

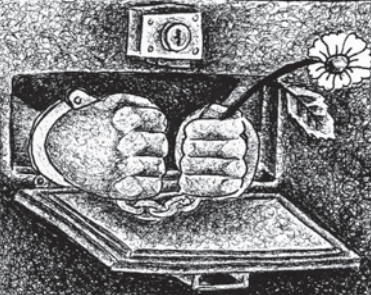
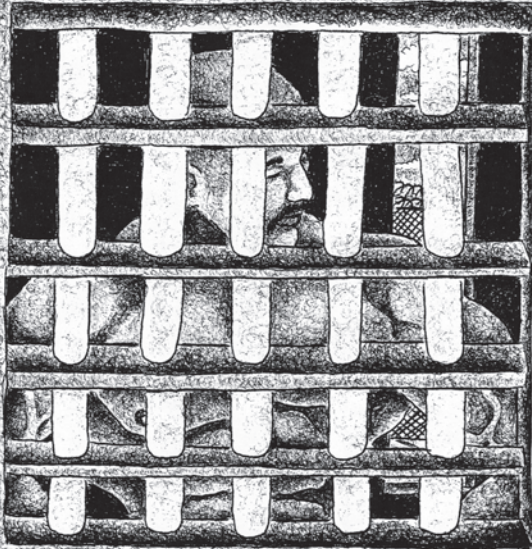


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LUCASVILLE

LUCASVILLE

THE UNTOLD STORY OF A PRISON UPRISING

Second Edition

STAUGHTON LYND

PM PRESS | 2011

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Jason Robb drew the pictures on the previous pages after he, and four other participants in the April 1993 uprising at the Southern Ohio Correctional Facility in Lucasville, Ohio, who had been sentenced to death, were transferred in May 1998 to the new super-maximum security prison in Youngstown.

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FOREWORD

Mumia Abu-Jamal

LUCASVILLE.

The name is evocative. People who hear it, who may know very little about its recent role in Ohio history, seem to recognize its penal roots.

It has become a site etched upon the American mind that means prison, like Sing Sing, Marion, or Lewisburg.

The name evokes an aura of fear, of foreboding, of something strangely sinister.

That this exists is a testament to how the state has set aside sites of invisibility; where people know, in fact, very little of substance; yet know enough to know that this is something to be feared.

Yet, Lucasville exists simply because millions of people, like you, the reader, allow it to exist. It exists in your name.

Amid the silence that greets its mention, is the silence of ignorance, an ignorance that serves the interest of the state, but not of the people.

Lucasville is written to dispel that silence, to go behind the walls erected by the state (and its complicit media), to show its true face. It reveals how and why a deadly riot occurred there, which snuffed out ten lives.

Yet, there is a reason why Lucasville is not the latter-day equivalent of Attica. The five men who are the focus of this work (who have been called the Lucasville Five) worked, against great odds, to prevent an Attica (where over thirty men perished when the state unleashed deadly violence against the hostages taken, and falsely blamed it on prisoners). They sought to minimize violence, and indeed, according to substantial evidence, saved the lives of several men, prisoner and guard alike.

Yet, as the saying goes, “no good deed goes unpunished.”

The record reflects that these five men could’ve been any five men, drawn from the burgeoning, overcrowded population of Lucasville. Why these five?

They didn't snitch. Or, to be more precise: they didn't lie.

Was the state actually soliciting lies when they talked to prisoners? According to the sworn affidavit of one John L. Fryman, two members of the Ohio State Highway Patrol made it abundantly clear what they were looking for when they came upon him as he lay, wounded, in the SOCF prison infirmary:

They made it clear that they wanted the leaders. They wanted to prosecute Hasan, George Skatzes, Lavelle, Jason Robb, and yet another Muslim whose name I don't remember. They had not yet begun their investigation but they knew they wanted these leaders. I joked with them and said, "You basically don't care what I say as long as it's against these guys." (From Chapter 5)

Several prisoners reported similar conversations. They learned to say what those guys wanted to hear. And the Lucasville Five were born.

What makes them remarkable is not just what they did in the hours of conflict and chaos (although, considering the possible alternative, it is indeed remarkable). They calmed men down, and demonstrated that the uprising was not racially motivated. They tried to provide mixed and collective leadership. They strove to keep the peace in a place designed for permanent turmoil. That Muslim and Aryan, Black and White, Country and Rural could see beyond these easy labels, and begin to perceive each other's humanity, is, in itself, a remarkable achievement, especially when all hell is breaking loose.

They rose above their status as prisoners, and became, for a few days in April 1993, what rebels in Attica had demanded a generation before them: men. As such, they did not betray each other, they did not dishonor each other, they reached beyond their prison "tribes" to reach commonality.

And therein lies the rub.

For the state fears few things more than "convict unity." The very premise of the prison is, in a way, a reflection of the guiding principle governing the larger society on the outside: division, conflict between races, classes, and genders. Divide and conquer.

They therefore had to make Hasan the *bête noire*, the boogieman. The Leader who Created Chaos.

Secondly, George Skatzes became a Public Enemy. Why,

one wonders? He wouldn't incriminate other guys. In a word, he wouldn't stand by his white-skin privilege, and dime out some brothers. The D.A. even hinted as much, telling the jury:

Mr. Skatzes had his opportunity and he chose not to take it. Had Mr. Skatzes taken it, . . . Mr. Skatzes would be up there on the witness stand testifying and Mr. Lavelle would be sitting over there [at the defendant's table].
(From Chapter 4)

George, at the time a member of the Aryan Brotherhood, had not followed the "rule" of white solidarity. He did not play the game.

That is his deadly crown.

One hundred and fifty years ago, a man named John Brown and a Black and White squad of armed men struck the armory at Harper's Ferry to strike a fatal blow against slavery. It is interesting that when Brown was captured and tried, he was charged with (among other things) treason.

Whom had he betrayed?

He betrayed deeply held notions of what whiteness meant.

About fifty years ago, when World War II was winding down, the U.S. government, at a military prison in France, appointed several upper-class German prisoners-of-war as guards over Americans who were being held there.

Imagine that: Nazi POWs, guarding U.S. Army prisoners, just days after they were both killing each other.

Such an historical event tells us all we need to know about class, and underlying ideology. Imagine what it meant to the German officers.

Imagine what it communicated to the American prisoners!

In prison, we see the outer society at its clearest and sharpest.

There are few illusions there.

Lucasville will hopefully destroy other illusions.

Death Row, Pennsylvania

INTRODUCTION

PROSECUTORS HAVE CALLED IT “the longest prison riot in United States history.”¹ More accurately, the Director of the Ohio Department of Rehabilitation and Correction (ODRC) refers to “the longest prison siege in U.S. history where lives were lost.” A 1987 rebellion at the United States Penitentiary in Atlanta seems to have lasted a few hours longer.²

The uprising took place in April 1993 in Lucasville, Ohio, a small community just north of the Ohio River. Two populations, approximately equal in size, confronted one another there. On the one hand were the maximum security prisoners at the Southern Ohio Correctional Facility (SOCF), mostly black, mostly from cities like Cincinnati and Cleveland. On the other hand was the all-white population of the town. Almost everyone in Lucasville worked at the facility or knew someone who did.³

In the course of the eleven-day occupation, one correctional officer, and nine prisoners were murdered by prisoners.

5



My wife Alice Lynd and I were living in northern Ohio at the time. Those eleven days in April 1993 coincided with the much-publicized siege of the Branch Davidian compound in Waco, Texas. We were barely aware of the Lucasville disturbance.

In 1996, my wife and I learned that a supermaximum security (or “supermax”) prison was being built in Youngstown. Alice organized a community forum at a church near the site to explore the question: What is a supermax prison? Jackie Bowers from Marion, Ohio, testified about the experience of twenty-three-hour-a-day isolation. She is the sister of George Skatzes, one of the five men condemned to death after the Lucasville events.

Alice and I became acquainted with “Big George,” whom we visited monthly for many years. We became increasingly convinced of his innocence and volunteered to assist his post-conviction counsel. As retired attorneys, we had more time than busy practicing lawyers to read 5,000- or 6,000-page transcripts. Little by

little we came to be researchers for several of the Lucasville Five defense teams.

Two things caught my attention from the outset.

First, there has been an extraordinary degree of solidarity among the five men condemned to death. They have shared legal materials to a greater extent than have their attorneys. They have expressed concern about one another's health problems. Together they have engaged in a series of hunger strikes protesting their burdensome conditions of confinement. Yet two of the five were at the time of the uprising members of the Aryan Brotherhood, an organization thought to endorse white supremacy, and the other three are African Americans. I sensed a dynamic quite different from the unchanging—even unchangeable—racism that many historians have recently ascribed to white workers in the United States. (See Chapter 7.)

Second, emotions in southern Ohio have run so strongly about the Lucasville events that truth has gotten lost in the shuffle.

The *Columbia Journalism Review* published an article about the irresponsible speculations of the media during the eleven days. According to the *Review*:

Glaring mistakes were reported as fact, and were never corrected. Reporters . . . vied for atrocity stories. They ran scary tales—totally false, it was later found—that spread panic and paranoia throughout the region.⁴

Among the examples recounted of bad reporting about the Lucasville uprising were these:

Six days into the riot a front-page story in the Cleveland *Plain Dealer*, citing anonymous sources, reported that along with seven inmate deaths nineteen other people in the prison had been killed, including “some pretty barbarous mutilations of the dead.”

A reporter for Channel 4 told viewers that as many as 172 bodies were piled up in the prison. This body count turned out to be a head count of inmates in one of the blocks not involved in the riot.

The *Akron Beacon Journal* reported about the murder of Officer Robert Vallandingham “that his eyes had been gouged out, that his back, arms and legs had been broken, and that his tongue had been cut out.” Not one of these details was accurate.⁵

Even on the 10th anniversary of the uprising, in April 2003, media coverage in Ohio dealt almost exclusively with persons

outside prison. The highest award given to Ohio correctional officers for bravery was renamed for Officer Vallandingham; his widow Peggy Vallandingham accepted the Vallandingham Gold Star Award for Valor in his name; and flags at Ohio prisons flew at half mast. News stories conveyed next to nothing about the men on Death Row.

This was not wholly the fault of the media. Applying what appears to be a permanent policy, in mid-February 2003 ODRC Director Reginald Wilkinson informed a reporter for the *Columbus Dispatch* that “no inmates convicted of riot crimes will be permitted to speak to us.”⁶

I write as both an historian and a lawyer. Both professions claim to be devoted to the search for truth. And because historians and lawyers commonly turn their attention to facts after they have occurred, one might suppose that history and law would correct the mistakes of journalists reporting in the heat of the moment.

Yet from the point of view of an historian, official narratives about what happened at Lucasville are disturbing in many ways. For example, an historian writing about these events would almost certainly begin by exploring the causes of the riot. But as I will explain more fully in Chapter 8, in the Lucasville capital cases the defense was forbidden to present such evidence while the prosecution was permitted to expand on this theme at length.

Indeed, my belief in the integrity of truth-seeking in the law has been shaken by the Lucasville judicial proceedings. I have come to feel that the idea that the adversary process promotes truth-seeking may be as misleading as the assumption that the free market competition of profit-maximizing corporations will produce adequate public health.

In what follows I present the facts of the Lucasville disturbance as best I can discern them. This is the untold story that the State doesn’t want you to hear.



A central thesis of this book is that the State of Ohio and its citizens need to face up to the State’s share of responsibility for what happened at Lucasville.

It might be argued that the authorities have already conceded their part in the sequence of cause and effect. After the rebellion, prisoners not involved in the disturbance sued State defendants

for negligence in connection with the rebellion. The prisoners' suit alleged in part:

17. In 1990, following an investigation at SOCF, a State Senate Select Committee determined that the security policy and procedures at the institution were "woefully inadequate," and recommended various reforms . . .

18. Also in 1990, in order to rectify overcrowded conditions and to maintain proper security within SOCF, defendants . . . announced the implementation of "Operation Shakedown" pursuant to which the entire population of the prison was to be single-celled.

