. Similar training tools should be required in all prison systems.

Endnotes to Chapter Fourteen

1. My analysis and recommendations regarding the language contained in the prisoners' rights section of this proposed legislation has been carefully reviewed and endorsed by Indian spiritual leaders with experience in prison work, including Oowah Nah Chasing Bear, Darrel Gardner, Lenny Foster and Art Solomon. Additionally, my analysis and recommendations have been carefully reviewed and endorsed by Indian lawyer, scholar and expert on American Indian religious freedom issues, Vine Deloria, Jr., as well as the National Lawyers Guild; They have also been reviewed and endorsed by Dr. Harold Pepinsky, retired attorney and Chair of the Critical Criminology Division of the American Society of Criminology; and Dr. Susan Caringella-MacDonald, Chair of the Division of Crime and Juvenile Delinquency, Society for the Study of Social Problems. Also, Francis T. Cullen, Chairman, Academy of Criminal Justice Sciences, has reviewed my analysis and recommendations and stated that they "seem to have much merit and I hope [they] will meet with success in improving the current law."

In preparing the analysis and recommendations, I consulted an extensive report issued in June of 1988 by the Canadian Bar Association's Committee on Imprisonment and Release, prepared by Professor Michael Jackson of the University of British Columbia. The report, entitled *Locking Up Natives in Canada*, stated in part:

Another approach proposed by the Correctional Law Review designed to ameliorate the problems faced by native offenders, involves the reform of existing correctional legislation.... This would entail the development of a legislative scheme which recognizes native offenders as a particularly disadvantaged offender group and therefore deserving particular consideration. As the Correctional Law Review points out, the codification of selected aspects of the operation of the correctional system as they pertain to native offenders could ensure that correctional legislation was brought in line with Charter [Constitutional] requirements, particularly in relation to a recognition of aboriginal rights, equality rights and fundamental freedoms such as freedom of religion. It is in fact in relation to this last fundamental freedom that much of the initiative directed to special native programming has been focused in recent years. The experience in this area is both illustrative of the problems which native prisoners face, in the context of a prison system which historically has seen them as second class "citizens," and the ways in which native prisoners themselves have sought to initiate significant change in their situation....

.... Native prisoners who learn the ways of native spirituality discover, often for the first time, a sense of identity, self-worth and community. Because the path is one which must be taught by those who have special knowledge and who are respected for their spiritual strength and wisdom, the practice of native spirituality requires that prisoners communicate with Elders in the outside native community. Some prisoners by virtue of their prior training or the training they undergo in prison are able to lead certain ceremonies and provide spiritual counselling to other prisoners. There develops, therefore, a continuum in which those who are more experienced in spiritual ways are able to help those less experienced. In this way a sense of community emerges based not on the common element of criminality, but rather on a search for spiritual truths. In place of the alienation which prison typically engenders, native prisoners are able to experience a sense of belonging and sharing in a core set of values and experiences which link them with the outside native community, as native prisoners are able to experience feelings of value and self-worth not only through their spiritual training but also in the work they are able to do in helping other prisoners along the same path. Native spirituality, therefore, provides native prisoners not only with constructive links to each other but also to their relations with native people outside of prison and with their collective heritage.

Native spirituality is seen by many native people, both inside and outside the prison, as an important element in dealing with problems of alcohol and drug dependency, violence and other forms of anti-social behavior. Some of the alternative responses to crime which are being fashioned by native communities on the outside, whether in the form of diversion or community counselling, have built into them an element of exposure to native spirituality....

Within the context of the prison system, native prisoners have experienced great difficulty in getting their practices taken seriously. Native spirituality is seen by many staff as being pagan or cultist. The smoking of the pipe is equated with drug use; the cloistering of native prisoners inside a small sweat lodge is viewed with suspicion in terms of the machinations and security breaches which are envisaged as taking place therein. In the context of the federal prison system, efforts have been made through the formulation of Commissioner's Directives to facilitate the practice of native spirituality and in a number of institutions these practices are now becoming well established. We have been told, however, that many difficulties still exist and that native prisoners feel that their religious observances are not afforded the full measure of recognition and respect which mainstream religions are. Native prisoners find that their medicine bundles, which contain their own personal items of spiritual significance, are subject to security searches in ways which desecrate the objects. Complaints are also made regarding the lack of respect with which Elders and their medicine bundles are treated when they come into the prison to help officiate and conduct ceremonies.

Although it might seem to be an unlikely source for initiatives in native self-government, the work which has been done by some of the Native Brotherhoods and Sisterhoods in Canadian prisons is a concrete expression of native peoples' determination to regain control of their own lives, and to shape their future in terms which have meaning and coherence within their own cultural framework. In some federal prisons, native prisoners have formed cultural and spiritual societies to give legal shape to their aspirations. In some cases, these initiatives have been perceived by correctional administrators as exercises in "red power," and as such potentially undermining of institutional good order and security. Properly viewed, the initiatives of which members of the Committee are aware, are rather an effort to create order out of disorder, to develop self-respect and pride where now only alienation and bitterness prevail.

....The Correctional Law Review sought to grapple with this issue and has proposed that the recognition of native spirituality be elevated from administrative recognition in Commissioner's Directives to legal recognition in legally binding legislation or regulations... (Jackson, 1988:89-95).

I highly suggest that members of Congress read the Canadian Bar Association's full report before voting on Senator Inouye's S.1021, as its contents are applicable to the situation in the United States.

2. E.g., *Wilson v. Schillinger*, 761 F.2d 921 (3rd Cir. 1985); *Hill v. Blackwell*, 774 F.2d 338 (8th Cir. 1985); *Dreibelbis v. Marks*, 742 F.2d 792 (3rd Cir. 1984).

3. *Id.*

4. For the complete text of New Mexico's Senate Bill 61, please refer to the conclusion of the survey of Indian spiritual/cultural programs in the United States and Canada contained in the appendix of this book.

5. *Sample v. Borg*, 675 F.Supp. 574 (E.D.Cal.1987).

6. Consent decree used as a model by the Native American Rights Fund in numerous cases in various states. The specific consent decree this is paraphrased from was published in the Idaho Department of Corrections' Policies and Procedures Manual. It was entered into force in January, 1987, in the case of *David Guy Brown, et al. vs. Arvon J. Arvae, et al.*, Case No. H.C. 2490 in the district court for the 4th judicial district of Idaho, Ada County.

7. *Ibid.*

8. Locking Up Natives in Canada: A Report of the Committee of the Canadian Bar Association on Imprisonment and Release. Page 93. See Jackson (1988).

9. *Ibid.* at page 93.

10. This paragraph was derived partly from the consent decree referred to in note 6 above, and partly from consultation with spiritual leaders, and is consistent with the Canadian Bar Association's Report (Jackson, 1988).

11. Consent decree referred to in note 6 above.

12. *Ibid.*

13. Original, except for the last sentence, which was taken from a memorandum issued to staff at the Washington State Penitentiary.

14. Consent decree referred to in note 6 above.

15. *Ibid.*

16. Original, in consultation with spiritual leaders.

17. Consent decree referred to in note 6 above.

18. *Ibid.*

19. *Ibid.*

20. *Ibid.*

21. *Ibid.*

22. *Ibid.*

23. *Ibid.*

24. *Ibid.*

25. *ibid.*

26. State of Wisconsin, Department of Corrections Internal Management Procedure No. 309-6.

27. Regulations for the Washington State Department of Corrections.

28. 1974 consent decree in the case between the Indian prisoners and the Nebraska Department of Corrections.

29. State of Nevada, Department of Corrections Administrative Regulation #809.

30. *Supra* note 26.

31. *Supra* note 29.

32. *Supra* note 26.

CHAPTER FIFTEEN

Back to the World

by

Bernie "Wolf Claws" Elm
Little Rock Reed
and
Harvey Snow

~ ~ ~

Little Rock Reed:

As I began formulating ideas about the structure of this book, I thought that maybe the best way to handle this chapter would be to have several people write on the subject from their own experiences and perspectives, so I asked several Brothers to sit down and write. I said to them, "Just imagine that you are writing a letter to the president of the united states. Imagine that he has written to you and asked for your views on the problems inherent in the *parole and release system*, and he wants to know what you think should be done to correct the mess it presents for Indian people. Imagine that he's going to read your letter to Congress and everyone in the country on national television! I realize this takes quite an imagination, Brother, but just give it a shot and see what you come up with." What follows are a few of those responses....

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Bernie "Wolf Claws" Elm (Cuyuga elder)

In submitting a paper for this chapter I know that I must keep in mind that all states are not the same as far as their parole systems are concerned. Some have real tough parole systems while others are more realistic and progressive in their application. While New York State is supposed to be more progressive, let's say as compared to Texas or some other southern state, quite the opposite is true. They have an antiquated parole system that borders on being downright primitive. The New York State legislature is reluctant to make any modifications or changes of any kind because they say the system they have works. I would challenge that right off as they have a 78% recidivism rate in this state. With a track record like that, progressive change would be

difficult indeed. As to Indians on parole, the rate of recidivism is even higher, about 98%. This rate is based on my observations of the Indians going out on parole and those coming back on violations. Just about all of them return to prison for alcohol or drug related violations. Of course, there are some who are returned with new sentences, all of which are in some way alcohol or drug related.

At the present time there are no traditional alcohol or drug related programs available to American Indians going out on parole in New York State. Of course, the Division of Parole strongly advises the Indian to go to Alcoholics Anonymous lest he be in violation of his or her parole. This must be done on a daily basis and proof of attendance brought to the parole officer. It is then up to the individual to get to meetings somewhere in the city by whatever means he has available. Since the person is on parole, she or he has no driver's license or motor vehicle and so is forced to walk to the bus stop no matter how far, and get a bus into the city, then after the meeting, take the bus to the end of its route and walk back home! This is expected on a daily basis, weather be damned!

The Indian living in the city has it a bit better in that he doesn't have to worry about transportation to and from meetings. Even if his traditional ways are in conflict with AA traditions, at least he can keep the parole officer happy with his attendance at AA. There is another problem of placement in New York State. All of the reservations of the Iroquois Confederacy are sovereign nations and the State of New York has no jurisdiction over them. This puts fear into the parole system that they will "lose" an Indian on a reservation and not be able to return him to prison until they can place him under arrest off the reserve! So in many cases the parole board will specify that the Indian must find residence in the city. This then, denies him the right to live with his family and traditional people on the reservation. While this is ridiculous and totally out of context with reality it is a common practice in this state. The parole authorities will even go so far as to charge the Indian with absconding his parole when they know good and well just where he is. Then too, an Indian who is allowed to live on the reservation is more likely to be subjected to urine tests each time he reports to the parole officer. In the event he is allowed a driver's license, he is subjected to frequent hassle by police and sheriff officers. They will stop his car on a supposed "routine check" and frisk him and the contents of his car. If an Indian on parole is caught drunk, he is more likely to be returned to prison than a White person. I can think of one who was returned to prison for drinking and the parole board gave him two years. In those two years he got a couple of misbehavior reports and when he went back to the parole board they gave him six more months. What we have here is an Indian given 2 1/2 years for being drunk. That is 2 1/2 years in a state prison for drinking a legal beverage and getting drunk! Granted it was a violation of parole, but 2 1/2 years?

There is much need for legislative change in the parole system. No doubt there need to be changes in the system regarding the

parole of Indians from prisons. For starters, I believe that parole officers should be better educated in traditional ways and how cultural differences affect the Indian under a system he does not fully understand or sanction.

Parole officers should be compelled to visit a reservation and to talk with Chiefs and other traditional men and women as part of their training. After all, sooner or later they may have an Indian under their "supervision." If they are made aware that a reservation is not the primitive community they have been brought up to believe it is, then their outlook on each individual person would be different. After all, we are dealing with ignorance of cultural differences between Whites and Native Americans. Over the years, the Indian has been portrayed as a drunken bum without much hope of recovery. The parole officer being White and no doubt a bit prejudiced is ready to accept that portrayal as real. Some of them are ex-police officers and have had to deal with intoxicated Indians in the past and carry this concept of Indians into their new positions. It is a small wonder then that these persons are not ready to deal with Indians on parole.

When an Indian is released on parole and the parole authorities refuse to allow him to live on the reservation they are denying him his tribal rights to traditional concepts of the Long House of the Iroquois Nations. He cannot take part in the traditional dances if he is not allowed on the reservation. Then too, if the Long House sets up any type of alcohol rehabilitation program it is usually required that he be a resident of the reservation in order to participate. If educational funds are distributed, he cannot have a part of that as he is not living on the reserve. His family has already been without him while he was in prison, but now that he is out, they will still be denied his presence because of parole "rules". If he is married, his wife and children will be forced to move to the city to be with him. This then takes away any tribal connections the wife and children had while living on the reserve. The children are forced now to go to a White school where they will forget the language if it is not in use in school as well as at home. They may be subject to ridicule as strange kids in a strange land. His wife must cope with a new way of life in the city. She may have hostile neighbors who know nothing about Indians and display prejudiced attitudes. His wife will also have to deal with the possibility of a parole officer barging into their home at any time he pleases. This is part of the rules the prisoner will have to agree to if he is granted parole. (All prisoners released on parole are coerced into signing papers giving the parole officer permission to enter their homes without prior notice or permission.)

It would be much better if parole officers were informed of what a reservation is all about and be assured there is no danger that they will lose a parolee because he is living on a reservation. There is such a thing as an agreement to investigation by the chiefs of the reservation into any allegation of violation by the parolee. If the Chiefs agree that the parolee is indeed in violation of his parole, they may decide to turn him over to the authorities. If such an agreement is implemented, then

it should ease the restriction of reservation Indians from having to reside in the city. Such understandings are not out of the question. Certainly they would make it easier for an Indian to be paroled because the fear of losing him will be greatly reduced. It would also make for better relations between parole authorities and persons paroled to the reservation as well as traditional people who have no understanding of White man's laws. Care must be taken though to avoid vindictive persons from making false accusations and getting the parolee into trouble. Perhaps on the reservation a meeting could be set up between the Chiefs, the parolee and the parole authorities to decide whether or not the charge is true. Of course the accuser may remain anonymous except to the Chiefs and the authorities. Such an idea may or may not work, but I believe it should be given serious consideration.

The affect on the paroled Indian's family must be taken into consideration here. After all, they are not guilty of any crime. If rehabilitation is to be a reality, then the treatment of the family must also be of great concern.

~ ~ ~

Bernie "Wolf Claws" Elm
March 27, 1990
(an addendum)

Little Rock
Ohio

Greetings My Brother,

Very glad as always to hear from you and to get your word on how the book is coming along. Sorry to put it this way Bro, but I'm glad you have the editing to do and not me. Ha Ha. It's not that I have so many more important things to do, but rather that I'm just getting too fuckin' old to cut it anymore. Oh I guess my mind still functions after a fashion, but my memory is starting to be affected.... That's the first thing they say goes....

Anyhow, to get to your questions about what I meant in my reference to "progressive."

Okay, let's say the state decides to bring their parole system out of the chaotic state that it's in now. This of course would be noticed by some and they would begin to ask questions, such as: "What was the matter with the present system?" Since they deserve an answer, they would have to be informed about the present rate of recidivism. Then of course their next question would be, "How long has this been going on?" Believe me Bro, there are people out there who know how to ask the most embarrassing questions that the authorities would be hard put to answer to any satisfaction. With the epidemic of drugs and major crimes now, the last thing they want is to have their prison and parole system under question.

Therefore, the old adage of letting sleeping dogs lie applies. Now then, at the present time, the administrations can hide behind such programs as ASAT (more on that later) and the other insignificant programs that make smoke screens while they hide real issues from the very people who are footing the bills (tax payers). So then, when I refer to progressive, I mean that they ought to just take the bull by the horns, so to speak, and shake all the shit out of their sheets and begin to rebuild and progress in a positive direction. We know the value of truth and how much easier it is to live with. The legislatures and governing bodies should learn that too. If they had been truthful from the start, there would have been no problem with progress and dealing with society.

Oh yes, the New York parole system is indeed primitive. I was on parole back in 1960 and the rules have not changed to any degree of progressiveness. But it is as I suspect I guess: they actually fear trying to make changes because they don't want the public asking questions about the changes. As long as the parole system remains a secret from society, then there will always be prisoners going in and out of the swinging doors of the prison system. Progressive changes will not take place because there is an apathetic attitude within society that precludes interest or desire to investigate the huge amounts of tax dollars being poured into a system that obviously doesn't work. Where will it stop, Bro?

Ah yes, now to ASAT. This is a 90-day program and each person is required to sign a contract to participate. I don't know off hand how many prisoners are in the program at one time, but it is in the neighborhood of 150. There is no shortage of participants, as the prison system transfers prisoners from prisons where there are no ASAT programs to one where there is. Then since it is in reality a coercive transfer the program is always at capacity. I have heard different stories on what the cost per prisoner is, so I cannot give any set "price."

The program is supposed to have been thought up by prisoners, but if it was, it has been contaminated by administrative interference. The idea was that it would be strictly voluntary, but that idea was scrapped I suppose when they learned that they would not get many participants that way. This is where the coercion came in. The parole board picked up the ball and decided to be a part of keeping the funds rolling. They actually ask prisoners if they took part in ASAT and if not, they will hit them with a year and tell them they must take ASAT to be considered for parole. (This doesn't speak too well of their mathematics when you consider the program is supposed to be for only 90 days).

One other thing worth mentioning here is that I know of at least three prisoners who were given disciplinary reports because they refused to take ASAT. How can it then be voluntary if such force is used? The answer is that it is not voluntary, but rather a program where prisoners are forced to participate by threat of doing more time if they refuse. There is no difference in recidivism between prisoners who took ASAT and those who did not. As I stated before, even the Cadre prisoners, that is, the inmate peer counselors are no better off than regular participants. They

too return to prison because of drug or alcohol related incidents. The poor taxpayer is getting the bill for all this bullshit. Then too he is snowed under by glowing reports on what ASAT is doing, when in reality it is a total failure.

Well Bro, I hope that I have answered some of your questions here. If not, then please feel free to ask for more.

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Little Rock Reed

Parole boards generally are not held accountable to anyone for the decisions they make, and their powers are virtually greater than the powers of judges and legislatures. Because of their nearly total lack of accountability, they may make the most arbitrary decisions in flagrant violation of fundamental human rights. The case of James Romero clearly illustrates this fact.

James Romero, a Tiwa Indian from the Taos Pueblo in New Mexico, was wrongfully convicted of murder for the death of a Deputy Sheriff which occurred during an altercation that took place on the Navajo Reservation near Phoenix while attending an encampment in solidarity with the Brothers and Sisters of the Wounded Knee confrontation in South Dakota. He was sentenced to twenty years. To this day he maintains his innocence.

After serving fifteen years, James was mandatorily released on parole in 1988. After just five months out, while attending a Taos Pueblo Pow Wow, he was approached by a visiting police officer, Guy Peterson. According to witnesses, Peterson was intoxicated. Without provocation, Peterson physically beat James with his flashlight. James didn't fight back for fear that his parole would be revoked. Family and friends who were present assisted James to a nearby tent where he was cared for. He was bleeding profusely and was bruised all about the face and neck.

In order to cover up his own drunken assaultive behavior, Officer Peterson filed a police report accusing James of assault and battery. Then the Taos Pueblo Chief of Police wrote a letter to James' parole officer which, among other inaccuracies, stated that James had been arrested for the Pow Wow incident and then released on bond. This is completely false, for there were a number of police officers who intervened in the assault and left the scene with Peterson. James was never arrested, but he certainly would have been hauled off by these other police officers had he actually assaulted their fellow officer.

