Nick DiSpoldo

Postcards from Prison

1992

Contents

Pages from a jailhouse journal

The Southern Desert Correctional Center (SDCC) is located in open, arid desert, forty miles north of Las Vegas and just twenty-eight miles south of the U.S. nuclear test site at Mercury, Nev. Inmates joke that it will require but one significant mathematical mistake and we will all disintegrate and dissolve into desert dust. At night, a pack of coyotes, on their way to the institution's garbage dump, pause at the prison's perimeter, staring through the barbed wire at the even stranger creatures inside.

Two creatures held in contempt and scorned by society: coyotes and convicts.

Midnight: the hour that made a madman of Edgar Allan Poe, a fortune for Elvira, mistress of the dark, and, of course, we all know what it did for Cinderella. For me, its the hour when the cellhouse begins to quiet and I can be alone with my books, diaries, correspondence, manuscripts and the transcripts and legal papers of inmates to whom I teach law and writ-writing. Once in a while, to alleviate the fatigue of literary labors, I listen to my radio: National Public Radio, Larry King, Tom Snyder or celebrated bimbo Sally Jesse Raphael and her neurotic suburban housewives.

Tonight it is especially quiet: even a fart sounds like a hurricane.

The present Supreme Court, led by Chief Justice William Rehnquist, has modified nearly all of the rights granted prisoners under the Warren court (1953–69). Mr. Rehnquist, whom I suspect serves as technical advisor for television's *Night Court*, was appointed to the court in 1972 by Nixon and named Chief Justice by Reagan in 1986. Rehnquist has consistently voted against expanding prisoner rights and has sought to reconstruct the historical iron curtain that, prior to the Warren court, always existed between the constitution and the American prisoner.

It would be difficult to understand the relative regressiveness of the Rehnquist court without understanding the historical evolution of prisoner rights.

I have structured this evolution in what I call the four R's: Revenge, Repentance, Rehabilitation, Regression.

There was a time when Dante's phrase for the gates of hell — "Abandon hope, all ye who enter" — would have been an appropriate inscription to have placed at the gates of America's prisons. In the eighteenth century, New York's Auburn Prison employed the "silence system"; prisoners were not permitted to even *speak* to one another, the *Bible* was the only permissible reading material and prisoners were encouraged to be repentant. The word 'penitentiary', in fact, derives from 'penitent' the penological prescription prisoners were expected to fill. Prisoners, of course, were stripped of all civil rights and suffered total civil death.

In researching prison related cases, I 'discovered' a case in **Ruffin vs. Commonwealth** (1871) which reflected a judicial attitude that persisted well into the

twentieth century. The Virginia Supreme Court declared: "As a consequence of his crime, the felon forfeits not only his liberty, but also his personal rights, except those which the law in its humanity affords him . . . *He is for the time being the slave of the state."*[1]

The Supreme Court was established in 1789 and it was not until 1941 that the court interfered with prison officials — for the first time — in behalf of a prisoner.

Cleio Hull, a Michigan prisoner, had attempted to file a writ of habeas corpus with a federal court and prison authorities intercepted the writ to determine if it was "properly drawn." The court ruled: "Whether writ is properly drawn or what allegations it must contain are questions for that court alone to determine . . . Officials may not abridge prisoners' access to the courts . . ."[2] This case established a prisoner's right of access to the courts and is vital as later courts were to interpret 'access' to mean the right of jailhouse lawyers to help other inmates (**Johnson vs. Avery** 1969); the right of state inmates to sue state officials in federal court (**Cooper vs. Pate** 1964); the ruling that adequate law libraries must be established in all U.S. prisons (**Bounds vs. Smith** 1977) absent other alternatives.