19. As of April 11, 1993, single celling had not yet been instituted at SOCF; one thousand eight hundred and twenty (1,820) inmates were still housed in the prison (a number far in excess of the institution's design capacity).

Rather than defend against these and other allegations, the authorities settled with the prisoners for 4.1 million dollars.⁷ The correctional officers taken hostage, together with the widow and son of Officer Vallandingham, likewise sued the authorities "for numerous torts before and during the siege." The State once again settled, for more than \$2 million.⁸

In addition to the State's role in causing the riot, there were several ways in which the State's negotiators heightened the peril for the correctional officers held hostage in L block. As I will demonstrate in detail in Chapter 3:

Sergeant Howard Hudson, who was present throughout the negotiations, conceded that negotiators for the State deliberately stalled;

On April 12, apparently in response to communication between prisoners and the media, Warden Tate cut off water and electricity in L block. This action unnecessarily created a new issue between the occupiers and the authorities, failure to resolve which was the occasion for Officer Vallandingham's murder;

On the morning of April 14, a media spokesperson named Tessa Unwin denigrated the prisoners' demands and said that the prisoners' threat to kill a guard was just part of the language of negotiation. Officer Vallandingham was killed the next day while an anguished George Skatzes, negotiating over the telephone, pleaded with the authorities to restore water and electricity.

None of this impressed the Supreme Court of Ohio. In affirming one of the death sentences, the Court stated:

Nor was DRC's alleged refusal to "negotiate in good faith" relevant in the guilt phase. Let us be clear: The authorities in lawful charge of a prison have no duty to "negotiate in good faith" with inmates who have seized the prison and taken hostages, and the "failure" of those authorities to negotiate is not an available defense to inmates charged with the murder of a hostage.⁹

I believe these words to be profoundly misguided. To be sure, the authorities negotiated under duress. Moreover, if Sergeant Hudson and Ms. Unwin helped to cause the death of Officer Vallandingham, this of course does not mean that the leaders of the uprising were necessarily free of guilt.

What I nonetheless find unacceptable in the decisions of the Ohio Supreme Court is the attitude that prisoners in rebellion are "enemy combatants" toward whom the authorities have no obligations at all. For example, one Court of Appeals held that under the plain language of the law existing in 1993 the State had illegally eavesdropped on the conversations of prisoners in L block, and that this crucial evidence should therefore have been excluded at trial. On further appeal, the Ohio Supreme Court held that enforcement of the statute for the benefit of rioting prisoners would be "absurd." (See Chapter 6.)

Such a holding, and the attitude prompting it, oversimplify a tangled sequence of cause and effect. Perhaps the law itself is prone to such rigidity. Perhaps legal practitioners are driven to view the world superficially by the desire to win. History, with its constipated academicism, has serious problems of its own. But history at least stands for the proposition that an event can have more than one cause, and that sometimes what happens in life is not a melodrama, but a tragedy in which we all have played a part. Is it too much to ask that before sending five more men to their deaths, we pause and seek to determine what really happened?

Finally, there is the misconduct of the State after the prisoners surrendered on April 21. At that point in time, the agency charged with investigating what had occurred—the Ohio State Highway Patrol (OSHP)—and the special prosecutorial team appointed to try the Lucasville cases were free to act calmly and with circumspection.

However, as I demonstrate in Chapters 4 and 5, in the absence of physical evidence the State through its various agencies targeted those whom it believed to have led the uprising and built cases against them by cutting deals with prisoners willing to become informants. The government threatened prisoners with death if they declined to “cooperate.” I believe I can show that the prosecution put witnesses on the stand to offer testimony that the State knew to be false. Like Emile Zola in his celebrated exposé of the Dreyfus case, I conclude that the State of Ohio deliberately framed innocent men. See Staughton Lynd, “*Napue* Nightmares: Perjured Testimony in Trials Following the 1993 Lucasville, Ohio, Prison Uprising,” *Capital University Law Review*, v. 36, no. 3 (Spring 2008), pp. 559–634.

I argue that Ohio should be guided by the experience of the State of New York after the rebellion at New York’s Attica prison in 1971. In New York during the years 1975–1976 it came to light that prisoners had been induced to present perjured testimony, and that prosecutors were intentionally suppressing evidence of misconduct by State personnel during the assault on the prison. In the end, New York Governor Carey declared an amnesty for all persons involved in the Attica tragedy—both prisoners and persons involved in the State’s assault on the recreation yard—and extended clemency to prisoners who had already been convicted, or who had previously entered into plea bargains.

I believe that Ohio should do likewise. I believe there is a pattern of prosecutorial misconduct that should cause Ohio’s governor to pardon all Lucasville defendants found guilty of rebellion-related crimes.



It remains to thank the many persons who have helped me to bring this book to the light of day.

They include Frances Goldin, friend, literary agent, and negotiator extraordinaire; Peter Wissoker, the encouraging acquisitions editor for Temple University Press; and Ramsey Kanaan, editor of PM Press, which published this second edition. Three academics to whom the manuscript was sent for peer review provided helpful comments. I am deeply obligated to a number of lawyers, among them Attorney Niki Schwartz, who represented the prisoners in L block in settlement negotiations at the end of the disturbance;

Attorney Dale Baich, who worked on the Lucasville cases while employed by the Office of the Ohio Public Defender; Attorney Richard Kerger, one of the defense counsel for the supposed principal leader of the rebellion, Siddique Abdullah Hasan; Attorney Palmer Singleton of the Southern Center for Human Rights, which represents capital defendants in Georgia and Alabama; and Professor Jules Lobel of the University of Pittsburgh School of Law. I am solely responsible for all errors that nevertheless remain in the text.

In addition to the five men condemned to death, at least eighteen prisoners contributed relevant memories, documents, and insights. I have not named them lest doing so expose them to retaliation. They know who they are and they will find their contributions in these pages. In most cases, the information provided to me offered no benefit to the prisoner who shared it. In at least one instance, a prisoner conveyed information to clear his conscience at considerable peril to himself.

Like the women who attended Jesus at the cross after the disciples fled, Jackie Bowers provided whatever assistance was in her power to give.

Most of all I am indebted to seven persons who labored with me as an ad hoc editorial collective to try to find the truth about these complex events.

First is my wife, Attorney Alice Lynd. She spent approximately three years pouring over the transcript of the capital proceedings against George Skatzes, indexing and cross-indexing, and identifying issues for appeal. Later her time was almost wholly taken up by litigation concerning conditions at the supermax prison in Youngstown after it opened in 1998. Most of the prisoners who were found guilty of crimes or rule violations connected with the Lucasville uprising, including those sentenced to death, have been housed at the supermax. The pool of prisoner witnesses to what happened in 1993 was thus near at hand. And Alice has had an uncanny ability to retrieve documents that I knew I had once examined but thereafter seemed to have disappeared.

The five men condemned to death—the “Lucasville Five”—have been extraordinary collaborators. Throughout the process each of these men has been confined alone in a small cell, with little access to any of the others. A meeting between myself and all five around a table has never been permitted. Disagreements among the Five could not be ironed out face to face. Prison mail

presented many frustrations. Despite these physical obstacles, all five have shared their legal papers with each other and with me, responded to my requests, and reviewed the manuscript in various stages of its preparation. One at a time, I would probe their recollections, considering documents which very often they had provided. When I have come to conclusions different from what some of these men remember, we have discussed those differences with mutual respect and tried to establish the truth. I alone remain responsible for what is set forth herein.

Mumia Abu-Jamal has played a special role. He is probably the best-known prisoner in the United States, if not in the world. The period during which I put this book together was a time during which Mumia and his attorneys were in the midst of cross appeals from the decision of a federal judge who had for the moment set aside Mumia's death sentence (although he remained on Pennsylvania's Death Row), but left the jury verdict of guilt intact. Mumia stepped back from these pressing personal concerns to help with this book.

Mumia knew of George Skatzes, and there existed respect at a distance between the former Black Panther who had remained silent about the events surrounding the death of Officer Faulkner in Philadelphia, and the former member of the Aryan Brotherhood who had declined the State's invitation to accuse other prisoners of murdering Officer Vallandingham. (See Chapter 5.) Mumia said that he thought the book was "doable." Pennsylvania prison regulations prohibited direct correspondence between Mumia and the Lucasville Five, but through me, he offered encouragement.

Mumia's views about the Lucasville uprising are set forth in the Foreword to this second edition.

In that Foreword, Mumia contrasts what happened at Lucasville with the much greater loss of life at Attica in 1971. Like myself Mumia is particularly struck by the extent to which these five men overcame "easy labels"—Muslim and Aryan, black and white—and began to perceive each other's humanity.

They rose above their status as prisoners, and became, for a few days in April 1993, what rebels in Attica had demanded a generation before them: men. As such, they did not betray each other; they did not dishonor each other; they reached beyond their prison "tribes" to reach commonality.

I concur. I dedicate this book to all persons, in whatever country, on Death Row for political reasons.



In May 2010, as Alice and I prepare this second edition for the printer, all of the Lucasville Five remain alive. However, Ohio is executing one Death Row prisoner every month and future executions are scheduled into 2011. Ohio Supreme Court Justice Paul E. Pfeifer has stated: “There are probably few people in Ohio that are proud of the fact we are killing people at the same pace as Texas. When the next governor is sworn in, I think the state would be well-served if a blue-ribbon panel was appointed to look at all those cases.” See “Death Row cases should be reviewed, justice says,” *Columbus Dispatch*, May 15, 2009.

Meantime, the legal profession and the courts have begun to repudiate capital punishment as administered in Ohio and throughout the United States. In September 2007, a committee of the Ohio Bar Association found that the death penalty process in Ohio did not meet minimum standards of due process. In August 2009, the United States Supreme Court remanded for a new hearing in a district court the conviction of Troy Davis, who, like the Lucasville Five, was sentenced to death wholly on the basis of unreliable “snitch” testimony. And in October 2009 the American Law Institute, a prestigious body of lawyers, law professors and judges, decided to withdraw from their Model Penal Code the provisions governing use of the death penalty on the ground that no conceivable procedure could avoid the arbitrary and discriminatory results of the present system.

Niles, Ohio
May 2010

CHAPTER ONE A LONG TRAIN OF ABUSES

THE UPRISING AT THE Southern Ohio Correctional Facility (SOCF) in Lucasville began on Easter Sunday, April 11, 1993. As prisoners returned from recreation in the yard at about 3 p.m., they overpowered correctional officers on duty inside L block. After the release of certain badly injured officers, eight continued to be held as hostages.

In the course of the occupation, two more hostages were set free and one was murdered. Eventually, with the help of Attorney Niki Schwartz, the State and the prisoners came to a 21-point agreement. On Wednesday, April 21, 1993, 407 prisoners surrendered and the five remaining hostages were released.

In subsequent legal proceedings, three negotiators and spokespersons for the prisoners—Siddique Abdullah Hasan, formerly known as Carlos Sanders (hereafter “Hasan”), Jason Robb, and George Skatzes—were found guilty of the aggravated murder of Officer Robert Vallandingham. So was Namir Abdul Mateen, also known as James Were (hereafter “Namir”). All four were sentenced to death, along with Keith Lamar, alleged to have organized a “death squad” that killed five supposed prisoner informants in the early hours of the uprising. Hasan and Namir are Sunni Muslims, Robb and Skatzes were at the time members of the Aryan Brotherhood.

As this book goes to press, the five capital cases are making their way through the courts. Hasan, Robb, Lamar and Skatzes are at the last (federal habeas corpus) stage of appeals.

King Arthur

What makes human beings rebel?

Often rebellion seems not to be in the personal interest of the insurgents. This was true in Philadelphia in 1776, where Benjamin Franklin is said to have joked about the need for the signers of the Declaration of Independence to hang together lest they hang separately.¹ It was equally true in Lucasville, Ohio, in April 1993. At least two of the five men later sentenced to death for their alleged

roles in the uprising were within sight of release from prison when the “riot” began. Hasan, the supposed mastermind of the rebellion, was in the SOCF honor block.