A hearing was held by a U.S. Probation Officer, John Powell. In his findings, Powell wrote: "Based on the testimony of several witnesses plus the fact that Mr. James Romero was never actually arrested or placed in police custody," there was "no probable

"cause" to revoke his parole. Powell recommended that James be released and allowed to return to Taos Pueblo. His recommended decision was approved by his reviewing supervisor, Gilbert Montoya.

There were quite obviously some political strings pulled, or some money placed into the proper grubby little paws, for the U.S. Parole Commission rejected the Probation Officer's recommended decision as well as all the testimony and evidence pertaining to the matter, except for the personal testimony of Officer Peterson himself and his original report. Other police reports were also ignored by the Parole Commission, for at least one police report indicated that when the police arrived at the scene (while the assault was taking place), a crowd of concerned people told the police to get Officer Peterson. Indeed, Peterson was the offender and James was the assault victim.

Nevertheless, the Parole Commission found James guilty of assault and battery on an officer and revoked his parole so that he must serve five more years in prison. James filed a petition for a writ of habeas corpus, but he still sat in prison while his attempts to obtain a fair hearing were thwarted by the honorable U.S. Attorney General who contended that the U.S. Parole Commission's decisions, no matter how arbitrary or capricious, are not subject to review by any court of law. James served the entire five additional years and was finally released in the summer of 1993 to Taos, New Mexico, where he now continues to focus on his spiritual growth and to use his own experiences and spirituality to help the youth on his reservation to become strong in their spiritual traditions so they won't turn to drugs and alcohol and other negative things that may get them placed in prison where they would suffer the kind of hardships he endured. James is currently an active board member of the Native American Prisoners' Rehabilitation Research Project (NAPRRP) and hopes to gather, along with other former Indian prisoners, the resources necessary to establish a halfway house on the reservation for Indians being released from prison and others in need.

James' case is just one of the hundreds of examples that can be cited of the arbitrariness and lack of accountability of the parole boards (and a strong indication of why recidivist rates are so high!). Many parole boards are so secure in their knowledge that they won't be held accountable for their actions, that they don't even take precautions to conceal their actions when those actions clearly violate the law. For example, the U.S. Supreme Court ruled in 1981 that the Ohio Parole Board may arbitrarily rescind a prisoner's parole without any type of due process and without having to explain their actions to rescind the already granted parole. The members of the Ohio Parole Board certainly take advantage of this blessing from the Supreme Court. My own experience serves as a case in point. As stated by Harold Pepinsky, retired lawyer (Harvard graduate) and current chairman of the Division of Critical Criminology, American Society of Criminology, in a letter supporting my petition for writ of *habeas corpus* after the parole board rescinded my parole for merely stating that some of the parole board's policies and practices violate the constitutional rights of Ohio prisoners:

I had difficulty believing until I saw it myself that the Parole Board had the audacity and honesty to say right up front that the parole was being rescinded for at least a year because the prisoner complained he was being treated unconstitutionally. That is a suppression of free speech on its face of a prisoner who promises to abide by the law and asks only the same of the state in return. It strikes me that the suppression of free speech is more egregious still in light of the fact that Mr. Reed's claims of right are perfectly valid. Parole authorities are keeping Mr. Reed in prison because they don't want him to be free to criticize them, especially if his criticisms are valid and cogent.¹

But, of course, this type of treatment is expected in prison systems such as Ohio, where the prison administrators are so secure in their knowledge that they will not be held accountable for their actions, that they even state in writing that the case managers who are vested with the responsibility for providing notary services to the prisoners shall not notarize anything relating to civil rights "because it goes against what the department is trying to accomplish."²

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Harvey Snow (New Mexico)

The first area I'd like to touch on is the parole board. There is a great need for there to be Native Americans on parole boards for prisons with Native American prisoners. In talks with some of the brothers, I have found some very disturbing examples of discrimination that could probably be alleviated if there was a Native American on the parole board.

For example, one of our Navajo brothers went before the parole board and was denied for the following reason: "We feel that there are too many members in your family home and that it is too crowded, and we feel that it would not be good for you."

I wonder if the parole board is aware of the necessity of large families who are of an agrarian natured people. The families are large in order to have enough to support the farm or the ranch. White, Black, Hispanic, Oriental, etc. These are all agrarian natured people and the Native Americans should not be singled out and held back. This is only one example of the discrimination I speak of that shadows the Native Americans in prison. Now here is where you will see the need for Native Americans on the parole board.

1. The Native American parole board member is aware of our Native way of life and therefore could better speak in behalf of the Brother or Sister.

2. Many times, due to language barriers, the Brother's or

Sister's interpretation of the parole regulations and criteria are misunderstood, which leads to a violation of his or her parole. This is where a Native American parole board member could be of real help. The Native board member could fully explain all the conditions and clearly interpret all of the information.

The point is this: if there was a Native American on the parole board, he or she would be able to help put together a feasible parole package for the Brother or Sister. Keep in mind also that the Native American parole board member could provide some insight into Native American culture.

I would like to add that Native Americans are not the only race of people who have unstable environments. We should not be held back and we should be given the same chance as others. This type of mentality within the parole boards causes stress and the Natives are made to feel less than they are. It injures self-esteem.

The second issue I want to address may at first appear to be unrelated to this chapter on "Back to the World." However, it is very much related to the subject, as we will see. This issue is the lack of Native Americans in the Education Department in the prisons.

Many of the skins (Indians) who are coming to prison are illiterate or have little or no educational skills, which tends to hold them back. This is the problem: Native Americans are a quiet-natured people and are very reserved, especially around strangers. Many fear being laughed at or made fun of, so they tend to stay away from the educational programs in prison.

This is where a Native American teacher could be very helpful. The Native American teacher will be aware of the inmate's fears and insecurities, and will know how to talk to the Brother or Sister and provide encouragement. I feel that the institution needs to take this into consideration and do what they can in order to help the Native American inmates. They need to be more aware of our ways of life and help us to help ourselves. Education is a very positive tool for our fallen Brothers and Sisters who are in these Iron Houses. But the educational environment must be suitable (comfortable) to Native Americans for it to work. We have been accepting the things that have happened to us because we say, "So what, they won't listen to me anyway." It is up to us to change this attitude. We have got to help ourselves so that we can help our people.

The third issue I want to address may also seem unrelated to this chapter on "Back to the World," but it is related, and that is the issue of the need for Native Americans within the psychology department - that is, counselors. There is a dire need for qualified Native Americans who are in the psychotherapy field, who can come to these prisons and talk to the skins who need help. See, we have a great difficulty in opening up to people when we know that those people know nothing of our ways of life or spiritual needs, especially the non-Indian people. I mean, look at

the history between non-Natives and Native Americans; there is much to be afraid of. How can a Brother or Sister really be expected to feel comfortable enough with a stranger--a non-Indian stranger--to talk about family problems, tribal problems, or personal problems? Many times the Brother or Sister will be alone with his or her problems because he or she is afraid and does not trust anyone who he or she can talk to.

This affects all of us all over the country in different Iron Houses. Because of our silence, it is thought that we don't care what happens to us, but that is not so; it is merely our inability to open ourselves up and express ourselves to a stranger.

Now you can see the need for there to be Native Americans in the psychotherapy departments in prisons with Native American populations. Here we can recognize that there would be that immediate bond and trust. The Native American psychologist will be aware of the fears that his or her client has, and be better able to make him or her feel at ease, thereby making it possible for the Brother or Sister to get the proper treatment and guidance that he or she needs.

What I have discussed here (the need for Native American teachers and counselors in the prisons) are some of the problems that Native Americans face while in these White Man's prisons which have a significant effect on the probability (or improbability) of seeing the Brothers and Sisters make a successful transition "Back to the World."

Another of the things I have learned from talks with a few of the Brothers in the prison I'm in is the common cry: "I have no one to whom I can go for help. My family disowned me."

This is sad to hear, but it is reality. Many times the family does not want them anymore because of the wrong they did. In some cases the tribe has ostracized them from the tribe because of the nature of their crimes. In essence, they have nowhere and no one to seek help from. The only thing for them to return to is the type of environment and situation that got them sent to prison in the first place. Their only comfort is through alcohol or drugs, which leads them to criminal activities and back into trouble with the law, which results in either a parole revocation or a new sentence.

Now, here is an idea which, if put into action, could have a very positive effect on Native parolees, and in turn help reduce the recidivism rate among Native Americans.

The tribal leaders need to obtain finances from the federal government and/or other agencies that Native American monies are tied up in, for the purpose of setting up halfway houses on the Reservation to where Brothers and Sisters can be paroled. The returning Brother or Sister can be helped by coming to an alcohol and drug free environment. Here qualified counselors could better prepare the Brother or Sister for what he or she must cope with while making the transition back into society as a productive and

useful person.

Communication skills can be developed. Behavioral and anger management treatments can be implemented, not to mention the help that the Brother or Sister could get from the traditional spiritual leaders who can counsel them with their problems, by teaching them how to discipline their lives and become stronger in mind and spirit.

Once the halfway house is initiated, it could become self-supporting through the involvement and cooperation of its residents. I believe that if the tribal leaders took into consideration the underlying reasons for our Brothers' and Sisters' going to prison, there could be more of a concerted effort to help fund such a program. Just some of those reasons:

1. The influence of an alien culture that degrades our Native way of life, causing our people to feel humiliated and to harbor anger, causing us to stray from the Red Road.

2. Most of our role models are from dysfunctional families. "We become what we are taught."

3. The lack of adequate programs for the Brothers and Sisters who are being released from these Iron Houses.

4. The lack of adequate counseling personnel who can help us to relieve pent-up resentments toward authoritative cultures, i.e. White Society.

With all of these issues being raised, maybe an all out effort can come from outside influences and help us to get these types of programs set up on the reservations.

I would like to add that the Parole/Probation Offices are off the reservations and many times the parolee may not have transportation to meet with his or her parole officer on a specific date, leading to a violation of parole - and back to prison. If there was an established halfway house on the reservation, the parole officer could come out to the reservation to meet with the parolees; they could set up dates for monthly appointments.

Before closing, I would like to point out that even though there is a law here in New Mexico (the Native American Counseling Act) saying that we have specific needs, this does not mean that the law is being followed by these prisons. This is what the law says:

It is the purpose of the Native American Counseling Act to provide a program of counseling for native Americans confined in penal institutions in New Mexico, to teach good work habits and develop motivation through work; to develop and instill cultural pride and improve the self-image of native Americans; to develop an understanding of the cultural differences between native Americans and other ethnic groups and assist the native

American in relating and adjusting to such differences; to train the native American and his family to develop attitudes of mutual trust, mutual respect and an inter-dependence based on mutual understanding; to increase the availability of Indian spiritual leaders for teaching native Americans in the areas of Indian history, cultural sensitivity and Indian religion; and to generally involve native Americans in those aspects of the penal system that will assist in their rehabilitation and adjustment to a fuller life after their release from confinement.... It is necessary for the public peace, health and safety that this act take effect immediately.³

That is the complete Act, passed in 1983. No provisions were included for the implementation of the Act or compliance with the Act, and to this day no one has lifted a finger to implement or enforce it.

On December 5, 1989, there was an article in *The Independent*, a newspaper in Gallup, New Mexico, which stated in part:

Navajo leaders will ask the New Mexico Legislature to approve a pair of proposals that would give the tribe greater input into the state's corrections system.

Specifically, the Navajo Nation said Monday it wants the state to appoint a Native American to the state's Parole Board and funding for the six-year-old Native American Counseling Act.

"This is an ongoing process by the Navajo Nation's Corrections program to have input into legislation, to develop rapport with the state, and to establish a spirit of cooperation," said Len Foster, director of the Navajo Corrections Project. "It's time to realize that these issues need to be addressed."

...The tribe is seeking \$100,000 in state funding to hire medicine men and other consultants to work with Native American inmates and to provide counseling as well as cultural and spiritual activities....

As this book goes to press, no affirmative action has been taken with respect to the Navajo Nation's efforts.

~ ~ ~

Little Rock Reed

New Mexico's Native American Counseling Act discussed by Harvey has also been adopted by the State of Minnesota, with slight modifications but similar intent. However, the Minnesota statute does provide for the implementation of the Act, as follows:

The commissioner of corrections shall develop a policy to provide the counseling services listed in subdivision 2 to American Indian inmates of all juvenile and adult state correctional facilities and community-based correctional programs.⁴ The commissioner may, within the limits of available money, contract with appropriate American Indian private, non-profit organizations to provide these counseling services.⁵

The programs implemented under the Minnesota Act have been relatively successful, with the Minnesota Department of Corrections contracting out various aspects of the programs to Indian community organizations and medicine men. One of the very significant programs in operation is the Heart of the Earth Survival School (HOTESS) prison program, founded by leaders of the American Indian Movement. The HOTESS is a fully accredited school serving primarily Indian children from kindergarten to 12th grade. Its prison program serves incarcerated adult Indians. In a recent proposal for a "Re-Entry Services Program" HOTESS submitted to the state legislature and Department of Corrections in order to expand the services provided under the Counseling Act, HOTESS articulated some of the fundamental concerns of Indian people with respect to Indian prisoners being released back to the world:

The proposed RE-ENTRY SERVICES PROGRAM would include a concentration support for American Indian people exiting from prison. The advantage of this program would be that it has already begun as a program activity and this RE-ENTRY SERVICE PROGRAM would capitalize on and assure the continuity of cultural, educational and counseling service.

HOTESS's eleven years of observation of American Indian inmates has shown that there are certain character developments which take place while an individual is in prison. The holistic definition of learning (commonly called "traditional") influences the inmate so that he/she gravitates toward the functionally identified cultural programs and activities. These ceremonial acts serve to be an intellectual base for the inmate to express a concept of tribal identity that may not have mattered or may not have been a common practice prior to entering prison. The various cultural acts (drum groups, sweat ceremonies, pipe lighting, gathering of the circle, etc.) become a participating reality. The inmate has begun to interact and intellectually accept these acts as a part of his or her identity and intellectual process.

The acts described are a reference to spiritual consciousness and presence of American Indian people regardless of their personal tribal identity. Spirituality becomes important to the American Indian as a means of survival support. Native spirituality becomes important and defined, almost as dogmatically as organized religious practices similar to Islamic, Judaism, Christian and other religious practices. The

specific practice of spiritual ways relating to American Indian people becomes a prime focus of survival.

Physically people in prison tend to associate with the group that they are most comfortable with.... American Indians are no different from anyone else in that regard. Forming a special peer group is a common event in most prison environments. Their physical identity with the group is sometimes a matter of prison social survival.

All of these existing realities are a complete statement of American Indian people in prisons. A phenomenal development of character is the result of these influences while a person is in prison. The strength that we observe in prison is a dramatic statement for the individual inmate towards the thought of rehabilitation. Holistically, the individual has experienced strengthening of body, mind, and spirit combined with a validation of self, family, and community. The family and community value is a reconstructed semblance expressed by group organizations wherein the individuals feel a part of a family, calling one another "brothers" and "sisters." Their respective group is also recognized as a part of the prison community.

Essentially, there is reason and reward in belonging to a special group which acknowledges the individual, giving him/her a place of worth in a scheme of things, an investment. Leaving prison constitutes an abandonment of that investment, as subtle as it may have been for the individual. Primarily, the individual loses the ready opportunity to practice some very important activities. The established cultural support base has been removed by the departure from the prison environment, creating a vaccuum that is difficult to fill. Inside the prison all of the individual's cultural, social, and personal perspectives had meaning. Outside the prison they have to be reconstructed where they may not have existed with the same intensity prior to entering prison.

The HOTESS RE-ENTRY SERVICE PROGRAM seeks to address the transitional activity that would be necessary to continue the feelings of personal, family and community investment that existed for the individual. We are aware that the void being felt when the individual re-enters the community has to do with his/her sense of cultural/social/personal perspectives. All of these things have related and composite meaning which is identified as an influence from cultural orientations. Those orientations have not been quantified, to date, but perhaps that could also be an aspect of the proposed program of re-entry services.

The RE-ENTRY SERVICE PROGRAM will stress rehabilitation using the information available from existing programs, legislation, and demographics, coupled with the knowledge

that American Indian prisoners do respond positively to programs identifiable as culture-based, in contrast to institutional based programs.

The RE-ENTRY SERVICE PROGRAM will be an intensive combination of one-on-one and group counseling on alcohol and chemical dependency, supervised work, and educational experiences for juveniles and adults coming into the re-entry program. Counselors assist clients to unlearn their destructive life patterns and replace them with positive attitudes and constructive behavior. These programs are open to adults and juveniles coming out of state correctional institutions and also to other "at-risk" clients.

Day/Night Support programs will be put in place for both boys and girls. These will be last-resort, community-based programs for repetitive juvenile offenders, an alternative to institutionalization. Youth could spend up to 40 hours per week in the program, unlearning the behavior that got them into trouble. Youth programs would provide counseling, educational tutoring, vocational training, and recreation that enables participants to turn self-defeating habits into ways of coping successfully within the law abiding community.

Plans call for the development of residential boys' and girls' homes as a community-based alternative to incarceration. A halfway house with an "all the way home" philosophy for repetitive juvenile offenders coming from the state's juvenile facilities. Its purpose is to make the juvenile's re-entry into the community more gradual and successful.⁶

In the report of the Canadian Bar Association's Committee on Imprisonment and Release, *Locking Up Natives in Canada*, initiatives by Native Prisoners and community members were discussed:

Native prisoners, in developing the sort of initiatives we have been talking about are not only seeking to forge links with each other and with their collective traditions; they are also seeking to forge links with native communities and with their future life outside of prison. They point to the fact that very little exists in the community in the form of halfway houses which are responsive to the needs of native prisoners. Although in the major centres [cities] there are some halfway houses run by native agencies, they conform by and large to the mainstream model of such a facility. What distinguishes them is the fact that all of the residents are native, not the nature of the program or services they offer.

In Alberta, the Native Counselling Services Association (NCSA), which ... is a pioneer in terms of innovative programming for native people, has put forward a proposal

whereby it would take over an existing community correctional facility and run this according to a different model, one which responds directly to the needs of native offenders and their families.

The NCSA proposal involves the taking over of an existing community correctional centre located in downtown Edmonton, the Grierson Centre. The project proposal documents the almost doubling of the number of native prisoners within federal correctional institutions in Alberta over the past decade and the limited ability under existing programs for NCSA to provide services for native prisoners. The NCSA proposes that the correctional centre provide residency for native prisoners who intend to make Edmonton or Northern Alberta their place of residence upon release from either federal or provincial institutions. The specific components of the programs and services reflect its distinctively native orientation. Part of the program is devoted to family life improvement. It is to be made available to all residents and their family members who live within a reasonable distance from the centre. The program will be aimed at people who are experiencing a breakdown in their family relationships, those who are lacking in parenting skills or basic life skills. Another aspect of the program would focus on dealing with alcohol and drug abuse and would involve close cooperation with the Nechi Institute on Alcohol and Drug Education and the Poundmaker Treatment Centre. These programs are based on the principal of

awakening in native alcoholics pride in their heritage and of using this heightened cultural awareness, a feeling of group solidarity to combat dependence on alcohol as a means of escape from the sordid and brutal realities so often characteristic of their lives. Religious observances and venerated customs are important things in the Nechi program and so extend it beyond the limits of conventional therapeutic approaches. (Native Counselling Services of Alberta Proposal for the Operation of the Grierson Centre Complex, August 10, 1987, p. 9.)

A third part of the program is employment oriented and is designed to prepare and provide employment opportunities. The fourth component is cross-cultural awareness and involves the use of native Elders and the fifth part focuses on physical fitness.