The liberal egalitarian legacy of the Warren court began in 1956 in **Griffin vs. Illinois** in which the court ruled that indigent prisoners must be provided with free transcripts for purposes of appeal. Justice Black, writing the majority opinion, observed: "There can be no equal justice where the kind of trial a man gets depends on how much money he has."[3]

Before the Warren court, the criminal justice protections of the Fourth, Fifth, Sixth, and Eighth Amendments did not apply to *state* criminal trials; they only applied to *federal* prosecutions. The Warren court — literally — made the constitution available to the poor, the underprivileged, the prisoner:

Mapp vs. Ohio (unlawfully seized evidence by police must be excluded from court-the exclusionary rule; 1961)[4]; **Robinson vs. California** (state laws making status of drug addiction a crime are cruel and unusual punishment; 1962)[5]; **Gideon vs. Wainwright** (right to attorney in all state felony trials; before Gideon, poor defendants were provided counsel only in capital cases; 1962)[6]; **Malloy vs. Hogan** (right against self-in-crimination; 1964)[7]; **Miranda vs. Arizona** (right to remain

---

1 **Ruffin vs. Commonwealth** 62 VA. 790 (1871).
2 **Ex Parte Hull** 61 S. Ct. 640 (1941).
3 **Griffin vs. Illinois** 76 S. Ct. 585 (1956).
4 **Mapp vs. Ohio** 367 U.S. 643 (1961).
5 **Robinson vs. California** 370 U.S. 335 (1963).
6 **Gideon vs. Wainwright** 372 U.S. 335 (1963).
7 **Malloy vs. Hogan** 378 U.S. 1 (1964).

silent; 1966)[8]; **Duncan vs. Louisiana** (right to jury trial is applicable to states; 1968)[9].

In **Johnson vs. Avery** the court invalidated a Tennessee State Prison rule prohibiting the activities of jailhouse lawyers.

Avery was handed down in 1969 and Justice Fortas held: "The initial burden of presenting a claim to post-conviction relief usually rests upon the indigent prisoner himself with such help as he can obtain behind prison walls. The average prisoner is, in effect, denied access to the courts unless such help is available."[10]

I was particularly grateful for **Avery**. Although I was as yet an unpublished writer in 1969, I was confined in California's San Quentin Prison and I was often punished for helping inmates with legal problems. Guards ransacked my cell every other day and cut my typewriter ribbons or glued my stamps together.

The news reports tonight that Justice Thurgood Marshall will soon retire *[he has since retired]* from the court. The last great libertarian will be gone from the court and the swing to the right is certain.

There should be a statue of Marshall (as well as Warren, Douglas, Brennan and BJack) in every town square in America. Marshall wrote an opinion in **Procunier vs. Martinez** which remains a model of admiration. In **Martinez** (1973) the court ended the routine censorship of inmate mail when it declared that the California Department of Corrections' mail regulations were unconstitutional.

In recognizing First Amendment rights of convicts, the court considered also the First Amendment rights of persons to whom convicts were writing. Justice Marshall, in characteristic eloquence, observed: "A prisoner does not shed basic First Amendment rights at the front gate — whether an O'Henry writing his short stories in a jail cell or a frightened young inmate writing his family, a prisoner needs a medium for self-expression."

Justice Powell added: "Communication by letter is not accomplished by act of writing words on paper. Rather, it is effected only when letter is read by addressee."[11]

Someone sent me Charles W. Colson's Life Sentence and I'm not much impressed. Colson, one of the Watergate defen-dants, served only seven months in Maxwell Air Force Base and Fort Holabird and to listen to him one would think he closed Alcatraz, opened Leavenworth and walked the Big Yard at Attica. His book is dull and tedious. Like most Christians, he reads whatever symbolism and significance that is convenient into the simplest of human events. After his

---

8 **Miranda vs. Arizona** 384 U.S. 436 (1966).

9 **Duncan vs. Louisiana** 391 U.S. 145 (1968).

10 **Johnson vs. Avery** 393 U.S. 483 (1969).