The words “a long train of abuses” come from the Declaration of Independence. I draw on that history because the American Revolution is the rebellion about which I know most. I taught students about the American Revolution at Spelman College, a college for African American women in Atlanta, and at Yale University. I tried to ask hard questions such as: Why did some tenant farmers support the patriot cause while others hoped for a British victory? (Answer: It depended on the politics of your landlord. You opposed what the landlord was for, in the hope that if he lost you could obtain ownership of your farm.) Why did city artisans, who were radical Sons of Liberty before 1776, vote in 1787 for a constitution drafted by conservatives like Alexander Hamilton? (Answer: Before and after independence, the artisans were concerned to keep British manufactured goods out of America.) And how did it come about that these advocates of inalienable human rights set up a government for the new nation that protected slavery? (Answer: Both Northerners and Southerners expected that population in their part of the country would grow more rapidly. Each section anticipated that it would come to dominate the Congress and could then resolve the issue of slavery in its own interest.)

In writing about the Lucasville uprising I have viewed it as a rebellion like the American Revolution. I am encouraged in making the comparison by the following words from the country’s leading authority on prison riots, Bert Useem:

the principles underlying collective behavior against authorities appear to be fundamentally the same whether one is examining revolution against monarchies and empires or riots against prison authorities.²

So what made prisoners at Lucasville rebel? What were the causes of the uprising?

To answer these questions, we must turn to certain studies conducted both before the disturbance and after it ended; to deposition and court testimony, especially in a subsequent civil suit by victims of the rebellion; and to the collective memory of the rebels themselves.

The drafters of the Declaration of Independence charged King George III with “a long train of abuses” against their rights. Similarly, prisoners at Lucasville had multiple grievances against Warden Arthur Tate, whom they called “King Arthur.”

The Southern Ohio Correctional Facility in Lucasville was opened in September 1972 to replace the Ohio Penitentiary in Columbus, where there had been riots in 1968.

According to John Perotti, who was then a prisoner at SOCF, “Luke” came to have the reputation of being one of the most violent prisons in the country.³ Prisoner Emanuel “Buddy” Newell, testifying in the trial of a fellow prisoner after the surrender, agreed. When he heard the commotion begin in L block on April 11, he said, he first assumed that it was a “normal fight.”

Q. When you say a “normal fight,” what are you talking about?

A. You know, just inmates, just some inmates fighting, maybe two or three inmates fighting.

Q. Okay.

A. Officers trying to break it up, like all the time.

Q. Is that uncommon at Lucasville?

A. No.⁴

Perotti says that most of the guard on prisoner brutality took place in J block, which housed Administrative Control and Disciplinary Control (“the hole”). In 1983, Perotti continues, twelve guards beat to death Jimmy Haynes, a mentally disturbed African American prisoner. While nurses stood watching, one guard jumped on Haynes’ neck while another guard held a nightstick behind it. Two other black prisoners, Lincoln Carter and John Ingram, were alleged to have touched white nurses. They were beaten by guards and found dead in their cells in the hole the following day.⁵ No criminal charges were pressed.

A group of prisoners known as the “Lucasville 14” sought to give up their United States citizenship and to emigrate to other countries. Three of these prisoners cut off one or more fingers and mailed them to the United Nations and Department of Justice to prove that they were serious. The United States refused to allow them to renounce citizenship.⁶

Some prisoners organized a branch of the Industrial Workers of the World to demand the minimum wage for prison labor, Perotti relates. The courts rejected this demand. Perotti also helped

to prepare a thirty-eight-page petition to Amnesty International. The petition described instances in which prisoners were chained to cell fixtures, subjected to chemical mace and tear gas, forced to sleep on cell floors, and brutally beaten, all in violation of United Nations Minimum Standards for the Treatment of Prisoners. The authors were charged with “unauthorized group activity.” The petition was confiscated as contraband.

In 1989, Warden Terry Morris asked the Correctional Institution Inspection Committee (CIIC)—a committee of the Ohio legislature—to prepare a summary of concerns about SOCF to be used by him in discussions with Unit Managers and Department Heads.⁷ The CIIC based its response on letters from 427 different SOCF prisoners received between August 21, 1987 and November 16, 1989. A hundred eighty (42 percent) expressed concerns about personal safety. The CIIC report mentioned murders of prisoners Tim Meachum in December 1988 and Billy Murphy in January 1989, and the stabbing death of prisoner Dino Wallace.

In more than 100 subsequent interviews with CIIC staff, prisoners—years before April 1993—“relayed fears and predictions of a major disturbance unlike any ever seen in Ohio prison history.”

It was alleged that knives have been and can be bought or provided from staff, and that a staff person allegedly provided a gun that is reported to be hidden in the institution (whereabouts unknown). Inmates claimed of staff approaching them with suggestions or offering to make it worthwhile if they would stab another inmate. Certain inmates are reportedly allowed to stash or transport knives. One victim of a stabbing claimed that he knew it was coming, because of a reported pattern in such matters. His cell was targeted for daily consecutive shake downs reportedly to ensure that he had no weapon when the inmates stabbed him. A security staff person reportedly apologized to him afterwards, explaining that he has a family. Incidents were cited in which staff reportedly were present when verbal death threats were relayed from one or more inmates to another, (in one case when the inmate also displayed his knives by raising his shirt) yet staff were reportedly silent. In another case, after a stabbing, a staff person reportedly approached the inmate who stabbed the inmate and said, “Why didn’t you kill the son of a bitch?”⁸

Another prisoner at SOCF in those days, part-Native American “Little Rock” Reed, describes what led to the appointment in 1990 of a new warden, Arthur Tate.⁹

There was a horrible incident in which a mentally unstable prisoner killed a beautiful young school teacher named Beverly Taylor, who was helping prisoners to achieve their GEDs. The prison administration had carelessly assigned him to work as the teacher’s aide, where he would be alone with her at times, without supervision. The prisoner took her hostage and cut her throat with a coffee can lid, nearly ripping her head from her shoulders. Local citizens gathered in front of the prison demanding that prisoners be stripped of all privileges, holding placards that said “Kill the killers.” They didn’t know that most prisoners thought highly of Beverly Taylor and sincerely mourned her death.

As a result of this tragedy, in 1990 Arthur Tate was transferred from Chillicothe to Lucasville as the new warden. King Arthur began “Operation Shakedown.” The prison was placed on lockdown [“lockdown” means confinement of each prisoner in his cell]. Guards came into each cell block, armed in full riot gear, and tore the cells to pieces. Prisoners could only stand and watch as the guards intentionally destroyed personal property, such as our family photographs.

SOCF housed both maximum security prisoners and prisoners classified “close security,” a status intermediate between “maximum” and “medium.” However, prisoners agree that once Arthur Tate became the warden, the whole complexion of the penitentiary changed for everyone imprisoned there.

One of the Lucasville Five, Keith Lamar, remembers that Tate “immediately scrapped all the programs, supposedly as a way to cut down on inmate traffic. Lines were painted on each side of the hallway floors, and we were ordered to stay within those lines as we walked—military style—to and from the kitchen, gym and work areas.”¹⁰

Chrystof Knecht, another Lucasville prisoner, has similar memories.

Under Tate’s regime, SOCF prisoners were told how and when to eat, sleep, talk, walk, educate, bathe and

recreate. Privileges were taken away on a regular basis. New rules were enforced daily, disregarded, then re-implemented weeks later.

Bill Martin, still another prisoner at SOCF, thinks the “most bizarre” rule was the one “requiring prisoners to march to chow, recreation, chapel, work, school, commissary, etc.” King Arthur not only wanted prisoners to walk within the lines “but walk in double-file formations. Prisoners who hated each other were forced to march next to each other. Everybody deeply resented this.” According to Martin, there were repeated massive shake-downs of prisoners’ personal property, and constant transfers of prisoners from one part of the facility to another.¹¹

Snitch Games

A prisoner who becomes an informant is known behind bars as a “snitch.” In its report to Warden Morris, the Correctional Institution Inspection Committee concluded that the main concern of SOCF administrators should be “snitch games.”

It [snitch games] was the common denominator reported to be related in one way or another to past or present circumstances of the large majority of inmates. They spoke of the relationship between snitch games and unit management, violence, gangs, racial tension, drug, gambling, sex and extortion rings, job assignments, cell assignments, unit moves, lack of personal safety, fear of other inmates and distrust of staff.¹²

According to Keith Lamar and an influential Muslim prisoner, Taymullah Abdul Hakim also known as Leroy Elmore, after Warden Tate’s appointment SOCF continued to encourage “snitches.”

[T]he only way you could work where you wanted to work, or cell where you wanted to cell, was to be in cahoots with the administration. This served to increase the snitch population exponentially.

Taymullah declares that Tate “promoted informing on guards and prisoners. Prisoners were fitted with ‘wires’ (recording instruments) and sent at guards to entrap them in criminal activities. Flyers were printed up instituting a ‘snitch line’ where prisoners

and visitors could write to inform on criminal activities inside Lucasville.”¹³

Warden Tate’s invitation to snitch is contained in a memorandum, a copy of which is before me as I write. It is dated May 31, 1991, and directed to “All Inmates And Visitors.” The memo states in part:

Due to my concern about violations of laws and rules of this institution, I feel it necessary to make myself available for persons wishing to pass this information on to this office concerning these things. . . . I have established a post office box at Lucasville, Ohio for information which could assist our departmental efforts in eliminating violation of institutional rules and criminal conduct. Your letter will be intercepted by this office and will not be processed through normal institutional mail. Your information will be held in strict confidence. . . . The address is as follows: Operation Shakedown, P.O. Box 411, Lucasville, Ohio—45648.

Prisoners view snitches much as striking workers perceive scabs, only more so. It should not have come as a surprise that at least eight of the nine prisoners later killed in the uprising were prisoners perceived by other prisoners to be “snitches.”

L'État C'est Moi (I Am the State)

What did Warden Tate intend by all these changes? In a document entitled “Situation at the Southern Ohio Correctional Facility as it led up to the riot,” dated July 5, 1993, an anonymous prisoner states that he believes that Tate would have liked to lock down the whole institution permanently “and make it another Marion, Illinois super-max” (a prison in which prisoners are confined in single cells for twenty-three or more hours a day).

There is evidence for this theory that Warden Tate wanted to make Lucasville into a supermax. The most comprehensive of the post-uprising studies, Southern Ohio Correctional Facility: Disturbance Cause Committee Findings (sometimes called “the Mohr Report” after its chairperson, Gary Mohr) contains in its appendix a memorandum dated March 22, 1993, twenty days before the uprising began. The memo is from Tate to Eric Dahlberg, South Region Director. It is entitled “Request to Construct a Maximum Security Unit at SOCF.” Although Tate speaks of constructing a “maximum security” unit within SOCF, SOCF was

already for the most part a maximum security prison and his request must be understood to seek supermaximum conditions of confinement. The memo states in part:

Over the past several months I have expressed my concerns relative to the need for a maximum security unit at this facility which is suitable to house those prisoners who are high security risks requiring maximum levels of supervision as well as a physical structure designed to effectively house them. . . . [I]nmates in the highly assaultive, predatory category requiring maximum security confinement, will continue to increase due to lengths of sentences.

Recognizing that the Department was unable to finance the construction of a new, totally supermaximum security prison at that time, Tate asked permission to build a “high security unit” at SOCF.

Whether or not Warden Tate consciously wanted to turn SOCF into a supermax, it is certain that he self-consciously insisted on absolute obedience to his decisions, be they right or wrong. Like Bourbon kings before the French Revolution, he acted as if he believed that “I am the State.” Bill Martin offers an example of Tate’s mindset.¹⁴

King Arthur followed Otto Bender’s advice of closing all the windows during the summer because SOCF was designed to have a flow-through ventilation system to keep the institution cool. Without any investigation, King Arthur signed Bender’s decree which ordered all the windows closed. . . . My supervisor, Pat Burnett, subsequently went into King Arthur’s office and inquired about his “window decree.” King Arthur . . . had the institution’s blueprints on his desk and, as he was gently patting them, he told Burnett, “I have it all right here. The institution was designed with flow-through ventilation. It will keep the institution cooler if the windows are kept closed.” Burnett then informed King Arthur that the flow-through ventilation will not work because most of the blowers on the roof are burnt out. . . . [You would think that King Arthur would have rescinded] his “window decree.” But he did not want to appear foolish so we all suffered through a very hot summer.