The proposal is clearly meant to provide a bridge for native offenders from the prison back into the community. By involving the outside community in the development of the programs, the proposal recognizes that breaking the cycle of imprisonment requires harnessing the collective

strengths of the native community.

It is not difficult to see that the Grierson proposal, while inspired by the need to help native prisoners find their way back into the community, has many elements in common with some of the other proposals we have looked at, which are designed to provide constructive alternatives for persons who have come into conflict with the law before they are sent to prison. We are of the view that a native community resource such as the Grierson Centre could, in time, shape and develop alternative justice mechanisms for native people in an urban setting such as Edmonton. The wealth of experience that organizations such as the Native Counselling Service of Alberta have developed over the past decade, and their understanding of the needs and resources of the communities they serve, provides the best evidence that native organizations have the knowledge and the capacity to redirect the criminal justice system so that it works for and not against native people.

The Grierson proposal clearly seeks to harness community resources within a large urban setting and it is the urban centres to which many native offenders return. But what of those offenders who come from small communities far removed from such centres? The Correctional Law Review pointed out the dilemma that, in some cases, a native community may not wish to have one of its members, who has been disruptive, return to the community. However, in many other cases, the potential for reintegration exists. A common complaint from native organizations involved in this area is that the paroling authorities do not give sufficient consideration to the resources of an offender's home community, often because there is no person or agency deemed capable of exercising appropriate supervision. The Correctional Law Review has suggested that one way to respond to this would be to have a legislative requirement that where an individual expresses an interest in a return to his home community that, subject to his consent, his community receive notice of his parole or mandatory supervision plan. The Correctional Law Review has suggested that such a provision might read as follows:

With the offender's consent, and providing he has expressed an interest in being released to his reserve, the correctional authority shall give adequate notice to the Aboriginal community of a band member's parole application or approaching date of release on mandatory supervision, and shall give the band the opportunity to present a plan for the return of the offender to the reserve and his reintegration into the community. (Working Paper, No. 7, p. 36)

This would parallel the kind of requirement that now appears in the legislation of several provincial Child Welfare Acts in which any apprehension of an Indian child requires notice to the Band Council or any Indian child welfare agency established by the Band.

In relation to the issue of providing appropriate parole or mandatory supervision on reserves or in a native community, it is possible under existing legislation to designate private agencies or individuals as parole supervisors. Thus, the Native Counselling Services of Alberta has several of its staff so designated, although the numbers are inadequate to deal with the great number of communities which the agency serves. Some Provinces have gone some way to deal with this problem in relation to probation by providing funds for the training of community members on reserves to act as probation officers. Clearly, there is a need for parallel efforts in relation to parole supervisors.

The issue of native people acting in capacities such as parole officers or supervisors is not confined to the reserve context. Native prisoners on parole or mandatory supervision in urban areas with large native populations find that there are no native parole officers with whom they can communicate effectively. This, in turn, raises another important issue addressed by the Correctional Law Review relating to the hiring of native correctional staff by both federal and provincial systems. The federal system has in place what is, in effect, an affirmative action program for the hiring of new staff members of native origin, but it appears that this has had a very limited impact on the number of native persons working within the system.

We are of the view that the thrust of affirmative action programs for native staff should be conceived in a different way than the programs which are presently in place in relation to women working within the correctional service. Although there is every reason to believe that the presence of a greater number of women in prison may have beneficial effects upon the correctional regime, the primary thrust of this affirmative action program is equality of opportunity for women. While it is possible to justify affirmative action programs for native people on the same basis of equality of opportunity, there is an equally compelling objective underlying this program. This is to redress the problems which exist where native prisoners have to communicate with non-native staff across a cultural divide, a difficult enough task under the best of circumstances. Given that life in prison is characterized by the worst of circumstances, with the customary antipathy between prisoners and guards compounding stereotyped perceptions of native people, it is not an unexpected revelation to find that many native prisoners perceive their custodians

as the embodiment of a racist society. Under these worst of circumstances, communication typically becomes confrontation. The presence of native staff members does not guarantee surmounting the customary prisoner/custodian distrust but there is the realistic prospect that the interests of native prisoners, in terms of prison programs or release plans, will be better served where communication takes place within a common cultural framework rather than across a cultural divide.

The Correctional Law Review, while noting that affirmative action programs increasing the numbers of native staff and administrators need not have a legislative base, raises the question whether in light of the limited success under current administrative practice, a legislated requirement was necessary. Such legislation might require:

There shall be an affirmative action program for the hiring and promoting of aboriginal professional staff to work with native offenders.

This would encompass Order-in-Council appointments of National Parole Board members. While recognizing that programs which are designed to "indigenize" some correctional staff positions are but a small part of the spectrum of initiatives that must be undertaken to change the face of imprisonment as it is experienced by native prisoners, we are of the opinion that such a legislative provision is an appropriate part of correctional legislation.

In order to overcome some of the limitations of existing programs, we are of the view that any affirmative action program should be developed with the direct participation of aboriginal organizations involved in the correctional area. One model currently being implemented in Alberta involves the recruiting and training of staff by the Native Counselling Services of Alberta and their placement within the correctional system after this training. Such an approach has the advantages that aboriginal staff, at the time of their initial placement, are familiar with the correctional system and are able to work in accordance with its standards with a legitimate expectation that they can achieve career advancement, yet at the same time make legitimate demands on the system that it respond to the needs of aboriginal offenders.

A related issue is whether correctional legislation should also impose a legal obligation on correctional authorities to provide native awareness training to all staff coming into contact with native offenders. We believe that it should. The need for such cross-cultural education is one which native organizations and other informed commentators have advocated as a necessary

measure to enable other initiatives, such as those based on native spirituality, to be perceived in a positive and constructive way, to be encouraged rather than thwarted. But, the issue of cross-cultural awareness is one which extends beyond the prison walls. A space must be made for education and continuing education for those who presently possess power within the criminal justice system and who, through the initiatives advanced by native people, are being asked to exercise it with a greater respect and understanding for native values, to share that power with native communities and in some cases, give their power up in favour of native justice mechanisms.⁷

The Canadian Bar Association was certainly correct in asserting that "the wealth of experience that organizations such as the Native Counselling Service of Alberta have developed over the past decade, and their understanding of the needs and resources of the communities they serve, provides the best evidence that native organizations have the knowledge and the capacity to redirect the criminal justice system so that it works for and not against native people." Indeed, Indian organizations simply need to be given that chance, but it can't work without the cooperation of all segments of the criminal justice system. Today's a good day to start.

Endnotes to Chapter Fifteen

1. The court dismissed my *habeas corpus* action without comment as to the merits of my claim. Basically, what the court held was that the Ohio Parole Board is permitted to take prisoners' and parolees' paroles and place them in prison for absolutely any unlawful reason it chooses so long as the prisoner or parolee was originally convicted and sentenced by a court of competent jurisdiction and the indeterminate sentence has not yet expired. In other words, even though I became eligible for parole after only 4 1/2 years but had spent ten full years in prison at the time I filed the *habeas* action, the parole board could keep me in prison for 25 entire years (which is actually like 2 1/2 life sentences since lifers become eligible for parole in less than ten years in Ohio), and they may do this to me as punishment for having petitioned the government for redress of grievances. -- Not long after I filed the petition for writ of *habeas corpus*, I received notice from the Ohio Adult Parole Authority via the attorney general's office that I have no reason to expect to be paroled or released before the year 2007. It was only the result of enormous international support that I was finally released in May of 1992. I was released by the parole board itself so that my *habeas* action would become moot and the court would not have to set a precedent that would favor all Ohio prisoners. Refer to my statement to the Ohio Parole Board contained in the appendix of this book for an in-depth discussion on the subject matter. The information contained there is important for all prisoners, parolees and probationers nationwide, as nearly all the parole boards in the country are in violation of the laws I have cited in the document because prisoners, parolees and probationers simply have not challenged the constitutionality of the practices described in the document.
2. Informal Complaint Resolution (first step of Ohio's grievance procedure for prisoners), signed by case manager Carla Harrison, June 3, 1990.
3. New Mexico Senate bill 248, approved April 7, 1983.
4. Subdivision 2 is modeled after the New Mexico Act, note 3 above.
5. American Indian Counseling Act of 1985, Minnesota.
6. For more information or to offer your much needed support, please write to the Heart of the Earth Survival School, 1209 Fourth Street, S.E., Minneapolis, Minn. 55414. Tel. No. (612) 331-8862.
7. *Locking Up Natives in Canada - A Report of the Committee of the Canadian Bar Association on Imprisonment & Release*, June 1988, Professor Michael Jackson, University of British Columbia.

CHAPTER SIXTEEN

Laughter: The Best Medicine

An Interview with Darrell Gardner (An Uncompahgre Medicine Man)

Darrell Gardner is an Uncompahgre Ute medicine man and spiritual leader living on the Uintah & Ouray Indian Reservation in Utah. He has had quite a bit of experience in the traditional healing of people not only on his own reservation, but also on many of the reserves throughout the Manitoba and Saskatchewan provinces of Canada. Now into his sixty-first year, he has fifteen of his own children with his Uintah wife, Colleen.

Having a son currently serving time in the Utah prison system, Darrell had occasion to get involved in the ongoing struggle for religious freedom of the Indian prisoners in the state of Utah. He was instrumental, as was Lenny Foster, in raising public awareness about the lawsuit concerning the sweat lodge, for example, as was discussed in the chapter on "White Man's Law." Additionally, he has served as a spiritual leader for Native Americans in the Federal Bureau of Prisons, having gone into the federal prison in Texarkana and elsewhere to conduct sweat ceremonies and to provide spiritual counseling.

In the summer of 1993, after Darrell had a chance to read most of this book manuscript, Little Rock suggested that we include an interview with him in the book, and Darrell paused momentarily as a smile crept onto his face, and his twinkling eyes replied, "Okay, let's go for it. Them people in the prisons need a laugh to counteract some of the hardships they been going through!"

What follows is the transcript from the taped recording of that interview.

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LR: How 'bout just talkin' a little bit, Darrell, about your experience as a spiritual leader and how you came about working in the prisons.

DG: My name is Darrell Gardner. I've been a Native American traditional medicine man, spiritual advisor, counselor and advocate for Indian civil rights in the prisons and on the outside also, for a while now. I been doin' this kind of work for about fifty years, ever since I was a young person. It's something we're born into rather than something we learn in schools. You have to learn it in our school which is a little different than academic schools.

As far as I'm concerned about these prison systems, they're

pretty bad for American Indians. The prison officials' way of thinking isn't the same as our way of thinking. For example, they push us all together as one group regardless of what tribe or band we're from. Each tribe, each band, has a little different set-up, they're not all the same. Like the Navajos, or the Pagaweech as we call them in our language, they're different, they have different ceremonies. Basically it's the same; we have the same Creator, the same Boss, but we go about our ceremonies differently. The Shoshones, the Cheyennes and the others, we all have our own individual things. But in these prisons they lump us all together as one, which is confusing to us.

We do have some common things though. For instance, the sweat lodge; we all use the sweat lodge. It's been on this continent for about forty-thousand years, so that's pretty well established with each tribe. And the Pipe, it's been here for hundreds of years, and that's basically the same, but we each go about it in a little different way. Our languages are different, our traditions are different. When those people in the prisons lump us all together like that, it confuses us. It's like saying all white people are Mormons or Jews. They just can't seem to understand that we are all a little different and do things differently.

Some of us is full-bloods, some of us is half-breeds. It makes no difference. The difference is in our hearts. We're what we are. The Creator made us that way, and He don't make mistakes.

I'd like to answer some questions if you'd like to just ask me some questions or whatever.

LR: Okay. You made reference to full-bloods and mixed-bloods, which gets me to thinking. With regard to the legislation we want to get passed to protect the religious rights of Indian prisoners, I recall seeing in the proposed draft someone passed around, it suggested that the Indians who should be protected under the law are those who are federally recognized. That creates a problem because there are many Indians, full-bloods and mixed-bloods alike, who are not federally recognized because they were terminated by Acts of Congress in the 1950s and 60s. And then there are many who can't prove they have Indian blood because of legislation that has served to assimilate Indians into the white society or laws that have made it impossible to locate birth records, etc. What are your thoughts on who should receive protection in American Indian religious freedom legislation?

DG: We can't say they can't pray in the way they feel is their way to pray. It's ridiculous for us to think we can tell someone to pray or not to pray in a certain way. And it's ridiculous to think we can tell someone to pray in a certain way or not to pray in a certain way because of his race or his color or something. We can't dictate to people how they must think or believe. That's between them and the Creator. There's an old saying: you can lead a horse to water, but you can't make him drink. That's the way it is with Indians. The whites can lead us to water, but it don't mean we're gonna drink their Christianity. We've got our own ways. To me, these ways are the best way. I'm not saying that their ways or

their religion is bad because it isn't, but we should be accorded the same privilege. I mean, that's what the white American's country was based on. That's why the whites left Europe and came over here, because they were gettin' told to pray one way and it wasn't the right way for 'em. So then they come over here and they done the same thing to us. They told us, "Okay, you pray our way." This is not right. It's not right in anybody's books. The Constitution of the United States says that we're supposed to be able to pray our own way. It's not right to force someone to pray in a different way than what's in their own hearts. It isn't right. We've got our ways. We had a God before they come here. We all had the same God, just a little different way of goin' about talkin' to Him. These white people, they come over here from Europe and they bowed their heads and showed us how to pray in their way. This one person, he got down on his knees. They told him to bow his head, put his hands together, close his eyes and talk. He said, "I did that, and then I opened my eyes and all my land was gone!" The same guy was prayin' at the table when they had their first Thanksgiving. And he opened his eyes and all the food was gone! That kinda seems the way things are.

LR: That's for sure. Haha. (Pause.) ... I think this might be an ideal time to link two different political situations together. One is the struggle for religious freedom in the prisons, and the other is the struggle for sovereignty, for self-determination. You're Uncompahgre, but you have family who are Uintah and White River Utes, right?

DG: Yeah, I've got family who are Uintah, White River and Uncompahgre. I've got about fifty grandchildren, nieces and nephews who are all the different bands of Utes. I've got some who are part Navajo, part Cheyenne, part Sioux, so we're kinda mixed up.

LR: Yeah. A lot of your grandkids and kids, they're mixed-bloods who are predominantly Ute, so they've been affected by Congress' termination policy of the 1950s. Through a mere Act of Congress the mixed-blood Utes had their identity as Indian people terminated so that as far as the white man's laws are concerned, they are white people -- even though most of them have more Indian blood than federally recognized Indians of other tribes.

DG: Yeah, well, according to the government they're white, because the government don't want to recognize them as Indian. That's part of the government's plan to wipe out Indian people in this day and age. Instead of using guns they use paper, but it's still genocide.¹ But that piece of paper don't make us a different color or a different race or make us think in a different way. The government has a tendency to think that if they put out a piece of paper saying you're one thing you better be that. But that's not the way it is. We've survived. They was hopin' to get rid of us, maybe breed us into the white society and eliminate us. But it doesn't work that way. Some of 'em do, some of 'em don't: there's mixed-bloods who are white within themselves, and there's mixed-bloods who are Indian within themselves. Who knows, maybe that Jesus man was Indian. He's kinda dark I think. Maybe he's Ethiopian; he must be colored. Haha.

LR: Hee hee, ha. Well, hey, uh, what are some specific problems you see occurring within the prisons, and based on your experience, what do you think some of the solutions are to some of those problems?

DG: Well, each prison seems to operate in its own way, have its own way of doing things. They're not uniform. We don't have as much trouble in this way with the federal prisons as we do with the state prisons. The federal prisons I've been to seem to have more of a set of guidelines to go by and they more or less stick to 'em. There's individuals who make problems, but generally speaking, they stick to their guidelines from what I've seen.

But the states, they've got their own ideas. In my state, Utah, they're Mormon, I mean clear through. Damn near all the officials are Mormon. And according to their way of thinking we Indians are supposed to be the "Chosen People," the Lamanites. According to them, their "Good Book," we're supposed to get back into their fold. If we do that, we become white and delightsome, according to their scriptures.

LR: We become what?

DG: White and delightsome.

LR: Hee hee. White and delightsome. Haahaaahaaa!

[Several minutes of insane laughter.]

DG: Well, maybe I'm brown and cruddy, y'know, but I like it.

[Several more minutes of insane laughter.]

Yeah, they had a revelation that that would happen. [More laughter with tears.] ... I had a revelation they's fulla shit! Ha ha, you know what they said, "Hey, you're wrong, Indian." You know, they got stories about their people. That Moses man, he split the water, you know, and the Christians walked through it. Okay, maybe that's true, you know. Who am I to say it's not true? But damn it, they tell me, "How can a buffalo bring a Pipe to you Indians?" And I know the Buffalo Calf Woman did bring it to us Indians. But you know, what's the difference? If I can believe their story they can believe mine -- except mine's true! [Among more laughter.]

But back to these prisons. These states, they got their own rules, they have their own idea about how to do things. You gotta sue 'em like we did in Utah. We had to sue 'em. I walked into the prison with my Pipe, to pray with the Indian boys in there, and the officials said, "You can't do that. There's no place to smoke in this prison." And they said I couldn't bring that "paraphernalia" in there. And at the same time there were a bunch of outsiders walked by us; these were Mormon volunteers, and they were carrying their drums, saxophones, and their prayer books and everything into a meeting with the Latter Day Saints in there. Yet they wouldn't let me take a simple pipe and tobacco in their to pray with my people. I told 'em we could do it in the hallway.

We run into these states like that where the prison officials have their own ideas about how to do things, and if you don't belong to the biggest society, the majority in their population, then you're nothing. You have to fall in with 'em, and if you're in the middle up the river I guess you're gonna get wet. And in some cases we got wet -- we're mixed bloods. It's like down in a little town in Utah there. The Mormons was comin' across the prairie with their little push-carts, and this one Mormon man, he had about three wives. Them Navajos got mad at him, so they said, "Okay, we're gonna go after that man." So the man, he got scared, and he told his wives, "They've got us surrounded, so it looks like we're just gonna have to hunker down here until we got 'em out-numbered." And they done it. They shed their fruit all over us.

In Canada we run into a lot of problems 'cause there's so many different groups up there. A lot of the people up there are from out in the sticks where they can't really speak the white man's language. They get into these prisons and they have a hell of a time. They speak their own language and the officials think they're trying to hatch and escape or something, so they punish 'em for speakin' their own language.

LR: That's a problem down in the states, too. Federal prison policy forbids them from speaking their own language on the telephones when they call home. Some of their family members and loved ones back home can't even speak English, and they're too poor to travel to the prisons to visit their loved ones, so their communication with each other is severed. A couple years ago a Pima brother who was down in the federal prison in Phoenix told me he was punished with solitary confinement for talking on the phone to his grandmother in the only language she could understand.

DG: Yeah, their Indian tongue is the only language some of 'em know. It isn't right for the officials to do things like that. The prisoners have a fundamental right to communicate, but their voices are cut off. That's punishment on top of punishment. My idea of these prison systems is, if those men do something wrong, then maybe they deserve to be there, but they don't deserve to be treated like dogs while they're there. You take a dog and you tie him up and you poke him with a stick long enough, he's gonna get mean. He's gonna come back at you.