11 **Procunier vs. Martinez** 416 U.S. 396 (1974).

release, he describes a softball game between 'ex-cons' and 'straights'. Colson played for the ex-cons and describes how his team came from behind in the last inning to win 17–16.

Colson tells us it was 'symbolic'. To my mind it is only symbolic of the need for better pitching.

Colson's reflections on Nixon are interesting. Had Nixon known many of his friends and associates would end up serving time, he might have become the first president in U.S. history to have made prison reform a part of his platform.

Still, Richard M. Nixon has made a very important sociological contribution to America. As he carried 49 out of 50 states in his re-election win over McGovern, he has conclusively proven that the whole goddamn country is *crazy*, except Massachusetts.

In **Bounds vs. Smith** (1977), the court ordered the states to either establish "adequate law libraries" in all prisons or provide inmates with persons trained in the law. The states opted for the former as being the least costly. **Bounds** also holds that inmates at state expense must be provided with paper, pen, notarial services, stamps, and prisoners may not be charged for docket or filing fees. Rehnquist, a Republican — meaning he understands little that hasn't happened before — wrote that convicts, once they have had a direct appeal, have no constitutional right of access to the courts or to mount collateral attacks on their convictions.

Fortunately, Marshall and a slim majority prevailed: "Even most dedicated trial judges are bound to overlook meritorious cases without benefit of an adversary presentation . . . Moreover, if the state files a response to a prose pleading, it will undoubtedly contain seemingly authoritative citations . . . without a library, an inmate will be unable to rebut the state's argument."[12]

Bounds, of course, did not provide an immediate panacea. A law library is one thing; for laymen to utilize it is quite another. A clear majority of America's convicts are poorly-educated; many are semi-literate, and not a few possess the study habits of Curly, Moe and Larry.

Many inmates do not read at all and will never know Sinclair Lewis from Jerry Lewis. Western novels, *Playboy*, *Easyriders*, *T.V. Guide* or the *National Enquirer* are the staples of the convict literary diet, with a dash of Sidney Sheldon or Stephen King. Most cons prefer to be tranquilized by trivia: Saturday morning cartoons, re-runs of *Bonanza*, *Star Trek*, or *Gunsmoke*.

Convicts always complain about the quality of food, but sometimes the food is so bad it is actually *unlawful*. In **Nicholson vs. Choctaw County**, Alabama jail prisoners filed a class action suit to enjoin sheriffs deputies from serving road kill to prisoners.

---

12 **Bounds vs. Smith** 430 U.S. 817 (1977).

An order from U.S. District Court read, in part, "No animal killed on the road or highway may be served in the Choctaw County Jail."[13]

I think Alabama has sent its road kill to Nevada. I don't expect continental cuisine — hell, I don't even expect a burrito from Taco Bell — but how grown men can fuck-up even hot dogs and rice, is beyond me. Three times a week we have some sort of mystery meat, of varying colors, that has the consistency of hockey pucks and looks as though it belongs under a glass in a Harvard laboratory.

In **Turner vs. Safley** (1987), the Rehnquist court made clear its view of the prison community and the .rights of prisoners when the court held that the proper standard for determining whether a prison regulation claimed to infringe on an inmate's constitutional rights is valid, is to ask whether the regulation is "*..reasonably related to legitimate penological interests.*"[14]

The court has armed corrections officials with a convenient catch-all clause that enables authorities to bar any inmate activity (claiming "detriment to security") or censoring political publications deemed 'inflammatory'.

This "Turner test" will — given the overwhelming conservative majority of the current court — be applicable and applied to prison issues well into the twenty-first century.

The court used the Turner test to restrict 'radical' publications in a federal Prison. In **Thornburgh vs. Abbott** (1989), the court ruled that an inmate can be prevented from receiving any publication if it is ". . . detrimental to the security, good order, or discipline of the institution, or if it might facilitate criminal activity."[15]

In **Washington vs. Harper** (1990), the Supreme Court handed down its most dangerous decision: Prison officials may force psychiatric drugs into unwilling inmates.