As will be shown below, similar hard-headedness about the best way to test for tuberculosis was the trigger, or straw that broke the camel's back, in causing the April 11 uprising.

Overcrowding, Double-Celling and Transfers (or Lack Thereof)

A prison is a good deal like a factory. Prisoners, like workers “on the street,” may have some voice in small decisions. But just as workers—even unionized workers—are not allowed to have a say about decisions to close the plant, merge with another company or move the machinery to Mexico, so prisoners have no input in decisions about the security level of a prison, who should be retained and who transferred, and how many prisoners the facility will be permitted to house.

Lucasville was designed to house 1,540 prisoners. On April 11, 1993, when the uprising began, the prisoner population was 1,820 with 804 prisoners double-celled. Moreover, 75 percent of the prisoners at the highest security level were double-celled. According to the Mohr Report, “double celling of the inmate population was voiced by a vast majority of both staff and inmates as a cause of the disturbance.”¹⁵

Overcrowding at SOCF in 1993 was the result of shortsighted decisions by the Ohio Department of Rehabilitation and Correction concerning classification and transfer. After Warden Tate's appointment late in 1990, SOCF made some progress in reducing overcrowding by transferring prisoners to other institutions, especially to the Mansfield Correctional Institution (ManCI) in north central Ohio. Had SOCF become and remained a single-celled institution—as is recommended by the National Institute of Corrections for maximum security prisons—problems resulting from both double-celling and forced racial integration could have been avoided. But an officer was killed at ManCI, and ManCI was reclassified as a “close” rather than “maximum security” institution. As a result, between June 1992 and April 1993, 293 prisoners were transferred from ManCI to SOCF.¹⁶ They were young and, according to prisoner Keith Lamar, “unruly”; 96 percent of them were classified maximum security.¹⁷

Meantime, getting out of SOCF became very difficult. The Mohr Report found that between January 1992 and April 1993, when the uprising began, 75 percent of the prisoners recommended by SOCF staff for reduction to medium security (and

thus, for eventual transfer out of SOCF) were rejected by the Department's Central Office in Columbus "with no reasons provided for the rejection."¹⁸

George Skatzes recalls his personal experience. While imprisoned at SOCF in 1985 or 1986 he was found guilty of possessing one joint of marijuana and \$40, and told that he would have to do five more years at SOCF. At the end of the five years he met with the Lucasville classification committee. The chairperson said, "You are eligible to transfer. Where do you want to go?" Since his sister and other relatives live in Marion, Ohio, George replied: "Marion." But he was turned down by Columbus without explanation.¹⁹

The inability to transfer created hopelessness among SOCF prisoners. So did the fact that prisoners were permitted only one five-minute telephone call per year, at Christmastime.²⁰ The prison grievance procedure offered no practical relief. Already in 1989 the CIIC reported that "many inmates will not use the grievance procedure due in large part to reported retaliation by staff." In 1991, after Warden Tate's appointment, prisoners told CIIC investigators that staff "always take the word of staff over inmates," and expressed exasperation and anger that prisoners were not permitted to call other prisoners as witnesses and that appeals were reportedly always denied.²¹

The Trigger: TB Testing by Injection

The triggering event that led to the uprising, all accounts agree, was Warden Tate's insistence on testing for TB by means of injecting under the skin a substance that some Muslims objected to, believing that it contained alcohol. They tried to tell Tate that their religion, as interpreted by the religious authorities to which they adhered, forbade this, and asked him to consider TB testing by X-ray or sputum sample.

The Sunni Muslims at SOCF who told Warden Tate that they would refuse to take the TB test by injection were followers of the Hanafi Math-hab as expounded by the Council of Theologians in Port Elizabeth, South Africa. Ohio prison authorities consulted the Islamic Council of Ohio and the Islamic Center of Greater Toledo as to whether "Islam" forbade the injections. But as the South African center remonstrated:

The Ohio Department of Rehabilitation [and Correction] was aware of the fact that the Sunni Muslims

do not follow the Islamic Council of Ohio nor the Islamic Center of Greater Toledo. This fact is confirmed by Arthur Tate's letter dated 7th April 1993 to Eric Dahlberg, South Region Director. Now when the prison authorities were aware of the religious affiliation and allegiance of the Sunni Muslims, why did they seek advice and direction from those who they know are not acceptable to the Sunni Muslims? Will it be proper for the prison authorities to seek advice from the Roman Catholic Church in matters affecting Anglicans? Will it be proper and reasonable to seek direction from the Anglican Church to ascertain the beliefs of members of the Jehovah's Witnesses or of some other Christian sect? Just as it will be incorrect to do so, so too, is it improper to refer to those who are not acceptable to the Ahlus Sunnah. The prison was fully aware that the Sunnis follow our Council.²²

On Monday, April 5, 1993, there took place a summit meeting between Warden Tate and his staff and three Muslim prisoners: Hasan, Taymullah Abdul Hakim also known as Leroy Elmore, and Namir. The following dramatization is based on an article by Taymullah and a "synopsis" by Hasan.²³

WARDEN TATE. I am Warden Arthur Tate, Jr. This (pointing to each in turn) is Deputy Warden Roger E. Roddy; Deputy Warden Bill G. Seth; Captain Earl P. Kelly; and Chaplain Warren Lewis.²⁴ Weren't passes sent out for five of you?

HASAN. Only three of us are able to honor our passes. Cornelius Barnes and Isaac Hughes are in segregation. I am Siddique Abdullah Hasan, whom you call Carlos Sanders. This (pointing to each) is Taymullah Abdul Hakim, also known as Leroy Elmore; and Namir Abdul Mateen, or James Were.

TATE. My staff has informed me that 159 inmates have refused to take the TB test. The largest group out of this 159 are Muslims. That is why I singled you out to send passes to. The TB test is a health issue. It is mandatory that all prisoners be tested. There will be no exception or deviation from this rule. I understand that the Muslims' objections to taking the test are religious, and based on a letter that you received from your leader in Port Elizabeth, South Africa. Your concerns have been put forth to Central Office and they, in turn, have contacted various Muslims from the Ohio

area. All the religious leaders stated that there was nothing religiously wrong with Muslim inmates taking the TB test.

Therefore, we will be testing all inmates. I expect the Muslims to cooperate. If I allow the Muslims to deviate from taking the test, then the Aryan Brotherhood and other groups will want to deviate from institutional policies. I cannot tolerate that in my prison.

Sanders, do you have anything to say?

HASAN. I have nothing to say. You have already said what is going to happen and I see no reason to waste my breath.

TATE. This is a meeting. I want to hear what you have to say.

HASAN. This is not a meeting where what we say makes a difference. It is a meeting where you are being a dictator, and have adopted a hardline approach. You are not being sensitive and understanding toward our leadership position on the test.

TATE. Elmore, what do you have to say?

TAYMULLAH. The test is unlawful for us to take. We have no intention of taking it, for we would be guilty of a sin. However, if someone forces us to take the test, we will be absolved of the sin.

CHAPLAIN LEWIS (smilingly). How much force would have to be applied in order for you to be absolved of the sin?

TAYMULLAH. This is not a joking matter. The bottom line is we are not going to take the test.

TATE. Elmore, what will you do if one of my officers grabs you and tries to give you the test?

TAYMULLAH. I can't say what I will do. You do what you have to do and we will do what we have to do. If I were to tell you, "If one of your officers puts his hands on me I will physically strike him," I know for a fact that you would put me in the hole before I could even leave this so-called meeting.²⁵ Again, all I can tell you is that it's not permissible for us to take this test.

NAMIR. I do not trust the prison officials to test us. You have a reputation for using us as guinea pigs.

TATE. Mr. Roddy, when will you finish testing the inmates that are HIV positive?

RODDY. By Friday, April 9.

TATE. Then we will be ready to start testing you early next week. I hope you will change your minds.

As Hasan puts it, when those present rose to leave “the vibes were somewhat tense.”

On Wednesday, April 7 Hasan sent the Warden the following message:

In spite of what the modernist and westernized Muslims say, the TB substance is unlawful for a Muslim and an infringement on his right.

A person can be tested positive or negative by taking an X ray test and/or spitting into a cup. Hence, we have no legal objections to this form of testing, and pray to the Most High that you and your staff will accommodate us in this form of TB testing.

In closing, I was informed that the above optional policy was instituted at Mansfield Correctional Institution.

We thank you in advance for your time, consideration and mutual cooperation in being of any assistance to the Muslim body here.

We anxiously await your response.²⁶

Physicians have confirmed to this writer that, from a medical point of view, Hasan’s was a perfectly reasonable request for accommodation. Robert L. Cohen, M.D., a physician with extensive experience in monitoring medical care in prisons, states:

The purpose of screening for tuberculosis in a prison is to identify active cases of tuberculosis, so that these prisoners can be isolated and treated. The PPD, an intradermal injection of killed tuberculosis bacteria, is a screening test. If it is positive, it means that the person was exposed to tuberculosis at some time [in his or her] life. It does not mean that they currently have active tuberculosis. If the PPD test is positive, then a chest X-ray must be obtained to determine if the person has active tuberculosis. If the chest X-ray is normal, they do not have active tuberculosis. If tuberculosis is suspected, based upon a chest X-ray, the person should be isolated, and sputums collected to identify and culture the tuberculosis bacteria, if it is present.

If the PPD test is positive, and the chest x-ray is negative, then the person does not have active tuberculosis. The PPD test can also be falsely negative in persons with pulmonary tuberculosis. This can occur in persons with overwhelming tuberculosis infection, or much more commonly, in persons with severely compromised immune systems,

such as that found in patients with advanced AIDS. The PPD test can also be falsely negative if it is improperly placed. All experts in the field agree that improperly placed, and improperly read, PPD tests are common.

For this reason, some experts in the field of correctional health care have argued that the best approach to screening for and identifying cases of tuberculosis among prisoners is accomplished by obtaining chest x-rays. This is the procedure in Chicago and Los Angeles.

Many prisoners have voiced the same religious objection to PPD testing in other states, and in these situations [the authorities] have usually agreed to have a chest x-ray. There is no risk to any who live and work in the prison if tuberculosis screening is performed by chest x-ray. In fact, the chest x-ray is a more sensitive and specific test for tuberculosis screening in prison.²⁷

The Warden's decision to lock down the prison and, if necessary, forcefully to inject resistant prisoners in their cells, was also criticized at the time from the point of view of good prison administration.

SOCF Deputy Warden David See stated in deposition that he had been on vacation the week before the uprising. When he heard about the plan to lock all prisoners in their cells and perform the TB injections there, See called Warden Tate.

I told him I didn't think we should go cell to cell down in the inmate's house and do the tests in front of his peers because it gave the inmate no way out. . . . I felt that we should bring them one at a time up to the infirmary.²⁸

Later, in Hasan's trial, Deputy Warden See was forbidden to testify about his successful experiences in testing prisoners for TB in the infirmary, rather than in their cells.

MR. OTTO. Deputy Warden See would have testified that in '82 and '83 he ran a series of tuberculosis tests that involved bringing people to the infirmary. It was non-confrontational. Of 120 initial refusals, there were only five people actually thrown down and tested

[H]e would also have testified that two or three days before the riot kicked off, he was on vacation; that he had

a telephone conversation . . . with Warden Tate, and in that conversation he described that method and suggested that this would be a more peaceful means of resolving the matter.²⁹

But Warden Tate replied to Hasan's kite in a memorandum dated Thursday, April 8, as follows:

I believe you realize that I have the utmost respect both for you personally and for your religious beliefs.

Your position relative to TB testing is, however, one that is not rational nor will it be accepted by me. Your options have been explained and I expect full compliance to my orders for all SOCF inmates to be tested. There will be no deviations to this order.