This is what they're doin', instead of trying to rehabilitate 'em, quiet 'em down. That's what the sweat lodge does, it helps 'em get back together, get themselves together, get their lives back in focus. The prison officials have a tendency of pokin' sticks at 'em, makin' 'em mean. Then they turn 'em out and wonder why they come back. We all win when one comes out and is good with his family, good with society. We all win by that. But we all pay for it when he don't. When he goes back out ornery and mean, kills someone or does something worse than what he went there for in the first place, or as bad anyway. When he ends up back in there, it costs us. It costs us money. But you can't put money value on them people, on their lives, 'cause they are a part of us. Every time we lose one we're diminished by one. Every single one of 'em's important to us. We can't afford to lose any more Indians. They're

too precious to us. We lose 'em through drinking alcohol. On my reservation it's real, real bad out there. They're dying daily. In fact, we lost three last week. But that's a normal occurrence. And it's the way people treat 'em. It's our land. We were here first. The government said, "Okay, you go ahead and stay there, it's yours." And then they said, "Well, it's yours as long as you can keep the state out of it, if you can keep them from grabbin' it from you."

They don't help us. We gotta help ourselves. That's why it's so important to go in there and get these people in these prisons, get 'em educated. They got the time to do. They're wasting their time if they aren't gettin' some kind of education in there -- education they can use to help their people when they get out. They can contribute again, and some can really contribute in a big way, because they've got the time to get their education, no matter how old they are. That's the way we look at it. Those are our people. Maybe somebody does something wrong, but that don't make 'em worthless. There's always something they can do to help out the people.

LR: It seems like education isn't enough, though. There needs to be that spiritual element, too.

DG: Yeah, there has to be the spiritual. It's a wedding between the outside self and the inside self, and if either one of 'em's missing, they're not a whole person. The inside has to change also. The way we look at it, there's some reason for that. If we can find that reason and change it, then it will heal the problem within a person. If you just put a bandage on it (education), it's not enough. The person needs the medicine within before he or she will heal. It's so hard for the white people to understand. They've got one point of view and it's theirs, their point of view. We try to be as lenient as we can and have pity on 'em because they're so stupid sometimes. They look at us as being stupid, but they need to turn around and look at themselves, look what they're doing to the country, look what they're doing to this world. This world is the only one we got, we can't buy another one. Money's not everything. And you sure as hell can't take it with you. I'd like to see the whites walk a couple miles in our moccasins. It would give 'em a different point of view on things. But the whites, they're the Creator's work, too, so we gotta think of 'em in that way. There's good in everybody. But if they'd just look at us and say, "Hey, maybe that person's got some good also," or at least keep an open mind, things would sure be better for us. They bunch us up as criminals, drunks, and we're not all that way. We're kinda like the monster they created. They don't like to see what they created, and that's what they've done to us. But that don't mean we have to stay that way. We can heal ourselves, and that's what we're doin' now; we're in the process of healin' ourselves.

The prison system is a damn good school to teach those guys. It makes 'em stand back and look at themselves, and there's no sense in wastin' it. It may be an ugly school, but there's no sense in wastin' it if we gotta be there. It's our obligation, all of us Indian people, to help each other out. That's what it's all about.

We can't just stand back and let someone else do it. We have to put ourselves out to do it. If we don't help ourselves, nobody else is gonna help us. We have to help ourselves. We've set by and allowed the government to do too much for us, and all it's done is killed us, killed us with kindness -- their form of kindness. We've got to stand up and say, "Okay, we're gonna help ourselves."

[Pause.]

LR: Talk some more about the specific problems you're familiar with in the prisons. I know you've got more stories to tell, 'cause I've heard 'em!

DG: Well, out to the Utah State Prison, as well as other prisons, the officials put Christian chaplains in charge of Native American religious programs. Out to the Utah State Prison, for instance, they put a Baptist over the Native Americans. Well, this guy, he admitted that he didn't know a thing about Indians, not the first thing. But they had to have somebody with some "credibility." Well, I imagine he's been into that business for about twenty years. I've been into mine for at least fifty years. But yet I had no credibility with the officials because I was an Indian. I mean, this baptist preacher, he didn't know one end of the Pipe from another, and he admitted it. And he apologized for not knowing anything, and it wasn't his fault, but that's the system.

LR: Well, I wonder why he didn't recommend that the Indian spiritual leaders and medicine men be permitted to run the Indian spiritual programs, since he was obviously unqualified to be overseeing the programs. Did he make any such recommendation to the administration?

DG: No, because he had the job. They was payin' him. He didn't wanna lose his job.

LR: Oh, I see. As long as there's monetary gain, them Christian guys'll go ahead an push the Indian spiritual people aside.

DG: Oh yeah. Now, I had to drive to that prison about two-hundred miles, four-hundred actually, both ways, just to take care of 'em every week. And you know, I wasn't gettin' any money at all. And that was all comin' out of my own pocket, and I'm on V.A. disability.

LR: Yeah, that seems to be a real problem that must be addressed. It's a problem prevalent in all the states I think, but we can go ahead and use Utah as an example since that's where most of your experience is from.

DG: Well, the state of Colorado also.

LR: Okay. Why don't you discuss a little bit, based on your experiences, how the prison officials compensate the Christian spiritual volunteers while refusing to afford that same kind of compensation to Indian spiritual people even to cover basic travel expenses.

DG: Well, they compensate the Christian people. It's a service, like a service on an army base. They pay preachers to go in there and perform services. My friend out at the prison who's a Catholic priest, he goes out there and he's a volunteer, but they pay him for his time and trouble. But the Indians, they don't get paid one single cent. We had to supply -- in fact, I had to supply just about everything for the first sweat lodge out there. After the prison officials lost the lawsuit on the sweat lodge case, they said, "Okay, we'll let you have a sweat lodge, but you'll have to build it. We'll get you a little corner there, and you set it up, and you've only got a couple hours to run the ceremonies and get the hell out of there." Well, that was alright, but you should have seen what they expected during the lawsuit. They wanted us to put in a window -- to put a window in the sweat lodge so they could check us out. They said we might grow marijuana in there.

LR: Well, why couldn't they just check between ceremonies? I don't think you're gonna grow any crops during the course of a ceremony. Haha.

DG: Well, I don't know. You know, these Indian medicine men, they're supposed to have an awful lot of power.. Haha. You never know what they can do.

LR: Are you for real? They really thought you'd grow marijuana? They used that as an excuse to prohibit the construction and use of a sweat lodge?

DG: Yeah. They said we'd grow marijuana and rape each other. Yep. And they said they wanted us to put in gas heat to heat the rocks; and they wanted us to use artificial rocks in there. They said that way they could control it.

LR: At Lucasville in Ohio, they said we could use hot rocks as weapons, as if there aren't any other weapons around to bang someone's head off with. I had hoped to have a day in court. I was planning on entering my typewriter as an exhibit (the same typewriter I drafted most of this book manuscript with). If I'd had the chance, I would have pulled out the roll bar, which is hard rubber with a steel rod going down the center, weighing about three pounds, and shaped like a billie club with spikes on the end. I would have pulled it out and smashed something with it to get the jury's attention. And if that didn't get their attention, I would have pulled off the stainless steel, ice-pick-shaped measuring instrument used for adjusting the paper in the typewriter and explained to them how our prison walls and floors are ideal for grinding steel rods into daggers if we're inclined to drill it through someone's heart. The prison officials let me have that typewriter for years and never considered it as a potential weapon (even though I've used it to cause them more damage than any prisoners have ever caused in a riot, by typing up legal briefs and articles with it! Haha!). Yet they wouldn't let us have a sweat lodge because the hot rocks could be used as weapons. They wouldn't let us have a simple Sacred Pipe in there because it could be used as a weapon. The prison officials' so-called justifications are so ridiculous because they provide prisoners with all kinds of

weapons. If you wanted to kill someone, would you use a sacred pipe, a hot rock from the sweat lodge -- or would you use the bar bell in the gym that other prisoners are always crushing each other's brains out with, and which are allowed in all prisons?

DG: In Utah, they told us we could use the heat in the sweat lodges to form knives; you know, beat shovels into knives or something. Haha. I don't know. I don't know what their objective was there, I don't remember exactly, but it was really retarded. Ridiculous. I told them that altering our sacred sweat lodge and purification ceremonies like they were wantin' to do -- with the window and artificial rocks and heater -- would be the same as sendin' the Mormons through a car wash to get baptized. I said that on public television. I don't think they cared for it too much. I don't think it got me many points with 'em anyhow.

LR: You had some problems with eagle feathers too, didn't you?

DG: Oh yeah. Well, they wouldn't let the men have feathers -- or eagle feathers anyway. They said no way, that was an endangered species and they couldn't have 'em. I gave 'em some turkey feathers and that was okay. The officials were also saying they could hold contraband in their eagle feathers; you know, split open the stem and hide something in there and then seal it back up. That was one of their security claims for prohibiting eagle feathers.

LR: But they can't do that with turkey feathers, huh?

DG: Well, evidently, that's a domesticated bird and ...

(Insane laughter!)

... and it's just them wild ones they gotta worry about! Haha.

(More laughter.)

Well, anyway, I gave the men turkey feathers and they didn't like it. They said they didn't want turkey feathers, and I told 'em to shut up and take 'em 'cause they're gonna get roughed up eventually, and then I can replace 'em. So that's what happened and I replaced 'em with eagle feathers and everyone was happy.

LR: Haha. That reminds me of something that happened a while back. You remember a few years back when you sent me that pouch and the eagle plume and bone when I was at Lucasville prison?

DG: Yeah.

LR: Well, what happened was this. I was able to get an order from central office in Columbus so the prison officials had to let me have several sacred items. Well, the order stipulated that I would have to get approval from the Secretary of Interior to have access to any eagle feathers or eagle parts because it's an endangered species. So me and a Choctaw bro of mine who was there with me, we submitted applications to the Interior Department. This was in the mid-1980s and we're still waitin' for a response from the

Secretary, which speaks to the expediency of bureaucracy! Haha!

But anyhow, my application was pending when the eagle feather and things arrived that you sent to me. So I was called down to the chaplain's office so I could open the package in his presence. He was a Southern Baptist who hated everyone (including other Christians) and he was pissed off 'cause I succeeded in getting the order from central office allowing these sacred items despite his protests. Well, as I opened the box, he was looking very closely at each item, hoping to spot something that could be considered as contraband, like an eagle feather or an eagle bone. When he saw the bone, he asked me what kind it was. I said, "Uh, that's a chipmunk bone." Ha ha. And he replied that it sure looked big for a chipmunk bone. I said, "Oh, not at all, Chaplain. Why, you musta never been down to Chipmunk State Park out to Utah. Out there, why, they grow 'em as big as ground hogs!" And he went for it! Ha ha. I guess he was a city boy! And then he eyed the eagle plume with suspicion as I pulled it from the box, and he asked what kind of feather it was. "Duck," I replied!

Haha! And so then he drafted up a written permit -- grudgingly, as a result of the order from central office -- that said I was allowed to have in my possession certain sacred objects that no guard should ever touch, including a chipmunk bone and a duck feather! Haha!

DG: Yeah, them chipmunks are some powerful little devils. They even have horns on their heads at Chipmunk State Park. Ha ha. They're pretty tricky -- steal everything you got. Ha ha.

Down in the Gunnison prison in Utah, they put one of their Latter Day Saints people in there to run the sweats. I guess he says he's a mixed blood, but he looks awful white and delightsome to me. They've got problems in there. He goes in to run them sweats in his blue suit and tie -- comes out all wrinkled!

LR: Ha ha hahahahaaaaaahee hee hee haa!

DG: He's not gettin' too many converts out there. The Indians won't go out there to his sweats.

LR: You're kiddin' me, Darrell! They don't really have this Mormon guy tryin' to run sweats, do they?

DG: No, I'm not kiddin' you. But the Indian boys -- and my son James is one of 'em -- won't go in there 'cause he's preachin' the Book of Mormon in there. And that's no place for that.

LR: Wait a minute, wait a minute. You can't be for real. You mean to tell me they've actually got a Mormon missionary going in there to the sweat ceremonies and preachin' the Book of Mormon? Tell me you're jokin'!

DG: No, this is not a joke at all.

LR: And he's going into the sweat lodge in a suit and tie?

DG: Well, that part was a joke!

[Pause for laughter.]

But the men, they don't wanna go to the sweats down there 'cause this guy's tryin' to convert 'em into Mormons. The men don't want no part of him. He goes in there and preaches like a missionary, instead of prayin' to his Maker.

LR: Well, aren't there any Indian spiritual leaders who could come in and run the sweats for those bro's?

DG: Well, there aren't too many around there. There are some Navajos down there to the lower end, but they just don't have the money to travel that far. These are all poor people. And the state won't give any money to an Indian to help out with the cost of travel. The officials got who they want put in there. We're gonna have to do something about it, but I don't know what. I guess we're gonna have to file another damn lawsuit.

LR: Yeah, and then maybe after a couple million more tax dollars and several years of litigation, the state will be forced to let Indians run the Indian ceremonies.

DG: Yeah, it's a never-ending fight. They just have no respect, and they won't let the Indians worship in a traditional way unless they are forced to by the courts or legislatures. And then half the time they don't even follow their own laws. It's just a never-ending fight.

In our language, we've got a -- the old people, they would tell the kids at night, "Don't go outside or the sayants'll get you." The sayants. That word itself meant the "saints." The Latter Day Saints. Them Mormons, they would come around and steal our children and take 'em for domestic help. But that's where that comes from. Don't go outside at night or the sayants'll get you.

You know, all these religions think they're the right one. And I'm sure they each are the right one for someone. But we have our own thing. We don't need them to be forcin' theirs on us. We don't try to force ours onto them. They'll fight to the death for what they think. Well, that's the way we are, too. We got our own. We know where we're goin'. We know which road we're on. We was doin' it long before Christianity. That Jesus man was a good man, if they would just listen to what he said, and do it, don't just talk about it, give it lip service. If they would only follow what he said, he was a good man -- but so was Muhammad, and so was Buddah. If the people would just listen and do what he said, this would be a better world.

But we've got our people, too. We've got our prophets. But they think, "No, you Indians can't have prophets, only white people can have prophets." That's the way they think. But we have ours too. We have our legends, our traditions that were handed down to us, and they're sacred to us.

I went to a school one time, a little kids' school. They was havin' some trouble with the kids down there. This was an Indian school, but with white teachers. Some Indians asked me to go down there and fan 'em off, smudge 'em off with cedar and sage, pray for 'em. So I went down to that Little Blossom School and I was fannin' them off and all them white teachers was bunched up over there in the corner of the room. They didn't want none of that stuff on them. They thought it was gonna contaminate 'em. They said it was the devil's work.

LR: Well, Darrell, I think we're about out of space on the tape for this interview. Do you have anything you'd like to say in conclusion?

DG: Yeah. Not long ago, me and some friends was walkin' down the street up there in Salt Lake, and there was a hit-'n-run. This white man run over this Indian. The Indian fella, he turned a couple flips in the air and landed all broken in the street. We thought for sure he was killed from the impact. We ran over to where he laid in the street, and he had tears rollin' down his face, but he was laughin'. We asked him what he was laughin' for, and he said, "Did you see what I did to that white guy's grill?!"

Ha ha. Well, the point is, that's how our people have survived through everything we've been through, and that's how we will continue to survive. We gotta hang on to those small victories, 'cause every one counts. And we gotta keep on tryin' to make the best of everything we are faced with. Without the ability to do that, we would have died a long time ago. But we're still here, and we'll be here for a long time to come.

LR: Thank you, Darrell.

DG: Aho.

Endnotes to chapter Sixteen

1. The termination policy and its effects on Darrell's people is revealed in a bit more detail in a previous chapter, "More Cause for the Fear," by Deborah Garlin who is the attorney for the Aboriginal Uintah Nation. A 40-minute video documentary entitled *The Effects of the Ute Partition Act of 1954*, produced and narrated by Little Rock Reed in August 1993, is available for \$20 from the Uintah Economic and Social Services Development Corporation, P.O. Box 53, Whiterocks, Utah 84085. All proceeds go a long way to help these people become self-sufficient, as there is no "overhead." And your support is deeply appreciated.

EPILOGUE

Vision for My People

by

Art Solomon

with illustrations by Ferdinand Manning, Jr.

VISION FOR MY PEOPLE

Grandfather, Great Spirit,
Today I sat for a short while in the thundering
silence of your solitude.
And as I sat there I saw a vision of how it was
and how it is, and how it was supposed to be,
here in this part of your creation.
I thought about, and I saw with
my limited vision,
the power and the sacredness
and the beauty of your creation.

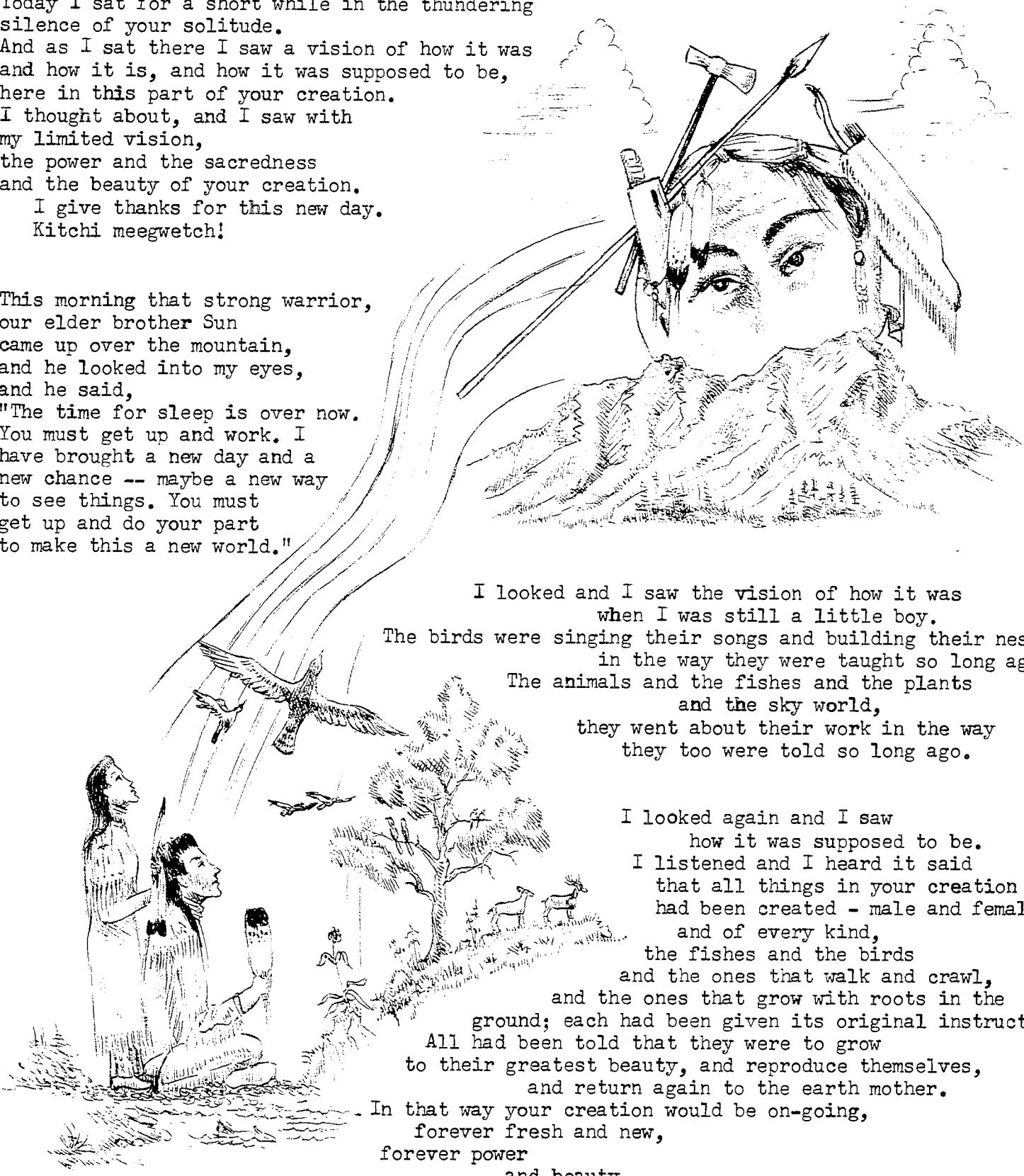
I give thanks for this new day.
Kitchi meegwetch!