In 1800 when the Supreme Court moved to Washington, D.C., the honorable justices were so little regarded they were given temporary quarters in the Old Senate Building in an area once used as a janitorial storage room. And for the duration of one full term the United States Supreme Court actually met in a *tavern*.

When I consider Washington vs. Harper, I'm convinced the court still meets in a tavern.

In 1990, while the country was distracted by flag-burning and its resulting constitutional controversies, the court handed down **Harper**, which went virtually undiscussed in both the electronic and print media.

---

13 **Nicholson vs. Choctaw County** 498 F. Supp.295 (1980).

14 **Turner vs. Safley** 482 U.S. 78 (1987).

15 **Thornburgh vs. Abbott** 109 S. Ct. 1874 (1989).

Walter Harper, an inmate in the Washington State Prison system, was several times sent to the states's Special Offender Center, although Harper, convicted of armed robbery, has never been adjudged insane or incompetent. He was forced to take a series of antipsychotic drugs — sometimes call 'psychotropics' or 'neuroleptics' — that included Trialofon, Haldol, Prolixin, Tarcatan, Loxitane and Navane. These drugs serve to alter the brain's chemical balance and often produce serious side effects. One of the most serious of these side effects is tardive dyskinesia, a neurological disorder, irreversible in some cases, and found to have a frequency rate of ten to twenty-five percent.

Tardive dyskinesia, according to a brief submitted to the court by the American Psychiatric Association, is chiefly characterized by uncontrollable movements of facial muscles.

Justice Stevens, dissenting in **Harper**, in part, wrote: "The court has undervalued respondent's liberty interest and has concluded that a mock trial before an institutionally-biased tribunal constitutes 'Due Process' of law . . . Every violation of a person's bodily integrity is an invasion of his or her liberty. The invasion is particularly intrusive if it creates a substantial risk of permanent injury or premature death."[16]

Harper surely destroys the noble concept contained in **Stanley vs. Georgia**: "Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds."[17]

The court's provision that only a psychiatrist can order forced medication would be amusing if it were not so dangerous. Prison personnel often employ psychiatric 'medication' in modifying the activity or energy level of inmates deemed 'undesirable'. Prison medical staffs are rarely blessed with humanitarians who choose to work in a prison because they are driven by a need to administer to the planet's poor and pitiful.

They are all too frequently people who possess neither the ability nor initiative to work 'outside' where their performance and efficiency would be subject to close and constant scrutiny.

The court reversed its own ruling in **Vitek vs. Jones** and perfectly conveys the regression of the Rehnquist court. **Vitek** held: "A criminal conviction and sentence of imprisonment extinguish an individual's right to freedom from confinement, but it does not authorize the state to classify him as mentally ill and to subject him to involuntary treatment without affording him additional Due Process protections."[18]

---

16 **Washington vs. Harper** 110 S. Ct. 1028 (1990).

17 **Stanley vs. Georgia** 394 U.S. 557 (1969).

18 **Vitek vs. Jones** 445 U.S. 480 (1980).

There are two dangers inherent in **Harper**. One is the possibility the ruling may extend far beyond prison walls; to sanitariums, nursing homes and hospitals. Forced drugging of the citizenry is not an impossibility.

The second danger is the door it opens to medical experimentation and experimental 'medical' techniques like aversion therapy, electroconvulsive shock and psychosurgery. Long ago, in an article for the *New York Times*, I warned against experimental research that is often forced on prisoners.[19]

Can one imagine anything more horrible than Orwell's *1984*? Yes. It is a group of American prisoners who have been electrically or drug-conditioned to smile rapturously as pictures of Rehnquist or Jesse Helms are flashed on a screen.

I have known many condemned men in the prisons of California, Louisiana, Arizona and Nevada. I have worked as death row law clerk and I have studied more death transcripts than I care to recall. Like most mortals, the phenomenon of death fascinates me, and I have long considered the legalities of the death penalty.