I trust you, as well as others who feel as you do, will comply with this policy. You are in no position to dictate to me how you perceive this should occur. I am certainly hoping there will be minimal difficulties associated with this process.³⁰

On the Eve

Narratives of uprisings and rebellions usually have a preliminary chapter with a title like, "The Gathering Storm."

In fact this appears to be exactly what prisoners and guards at Lucasville felt at the time. Keith Lamar reports that as April approached, prisoners were feeling "suffocated and boxed in." According to Keith, "to say that we were living in a pressure cooker is something of an understatement; it was a madhouse."³¹

On Wednesday, April 7, Major Roger Crabtree, who was Chief of Security, approached the Warden with the information that the facility was "unusually tense." On April 9, Captain Frank Phillips told the Warden that "this place isn't right—something is going to happen."³² A gathering of Muslim prisoners on Saturday, April 10, appears to have turned into a tense discussion of TB testing. According to the Mohr Report, "Sanders, the recognized Muslim leader, and four other Muslim inmates refused to leave the chapel . . . resulting in the chaplain having to push Sanders out of the way in order for the chaplain to gain access to the hallway."³³

On Good Friday, April 9, Warden Tate left the facility for the weekend without informing those left in charge at SOCF that tension among the Muslim prisoners was high. The Warden knew

that the facility would have no supervisor above the rank of lieutenant for the weekend. But Lieutenants William May and Wayne Taylor, in charge of the prison during the first and second shifts on April 11, were not even officially advised of the lockdown planned for April 12.³⁴

Keith Lamar is convinced that Warden Tate wanted the Lucasville uprising to happen. Reflecting on the April 5 exchange between the Warden and the Muslim leaders about TB testing, Lamar asks:

Why didn't Tate just lock Hasan, Taymullah and Namir up? Surely he had probable cause—and isn't it an old military theory that if you "strike the shepherd the sheep will scatter"? Why give them the opportunity not only to see your hand but to plan a counter attack? I'm telling you, Lucasville was a set up. And this whole dialogue between Tate and Hasan (et al.) brings to mind one of my favorite verses in one of Shakespeare's plays. He said:

Oftentimes to win us to our harm
the instruments of darkness tell us truths,
Win us with honest trifles
to betray us in deepest consequence.³⁵

Many other prisoners share Keith's suspicion. They speculate that Warden Tate was hoping for a controllable disturbance that would allow him to ask the State legislature for more money.

April 11 was Easter Sunday. Because of the holiday the staffing complement on second shift was less than normal, in fact the lowest it had been for the previous 30-day period.³⁶

CHAPTER TWO

THE WORST OF THE WORST

THE OHIO DEPARTMENT OF Rehabilitation and Correction considers the five men sentenced to death after the Lucasville uprising to be among the “worst of the worst.”

During the months following the uprising, a petition and a letter addressed to the Governor and members of the Ohio legislature circulated throughout southern Ohio. (See Appendix 3.) The petition, ultimately signed by more than 26,000 persons, was to be returned to Death Penalty, P.O. Box 1761, Portsmouth, Ohio 45662. Portsmouth is the capital of Scioto County, in which the Southern Ohio Correctional Facility is located. The letter demanded that the State “USE the Death Penalty!”¹

In this atmosphere of hatred, how could the Five communicate their side of the story, and in a larger sense, their humanity, to their juries or, after trial, to the public?

The opportunity available to them in the courtroom was the so-called “unsworn statement.” A prisoner, after conviction for a capital offense, is permitted to make a presentation to the jury as to why he acted as he did, and to make it without cross-examination. A death penalty hangs over the prisoner’s head as he tries to explain himself to a jury that has already found him guilty.

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Namir

Namir, also known as James Were, like all of the Five (with the possible exception of Robb) grew up in very difficult circumstances. In addition he has been found to have an IQ of 69, to have learning difficulties, and thus to be on the borderline of mental retardation. A teacher who attempted to assist him in the Adult Basic Literacy Program while at the Ohio State Penitentiary testified that, unlike most prisoners there, Namir came up against barriers to learning that he could not overcome.²

“Prison is my home,” Namir said to his jury. “That’s where I been living most of my life, from childhood to adult, and it will be my home probably until I die.”³

Namir had not been in prison continuously. He told the jury that in 1980

I got out, got off parole, got married to my wife, had two kids, times got hard, couldn't find no job, pressure was too much, no food in the house, hitting it hard, looked over, took my pistol, went out there, got me money so I could feed my kids.

He did try to work, Namir insisted, and he did have a job from time to time.⁴

After arrest and conviction for aggravated robbery, Namir tried very hard because of his children to stay out of trouble. He became a Muslim and for a time served as “imam,” or prayer leader, of Muslim prisoners at SOCF. Namir had only two write-ups in the ten years prior to 1993. At the time of the uprising he was within four years of going back to the Parole Board. Indeed at the time of the riot Namir had been approved to leave SOCF and go to close security at Mansfield. However, a prisoner with whom he had had a serious fight in prison was already housed at Mansfield, so the authorities refused to send him there. Warden Tate had the opportunity to send him to another prison but refused to do it, Namir said. “Now,” he told the jury, “I don’t believe I will get an opportunity to make up things for my daughter and my son that I strived so hard to try to go home for.”⁵

Namir has a good deal in common with certain characters of the Russian novelist Dostoevsky, at once mentally challenged and capable of extraordinary generosity.

He has put his life at risk to help a fellow prisoner. Derek Cannon was indicted for being one of the “death squad” that, in the early hours of the uprising, went from cell to cell in L-6 killing supposed snitches. There is reason to believe that Cannon never entered the pod and Namir, who was in L-6 at the time, knew this.

Namir insisted on testifying for Cannon. Cannon protested. He pointed out that the State was seeking the death penalty for Namir, and that if Namir put himself on the stand at Cannon’s trial, he might expose himself to damaging cross-examination. Namir testified regardless.⁶

Jason

In making his unsworn statement, Jason Robb tried to explain to his jury why he was a member of the Aryan Brotherhood.

Jason began by saying that he was twenty-seven years old and had been born in Orange County, California. When he was eight or nine years old his family moved to Dayton, Ohio. "It was explained to us kids that it was a job opportunity for my father."⁷

The Robbs lived in a Dayton neighborhood known as "little Kentucky" and young Jason was introduced to hunting rabbits and squirrels. In high school he began experimenting with marijuana, which, he claimed, people grew in their backyards. There was a lake nearby, and young people sneaked into the area at night. "They'd have bonfires. Older guys would sit around and drink with their girlfriends. We'd go swimming, smoke pot." Jason moved on from pot to beer, and there was a criminal trespassing incident.⁸

Robb's family sent him back to California to live with his grandparents. They were strict. Jason's older brother would take him surfing, but at the grandparents' home things became tense. Jason was returned to Ohio.

At fourteen or fifteen, Jason Robb was a heavy drinker and using a variety of hallucinogens. He began to sell PCP to supply his habit and that of his girlfriend. He bought a motorcycle and kept it at a friend's house. There was trouble at home. At age seventeen, while high on PCP, quaaludes, valiums, pot, and liquor, "all on top of each other mixed together," Jason Robb shot and killed a man. He pled guilty to manslaughter, and received a seven to twenty-five year sentence. His attorney told him he would only do three years, but older prisoners explained it would be ten years before Jason even saw the parole board.⁹

While Robb was in the detention facility before being transferred to the penitentiary, his mother and sister, who were moving back to California, visited him. He was withdrawing from drugs cold turkey and had the shakes, cramps, vomiting. At the time he couldn't hold a cup of milk without spilling. It was hard for him that his relatives saw him not being able to control himself.

Jason's father stayed in Ohio for a time to try to help his son. It was the first time Jason had seen his dad cry. He would not see his family again for seven or eight years.¹⁰

Jason Robb now began "Prison 101" at the old Ohio State Reformatory in Mansfield. The shower was a giant room with

a drain down the center of the floor. One hundred men would shower at the same time, each one a foot from the man next to him. The officers stayed outside the door, and Jason saw his first prison rape toward the back of the shower when it started getting steamy. After that, he stayed toward the front of the shower and always carried a padlock, which he could buy at the commissary and which he could use in self-defense.¹¹

The older cons told Jason that he and the other young prisoners were guppies in a pool of sharks. Jason was 5'5" and weighed, at the time, 141 pounds. When he was coming back from the commissary with a fishnet bag over his shoulder, prisoners came up behind him, cut open the bag with a razor, and took his things. Jason fought, got a broken nose and black eyes, but stood his ground. "I learned something there. You don't back down and you don't show fear."¹²

The AB

Enter the Aryan Brotherhood (AB). "I was approached by a group of white guys . . . pretty big sized guys." They had their own weight areas, they always ate together, and nobody bothered them.

"After my second fight with a black inmate in the shower area," Jason went on, "three white guys approached me and basically they told me, we like your spunk, you got heart, you won't let these guys run over on top of you, we like that."

Robb was suspicious. But the ABs explained to him: "Listen, man, you don't have to be by yourself no more. . . . Be one of us and we'll watch your back."

So Jason agreed to check them out. He found that he always had a spot on the weight bench if he wanted to work out, he always had a place to sit in the chow hall. The AB got him a good job in the prison and urged him to go to high school. "Basically I become a member of the Aryan Brotherhood at that time," Robb said.¹³

Luke

In 1991 Jason was sent to Lucasville. While at Lucasville he had no conduct reports of any kind.

One early experience at "Luke" involved the day room. The day room is a common area in a block of cells where prisoners are locked in together for an hour and can watch TV. Robb witnessed an incident in which one prisoner chased another around the day room and began to stab him, while officers, standing outside, did nothing. After that Jason stayed away from the day room.

Robb became a twenty-four-hour plumber, which was “kind of an honor-type thing” because you are allowed out of your cell at any time of day or night. He had his own toolbox. Later he transferred to spray painting for Ohio Penal Industries, increasing his state pay from \$24 a month to “\$40 something.”

When the uprising began on April 11, 1993, Jason Robb was twenty-five years old.

Hasan¹⁴

Siddique Abdullah Hasan, formerly known as Carlos Sanders, was born on January 4, 1963, in Savannah, Georgia. He was the third of four children, two boys and two girls. Hasan’s birth was the most difficult of the four. His mother was in labor for twelve to fifteen hours. Two doctors were required to help Hasan’s mother bring him into the world, “a world I’ve had to struggle in since day one.”

When Hasan’s mother had her first child at age thirteen, she didn’t know whether to be happy or sad. She quit school to raise the baby. When she had her last child, she was nineteen. She didn’t want another child at that time because of problems in her relationship to Hasan’s father. “By the time my baby sister was four,” Hasan says, “my parents’ common-law marriage was dissolved and she was saddled with the obligation and responsibility of having to raise four children alone.”

A Family without a Father

Hasan continues: “My father moved to Jacksonville, Florida after the separation and did not fulfill his verbal promise to provide financial support.” Hasan’s mother followed his father to Florida, seeking the money he had promised to give her. But no money was forthcoming, so she returned to Georgia and filed a claim for child support.

The court ordered Hasan’s father to pay his mother’s rent, but he refused. “Because she did not wish to see him arrested, she refused to file additional charges or even notify the authorities of his whereabouts. . . . She accepted menial jobs, as a cook and a housekeeper, in hostile and racist workplaces.”

The family lived in a three-bedroom apartment in a low-income housing project. There was no money to hire a babysitter so Hasan’s mother bought a TV. “Actually, the responsibility of raising us fell in the lap of my older sister, who is only three and a

half years older than myself.” Like his mother and maternal grandmother, this sister too gave birth to her first child when she was thirteen years old. Hasan was practically left to care for and raise himself. He believes that both he and his brother were profoundly affected by the lack of parental supervision and the absence of a father. “To put it bluntly,” Hasan says, he and his brother came “from a broken home and a dysfunctioning family, compounded by not having a male figure in our life to guide us into manhood.”