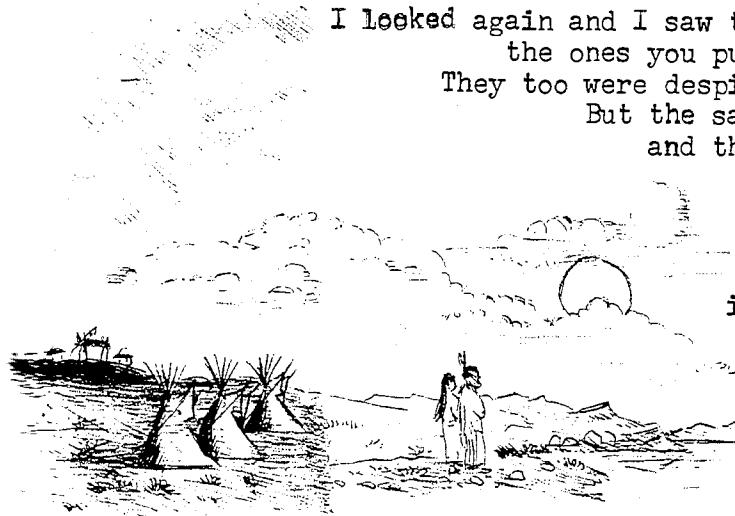
This morning that strong warrior,
our elder brother Sun
came up over the mountain,
and he looked into my eyes,
and he said,
"The time for sleep is over now.
You must get up and work. I
have brought a new day and a
new chance -- maybe a new way
to see things. You must
get up and do your part
to make this a new world."

I looked and I saw the vision of how it was
when I was still a little boy.

The birds were singing their songs and building their nests
in the way they were taught so long ago.
The animals and the fishes and the plants
and the sky world,
they went about their work in the way
they too were told so long ago.

I looked again and I saw
how it was supposed to be.
I listened and I heard it said
that all things in your creation
had been created - male and female,
and of every kind,
the fishes and the birds
and the ones that walk and crawl,
and the ones that grow with roots in the
ground; each had been given its original instruction.
All had been told that they were to grow
to their greatest beauty, and reproduce themselves,
and return again to the earth mother.
In that way your creation would be on-going,
forever fresh and new,
forever power
and beauty
and sacredness.





I looked again and I saw the Indian nations of this sacred Turtle Island --
the ones you put here first and showed them their sacred way.
They too were despised and desecrated by those so blind and greedy.
But the sands of time run through the glass
and this time of times is nearly over.

The longest
and the darkest
and the coldest
hour of the night
is the one just before the new day returns.
Now is the time of hope.
Now is the time to rise up.
Now we must take into our hands
the power of self-determination.
We must stand up in our place in the sun.



But I looked again
and I saw there, alone in desolation,
a woman,
reviled and ravished and destitute;
her birthright stolen.
The teachings of her grandmothers had been replaced
by thoughts that don't belong.
Yet she is the mother of our children.
Without her there is no future.



But wait, my brothers, let us take a closer look.
There stands our mothers and our grandmothers.
She is our wives and sisters.
Without her we cannot go,
for that is how it was made to be -
that time so long ago.

That woman is the mother of our nations.
She is the center of the circle of life,
fashioned by the Great Mystery
and given as a gift
to the male side of the human family.

That woman, so troubled and so deeply hurt
in the prisons of stone and steel;
that woman imprisoned
in the confines of her soul and mind--
we must help her.
For without her we cannot go.



My brothers and sisters, this too the vision gave:
Those prisons of soul and mind are fashioned
by cutting off the true knowledge, from the Great Mystery,
and replacing it with mistaken ways of seeing
and understandings that don't belong.

Then I looked at the vision of how it is and I saw this --

I saw might and destruction.

I saw prisons and vengeance.

I saw a vision of the greatest desecration in the history of man.

I saw leaders who are fools but who believed they were gods in their own right.

I saw those who were leading everything, even our earth mother,
into a final and total annihilation, without reprieve.

And I saw that you will not let it be that way,
Grandfather.

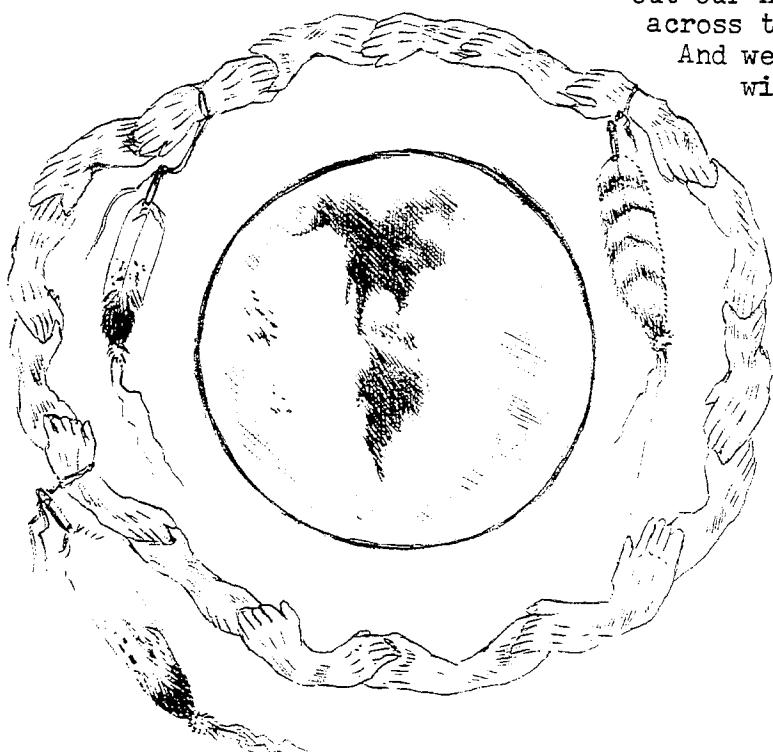


I looked beyond the monstrous stupidity of these leaders,
and I saw hope.

For you had raised up a good people who saw the final death,

And they said, No! you cannot go that way! For we have reached
out our hearts and our minds and our hands
across the continents and the oceans of the world.
And we will surround you and circumscribe you
with an unbroken and unbreakable ring
of prayer and hope
for the continuation of our children
and our future.

That is how it has to be.



Grandfather, have pity on us.
And stop this evil power
that grinds everything in its mill
of death until nothing is left but
nothingness.

Grandfather, have pity on your children.

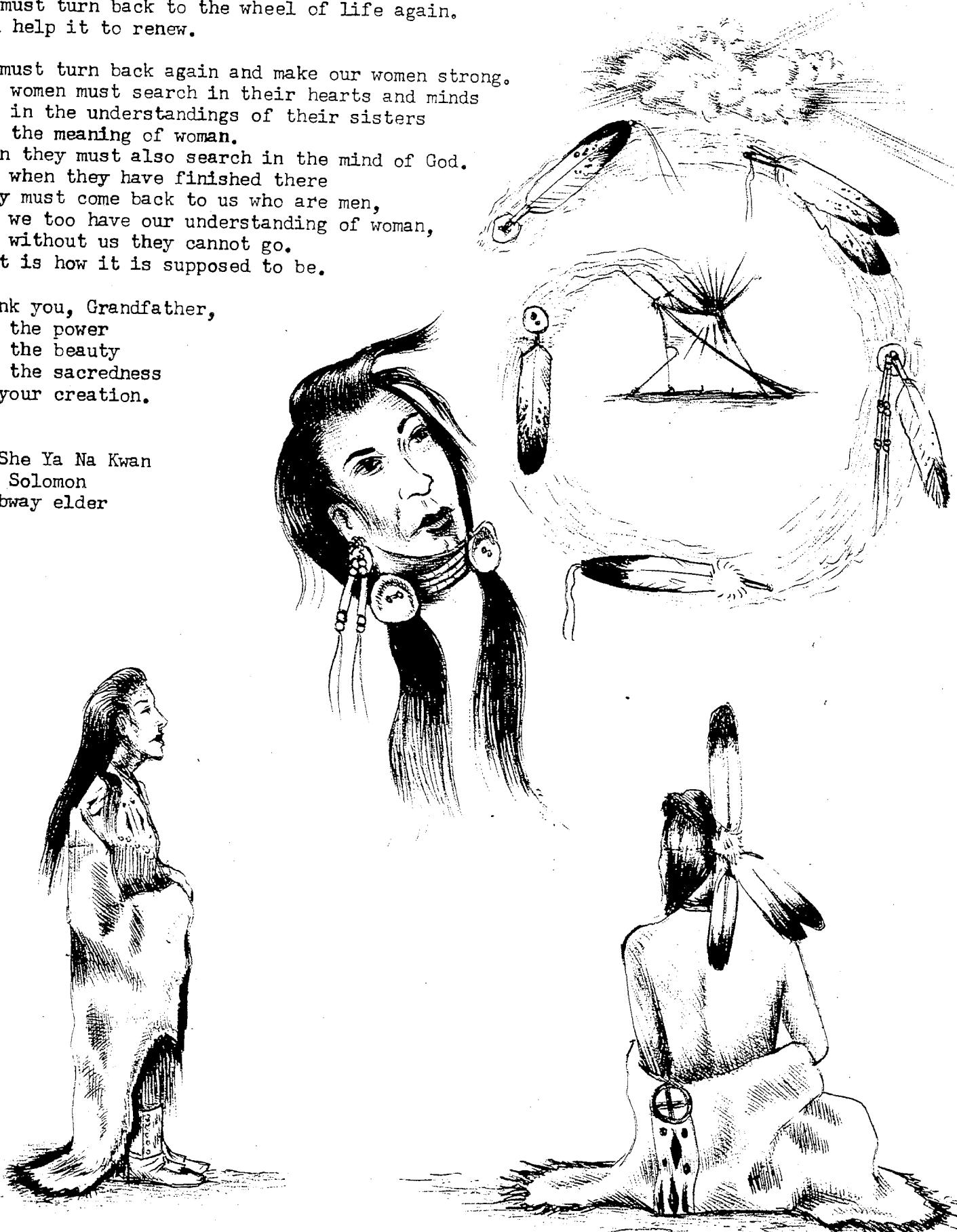
There, my people, is where we start.
We must turn back to the wheel of life again.
And help it to renew.

We must turn back again and make our women strong.
Our women must search in their hearts and minds
and in the understandings of their sisters
for the meaning of woman.

Then they must also search in the mind of God.
And when they have finished there
they must come back to us who are men,
for we too have our understanding of woman,
and without us they cannot go.
That is how it is supposed to be.

Thank you, Grandfather,
for the power
and the beauty
and the sacredness
of your creation.

Ka She Ya Na Kwan
Art Solomon
Ojibway elder



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Appendix A

**Survey of American Indian
Spiritual and Cultural Programming
in the Prisons of North America
(Canada and the United States)**

conducted and tabulated

by

**The Native American Prisoners'
Rehabilitation Research Project
(NAPRRP)
2848 Paddock Lane
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February 1993

The following document is an original. Typographical errors have not been corrected.

Introduction

In November and December 1992 we submitted questionnaires to the central offices of the state and federal prison systems in the United States, and to the federal prison system in Canada. The questionnaire contained the following questions:

1. How many American Indians (including Native Alaskans and Hawaiians) are incarcerated in your department?
2. Do any of the prisons in your department have culture-specific substance abuse programs designed by and for Native Americans?
3. Do any of the prisons in your department allow the Indian prisoners to participate in the purification ceremony of the Sweat Lodge? (Indicate security level of prisons where allowed.)
4. [If yes to #3], has the implementation and use of the Sweat Lodge caused any security problems greater than the problems associated with the operation of Christian religious programs in your prisons? (If yes, describe and provide documentation.)
5. What is the policy of your department concerning the wearing of long hair by male prisoners? (Check one):

(a) allowed for religious purposes []
(b) allowed regardless of religious belief []
(c) long hair forbidden []

6. [If long hair is allowed or has ever been allowed], are there any documented instances where:

(a) contraband has been found in long hair?
(b) any other breaches of security have occurred as a result of the wearing of long hair?

PLEASE PROVIDE DOCUMENTATION IF YES TO 6(a) OR 6(b) ABOVE

7. Are the Native American prisoners in your department allowed to have Pipe ceremonies?
8. Are the Native Americans in your department allowed to wear or have access to (check if YES):

- | | | | |
|---------------|-----|------------------|-----|
| (a) headbands | [] | b) medicine bags | [] |
| (c) sage | [] | (d) cedar | [] |

- (e) sweetgrass [] (f) tobacco ties []
- (g) drums [] (h) beading materials []
- (i) Sacred Pipe [] (j) gourds []
- (k) eagle feathers []

9. Please identify and document any problems that have arisen as a result of the allowance of the above sacred objects.

We also asked the prison officials to provide copies of any and all departmental policies relating to the practice of Native American religion in their prisons, and we offered to pay the cost of copying. Additionally, we provided space for any comments the officials would want to offer concerning the subject matter.

The results of our survey are broken down into three categories. First, we will address the response we received from the Correctional Service of Canada (which is responsible for all offenders sentenced to two years or more in Canada); second, we will address the response we received from the United States Bureau of Prisons; third, we will address the responses we received from the state prison systems of the continental U.S., Hawaii and Alaska. Finally, we will address the state prison systems that did not respond, most of which we are familiar with because of the assistance we have provided to prisoners in those states.

Correctional Service of Canada

The prison officials of Canada indicated that the first sweat lodge was constructed for use by the Native American prisoners in Canada in 1972. Today, every major prison in the country has a sweat lodge, allows all prisoners to wear long hair regardless of religious affiliation, and allows the use of all the sacred objects referred to in question #8 of our questionnaire. The prison officials indicated further that these practices have never caused any problems beyond those associated with any other activity allowed in the prisons, including Christian religious activities

¹We believe the programming and experiences of the prison system in Canada are relevant to policies governing the subject matter in United States prisons, for as the United States Supreme Court has observed on occasion, the policies and practices in other well-run institutions are relevant for the purpose of determining the need for restrictions on prisoners' constitutional rights within a prison. See, e.g., *Pell v. Procunier*, 417 U.S. 817 (1974); *O'lone v. Estate of Shabazz*, 482 U.S. 342 (1987).

and recreational activities. There was no indication whether or not the prisons have culture-specific substance abuse programs designed by and for Native Americans, although the officials did indicate that the religious practices provided for the Native Americans serve a very positive rehabilitative function.

United States Bureau of Prisons

The Federal Bureau of Prisons did not fill out our questionnaire, although we did receive a response from the Assistant Chaplaincy Administrator stating that "the procedures followed by the Chaplaincy Services...for American Indian inmates to practice their religion in the various institutions throughout the Bureau...include sweat lodges, pipe ceremonies, pow wows, and talking circles and the availability and use of all the items you listed under number eight in your questionnaire."

The Assistant Chaplaincy Administrator also attached "a memorandum from the drug abuse program staff regarding programs available to Native Americans." The memorandum referred to is reproduced here in its entirety (it contained no date):

Regarding your request to implement a substance abuse program in our system, for your information, we now have a number of such programs in place in the Bureau of Prisons that have been specifically designed for the Native American population. Probably the most notable is the People in Prison Entering Sobriety or PIPES program. Developed at our institution at FMC Rochester, this program is now available in many of our institutions in conjunction with our National Drug Abuse Program effort.

If you would like further information on our PIPES Program, please contact Dan Foster, Chief Psychologist at FMC Rochester at (507) 287-0674 extension 262.

It should be noted that after we received the above communication from the Assistant Chaplaincy Administrator (his letter was dated January 22, 1993), our organization has received correspondence from Native American prisoners in at least one federal institution complaining that the prison officials refuse to allow them to implement the PIPES program.² Additionally, at the time of the

²*This issue is very important and intricately related to religious freedom concerns, as according to extensive research conducted by this organization, most Native American prisoners are forced into substance abuse programs which promote religious beliefs that contradict Native American value systems and beliefs,*

Assistant Chaplaincy Administrator's correspondence, there was at least one lawsuit pending against the prison officials for failure to allow the Native American prisoners to have access to sacred objects referred to in number eight of our questionnaire.

We would like to add also that while the Assistant Chaplaincy Administrator's response made no reference to sweat lodges or the wearing of long hair, we are aware, based on previous communications with prisoners and prison officials in the Federal Bureau of Prisons, that all federal prisons allow the wearing of long hair by male prisoners regardless of religious affiliation, and federal prisons generally allow the construction and use of the sweat lodge, although we are aware of instances where Indian prisoners have been transferred to prisons with sweat lodges when they have requested that they be allowed access to the sweat lodge, because the wardens at the prisons they were in didn't want to allow a sweat lodge to be constructed at their prisons.

The State Prison Systems

Of the fifty state prison systems we contacted, thirty-four states (sixty-eight percent) responded to our surveys. Those that responded are Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington and Wisconsin.

Although only 68% of the states responded, we have a substantial amount of information concerning the subject matter in thirteen states that did not respond, those states being Alabama, Florida, Idaho, Iowa, Missouri, Montana, Nevada, New York, Ohio, Oklahoma, Oregon, Tennessee and Wyoming. Therefore, we will offer comments about the information we have from those states after we discuss the information in the survey responses.

Survey Data

Question #1 of Survey

Of those states that responded to the survey, only thirteen

while at the same time prohibiting the implementation of culture-specific programs which studies indicate have much greater rates of success for Native Americans than do conventional programs accredited by the prison officials. In fact, the accredited programs have nearly a 100% rate of failure among Native Americans.

states know how many Native Americans are incarcerated in their prisons, while the remaining states use classification systems that categorize the prisoners as "white, black or other."

Question #2 of Survey

Of those states that responded to the survey, only one state (South Dakota) has a culture-specific substance abuse program designed by and for Native Americans; however, it "is not accredited or a part of the chemical dependency program";

Question #3 and #4 of Survey

Of those states that responded to the survey, eighteen states indicated that they allow sweat lodges at their prisons. Of those who responded that they do allow sweat lodges:

- * ten states indicated that they allow the sweat lodge in minimum, medium, close, and maximum security prisons, while one of those states (Arizona) offered that the sweat lodge is also allowed in "super maximum security";
- * three states indicated that they have sweat lodges only in their maximum security prisons;
- * three states indicated that they only have sweat lodges in their medium security prisons;
- * one state indicated that it has sweat lodges in its minimum, medium and close security prisons;
- * one state (Virginia) indicated that permission has been given but no sweat lodge has been built yet;
- * South Dakota and Arizona indicated that they have experienced some problems. South Dakota indicated that there "have been instances when the inmates have not been willing to stop service at count time."³ Arizona (which has sweat lodges in minimum, medium, close, max and super maximum security facilities) indicated that there have been two breaches of security directly related to the sweat lodge: in 1987 a prisoner was raped in a sweat lodge; and in 1990 or

³It is standard practice for prison officials to allow prisoners to stay at work, at visits, and other places throughout the institutions during count time just so long as they are accounted for. This fact strongly indicates that it is not necessary to make the Indian prisoners stop their religious service at count time -- as long as they can be accounted for.

1991 a sweat lodge was used to make/store alcohol products;⁴ and

* the remaining states that allow the sweat lodge indicated that they have never experienced any problems with it.