I oppose capital punishment because we do not have the capacity to make the death penalty 'fair' — as the Supreme Court deluded itself it could be made 'fair' in Furman vs. Georgia.[20] Here 'capacity' is the operable word. In a capitalist society, cash is the colossal catalyst.

If two persons are charged with capital crimes, one wealthy, one poor, the quality of justice immediately changes. The wealthy defendant can post bail, hire the attorney(ies) of his or her choice, retain investigators, employ alienists to testify for the defense, and postpone the trial indefinitely. The indigent defendant will sit in jail, unable to post bail, and will be represented, invariably, by a public defender who is either inexperienced or burdened by a staggering case load. These are the simple concrete conclusions of economics. I am not interested in the trite moralistic arguments advanced for or against capital punishment nor the vacuous veneer of religious rhetoric; I'm a paralegal, not a priest or philosopher.

Lewis E. Lawes, former warden of New York's Sing Sing prison, wrote: "... not only does capital punishment fail in its justifications, but no other punishment could be invented with so many defects. It is an unequal punishment in the way it is applied to the rich and to the poor. The defendant of wealth and position never goes to the electric chair or gallows..."[21]

Former Attorney General Ramsey Clark, wrote: "It is the poor, the sick, the ignorant, the powerless and the hated who are executed."[22]

---

19 "A Clockwork Orange" by Nick DiSpoldo, *New York Tunes* Op-Ed Page, June 20, 1974.

20 **Furman vs. Georgia** 408 U.S. 238 (1972).

21 *Life and Death in Sing Sing* by Lewis E. Lawes, pp. 155–60.

22 *Crime In America* by Ramsey Clark, 1970.

In researching a book-in-progress about the history of capital punishment in the U.S. — from the executions of Sarah Good and Sarah Osburn during the Salem Witch Trials of 1691–92 to Ted Bundy's 1989 execution in Florida — I have compiled data on 562 legal executions. I have found but five cases wherein those executed were persons of affluence or influence — and two of these were 'convicted' atom spies Julius and Ethel Rosenberg.

Finally, is the Supreme Court itself an unquestionable authority in such a life and death issue? Hardly. The court is in a state of flux; new justices do come and go. It is possible the Rehnquist court will lead us back to the appalling period of Palko.

In 1935 Frank Palko was convicted in a Connecticut court of killing a police officer. The jury found him guilty of second-degree murder and sentenced him to life in prison. The state, however, was unhappy with the punishment, and the DA. appealed on errors prejudicial to the prosecution. The Connecticut Court of Error (was there ever a court more aptly named?) agreed and ordered a new trial. Palko objected on the Fifth Amendment's ban of "double jeopardy." Palko had a point. But Palko was retried and this time Palko was sentenced to death. He appealed to the Supreme Court.

The Supreme Court ruled that Palko was legally sentenced to die because — are we ready, folks? — the Fifth Amendment did not apply to the people of the states.

Justice Benjamin N. Cardozo, writing the majority opinion in **Palko**, observed: "The Fifth Amendment is not directed to the states, but solely to the federal government."[23] The Constitution begins, "We the people . . . " *What* people? The people of Paraguay?

Frank Palko was eventually executed and thirty-two years later **Palko** was over-ruled in **Benton vs. Maryland** wherein the Warren court declared, " . . . the double jeopardy clause is fundamental to the American scheme of justice and should apply to the states . . . in so far as it is inconsistent with this holding, **Palko vs. Connecticut** is overruled."[24]

Frank Palko will be happy to hear that.

---

[23] **Palko vs. Connecticut** 58 S. Ct. 149 (1937).

[24] **Benlon vs. Maryland** 89 S. Ct. 2056 (1969).

Nick DiSpoldo
Postcards from Prison
1992

Originally published in *Anarchy: A Journal of Desire Armed*; #34, Fall '92