Hasan was five when his father left the home and seven when his mother’s mother died. Inevitably, he thinks, he developed an intense bond with his older brother who became his role model.

Hasan’s brother began to socialize with the older guys in the neighborhood. “He adopted their etiquette, thinking pattern, and criminal lifestyle.” It usually took some persuasion before Hasan could be convinced to take part in delinquent activities with his brother and his brother’s crowd. These consisted “of stealing, truancy from school, and sneaking in movie theaters or the Savannah Civic Center.”

Hasan first aimed a gun when he was eight years old. It was aimed at his father.

I vividly recall this older white guy riding his red bike through our neighborhood, an all-black community, when my brother jumped him and seized his bike. Our father, who didn’t live with us but was phoned by our mother, came to our house to discipline the perpetrator with an extension cord. The beating administered to my brother was so severe that blisters on his skin developed and burst.

Everyone witnessing the beating was deeply disturbed, including our pet dog, Penny. Penny commenced barking at our father, who instructed us, “You better come and get this dog before I kill it!”

With tears in my eyes I moved inch by inch toward my father’s coat, which he had hung on a chair. He always kept his gun in a coat pocket. I grabbed it, pointed it directly at him, and yelled, “If you don’t leave my brother alone, I will shoot you! Now get out of my house!”

The brothers ran out of the house. “This marked the beginning of us running away from home to avoid beatings from our father,” Hasan recalls. It was also “my first vivid encounter with standing up against injustice.”

Trouble with the Law

In June 1973, the Juvenile Court of Chatham County gave temporary custody of Hasan, now ten years old, to the Department of Family and Children's Services, and he was referred to the Georgia Regional Hospital at Savannah. Psychiatric examination and treatment followed. Hasan was found to have average intelligence and no serious mental illness. He was removed from the hospital and placed in a foster home.

According to the paper trail, he continues, "I developed well in my new family setting and structured environment. However, I longed to be with my natural family and frequently ran away back home to be near them. Eventually I was permitted to stay with them." This turned out to be a costly mistake.

By the summer of 1975, Hasan, his brother, and a neighborhood friend of his brother were arrested breaking into a gun store. Hasan was sentenced to four-to-six months at a Youth Development Center but after running away repeatedly and getting into fights, ended up serving eighteen months.

Approximately six months after his release, Hasan, his brother, and two of the brother's friends were picked up for a robbery. Hasan had not been involved but "accepted the weight instead of telling on my brother." He was tried as an adult, pleaded guilty to the robbery, and was sentenced to a "zip-six," that is, zero-to-six years. During this incarceration, Hasan twice took part in escape attempts. He was released in 1983.

Hasan reflects on this first long stint in an adult prison as follows:

I was no longer under the influence of my brother. I was becoming a leader among my peers and the convict body. I filed legal complaints to challenge the injustices and the deprivations of constitutional rights; became involved with the Islamic faith; and started taking a verbal and physical stand for weaker prisoners who were being abused by other prisoners or guards.

Above all, I started striving to find a sense of purpose and structure in my life. While I will agree that prison is depressing and an evil place to be, I must also admit that it's a good place to reflect and do some serious self-reckoning and planning.

However, a noticeable downside for an impressionable person is, he can easily or gradually adopt the convict code

of “survival of the fittest,” and, consequently, become a no-nonsense and treacherous person when others violate his space or when push comes to shove. That is what happened to me.

After Hasan’s 1983 release, his efforts to “go straight” were unsuccessful. As he tells it:

Like many others who came through the prison system, I had dreams and goals I wanted to achieve once released from captivity, but the reality was: I had no realistic plans on how to achieve them. Indeed, this was a recipe for trouble. Having very little formal education, no vocational skills, and being an ex-convict were already three strikes against me when my feet hit the street and I commenced pounding the pavement. These unfortunate ingredients, coupled with my impatience, did not mix with the business establishment and, resultingly, the doors of employment and opportunities were all slammed in my face.

I reluctantly became involved in the drug trade. My baptism into the drug trade came largely because it was a family thing, that is, everyone in my immediate family was selling marijuana. I rationalized my involvement by telling myself, “I am not stealing or forcefully taking anyone’s money, but selling weed is my bread-and-butter hustle.” Little did I know that such a hustle is usually accompanied with problems, such as people occasionally testing your patience, or resolvedness, when it comes time for them to pay their debts, having to defend your honor and reputation after being played or robbed, being in shootouts or far worse, and so on. Simply put, the “drug game” is a “dog-eat-dog game.” And to survive in it, one has to become, figuratively speaking, a dog. That I became.

Hasan lived day-to-day, making money by gambling and selling drugs. He carried a gun constantly. He was arrested again after he and a friend stole a car at gunpoint.

Regrettably, I had lost sight of my dreams and goals. Taking another fall—imprisonment—was what caused me to regain focus. By August 1984, I was back in prison—this time in the Ohio prison system—and working toward

recapturing my spiritual base, that is, the guidance, stability, and purpose that Islam initially provided me.

Islam

“I was supposed to be a Muslim, but it really hadn’t settled on me,” Hasan says. In the Ohio prison system, his life started taking a new turn.

He earned his General Equivalency Diploma (G.E.D.) and enrolled in college classes. He read college textbooks, the dictionary, and the Koran.

Arriving at the Southern Ohio Correctional Facility (SOCF) in 1988, he became a part of the Muslim community among prisoners there. By 1991, Hasan had become the “imam” or prayer leader.

At the time of the uprising, Hasan was living in the honor block at SOCF and was on the verge of being transferred out of the prison. He had only ten months to go before meeting with the Parole Board. Questioned by the *Cincinnati Enquirer*, Officer Michael Hensley—a hostage during the uprising—said that he had never known Hasan to be in trouble.¹⁵

Big George

George Skatzes, now in his sixties, is the oldest of the Lucasville Five. He is a tall, burly man, as his nickname suggests. In rural Lucasville, he stood out among African Americans or whites from the city because he shared the cultural background of the predominantly white guards. George is “country.”

The best portrait of Skatzes as a child comes from affidavits by his sister, Jackie Bowers.¹⁶

George and Jackie had a very hard childhood, she relates. Their parents were divorced when Jackie was two and George was an infant. There were four other children: two girls from their mother’s first marriage, and two boys from a second marriage. George says it was a household, not a family. “The way I see it, I was brought into this world, kicked in the ass and left to make my own way as best I could.”

The Skatzes home was in perpetual disorder. The children didn’t have decent clothes. They never invited friends to their house because they were embarrassed. George and Jackie—so Jackie recalls—never had a hug, or a simple “I love you,” or praise for good schoolwork or trying to do a job around the house. George adds, “There were a lot of arguments in our home. I can’t

even remember a time that all of us sat together at the table to eat a meal.”

George remembers himself as a “baseball fanatic” who was never good enough to make the team. Every spring he tried out for Little League but always was put on a farm team, not the “real team.” He specifically recalls an evening when all the other members of the team had parents there, but he had no one. He has never been able to shake that sense of aloneness, George says about himself. He has never felt accepted into the mainstream. “The feelings I had that night still haunt me.”

The older sisters married, left home and had families. The older brothers quit school and went to work at an early age. Jackie started babysitting at thirteen so she could buy herself some clothes and her first pair of glasses.

George and Jackie would find pop and milk bottles to turn in at the corner grocery. George started junking. “I would walk the alleys, the railroad tracks in search for scrap metal, iron, tin, anything that would bring a penny or so at the junk yard.” He hung out at an auto body job and pestered the owner for a job.

George also had a paper route. He took pride in putting the paper in a dry place in bad weather. On Sunday mornings he would always be very quiet. And he had a job of stuffing papers all night every Saturday night for \$5.00 a shift.

Jackie and George enjoyed visits with their father. When Jackie was fourteen and George was twelve, their dad tried to get custody of them. It never happened. Two years later their father died and George was very much affected. He loved his dad and needed him, Jackie says. George began to stay away from home. Jackie herself left home at age seventeen, and feels that if she had taken George with her he would not be in prison today.

At school George wanted to play football, and put in long hours practicing shot put and discus throwing, but was unable to do either because of a heart murmur. In eighth grade he was labeled a slow reader.

In his late teens and early manhood, George Skatzes was in constant trouble with the law. Breaking into parking meters and stealing cars led to time at the Juvenile Diagnostic Center and Boys’ Industrial School. He enrolled in tenth grade, “got into it” with a teacher, walked out and never went back.

Then and later, George gave a great deal of love to those around him. Once he saved five weeks’ paychecks from his job at

Quaker Oats to buy his mother a refrigerator and freezer. When Jackie's youngest son was killed in a car crash he helped her through the experience.

Formation

Catholics speak of the experiences that fix the pattern of a person's character as that individual's "formation." George Skatzes says that he came to know himself in prison. He grew up, he recalls, when he was twenty-two years old and surrounded within prison walls by "old solid convicts."

At the time he was always defying prison authorities and being sent to "the hole." In the hole you were fed bread and water, and got a whole meal only every third day, George says. Older men like Poley and Freddie Brock talked to him. "You can't wear that hole out!" they told George.

The convicts who influenced the character of young George Skatzes were both white and black. Your word is your bond, George learned. He remembers a black man who wanted to know the truth about a situation. The man came to George and told him, "I come to you because I know you'll tell me the straight of it."

After this first incarceration as an adult, George Skatzes was paroled in September 1970. He completed his parole successfully and stayed out for three years. There was a friend who would have gotten him into the carpenters' union, with a job at the mall. He chose a different life style.

In December 1973, Skatzes was sent to prison again. He was paroled once more in November 1975. At this point in his life, George says, "it was my goal never to return to prison!"

Please understand that I stayed out for just shy of seven years without any trouble. I had my life pretty well together. I was married, we had a son, Shane Wesley. In my life I really never had it so good, so together!¹⁷

Conviction for Murder

George Skatzes' life came apart in the early 1980s. He worked at the local Quaker Oats plant with a man named James Rogers. The two became involved in armed robberies. Several months after Skatzes broke off his collaboration with Rogers, a storeowner named Arthur Smith was murdered.

In an eerie prefiguring of the Lucasville trials, Rogers turned State's evidence. In return for immunity from charges concerning the murder of Arthur Smith and about fifteen armed robberies, together with a favorable letter to the Parole Board, Rogers blamed Skatzes for Smith's murder. Cross-examination brought out the admission that Rogers had perjured himself on at least three previous occasions. Indeed the following colloquy occurred:

Q. To prevent yourself from being convicted, punished, going to prison, would you lie under oath?

A. I certainly would. I have before.¹⁸

Additional evidence has come to light suggesting that Skatzes was, simply, framed. Dan Stanley was a former associate of Rogers, Skatzes and a woman named Becky Boop. At the time of Skatzes' trial, Stanley was serving a ten to twenty-five year sentence for armed robbery. After Rogers turned State's evidence and Skatzes was convicted, Stanley testified at a hearing on Skatzes' motion for a new trial that Skatzes was not guilty. According to Stanley's sworn testimony:

- Becky Boop told him that she and Jimmy Rogers were at the Arthur Smith murder and George Skatzes was not.
- Jimmy Rogers told Stanley just before Skatzes' trial that he "was going to guarantee that George got convicted." Rogers said, Stanley continued, that "what makes it so sweet is—his exact words were—the motherfucker wasn't even there."¹⁹

Diane Rogers, Jimmy Rogers' wife, told investigator Linda Garrett in 1986 that Skatzes was not present at Smith's murder and "Jimmy Rogers pulled the trigger." Sheila Lile, Arthur Smith's daughter, wrote to George Skatzes in 1989, "I have never heard or saw any evidence to make me believe George Skatzes murdered my father Arthur Smith."

Skatzes was unable to afford a lawyer to handle his appeals. His conviction and sentence to life imprisonment were affirmed.

When the Lucasville uprising began on April 11, 1993, George Skatzes was in his cell, writing to the jurors who had convicted him ten years before.²⁰ After the cells in L block were opened by prisoners in rebellion, George like many others went out on the

recreation yard. Again like many others—including Jason Robb and Keith Lamar—he made the fateful decision to go back into the occupied block.