Question #5 of Survey

Of those states that responded to the survey:

* twenty-seven states indicated that all male prisoners are allowed to wear long hair regardless of religious affiliation;

* one state indicated that it allows male prisoners to wear long hair for religious purposes;

* five states indicated that they forbid long hair to be worn for any purpose by male prisoners; and

* one state (Indiana) indicated that its "facilities are inconsistent," and that some allow all prisoners to wear long hair, some allow prisoners to wear long hair only for religious purposes, and some prohibit all male prisoners from wearing long hair regardless of religious belief.

Question #6(a) of Survey

* Five states indicated that contraband has been found in long hair: 1) Vermont (which allows all prisoners to wear long hair) indicated that on two occasions contraband had been found taped to the nape of a prisoner's neck or behind the ear and his hair was used to conceal it; 2) Louisiana (which allows all male prisoners to wear long hair) indicated that contraband was once concealed in dreadlocks; 3) Indiana (whose inconsistency of policy is described above) has indicated that contraband has been found in prisoners' hair on numerous occasions;⁵ 4) North Carolina (which allows all prisoners to

⁴ These isolated incidents at the sweat lodges are no indication that sweat lodges pose greater security problems than Christian chapels do. Prisoners have been known to be raped in prison chapels in some states, and prison chapels have been used for the production and storage of alcohol products as well.

⁵The state of Indiana has been unsuccessful at producing any documentation with which to substantiate these claims in lawsuits. It is worth more than passing interest, also, that the person who filled out this questionnaire on behalf of the Indiana Department of Correction, in defending the Department's refusal to allow the

wear long hair) provided two responses to the survey: in one response, #6(a) was left blank; in the other, they indicated that contraband has been found in long hair, but offered no details or documentation; and 5) Illinois (which allows all prisoners to wear long hair) indicated that contraband has been found in long hair, but stated that "No specific information is readily available." None of these four states provided the requested documentation verifying that contraband has been found in long hair.

* One state that forbids the wearing of long hair (Pennsylvania) failed to respond to this question although Pennsylvania has allowed prisoners to wear long hair in the past and currently has litigation pending for refusing to allow prisoners to wear long hair according to their sincerely held religious beliefs. According to correspondence we have received from the commissioner of corrections' office, no contraband has ever been found in any prisoner's hair in Pennsylvania, and there are no other instances in which the wearing of long hair has caused a breach of security.

Question #6(b) of Survey

* All of the states indicated that no other breaches of security have occurred as a result of the wearing of long hair; however, South Dakota (which allows all male prisoners to wear long hair) commented that they "have had problems with injuries in the industry shop," a problem that can be alleviated by the mandatory wearing of hair nets or pony tails around machinery.

Question #7 of Survey

* Twenty-one states indicated that they allow Native American prisoners to hold pipe ceremonies. However, one of those states (North Carolina, which indicated that it had 450 Native American prisoners as of June 30, 1992) offered the comment that "regular smoking pipes are sold in the canteens and inmates can smoke as they choose."

construction of a sweat lodge, stated to a group of Indian spiritual leaders in October 1992 that the sweat lodge has been used in other state prison systems to have dope parties. When asked to cite an example, she said that according to a newspaper article she'd read, this had happened in the Kansas Department of Correction. This simply never happened, as was later verified by Kansas prison officials.

Question #8 of Survey

Of those states that responded to the survey:

- * 17 states indicated that they allow the wearing of headbands;
- * 21 states indicated that they allow the wearing of medicine bags;
- * 20 states indicated that they allow the prisoners access to sage;
- * 18 states indicated that they allow the prisoners access to cedar;
- * 19 states indicated that they allow the prisoners access to sweet grass;
- * 10 states indicated that they allow the prisoners access to tobacco ties (while one placed a question mark in that box and two indicated that all tobacco products are strictly forbidden);
- * 20 states indicated that they allow the prisoners to have access to the drum;
- * 13 states indicated that they allow the prisoners to have access to beading materials (while one state placed a question mark in that box);
- * 20 states indicated that they allow the prisoners to have access to sacred pipes, but again, one of those states indicated that "regular smoking pipes are sold in the canteens and inmates can smoke as they choose";
- * 10 states indicated that they allow the prisoners access to gourds; and
- * 21 states indicated that they allow the prisoners access to eagle feathers.

Question #9 of Survey

- * The only state that indicated there have been any problems with the allowance of any of the above sacred objects was Arizona. They provided the following comment: "1992 - Fort Grant - a minimum security institution - in attempting to examine a Native American inmate's medicine bag, an officer grabbed the bag from the inmate's possession and subsequently was attacked by the inmate for violating his religious

possessions. (The outcome of this incident resulted in the re-writing of the Procedures, an opportunity for the Warden to provide on-the-job training concerning proper methods of search in this area.)"

Special Comments Offered by the Survey Respondents

The following are all comments offered by the survey respondents which are not referred to above:

Alaska: [Regarding items listed in #8 of questionnaire], "suspicion by staff. Strong feeling that these items are not relevant to Native Alaskan culture."

Arizona: "Last year a guard grabbed a Native Indian's medicine bag and tore it from his neck. The prisoner hit the guard. Chaplain Thompson is writing a proposal suggesting guards and police officers be trained in the spiritual traditional practices of the religious denominations within the state of Arizona."

Arkansas: "Religious ceremonies must be individual, or if in groups have a free world sponsor present."

Colorado: "We have experienced no problems whatsoever in providing our Native American inmates with full access to their valid religious needs."⁶

Connecticut: "No problems have arisen from use of any of the above [sweat lodges, pipe ceremonies, headbands, sage, sweetgrass, cedar, medicine bags, sacred pipes, eagle feathers.]"

Georgia: "Requests for medicine bags denied."

Illinois: "In reference to [culture-specific substance abuse programs, sweat ceremonies and pipe ceremonies], to date there has been no request by Native Americans for such specific religious services or ceremonies."

Indiana: "We are presently revising our policy to accomodate Native American spiritual practices within security limitations. The policy will provide for more consistency among facilities. We are also attempting to recruit Native American Volunteers to assist in facility programming and training for staff in Native American

⁶Colorado allows the full range of religious programming and practices referred to in our questionnaire.

spirituality."⁷

Kansas: "While some security personnel would rather that Native American inmates did not have medicine bags on their person, no significant security or procedural problems have arisen."

Kentucky: "No Native American religious requests have ever been made."

Maine: "The pastoral staff at two of our major institutions ... have, in the past, made accomodations for Native Americans. These services were provided to the Native Americans on a voluntary basis; however, the Maine Indian Association canceled the spiritual meetings due to lack of funds."

Maryland: "The sweat lodge has been denied because of a city ordinance prohibiting fires to be built within the city limits, and that's where our penitentiary is located."

Minnesota: "Medicine bags have occasionally been searched and spiritual leaders have objected."

Nebraska: "(1) Pipe ceremonies only allowed in sweat lodge. (2) Burning of sage, cedar and sweetgrass is only allowed in the sweat lodge. The oder (sic) of these herbs may cover-over the smell of marijuana. (3) Only certain colors of headbands are allowed to control gangs within the prisons (sic)."

New Mexico: "Sweat ceremonies only occur about once a month average because of short wood supply. Also, there are no funds allotted toward the expense of having a tribal recognized spiritual leader come to the prisons."

North Carolina: We have been unsuccessful at locating a medicine man to work with us. Not long ago the North Carolina Indian Affairs Commission told us there was no medicine man in the state. Our efforts are very fragmented and uncoordinated. Most organized Native Americans are Protestant Christians. We are very receptive to help and to equal treatment but need some strong continuing assistance."

Rhode Island: "No Native American religious requests have ever been

⁷The Indiana Department of Corrections has been claiming for over ten years that it is revising policies to accomodate Native American spiritual practices, so we have yet to see whether this is just more talk. Additionally, the only two tribally recognized Native American spiritual advisors in the state of Indiana have informed us that the Indiana Department of Corrections treats them very disrespectfully and the Department is trying to locate "Native American volunteerers" to replace them.

made."

South Carolina: "The only Native American religious request ever made was for a medicine bag. The request was denied."

South Dakota: "The smells [of herbs] can cover the use of marijuana; headbands are used to denote gang colors; the drum can be irritating to non-Indians."⁸

Texas: "Inmates can receive material from publishers and natural items for themselves and their cells. However, there are no group meetings and the Unit Warden determines what is considered to be contraband."⁹

Utah: "Drums and pipes are allowed only in the sweat lodge ceremony."¹⁰

Vermont: "The sweat lodge has never been requested. Pipe ceremonies have never been requested, but smoking is prohibited."

Virginia: "The only problem of which we are aware is that our K-9 (drug sniffing) dogs were, initially, unable to distinguish between illegal drugs and some of the Native American herbs and grasses. We have since re-trained the dogs and this does not appear to be a problem any more."

Washington: "On a few occasions inmates have used marijuana in the pipe."

⁸ Note that South Dakota does allow its Native American prisoners to use the drum, sacred herbs, and headbands.

⁹ The NAPRRP has received complaints from Native American prisoners in approximately six prisons in Texas. These prisoners all claim that every outward expression of Native American religion is forbidden. Pipe ceremonies denied; sweat lodges denied, and all sacred objects and herbs denied. Moreover, the *Iron House Drum*, a quarterly journal of spiritual/cultural significance published by the Native American Prisoners' Rehabilitation Research Project, and other Native American publications, are prohibited in the Texas state prison system (these publications do not pose a security threat, as some prison chaplains in other states subscribe to the *Iron House Drum* and share it with the Native prisoners). The comment made in Texas' survey response simply is not true. We have records to verify these claims.

¹⁰ Note that the state of Utah has a sweat lodge and allows Native American religious practices only as a result of litigation. Prisoners in every Utah prison continue to complain of religious persecution and deprivation.

STATES THAT DID NOT RESPOND

The NAPRRP has information about some of the states that did not respond to the survey. Based on our information, we provide the following comments about the states listed below.

Alabama: We are aware of at least two lawsuits currently pending against the prison officials in Alabama because they will not allow Native Americans to practice traditional religious beliefs.

Florida: At least one Florida prison has allowed a Native American prisoner to carry a pipe bundle, including the sacred pipe, sage, cedar, sweet grass and tobacco, and to go pray by himself out-of-doors, without incident. However, Florida prison officials forcibly cut prisoners' hair in violation of religious beliefs.

Idaho: The state of Idaho allows the Native Americans to have sweat ceremonies, pipe ceremonies, and access to all of the sacred items referred to in our survey, as well as and long hair.

Iowa: The state of Iowa allows Native American prisoners to participate in sweat ceremonies and to wear long hair.

Missouri: Native Americans in Missouri's maximum security prison are allowed to wear long hair but when they are transferred to some lesser security prisons, they have it cut off by brute force. Hair length is apparently left to the whimsical discretion of the individual wardens. Sweat lodges are forbidden. Pipe ceremonies are allowed.

Montana: The wearing of long hair and all of the religious practices referred to in our survey questionnaire are allowed by some Montana state Native American prisoners. However, the prisoners claim that all of these practices, including the burning of tobacco, are prohibited for some of the Native Americans for punitive reasons.

Nevada: Native American prisoners in Nevada are allowed to wear long hair and have pipe ceremonies, sweat ceremonies and medicine bags.

New York: Prisoners in New York are allowed to wear long hair. Pow wows are allowed in some prisons, but we are unsure of the extent of religious practice allowed in all the prisons. Some prisons do forbid congregate worship services for Native Americans.

Ohio: Ohio cuts some prisoners' hair by force while allowing other prisoners to wear long hair, notwithstanding religious belief. Pipe ceremonies are allowed in some prisons, provided an outside spiritual advisor conducts the ceremony, while the wardens of other prisons refuse to allow any Native American spiritual leader to

enter the prison. Religious requests in the state of Ohio have long been denied.

Oklahoma: Some lesser security prisons in Oklahoma have sweat lodges while they are denied to prisoners in some prisons. The same is true with all of the religious practices and sacred objects identified in our survey questionnaire. Some prisoners may wear long hair while others have it forcibly cut notwithstanding religious belief. The attorney for the Oklahoma Department of Corrections has informed us that contraband has never been found in any prisoners' hair in Oklahoma although Oklahoma prisoners were all permitted to wear long hair up until 1986.

Oregon: The wearing of long hair and all of the religious ceremonies and sacred objects referred to in our survey questionnaire are allowed in the Oregon prisons.

Tennessee: We are aware that a Native American prisoner on death row in Tennessee has had access to a sweat lodge, and that there were no problems with it. We are also aware that he and other Tennessee prisoners have long hair. However, we were recently informed by the prison chaplain that he could not discuss any Native American religious practices or policies in the Tennessee prison system because of pending litigation concerning the subject matter.

Wyoming: The Native American prisoners in the state of Wyoming are allowed sweat ceremonies, pipe ceremonies, and all the religious items identified in our survey questionnaire, as well as long hair.

Final Comments

It must be understood that the information provided by a state does not necessarily represent the situation that exists in all the prisons in that state or for all the Native American prisoners in a particular prison. For example, while sweat lodges are allowed for use by Native American prisoners in the states of Arizona, Utah, Montana, Tennessee and Oklahoma, we know also that sweat lodges are forbidden in some of the prisons in each of those states. Similarly, while a number of states claim to allow the wearing of long hair for religious purposes and only for religious purposes, the number of prisoners getting forced haircuts in violation of their religious beliefs is greater than the number of prisoners who are allowed to wear hair in accordance with their religious beliefs in most of those states.

We would also like to point out that our organization has reviewed published case law throughout the United States on the issue of the wearing of long hair, and of the sweat lodge. According to that study, prison officials who prohibit the wearing

of long hair and the use of sweat lodges have never produced any evidence with which to substantiate their claims that sweat lodges and long hair might cause security problems. The only evidence produced in any of the cases has been speculative, self-serving "expert" testimony of prison officials who are opposed to allowing these religious practices to take place in their prisons. In each state that has experienced security problems, and has been able to document those problems, the security problems have been so minor that each of those states continues to allow the wearing of long hair by all prisoners, and the use of the sweat lodge. However, one of the states that has documented two incidents relating to the sweat lodge (Arizona) is currently discriminating against the Native American women according to correspondence we have been receiving from the Native American women incarcerated in Arizona over the past two months.

We would like to incorporate in our concluding comments an excerpt from an unpublished essay by Monique Fordham, written in the fall of 1992:

Whether one chooses to characterize the denial of religious freedom to Indian prisoners as racist harassment, or just a result of ignorance, such arbitrary denial is difficult to justify in light of the benefits reported by prison officials who have allowed such practices. The sweat lodge is often the central component in religious programming for Native American prisoners, and the benefits derived from this ceremony have been observed by corrections officials such as George Sullivan, who has worked in the United States prison system for almost 40 years. Sullivan first implemented sweats for Indian prisoners when he was warden of the Oregon State Correctional Institution in 1970, in addition to allowing Native American spiritual leaders to visit and counsel with inmates there. Sullivan soon recognized the importance these activities had for the Indian people at his facility:

It gave them an opportunity to rekindle their relationships and understandings of their heritage, and I think it was very valuable to them.... We had no problems with any of the Native American prisoners who participated in these Native American religious services...[interview, fall 1992].

Sullivan later instituted a similar Native American religious program at the New Mexico State Penitentiary when he became warden there. Once again, the program was a success. When Sullivan assumed his current position as Deputy Director of Operations for the Colorado Department of Corrections, wardens in the state were actively opposing the implementation of religious ceremonies for Indian prisoners. Undaunted, Sullivan used his authority to mandate that all wardens within the state institute religious programs for Native inmates that

incorporated sweats and regular visits by spiritual advisors. The programs have, according to Sullivan, been "in all ways a positive experience and result." Some wardens will continue to argue that there's a security risk involved, but based on his experience, Sullivan says:

Those contingencies are just not valid. There's absolutely no reason an inmate cannot wear his hair long per his religious beliefs, no reason he cannot have his medicine bag. There's absolutely no reason whatsoever why they cannot have their sweat lodge,..., eagle feathers or their pipes. There's just no good security reason why this cannot be permitted [interview, fall 1992].

It seems odd that many prison officials would oppose any program that suggests lower rates of disciplinary action, improved prisoner attitude and the possibility of reduced recidivism. In any event, it is clear that Native prisoners cannot afford to have their religious freedom hinge on the enlightenment of individual corrections officials. Enforceable legislation is required to standardize policy once and for all.

Legislation passed in New Mexico (Senate Bill 61) on February 11, 1993, we believe, should serve as a model for other states to follow. That New Mexico law, which amends New Mexico's Native American Counseling Act of 1983, reads in part:

B. Upon the request of any native American inmate or group of native American inmates, a state corrections facility shall permit access on a regular basis, for at least six consecutive hours per week, to:

(1) native American spiritual advisors;

(2) items and materials used in religious ceremonies, including cedar, corn husks, corn pollen, eagle and other feathers, sage, sweet grass, tobacco, willows, drums, gourds, lava rock, medicine bundles, bags or pouches, pipes, staffs and other traditional items and materials; and

(3) a sweat lodge on the grounds of the corrections facility.

C. A secure place at the site of worship in which to store the items and materials used to conduct the religious ceremonies shall be provided.

D. Native American spiritual advisors shall be afforded by the administration of a state corrections facility the same stature, respect and inmate contact as is afforded the clergy

of any Judeo-Christian religion.

E. No native American inmate shall be required to cut his hair if it conflicts with his traditional native American religious beliefs.

Section 3. EMERGENCY. -- It is necessary for the public peace, health and safety that this act take effect immediately.

Appendix B

Statement of Little Rock (aka Timothy) Reed to the Ohio Adult Parole Authority

**Southern Ohio Correctional Facility
December 18, 1991**

The following document is an original. Typographical errors have not been corrected.

STATEMENT OF LITTLE ROCK (aka TIMOTHY) REED
to the
OHIO ADULT PAROLE AUTHORITY
Southern Ohio Correctional Facility
December 18, 1991

As I entered this room today, I brought two things with me that I intend to take with me when I leave: integrity and self-respect. I imagine that you don't often witness that in those who stand before you in the course of your day's work, and that you are accustomed rather to witnessing lamentations and tears from those who would hope to receive their freedom as fair exchange. Freedom, however, is relative, for I can assure you that there is nothing outside these prison walls that I would consider fair exchange for my integrity and self-respect which would be forever lost with such a shameless drama as that. In my world, under my God, freedom is dependent upon integrity and self-respect. When I look at myself in the mirror, I see a free man. I see a just man, and a principled man.

I am aware that the majority of people in this land today are of a nature that they would sign documents -- contracts -- which are intended to carry not only the full force and effect of the law, but also their words of honor, and that they would do so knowing that they fully intend to violate the terms of those documents even before the ink they have placed on them is dry. Through such acts of deception, they hope to gain something. For example, a prisoner hopes to gain his freedom by signing this contract you expect for all prisoners to sign agreeing to certain terms of parole. I have been through many dialogues with prisoners concerning this matter, and though they are many, they are basically the same, and they go like this:

"Why did the parole board take your parole, Little Rock?" the prisoner will ask.

"Because," I reply, "some of the terms of parole that the parole board wanted me to agree with (and which they want all parolees to agree with) violate the law, so I have challenged the validity of those terms and elected to sign the agreement only after modifying the terms so that they are constitutionally valid."

"Man, you are crazy!" the prisoner will claim. "You should have just signed the document -- to hell with what it says! You're supposed to just say and do whatever the parole board

wants to see and hear, and then when you're released from prison you can do it your way and to hell with the parole board."

"But I intend to stay out of prison for the rest of my life once I am released," I reply, "and it seems that your advice isn't conducive to that end, for certainly, if I sign the contract I must uphold its terms, for in the signing of it I am giving the parole board not only my word, but the lawful authority to revoke my parole and have me returned to prison for an indefinite number of years if I break my word."

"Well, I think you're a damned fool, Little Rock, because freedom is most important," the prisoner will say.

"Perhaps I am a fool, my friend," I will reply. "Nevertheless, I see that you are in prison for your third time as a result of your having violated the terms of parole to which you agreed. If I must remain in prison here for a couple more years pending a court ruling enjoining the parole board from imposing these unconstitutional parole conditions on me (or anyone else, such as you), I will serve less time than you have served for violating the conditions you agreed with. So if the loss of freedom is the yard stick by which the fool is measured, who is the greater fool: you or I?"

"We'll have to finish this discussion some other time, Little Rock," the prisoner says as he ambles hurriedly away, "for I have places to go, things to do, people to see."

Another example of the deceitful nature of the majority is illustrated in the signing of treaties that are violated by the majority before the ink is dry. Of course, this situation is a little different than that faced by a prisoner. Nevertheless, the ends and the means are one and the same: the gaining of something through deception. Perhaps in the instance of treaties, the deceitful one may keep what is gained anyway, through brute force, the killing of women and children and the like, while the prisoner is not so powerful that he may keep the freedom he has gained through deceit and must therefore lose it. But the odds in this game of deceit are of no matter to me, because, as I said, the ends and the means are the same. I will ask you to pardon me, therefore, if you might find it offensive that my integrity and self-respect preclude me from joining with the majority. If I give you my word, I do so with the intention of keeping it, because I live with honor. Forgive me if this offends you.

Let's examine for a moment, shall we, the reason my parole was rescinded last year. I will try to keep this as brief as possible so as not to take too much more of your time. In so doing, I will forego a lot of details and ask simply that you trust

what I am saying to you here -- and if you have any questions along the way, please feel free to stop me at any time to ask questions and I will go into greater detail on the points you question. For example, I am about to cite some laws to you and tell you what they say. If you would like greater detail as to what they say, or if you don't trust what I am saying, by all means, stop me and say so, for I have here with me a stack of legal materials to which we may refer for greater detail.

In two United States Supreme Court cases, *Connecticut Board of Pardons v. Dumschat*, 101 S.Ct 2460 (1981), and *Olim v. Wakinekona*, 103 S.Ct 1741 (1983), the court ruled that when a state does not create a liberty interest in something such as a parole, a government decisionmaker such as a parole board may deny the requested relief (such as parole) "for any constitutionally permissible reason or for no reason at all." In citing these two Supreme Court rulings, the Sixth Circuit Court of Appeals (which has jurisdiction over you and I) ruled in the case of *Inmates v. Ohio State Adult Parole Authority*, 929 F.2d 233 (1991), that you are permitted to rescind a prisoner's parole "for any constitutionally permissible reason or for no reason at all." *Id.* at 236. As you know, my parole was rescinded for a reason, and to use the words of the parole board, that reason was because I "said the conditions [of parole supervision] as they stand violate [my] constitutional rights." So the question remains whether this given reason is "constitutionally permissible." I don't think it was. The U.S. Supreme Court has clearly established that prisoners retain their right to seek redress of grievances. See *Pell v. Procunier*, 94 S.Ct 2800 (1974); and the Sixth Circuit Court of Appeals in *Wolfel v. Bates*, 707 F.2d 932 (6th Cir. 1983), ruled that a prisoner in the Southern Ohio Correctional Facility "was, in effect, subject to discipline merely because he complained" and that "this was an impermissible abridgement of his right to seek redress of grievances," *Id.* at 934. The court held further that this law has been clearly established since the *Pell v. Procunier* ruling in 1974, and the court even went on to state that:

Furthermore, earlier in 1978, officials of the Ohio Department of Rehabilitation and Correction had been forbidden to initiate disciplinary proceedings merely because an inmate could not substantiate a grievance. *Taylor v. Perini*, 455 F.Supp. 1242 (N.D. Ohio 1978).

Well, in my case, I can substantiate my grievance, because the law itself is the substance upon which I rely, so let me turn now very briefly to the conditions of parole supervision that I complained about, and to the applicable law upon which I rely as a basis for my complaint.

The first condition I complained about is the condition that reads:

I will comply with all orders given me by my probation/parole officer or other authorized representative of the Court, the Department of Rehabilitation and Correction or the Adult Parole Authority including any written instructions at any time during the period of supervision.

Section 5120:1-1-12(B)(3) of the Ohio Administrative Code (OAC) requires that you impose this particular condition on all parolees; however, the OAC includes the word "lawful" so that parolees are required to comply only with all lawful orders. The omission of the word "lawful" has but a single effect: the inclusion of all unlawful orders. Now, I am sure that your purpose for imposing this condition on parolees is to regulate and control the behavior of prisoners, and I fully agree that this is a legitimate and substantial interest. However, the United States Supreme court has ruled that "even though the governmental purpose be legitimate and substantial, the purpose cannot be pursued by means that broadly stifle personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker*, 81 S.Ct 247, 252 (1961). Since I believe that I have a personal liberty to ignore any unlawful orders given me by anyone, and that this sincere belief is rooted in my moral and political ideologies as well as my religious values, then there can be no doubt that my strict adherence to an unlawful order in violation of these ideologies and values must by necessity violate my rights secured under the First and Fourteenth Amendments to the U.S Constitution. The Supreme Court of the U.S. ruled in *NAACP v. Alabama* 84 S.Ct. 1302, 1314 (1964):

This Court has repeatedly held that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.

For these reasons, I believe that until the word "lawful" is placed back into this parole condition, it is an unconstitutional parole condition, for you have no legitimate or substantial interest in forcing any parolee to comply with unlawful orders.

The next parole condition I complained about is the one which reads:

I agree to a search without warrant of my person, my motor vehicle, or my place of residence by a probation/parole officer at any time.

In *Coolidge v. New Hampshire*, 91 S.Ct. 2022 (1971), the U.S. Supreme Court ruled that:

Searches conducted outside the judicial process, without prior

approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions. The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption that the exigencies of the situation [make] the course imperative.

Id. at 2032. And in holding with this Supreme Court decision, the Sixth Circuit Court of Appeals has made it very clear that only six such exigent circumstances qualify for exemption from the requirement of a search warrant, they being:

- (1) searches of automobiles;
- (2) searches incident to lawful arrest;
- (3) searches based on the plain view doctrine (e.g., if an officer sees in plain view a machine gun on a rack over the fireplace through the window as he drives by the house, the plain view doctrine would apply);
- (4) searches based on consent;
- (5) searches based on immediate threat to life; and
- (6) searches which occur while law enforcement officers are in hot pursuit of a fleeing felon.

See *United States v. Nelson*, 459 F.2d 884, 888 (1972), and *United States v. Stoner*, 487 F.2d 651, 653 (1973). Nowhere in those six specifically established and well-delineated exceptions to the requirement of a search warrant is there any implication that you are authorized to impose this parole condition on parolees as it relates to the search of a parolee's place of residence. This issue has also been addressed in other circuits. For example, the United States Court of Appeals for the 4th Circuit has ruled that "in the absence of exigent circumstances or other exceptions to the rule requiring [a] search warrant, [a] parolee's Fourth Amendment Rights were violated when, based on probable cause, [a] parole officer made [a] warrantless search of [the] parolee's room."

As for the searches of motor vehicles and persons, the controlling law states that probable cause must exist before a motor vehicle may be searched, *United States v. Ross*, 102 S.Ct. 2157, 2173 (1982), and before a person may be searched. *Terry v. Ohio*, 88 S.Ct. 1868 (1968). However, I did not complain to the parole board about this particular parole condition as it applies to searches of persons and motor vehicles, because I understand that there are legitimate reasons for routine searches of this nature, provided they are not conducted simply to harass a parolee.

The third parole condition I complained about is the one that reads "I agree to sign a release of confidential information from any public or private agency if requested to do so." With respect to this parole condition, I will reiterate what I said in my oral and written presentation to you on February 5, 1991:

This condition, I believe, means that my parole officer may release to or obtain from any public or private agency any and all confidential information or records pertaining to me. Hypothetically, this condition may enable public officials whose unlawful conduct I have exposed in previously published works and plan to expose in future published works, to obtain confidential information about me -- information which is privileged under the Privacy Act (5 U.S.C. 552a) and not otherwise legally accessible to any public official (including my parole officer). I perceive this as a real threat to me by possibly vindictive government officials whose unlawful conduct I have exposed or will expose.

The Privacy Act was given explicit recognition and force by the U.S. Supreme Court in *Detroit Edison Co. v. N.L.R.B.*, 99 S.Ct. 1123 (1979):

Written consent [is] required before information in individual records may be disclosed, unless the request [for information] falls within an explicit statutory exception.

Id. at 1133. This parole condition also violates the Fifth Amendment to the extent that any confidential information demanded by the parole officer may be privileged attorney-client information maintained by a public or private attorney or agency. *Malloy v. Hogan*, 84 S.Ct. 1489 (1964). This parole condition also violates the Due Process Clause of the Fourteenth Amendment. The Supreme Court stated in *Louisiana v. NAACP*, 81 S.Ct. 1333 (1961), that "it is not consonant with due process to require a person to swear to a fact that he cannot be expected to know." *Id.* at 1335. Likewise, it is not consonant with due process for you to expect me to sign a release of confidential information, under pain of imprisonment, without first knowing what the information is, who wants the information, or why the information is wanted. Even while I am confined in a maximum security prison I retain my rights secured under the Privacy Act. I have asked the parole board over this past year upon what lawful authority the parole board relies to over-ride these clearly established laws, but no answer has been forthcoming, so I must assume that my grievance is, indeed, quite valid.

In the conclusion of my presentation to the Parole Board on February 5, 1991, I stated:

In conclusion, I would like to express the fact that it is not my intention to be troublesome to the Adult Parole Authority. I have every intention of leading a law-abiding life when I am released from prison. I merely wish to retain certain constitutionally and statutorily protected rights, as I have attempted to explain in the foregoing.

Each of the ways in which I had altered the Conditions of Supervision form before signing it point to the fact that my alterations of the forms do not suggest an unwillingness on my part to comply with the conditions of supervision, but they suggest rather that I merely wish to be assured that whoever my parole officer may be will conduct himself or herself in a lawful manner in his or her dealings with me, just as I am expected to conduct myself in a manner which displays a regard for the law.

And so now I'm sure you wonder if I am willing to sign the contract this time without altering it. It is my hope that you are willing to compromise. I think that a reasonable compromise would be for me to agree to comply with all lawful orders given me by my parole officer, etc., and for me to agree to a search without warrant of my place of residence, my motor vehicle or my person at any time, provided that the place of residence is searched only upon probable cause, and the search of my person or my motor vehicle be conducted within reasonable cause (as opposed to harassment). Even prisoners have the right not to be searched as a means of harassment, as such searches violate the Eighth Amendment.

As to the third parole condition, the only reasonable compromise I can think of is for me to agree to sign a release of confidential information after being fully informed as to what information is sought, why it is sought, and who seeks it, and determining for myself whether the requested information is a lawful one and the release of such information would pose no threat to myself or others. If there is a dispute between me and the parole officer about the validity of the request for information, we could take the request to a judge at the courthouse for a decision. I think that is a reasonable compromise.

If you are unwilling to compromise right here and now, today, then I, too, will be unwilling to compromise. By this I mean that I will sign the contract without altering it, and I will fully comply with its terms until I am able to obtain a court order which nullifies the terms without compromise in accordance with the laws I have set forth in the foregoing statement. I believe that if you are unwilling to compromise, this document will itself convince a judge to grant me the order on or before the day I am released from prison.

I have nothing further to say.

Little Rock Reed
Southern Ohio Correctional Facility
December 18, 1991

~ ~ ~

I am saying this not to all of you but to those of you who condemned me to death, and to these same jurors I say: Perhaps you think that I was convicted for lack of such words as might have convinced you, if I thought I should say or do all I could to avoid my sentence. Far from it. I was convicted because I lacked not words but boldness and shamelessness and the willingness to say to you what you would most gladly have heard from me, lamentations and tears and my saying and doing many things that I say are unworthy of me but that you are accustomed to hear from others. I did not think then that the danger I ran should make me do anything mean, nor do I now regret the nature of my defense. I would much rather die after this kind of defense than live after making the other kind....

... You too must be of good hope as regards death, gentlemen of the jury, and keep this one truth in mind, that a good man cannot be harmed either in life or in death, and that his affairs are not neglected by the gods. ...I am certainly not angry with those who convicted me, or with my accusers. Of course that was not their purpose when they accused and convicted me, but they thought they were hurting me, and for this they deserve blame. This much I ask from them when my sons grow up, avenge yourselves by causing them the same kind of grief that I caused you, if you think they care for money or anything else more than they care for virtue, or if they think they are somebody when they are nobody. Reproach them as I reproach you, that they do not care for the right things and think they are worthy when they are not worthy of anything. If you do this, I shall have been justly treated by you, and my sons also.

Now the hour to part has come. I go to die, you go to live. Which of us goes to the better lot is known to no one, except the god.

-- Socrates

Appendix C

About the Authors

Some of the contributors to this book have introduced themselves in the text of their contributions. What follows is an introduction to some of those who have not.

Art Solomon

Art Solomon, an Anishnabe traditional elder, was born in 1913 in the small fishing village of Kilarney, Ontario. As a child, he was taken and placed in a residential school where, as Art recalls, "they intended to turn us into white people." When he finished at the residential school in Spanish, Ontario, he was sent back to Kilarney and placed in the sixth grade. According to Art, "after a few months of that wasted time, I walked out of school. That's what they call a dropout, but I didn't drop out, I walked out."

Art has worked at many things throughout his life: as a fisherman, as a pulp cutter, as a miner, as a craftsman. When his children left home, he began to go into the prisons. In his words:

There I found a terrible hunger among our Native brothers, a hunger for their spiritual and cultural needs. I began to try to address those needs. I got an extension language (Ojibway) course started at the University of Sudbury. We brought that to our brothers in the Ontario provincial prisons, then later on we started into the heavy-duty maximum-security federal prisons in Ontario. There are nine federal prisons in Kingston, including the only federal prison for women in KKKanada.

For many years Art struggled for the freedom of religion for native people in the prisons, and he succeeded almost single-handedly. After twelve years of working as a spiritual volunteer in the federal prisons, there came about a declaration from the commissioner of the federal prison system stating that it would now be okay to let native people practice their spiritual ways in the prisons. "That's what I had been working for all those years," Art says. "I carried a sacred pipe with me, that's all I used. There had been freedom of religion for Roman Catholics, for Anglicans, for Jews, for Muslims, and other faith traditions, but not for Native people. After the commissioner's directive, it became possible and it was legitimate, although the struggle still continues in many ways for our brothers and sisters in the prisons of KKKanada. It seems strange, but many of our people are finding and returning to their traditional spiritual and cultural ways as a result of being in prison."

Art recently had a book published called *Songs for the People: Teachings on the Natural Way* (NC Press Limited: Toronto 1990), which is a collection of poems and essays he had written over the past forty years. As stated by the editor of his book, the writings

presented in the book

reflect the spiritual progress of a single man and the seeds he sowed in that progress. The selection makes a particular emphasis on the movements he helped to inspire, and the social and spiritual issues those movements addressed. Another paradox is the frequency with which the movements inspired by Art's vision have blossomed into large and complex organizations: the North Ontario Crafts Programme, the American Indian Movement, the Canadian Alliance in

Solidarity with Native Peoples, the Native Studies Department at the University of Sudbury, the University Prisons Programme, and the World Council on Religion and Peace. In recent years, the paradoxes of Art's complex spiritual sojourn have been formalized as he has been honored with the degrees of Doctor of Divinity by Queen's University in Kingston, and Doctor of Civil Law at Laurentian University of Sudbury, as well as the Ontario Bicentennial Medal.

And in May of 1991, Art was honored with the highest award that the province of Ontario could give: the Medal of Merit. Art says, however, that "all those awards are neither here nor there for me, because I have always worked for the people, and I will continue in that way for as long as it will be possible for me to do it. I am an Elder of the Ojibway Nation. For 79 years I've been walking around on this earth, and I expect to be around when prisons are closed for the last time." Says Art:

*This book is written collectively by brothers and sisters inside the prisons, and from their hearts. It is another cry for justice. My friend, Bishop Remi Deroo, wrote a book which came out a few years ago when we were both in China. The title of the book was *Cries of Victims, Voice of God*, which was exactly the way I understood things, and which might be considered as a subtitle for this book. It is another cry for justice. If it falls on deaf ears and hardened hearts, too bad. But if it falls into the hearts of those who care and can see, then it is good.*

We have suffered long and patiently, but our suffering and pain are nearly over now. There will be a new order of things, a new day, a new paradigm, and it will come before the year 2000. Having waited for 500 years, we can wait a little longer. Meanwhile, we have to pick up our medicine and go. And the name of our medicine is L.O.V.E. We are picking up our medicine now in our communities and our nations. It is an imperative for us now to heal ourselves and our communities and our nations, because we are the final teachers in this sacred land. We have to teach "the man" how to walk in a sacred way; we have to teach "the man" how to walk in harmony and balance on this earth. We cannot teach others how to heal as long as we ourselves are sick. But we are using our medicine now and teaching others how to use that medicine too. All across this land it is already happening, in spite of everything you see and hear. This world is already in a healing mode. If the man wants to hear our teaching, he has first to put down his greed and arrogance. But that will come too in its own time and its own way. Not many, with those hearts of stone, will be able to hear us. They have a choice for a little while yet. But not for very long....

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Oowah Nah Chasing Bear

Oowah Nah Chasing Bear, a Kiowa-Apache spiritual advisor born at Sundance, Wyoming, currently lives in Bainbridge, Indiana. In her own words, "My life is devoted to the people. For twenty years I have struggled for religious freedom for our people in the prisons. The state of Indiana is racist and over the years I have struggled inch by inch, step by step, issue by issue. Twelve years ago we got the sacred pipe into Pendleton prison, but today we are still struggling to have the pipe brought into other Indiana prisons."

Oowah Nah founded five Native spiritual circles in Indiana state prisons and is very active in supporting Native people in cages everywhere. Additionally, she has been very active over the years in the struggle to have laws passed to stop the desecration of sacred burial sites, and she speaks at colleges, churches, and to other groups to educate the public on Native issues. She also gathers food, clothing and other needed supplies, and holds benefits to raise money for fuel to have supplies transported continuously to those in need on the reservations.

Harvey Snow

Born in 1956 in Tularosa, New Mexico, Harvey Snow's father was part Seminole and Irish/Welsh. His mother is Castillian Spanish and Azteca from Mexico. Harvey was raised to be ashamed of his Indian blood. In his own words,

"because my dad had white blood in him, he could pass for a white man with a tan. It was easier for him to get work. When he would come home from work, I would be the reminder of his blood, and as he looked into my black eyes and saw my brown skin he saw disgust. I guess that's why we never had a good relationship.

How ironic, my dad raised us kids not to claim our blood, yet I was born just down the mountains of the Mescalero Apaches. Having the different bloods in me, I always felt that I was caught between worlds. Like my father, I walked many different paths trying to discover my identity. In my walks I have been shot, stabbed, beaten, have been in accidents with loss of life, and was paralyzed on my left side from the waist down. I wound up losing my left leg from the knee down when I fell down some stairs in a drug program. I've had numerous heroin overdoses and suicide attempts. There is more, but I've not the space to tell it all. I just want for you to see where I came from, and the person I am today. I'm doing fourteen and a half years for voluntary manslaughter, habitual criminal and distribution of marijuana. I'm a three-time loser. I was under the influence of alcohol and drugs. Had I not been, I would not have put myself in this situation that I know would have drastic results.