Why did he do so? For one thing, that was where Skatzes celled and he was concerned to safeguard his legal papers. Something else weighed even more heavily, George recalls. His final appeals in the Smith case had been *pro se*. Papers had to be filed at a time when he was in the hole and unable to do any legal work. Friends among his fellow prisoners assured him, says George Skatzes, that they would make sure his appeal was timely filed if they had to type every word themselves. On April 11, 1993, some of those same friends were inside L block. George was not about to forget their previous act of solidarity. He went back in.

Keith

George Skatzes likes to say that he and Keith Lamar are a lot alike, because they both “came up the hard way.” Keith is a tall, sinewy man, nicknamed “the Boxer.”

The Supreme Court of Ohio, in affirming Keith Lamar’s conviction and death sentence, summarized the evidence offered in Keith’s trial about his childhood.²¹

Lamar grew up in a poor neighborhood where illegal drug activity and violence were common. Lamar’s aunt, Carolyn Lamar, testified that Lamar lived with a stepfather who would beat him for minor transgressions, such as failing to take out the garbage or touching his stepfather’s things. Although Lamar’s mother tried to look out for Keith and his siblings, “she wasn’t there for them because she was having her own problems.” Carolyn testified that Lamar, his brothers and sisters were not well fed and lived in a house that was inadequately heated.

While still a teenager, Keith Lamar quit school and moved out of the house to live with friends in an apartment. According to Charles See, a social service administrator with experience working with inner-city youth, the apartment was in one of the “most dangerous areas in the city of Cleveland.”

Lamar’s older brother Nelson testified that their stepfather was physically abusive and interested only in the boys’ athletic talent. He beat them when they did not perform well. It was also the stepfather, Nelson testified, who introduced Keith to drug dealing.

Dr. Jeffrey Smalldon, a clinical psychologist, was the final mitigation witness. He said that Keith Lamar “used and sold

marijuana when he was fourteen years old” and eventually began abusing alcohol, cocaine, crack, and PCP. According to Dr. Smalldon, Keith developed a serious crack cocaine habit that persisted until he went to prison in 1989.

In his own unsworn statement, as coldly summarized by the Supreme Court, Lamar told the jurors that he was

disappointed in their verdict but that he did not hold it against them. He also explained that his previous murder conviction resulted from a shootout in which he had also been shot. Lamar expressed some regret about that incident because the victim he shot “twice in the heart” had been a childhood friend. Lamar acknowledged that his background had been difficult and added that he had instructed his mother not to testify for him because he “didn’t want her to feel that she had to justify, you know, or apologize for doing the best that she could.”

Keith has his own view of these facts.²² He is not at all comfortable to let drug addiction stand “as the defining impetus behind my downfall.” Drugs, he believes, only served to accelerate the inevitable.

I was born into a social structure that is systematically designed to destroy, discourage and otherwise retard one’s ambition. As a black male born into this racist society, I learned very early that I would never amount to anything. This seed of destruction was firmly planted in my mind and cultivated way before it ever occurred to me that cocaine could supply a way out of the hopelessness, gloom and misery in which I was confined.

What the Supreme Court characterizes as “some regret” for killing his childhood friend, Keith expresses as follows.

When I shot and killed Kenyatta, my childhood friend, I simultaneously killed myself as well. I was left to live a death, to live out the remainder of my days remembering this horrible thing I’d done.

When he first came to the penitentiary, Keith Lamar continues, he walked around in a daze. He did not want to acknowledge

the reality of what he had done. He closed down completely, distancing himself from his family, his friends, “and to a great extent from myself as well.” The only thing that saved him and kept him from taking his own life, Keith says, “was the notion given to me after reading the autobiography of Malcolm X that I could redeem myself and make Kenyatta’s death mean something by doing something productive with my time and energy.”

The first thing Keith did was to get a G.E.D. and enroll in college. But at the time Keith was doing more than ten years to the Parole Board and Pell grants were available only to those with shorter sentences. He was put out of the college program.

I then took it upon myself to educate myself, starting with Black history, moving on to the Black revolutions of the 60s and 70s, and then to what I call “true” American history. I studied philosophy, psychology, sociology, theology. As I found myself struggling with the question of God, I joined Islam, which I practiced for two whole years.

After the rebellion Lamar was charged with nine counts of aggravated murder. Writing to Mumia Abu-Jamal and myself, he explained that thereafter he adopted a new name, “feeling I would need a constant reminder of what I needed to be about.” His new name is Bomani Shakur. “Bomani” is Swahili for “Mighty Soldier.” “Shakur” means “Thankful.”²³

The Thankful Mighty Warrior also made a statement before the court pronounced sentence.²⁴ He said in part:

I want the record to reflect that I stand unbowed and unbroken by what has been allowed to transpire inside these walls within which I sought justice . . . Within the confines of prison I found myself, and I’m not willing to sacrifice myself or belittle myself or bow down to something that I don’t believe in. I don’t believe in what took place in this courtroom.

CHAPTER THREE WHO KILLED OFFICER VALLANDINGHAM?

THE MUSLIMS WHO BEGAN the Easter uprising at SOCF hoped to take officers hostage for a time, without injuring them, in order to send a message. A few years earlier, five prisoners had overpowered officers, used the telephone to tell the media what was happening, released the officers unharmed, and, so it seemed to many prisoners, for the first time caught the attention of the federal courts and received some real help from outside the walls.¹

Similarly, some prisoners seem to have believed in 1993 that if there could be just enough disturbance to cause Columbus headquarters to intervene, Warden Tate's intransigence about how to conduct TB tests might be overcome.

Reginald Williams, a Muslim and a prosecution witness against Hasan and Namir, stated under oath that "we were going to basically barricade ourselves in L-6 until we can get someone from Columbus to discuss" the testing method.² On cross-examination, Williams confirmed this explanation:

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Q. You're saying the plan was to have a brief barricade in order to bring attention to the fact that religious beliefs were being trounced upon?

A. Exactly.³

Seven years later, at Namir's second trial, Williams repeated his testimony. He said that the Muslims' plan was to occupy only a single living area or "pod," L-6, so as "to get someone from the central office to come down and address our concerns."⁴

Williams also testified that when prisoners first approached the guards in L block, there was no intention to hurt them. Williams described his own encounter with Officer Michael Stump.

I put the knife to his neck, and I informed him to give me his keys and he won't get hurt. . . . He was saying: Don't stab me. And I was telling him: I'm not going to stab you. I just want the keys⁵

Apparently Officer Stump reached for the knife, and the knife broke in such a way that Williams still held only the handle while Stump had the blade. “So at that time guys just started jumping on him, because he had the knife in his hand.”⁶

Chaos

If the prisoners’ initial strategy was peaceful, events almost immediately spun out of anyone’s control. Too much hostility had accumulated to be channeled peacefully according to a master plan. Prisoners not only overpowered the L block guards but beat them. Some of these officers were hurt so badly that prisoners carried them out to the recreation yard and left them there to be retrieved by the authorities.

After the release of the badly injured officers, eight continued to be held as hostages. Keys were seized that opened the different pods (L-1, L-2, and so on), and in each pod, prisoners took the place of guards at the consoles that opened the individual cells. Some prisoners then turned their attention to alleged “snitches” and before the day ended, six prisoners—all of them white—had been killed.⁷

The word used by almost every participant to describe these first hours of the uprising is “chaos.”

The riot erupted just inside the door near the metal detector, where black prisoners returning from recreation on the yard assaulted guards and then moved up the hallway.⁸ The first sounds to be heard were scuffling, shouts, the sound of blows, cries of “Help!” and “Man down!”

One prisoner remembers the attack on Correctional Officer Horsley. A prisoner yelled at him, “Where are the keys? Give me the keys.” Horsley yelled back that he “didn’t have the keys.” This witness also recalls prisoners beating on the control panel that opened the cell doors.⁹

Another participant recalls Sergeant Shepherd screaming excitedly into his radio, “close the crash gates, close the crash gates. . . . I told you to close the fucking gates.”¹⁰

Phrases heard by many witnesses were, “This ain’t a black and white thing.” “We’re taking over.” “There is an inmate police, kill the snitch.”

A prisoner interviewed at an Ohio correctional facility recalls the sounds of breaking glass. He heard people shouting: “They fightin’ the police, man. Open up!” “They [prisoners] runnin’ out

there in the hallway!” He heard the rattling of officers’ keys, as guards fought with prisoners and went down.

Paul Mulryan, in his account of the first moments of the rebellion, writes:

I heard the two rollers in charge of my block. . . Their voices were so full of panic and urgency that I knew something very big was jumping off. “Lock up! Lock up now, damn it!” they yelled. Someone in the cells called out, “The guards are locking themselves in the bathroom! What the hell’s happening?” “They’ve got control of the L-Corridor! There are guys running around with masks on! They’ve got the keys! They’ve got the fucking keys!” The rumble from the corridor began to grow like a rolling thunderstorm: muffled screams, the thud of feet running through the halls, glass shattering and showering the floor, and echoes of loud ramming sounds as though heavy steel bars were battering down the walls.

At one point in this pandemonium, there was a very short pause and then the following: “Lucasville is ours! This is not racial, I repeat, not racial. It’s us against the administration! We’re tired of these people fucking us over. Is everybody with us? Let’s hear ya.” The prisoners “roared their approval.”¹¹

Negotiations: Phase One

“Once you start to take hostages you can’t stop halfway,” a prisoner reflects. Whether officers were overcome without injury (which may have been the initial plan) or badly beaten in the process (which is what actually happened), by overpowering their guards the prisoners in L block made themselves vulnerable to the most severe reprisals. The authorities began to assemble a force to storm the occupied cell block.

Within L block, the prisoners—like the workers who took over General Motors plants in Flint, Michigan in January 1937—began to organize a rudimentary government. An infirmary was set up. A sign posted next to it displayed a red cross and the words: “No Weapons Allowed.” Food in the different cells was commandeered and stored centrally, for equitable distribution later on. Improvised justice was administered to prisoners who stole food from guards or tried to rape other inmates. Security personnel were posted at the entrances to L block and to the various pods.

One such security officer was a recent adherent to the Muslims, Stacey Gordon, who assumed a vaguely defined responsibility for security in L-6.

The three organized groups among the prisoners—the Muslims, the Aryan Brotherhood, and the Black Gangster Disciples—took up residence in different pods: the BGD in L-1, the AB in L-2, and the Muslims in L-6. Representatives of the three groups began to meet to deal with problems arising from the uprising and to find a strategy to end it.

This was in itself a major achievement. It demonstrated a sense of collective purpose that resembled the Attica rebellion of 1971 rather than the Santa Fe disturbance in 1980. During the Santa Fe riot, a few inmates discussed organizing the riot as a protest against the administration but they had little influence on the course of a bloodbath during which prisoners killed 33 other prisoners.¹²

In these early days of the uprising, the principal demand of the prisoners was that the authorities provide someone with greater authority than Warden Tate—someone from the FBI or from the Ohio State Highway Patrol or from the governor's office—with whom they could negotiate.

The prisoners also began to discuss specific demands. Not surprisingly, these demands reflected the grievances that had caused the prisoners to rebel. Early in the disturbance the authorities set up recording equipment in the tunnels under L block. Statements and conversations of all kinds were preserved in a collection of "SOCF Critical Incident Communications." Based on the Critical Incident Communications, major prisoner concerns included: getting rid of Warden Tate; inadequate medical care; forced integrated celling; overcrowding; indiscriminate mixing together of prisoners with and without AIDS, TB, and mental illness, and prisoners at different levels of security; and punishment for alleged gang activity on the basis of physical appearance (dreadlocks, tattoos, etc.).

Some demands were difficult to make specific, such as "No more oppression," "civil rights violations," "violations of due process when a prisoner goes before the R.I.B. [Rules Infraction Board]," "religious freedom violations." There were complaints that the law library was insufficient and that in the prison work program "you sit on your ass all day." Prisoners wanted to grow their hair and beards as long as they desired. They thought the college program was "bullshit, that anyone can pass it." The offensive TB test was mentioned more than once, and one prisoner

said “the TB test could have been done by spitting.” There was a demand that the administration be held to its promise to allow one five-minute phone call a year at Christmastime.