I used to feel the loneliness of being without a mother's love, but now as I go outside I am comforted by mother earth's beauty. She nourishes my body and mind. My father sun warms my face as I gaze into the four directions, above and below, giving my thanks to the Great Spirit for all he has shown me. I am privileged to go to the sweat lodge twice a month, and I am truly blessed each time I sweat. All of my emotions and thoughts become balanced, and I emerge into a beautiful world.

After being raised as I was, where there was alcoholism, drug addiction, child abuse and violence, I am grateful for all of the rest, because now I can truly be happy with what little I have today. It may not seem like much to some, but to me it is much, because I have a new life. I am Seminole, and damned proud of it!

In concluding this, I want to thank Miyak Toka, "Grey Wolf," for all he has shared with me. I call him Tam-Shin, 'Grandfather.' He has given me a name, and I hope to honor him by saying it now. Wiconi Teca Wimaca, which means 'New Life man.' Also a quick thanks to Betty Mae Jumper who sends me copies of the Seminole Tribune. Thank you Barbara Del Vecchio. My medicine is with you.

Stormy Ogden Chavez

My name is Stormy Ogden. The Ogden is due to adoption of my father by a white family at the death of his mother. Our true family name is McCloud, and soon my last name will be Chavez. My people are of California; we are the keepers of the west. My grandmother's people are of Tule River/Tejon Ranch (Yokuts). My grandfather's people are of Kashia Pomo and of Michiwas Pomo. These are my people and this is where I come from.

Like many of our Indian people, I too was addicted to alcohol and drugs. I blame no one including myself for this. As a recovering person (four years), I have come to understand and to believe that this is a learned behavior, a vicious cycle of destruction of a person and of the spirit. A consequence of my

addictions was days spent in psychiatric wards, drunk tanks, and five years behind bars in county jails and in the California Rehabilitation Center for Women at Norco (CRC). My last "time" was spent at the Friendship House for American Indians, an alcohol recovery program in San Francisco. That was little over four years ago.

I am now a full-time student at Humboldt State University and a participant of the Indian Teachers Education & Personnel Program. My educational goal is to obtain my Master of Social Work degree with an emphasis on Native American issues; with a minor in Native American Indian Studies and an emphasis on Tribal Law and Government.

The question might be raised, "Why the education, to make the big bucks, to forget where you come from?" To this I say "No." That is not me and that is not what my people would want from me.

I have seen too many non-Indians working in the "system" that deals directly with or affects the lives of Indian people. The only reason why these people hold these jobs is because they have the college education. They have the "book learning," but do not know of the spiritual beauty of what it is to be Indian, nor do they know of the pain it is to be Indian behind those "iron bars." I do.

There is a desperate need for programs to be established for Indian women who are in the county jails and prisons. I also believe that these programs should include the women who are being released on probation and parole. For many of these women, the only opportunities they have are the same ones they had before they were incarcerated. Culture, traditions, intervention, prevention, education, prayers, hope, faith, the sweat lodge, the pipe, the drum, the rattle, the songs and the dances -- all of this must be blended together to stop the vicious cycle of destruction and death.

This is why I speak on this project. I am honored to be part of this. It is my prayer that this project will educate the departments of correction. But mostly, I pray it will heal the spirit, heal the women, heal the men, heal the children, and save the people.

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Charles Fancyhorse

Charles (Ceasar) Fancyhorse is Pawnee on his father's side, and Sac & Fox/Winnebago on his mother's side. Both his mother and father were traditional, and both raised him to respect the old ways. They first met at a Native American Church meeting in Tama, Iowa. His father was a Firechief, his mother a member of the Church. Both parents, now deceased, were buried in their traditional tribal ways. "It's the respect of their memory that helps me to keep going," says Charles:

I want to do good, for them. They taught me to always humble myself before the Creator, to respect our Elders, and to never forsake the old ways.

My father told me one time that Ceasar is not our real family name. It was Fancyhorse. It had been changed back in a time when having an Indian name would place a burden on future generations. It was a time when government boarding schools were just beginning, and living the old way was discouraged. A time when the school matrons would wash the children's mouths out with soap if they caught them talking in Indian.

I grew up with the smell of wood-smoke and cedar. To me, it's a comforting scent. It's something I wish I could get back to. Fort Supply and McLeod are two prison facilities in Oklahoma I've been to. Neither has a spiritual program for Indians -- Indians with traditional values. I can only hope.

My prayers go out to my brothers and sisters in the Iron Houses, and their families. Stay strong. The Creator gave us this day. No man, or man-made rules, can change what the Creator has given us.

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Tony Nieto

Born an illegitimate child in Houston, Texas, Tony Nieto is Mexican/Apache. Having been brought up as a Mexican child, he knew very little of his Apache side until he himself was a father and one of his young sons, 12-year-old Angry Bear Nieto, began to ask questions about his ancestry. It was then that Tony asked his mother about it and that he learned of his grandfather, Vincente, who was a strong Apache leader in the Council. His young son, Angry Bear, upon learning of his people, knew that it would be his destiny to follow the path that Vincente had gone before him: he was destined to be a warrior for his people.

Tony shares the story of his son's victories as an Indian warrior and activist within the California Department of Corrections -- victories against the prison administration in the Indian struggle for religious freedom within that system. And he shares the story of how the prison administration assassinated his son because of those victories, and has attempted to cover up the truth....

Tony himself is a former prisoner of the California Department of Corrections, and is active in the struggle of Indian people for justice. In 1977 he was council secretary for the Santa Rosa, Cahuilla and Soboba Indian Council. He is also strongly opposed to state-sanctioned murders through the death penalty. In October of 1989 he participated in the march against state killings which was to have lasted for ten days, but which was interrupted by the San Francisco earthquake which hit at the end of the fifth day. On the tenth day, they nevertheless held a vigil at San Quentin prison where the gas chamber is.

Tony has also been involved in speaking engagements to call attention to the injustices faced by American Indians in the prisons of North America. He was a key speaker at the Fifth International Conference on Penal Abolition hosted by the Indiana University in Bloomington in May, 1991, and was a key speaker at the 1991 conference of the American Society of Criminology in San Francisco. He continues to seek justice for the murder of his son, Angry Bear.

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Diane White

A member of the Northern Cheyenne Tribe, Diane was born in Montana where she was raised in early childhood by her traditional grandmother until, due to her grandmother's age and health, Diane was passed to other relatives, where she experienced abuse and an environment of alcoholism. She started drinking when she was sixteen years old, and her own alcoholism progressed until she was 31 years old, at which time she was arrested and incarcerated.

At the time of my arrest, I was so tired, my body was tired, my mind no longer functioned properly. I was a mess and I knew it. Now I have had the opportunity to untangle the vast web of my life, which was a totally confused mixture of addictions, co-dependencies, bad relationships with men, and my parenting.

In the time Diane has been incarcerated, she has been working toward obtaining a college degree in counseling. Her major goal is to eventually become a chemical dependency counselor, and to work with young adults. She has been asked to do a documentary on her life, the details of which are still in order. Of the documentary, she says, "it will hopefully help other young Native American women and men who may be in the same predicament I put myself in for so long. For many years I suppressed so much, and I just didn't know what to do. The documentary will be a message to others that there is help; something I never knew...."

Standing Deer Wilson

Standing Deer has introduced himself in depth in the chapters he has written for this book. You will notice in his writing that "america" and "united states" are not capitalized. This is because, in his words, "the America that deserves the respect of a capital 'A' does not exist in my mind and never will until america fulfills her promises to my people."

~ ~ ~

Moses L. Headman

Moses Headman is a Ponca Indian currently serving his sixth year of a 40-year sentence in the maximum-security state penitentiary in McAlester, Oklahoma. He was born in 1961, at a time of Indian resistance to the federal government policy of termination and relocation -- designed to destroy Indian community life by systematically denying the existence of Indian people.

"With forced assimilation as the rule," Moses recalls, "uprooting Native American children from their homes was a common practice."

My family lived separate from the Indian community on a rural settlement, where I was fortunate enough to spend the first twelve years of my life with my people. My fondest memories are of my early childhood. Our traditional ways were based on the practice of respect for life and all living things. I remember my Elders living in complete harmony -- maintaining balance -- according to the laws of nature.

In my early life I spent much of my time with my Elders. They were the traditional influences in my life. They shared many good teachings with me of the Indian ways. My Grandfather Big Elk on my mother's side taught me about the sacred drum and the external healing it holds for the Indian Nations. My Grandfather Big Bear on my father's side practiced the peyote medicine and taught me about the sacred pipe and the internal healing it holds for Indian people.

The root of assimilation appeared to be that the white man sought to make Indian children over in his own image. His efforts to assimilate me have been marked by total failure. At the age of twelve I was forcibly removed from my people by state authorities and placed in a foster home. I did the only thing that seemed natural at the time. I ran away and returned home to be with my Elders. For this act of resistance to assimilation, I was adjudicated a juvenile delinquent and incarcerated in the state reform school for boys. Thus came the eventual deterioration of my natural lifeway as psychological torture and physical abuse were the practice in these juvenile facilities. I eventually became desensitized as the pain of separation had no more meaning. I was soon old enough to fight fire with fire as violence brought temporary satisfaction in seeing my keepers hurt like I had hurt. I was herded through the juvenile detention system and finally into the penitentiary.

Today, Indians in captivity is the symbolic equivalent of a journey into the white man's hell. Our people have suffered and sacrificed enough at the calculated, methodical, cynical destruction of our cultures, peoples, and lands. It is a global crime and the most notable vandalism of all history! For our people to still be standing is -- well, as my brother Standing Deer so eloquently put it, 'Our existence is their defeat.' Native spirituality provides in its concept of 'the wholeness of man and woman with nature' the key to our survival.

As I share these words, my prayers are for our sisters and brothers

engaged in battling the ubiquitous and destructive cycle of ethnocide. I believe, as many of our people do, that if we go back to our culture, our spirituality, we can break this cycle and mend the Sacred Hoop. Systematic genocide is not a figment of Indian people's imagination. For the healing to begin, we must be allowed to speak with our own voices. -- In Unity & Peace (Wolakota!).

~ ~ ~

Little Rock (aka Timothy) Reed

Born in 1960, Little Rock was raised in the white culture. From early childhood he had been told his father was of Oglala background, but it wouldn't be until Little Rock was in prison for his second time, serving a 7-to-25-year sentence in the state of Ohio, that his Indian heritage would become meaningful to him. In his early twenties, he began to learn the real history of his people, and of the continuing atrocities being committed against Native peoples. It was at that time he began to learn of the rich spiritual heritage of his people, and in the mid-1980s he made a commitment to dedicate his life to his people -- and to all of humanity. He began with the struggle for religious freedom in the prison he was at, which expanded to other prisons until he eventually founded the Native American Prisoners' Rehabilitation Research Project (NAPRRP) -- an organization committed to advocating for the religious and cultural rights of Native Americans on a national level, and the organization behind this book project.

Unable to verify his Indian ancestry, he has at times been met with skepticism from Indians who have labeled him a "wannabe," while his inability to "prove" an Indian bloodline has been exploited by government officials to discredit his work because, as they would have the public believe, he "doesn't speak for Indians." When asked how he responds to these matters, Little Rock states:

Since I haven't documented my Indian blood, let's assume for the sake of argument that I have absolutely no Indian blood. The government officials would naturally have you believe that I don't speak for Indians because they want to discourage you from listening to what I say because they don't want you to know the truth about them and the crimes they are committing against Indians -- and I'm a strong spokesman on these issues and am ready to document what I say. That scares the hell out of them. Truth is truth whether it is coming from a white man or an Indian, so my blood line has no part in this as far as the government officials are concerned. Moreover, who are they to determine who is Indian and who isn't, or who speaks for Indians and who doesn't? That choice belongs with the Indians themselves, not any white man, and there are plenty of Indians who appreciate the way I present Indian concerns. This book and its participants certainly attest to that.

As for any Indians who may have referred to me as a "wannabe," I'm only aware of two, but they don't know me or my work, so their opinions don't count for much. Nevertheless, that's their prerogative. My actions are Indian. My sacrifices are Indian. My beliefs are Indian. My heart is Indian. My politics are Indian. My spirit is Indian. On the same token, there are many full-bloods who think, believe and act just like white people from the heart of Europe. One of the most respected Indian leaders of the day has watched my work for several years now, and as this book is prepared for the press, he has said that he's proud of me and my accomplishments and that I have certainly proven to be a determined and dedicated man. Actions speak louder than words or skin color. That's all I've got to say about that.

Little Rock spent several additional years in prison as punishment for his dedication and commitment to the struggle for prisoners' rights and Indian prisoners' rights in particular. It was difficult for him to produce tangible

evidence of this until the chairman of the Ohio Parole Board wrote that Little Rock remained incarcerated solely and expressly for asserting his constitutional rights.

While incarcerated, he had had many articles published in magazines and journals in the United States, Canada and abroad, and joined the editorial board of the *Journal of Prisoners on Prisons*, the only refereed criminological journal containing the writings of prisoners in North America. These accomplishments resulted in his being invited to organize Native American prisoners' representation for annual meetings of the International Conference on Penal Abolition, the American Society of Criminology, the Association for Humanist Sociology, and the Academy of Criminal Justice Sciences -- even while confined to a maximum security prison cell.

Finally released from prison in May of 1992, Little Rock participated in his first Sun Dance in Marty, South Dakota and continues to seek spiritual understanding and knowledge to guide him in his work. While on parole, he served as the full-time director of the NAPRRP. He was also attending college full-time, completing a bachelor's degree in Criminal Justice and Indian Affairs, and he planned to obtain his Ph.D. in Indian Studies in the beginning of 1995. He had begun work on his doctoral dissertation which was to be a text book entitled *An Introduction to Indian Studies*. Additionally, he was serving on the Ohio Council for Native American Burial Rights, and was lecturing on Indian Affairs at colleges and universities, with the particular aim of drawing support for the passage of legislation that will protect sacred burial sites and the religious rights of American Indians.

But Little Rock's circumstances have changed dramatically. In March, 1993, with only six weeks to go before final release from parole, he was ordered by his parole officer to report to the parole officer so that the Adult Parole Authority could return Little Rock to prison in order to keep this book from going to press and to silence Little Rock's voice. Little Rock went underground instead and remains at large as this book goes to press.

Had Little Rock turned himself in as he was ordered to do, he would have been returned to the prison in Lucasville, Ohio, just in time to participate in the so-called "riot" that took place there in April 1993. As was reported by Kentucky Post reporter William Weathers (Weathers, 1993):

It seems to me that Little Rock Reed -- who is not only a fugitive, but an author, editor, speaker and all-around agitator -- can tell us a good deal about what went wrong at Lucasville ... where Ohio's deadliest prison riot has just occurred. He not only witnessed the conditions that preceded it, but he was also centrally involved in civilized attempts to do something about the problems before they erupted into mayhem and murder.

Indeed, when Little Rock became aware of the riot at Lucasville, he knew that his fellow prisoners at Lucasville would not be given appropriate access to the media because the prison officials have always controlled the media during prison uprisings. So he placed himself at risk by coming out of hiding long enough to speak on behalf of the prisoners at Lucasville in interviews with the *Los Angeles Times*, the *Cleveland Plain Dealer*, the *Columbus Dispatch*, the *Cincinnati Enquirer*, and even the Columbus, Ohio ABC affiliate in a personal interview that aired across the nation. The information Little Rock provided in the interviews indicated that the Lucasville prison warden, Arthur Tate, Jr., was primarily responsible for the riot. In fact, as indicated in a *Plain Dealer* article (*Plain Dealer* 1993), Little Rock had forewarned Warden Tate of the impending riot in correspondence and in a lawsuit Little Rock filed in which the prisoners at Lucasville attempted (unsuccessfully) to get a restraining order which would stop the warden from initiating the riot.

Little Rock is a wanted man. Ohio government officials want him back in prison where they can silence his voice for good, because his voice is a threat to them because it has a tendency to expose the crimes they are committing. A statement of the facts regarding his current situation and whereabouts is contained in chapter 12. Read it and you be the judge.

"'America' needs to read this book! It is as compelling as Peter Matthiessen's *In the Spirit of Crazy Horse*, Vine Deloria's *God is Red and Custer Died for Your Sins*, and Churchill and Vander Wall's *Agents of Repression*. The American Indian in the White Man's Prisons: A Story of Genocide is the most comprehensive documentation of human rights abuses in this country that I have ever seen...."

-- Deborah Garlin
Human/Indian rights attorney activist,
author, former legal research and
writing professor

"This book is excellent. It was written collectively by brothers and sisters inside the prisons, and from their hearts. It is a painfully loud cry for justice. My friend, Bishop Remi Deroo, wrote a book a few years ago called *Cries of Victims, Voice of God*, which would be a good subtitle for this one. The American Indian in the White Man's Prisons: A Story of Genocide is a book that has been needed for a long, long time, and now it is done."

-- Arthur Solomon, Anishnabe
Traditional Elder/Spiritual Leader
author, and prisoners' rights activist

"This book is wonderful, POWERFUL!..."

... The writers in this volume, most of whom are present or former Native American prisoners and spiritual leaders, are masters at portraying the pain and suffering of their people through the written word. They are spread out in so many networks and so routinely transferred across prisons and prison systems as 'security risks,' that by legal mail and any other available means, they have among them a knowledge of prison conditions in North America far surpassing any other news network or body of literature I have seen. They are pressing the federal and state governments on a variety of issues such as having nuclear waste dumped on treaty grounds; and the prison awareness of these writers is matched by their global awareness of the confrontation between fundamentalist white Christian North America, and indigenous spiritualism. As we enter the second quincentennial of white European invasion of the Americas, the first peoples are united as never before on what is at stake for themselves and for mother earth in this basically religious struggle.

Nowhere on this continent is the battle ground bloodier and more raw than in U.S. prisons, in 'control units' for activist prisoners in particular. Indian activists are routinely receiving extended imprisonment, getting beaten and assassinated in prisons across the United States and Canada for no good reason. Here for the first time, Standing Deer Wilson himself describes how he agreed to help the feds assassinate American Indian Movement leader and political prisoner Leonard Peltier. Miraculously, both of them live today. That is not true of many of their brothers and sisters. If you think George Orwell's 1984 is bad, wait until you read The American Indian in the White Man's Prisons: A Story of Genocide.

The most remarkable and revealing part of this clash is that Indian prisoners are asking only to establish culturally relevant rehabilitation programs designed by and for their own people (if their suggestions in this book were to be taken seriously by policy makers, I believe the recidivism rates across the U.S. would decrease significantly for all racial and ethnic groups -- their suggestions are a substantial constructive response to the prison crisis); and they ask to be allowed visits with their spiritual advisors ('ministers' we Anglos call them) and to celebrate worship in their own way. They may, like Peltier and Standing Deer, go on a prolonged hunger strike to obtain these rights; they may go to courts and legislatures; but perhaps most exasperatingly to their keepers, they are concertedly non-violent and open. The strong ones among them, like these writers, follow a moral code so demanding, and remain serenely themselves in their commitment so steadfastly, as to terrify their keepers. To understand this terror of the keepers is to understand how we outside prison walls continue to accept the attempted genocide of the indigenous spirituality in ourselves, to say nothing of those who would live by it in our midst.

It is true I come to this book as one whose career in teaching and research takes me to prisoners and into their worlds, but this book is not only for criminologists, it is for non-native peoples across the face of this continent, and indeed on behalf of aboriginal rights worldwide."

-- Harold E. Pepinsky
Author, editor,
Chair, Division of Critical Criminology
American Society of Criminology