Finally, there was already a concern that there must be no selective prosecution of the alleged leaders of the uprising.

The prisoners’ first serious attempt to find a negotiated solution came at midday on Monday, April 12. George Skatzes (a white man) and Cecil Allen (an African American) volunteered to go out on the yard and try to talk to the men in the guard towers. Skatzes had a megaphone, Allen a huge white flag. The two men were in fear for their lives: Skatzes’ first words through the megaphone were, “Don’t try to cut us down.”¹³

He went on to say that the prisoners sought an agreement that would preserve the lives of the hostage guards while addressing prisoner demands. As the shouted conversation continued, Skatzes became more and more frustrated by the authorities’ apparent disinterest in finding a solution. In the end he bitterly accused the authorities of “playing games,” and exclaimed, before returning to L block, “We’re trying to do something positive. All you’re doing is fucking us around.”¹⁴

Skatzes’ conclusion that the State was stalling was correct. Testifying in Hasan’s case, Sergeant Hudson confirmed:

The basic principle in these situations . . . is to buy time, to maintain the dialogue between the authorities and the hostage taker and to buy time. . . . [T]he basic principle is to maintain a dialogue, to buy time, because the more time that goes on the greater the chances for a peaceful resolution to the situation.¹⁵

The State further aggravated the prisoners in rebellion by cutting off electricity and water in L block early on the morning of Monday, April 12. There is good reason to believe that the reason the State did this was to prevent communication between the men inside L block and the media. Prisoner Anthony Lavelle, who became the key witness for the prosecution, nonetheless testified:

A. . . . I had told Hasan that I think I could maybe hook a PA system up somehow. Him and Cummings said: Well, if you can, go ahead and try.

Q. Okay. And did you do that?

A. Yes. . . . I found a—I knew there were plenty of tape decks in the institution, and I got one of the tape decks and I decided that I needed speakers. So I . . . went down to the gym and found almost a six foot tall speaker that was bolted up into the ceiling of the gym. And I decided to take that down and use that.

Q. Okay. Were you able to actually use these materials to put together a PA system?

A. Yes.

Q. And where did you position that system?

A. I put it in L-7. . . .

Q. Which would direct out where?

A. It would direct the speaker out towards the parking lot of S.O.C.F.

Q. Okay. And what kind of things did you play or broadcast over the PA system?

A. James Bell had made a tape . . . with a list of demands that we wanted at the time. And I started playing the tape over the system that we had rigged up.

And a helicopter started, it was either coming in or had started up and it drowned the tape out. So we stopped playing it and then we tried it again and the same result—a helicopter drowned it out. *And shortly after that, the power was turned off, so that was the end of that.*¹⁶

Officer Larry Dotson, who was being held hostage at the time, states that the prisoners began demanding to speak to reporter Tim Waller from WBNS-TV Channel 10 in Columbus who they had seen on TV offering to negotiate. As a result, Officer Dotson continues, the Warden ordered the electricity cut off to L block.¹⁷

The prisoners conveyed their frustration in messages to the authorities hand-lettered on sheets hung from the L block windows. The messages included: “The State Is Not Negotiating,” “We Want To Speak To FBI,” “This Administration Is Blocking The Press From Speaking To Us,” and later, “We’re Willing To End This Ordeal!! Must First Talk Face To Face With Our Att. Nick [*sic*] Schwartz.”¹⁸

Other messages on the sheets spelled out different lists of demands. These included:

- No retaliation against any inmates.
- No selection of supposed leaders.

- Medical treatment that fits the medical guidelines, many people here are given aspirins for serious medical problems.
- Reasonable pay per work assignments.
- No petty harassment: walking in crowded groups behind yellow lines, forced to wear ill-fitting clothes, haircut standards applied at a whim of officers, arbitrary rules created to appease an officer's anger.
- No more forced integrated celling, also: Less time to be locked in a cell with an inmate you can't get along with.
- Low security inmates should not be in SOCF.
- Ban the use of unsubstantiated criminal records, dismissed RIB [Rules Infraction Board] and court cases, at parole hearing.
- Reduce the overcrowded prison conditions in Ohio.
- Food preparation and variety needs to be seriously upgraded.
- Education programs have been so diluted as to only accommodate those of a lesser security.
- Phone calls to . . . speak to their families other than 5 minutes at Christmas.
- Mail and visiting are arbitrarily applied.
- Complete overall review of records of all inmates for parole and transfer status.
- Inmates' committee needed for cross review with staff overseers.
- Ideal programming, outside help from statewide groups.
- If peaceful ending, cameras present when officers enter.¹⁹

The attempt of the prisoners in L block to communicate by means of messages written on bedsheets occasioned spokeswoman Tessa Unwin's fateful remarks at a press conference on the morning of Wednesday, April 14. Prisoners inside L block listened on battery-powered radios as media representatives aggressively questioned the State's representative.

Ms. Unwin was asked about a painted message that a guard would die if the authorities ignored prisoners' demands. She responded: "They've been threatening something like this from the beginning. It's part of the language of negotiation."²⁰ She also characterized the prisoners' demands as self-serving and petty.²¹

All sources agree that Ms. Unwin's comments provoked a strong, hostile reaction among many of the prisoners in L block. Her words were interpreted as a challenge to the prisoners'

credibility and manhood. They violated a cardinal rule of behavior behind bars: they showed a lack of respect. Anthony Lavelle testified that the gist of Ms. Unwin's statement was that prisoners' demands were "just a lot of talk." He said that her words "bruised a lot of . . . egos that, you know, we wasn't being taken serious."²² Hostage Larry Dotson adds that after Ms. Unwin's statement negotiations deteriorated rapidly. Blindfolded as he was, he could hear a dramatic increase in verbalized tensions within L block.²³

There is deep disagreement about what happened next.

Who Killed Officer Vallandingham? The State's Version

The Morning Meeting on April 15

According to prosecutors, the four men later convicted of the aggravated murder of Officer Vallandingham—Robb, Namir, Skatzes, and Hasan—set in motion plans to kill one of the hostage guards. These plans were approved, so the juries were told, by a vote of gang leaders in attendance at a meeting between 8 and 9 a.m. on April 15.

The Ohio Supreme Court has endorsed this version of events in a summary of alleged facts preceding its opinion in *State v. Robb*.

In the early morning April 15 meeting, gang leaders agreed to demand electricity and water and issued a strict timetable for compliance or they would kill a guard. At the end of the meeting, Cummings asked if everybody agreed that "if [they] don't give us these things, . . . then we gonna kill them one." Both Snodgrass and Lavelle verified that defendant [Robb] voted for an officer to be killed if water and electricity were not turned on in the time demanded.²⁴

Four of the Lucasville Five await execution because of this official history. The problem is that it is not true.

There is no evidence of any kind that the leadership meeting "issued a strict timetable for compliance or they would kill a guard." The FBI made a tape of the meeting from a tunnel under L block, and the only show of hands or voice vote mentioned on the tape concerns negotiating demands for the day.²⁵ (The transcript of Tunnel Tape 61 that the State used during the trials is

attached as Appendix 1, so that the reader can make an independent assessment.) Read in their entirety, Cummings' words envision a process: first, Skatzes was to go back on the phone and express "non-negotiable demands" for the restoration of water and electricity; second, the leaders were to "meet back after we put our non-negotiable things out" and only then make a final decision about killing a guard.²⁶

As for Lavelle, he testified about the April 15 meeting not only in the Robb trial, but also in the trials of Namir, Skatzes, and Hasan. In *State v. Were*, the following exchange occurred:

Q. When you left the meeting, was that the understanding, that a guard was going to be killed?

A. No. When I left the meeting, the understanding was we was going to meet up later on that afternoon and give them our final ultimatum. I had told them you know, just pick a time later on this afternoon, we can all come back and take the final vote.²⁷

Similarly at the Skatzes trial, Lavelle testified that there was no need for him to voice at the morning meeting what he claimed was his own opposition to killing a guard because "we was going to meet back up later that afternoon" to evaluate the results of negotiations.²⁸

Finally, in Hasan's trial, Lavelle for a third time affirmed that at the end of the morning meeting:

We hadn't made a clear decision. I had told them, you know, that we should decide on what we're going to do but we need to come back after the deadline and make sure that this is what we want to do.

So I said, you know, after we give them a deadline, if they don't meet it we should come back together and decide, you know, whether we want to do this or not.²⁹

At another point in *State v. Sanders*, Lavelle stated that at the morning meeting he "suggested after the deadline has been established and it's passed that we meet back up later and decide on whether this is what we want to do, be sure that this is what we want to do." The following exchange ensued:

Q. Okay. Did anybody say: No, we're not going to do that?

A. No.

Q. So then the agreement was that he would not be killed without another meeting?

A. That's correct. . . . I state, let's meet back up here later at another time, after we give them this 2:30, 3:30, whatever, and we decide, okay, they haven't met our demands, they had until such and such a time, they haven't met it, are we going to do it. Yes or no. Everybody said that's a good idea.³⁰

The alleged decision at the morning meeting on April 15 is the basic evidence connecting Hasan, Namir, Robb, and Skatzes to the murder of Officer Vallandingham.³¹ Lavelle's testimony in the four trials, taken as a whole, was that the morning meeting discussed the murder of a guard but did not come to a final decision, and that another meeting during the afternoon was to happen before a guard would be killed. The testimony of the prosecution's lead witness thus suggests that when a guard was in fact killed that morning, it was not as a result of the morning meeting but because a group of prisoners, in a rogue action, decided to take the decision into their own hands.

Thus, the meeting on the morning of April 15 did not decide to kill a guard.

The April 15 Death Squad

The Ohio Supreme Court further declared as to the events preceding Officer Vallandingham's murder:

That same morning, inmates from different gangs assembled to kill a guard, and defendant told them, "They think that we're bullshitting. . . . [W]e have to send one up out of here." However, Vallandingham was killed before that specific group acted.³²

This supplementary statement of supposed facts rests wholly on the uncorroborated testimony of informant Stacey Gordon. Gordon was a Muslim security officer during the uprising and a friend of Lavelle's. Not one of the prisoners from different gangs who allegedly "assembled to kill a guard"—besides Gordon, Robb, Leroy Elmore, Jesse Bocook, Aaron Jefferson, and Wayne

Flannigan—supports Gordon’s story. Moreover, that story conflicts with conceded facts about what happened between the end of the April 15 morning meeting just before 9 a.m., and the murder of Officer Vallandingham between 10:30 and 11 a.m.

First, Gordon says that he saw Robb negotiating on the phone and that Robb “slammed the phone down a couple of times and called back a couple of times.”³³ However, as demonstrated by the State’s own Time Line, introduced into evidence in *State v. Robb* as Exhibit 289-90, the only prisoner who negotiated between 9 and 11 a.m. on April 15, 1993, was George Skatzes. Gordon was apparently under the mistaken impression that Robb was the prisoners’ negotiator that morning and, as Gordon testified in *State v. Skatzes*, that “me and George Skatzes was securing the phones.”³⁴

Second, there was not enough time for all the events described in Gordon’s account to have transpired between the end of the morning meeting and the murder of Officer Vallandingham.

- Allow a minimum of 30 minutes after the meeting ended at about 9 a.m. for Robb to conduct and twice break off telephone negotiations.
- Credit Gordon’s account that Robb then left L-2 for 20 to 25 minutes to consult with Hasan.³⁵
- Add another period of at least 30 minutes for members of the death squad to “suit up” and assemble in L-2.
- Lastly, credit Gordon that, after suiting up, the death squad waited between 1 and 2 hours before Skatzes informed them that they would not be needed. (In his first reported statement as to this period of time, Gordon said it lasted “an hour and a half to two hours.”)³⁶

Thus if Gordon were to be believed, the death squad remained assembled until well after 11 a.m. before it was told about a murder that had occurred prior to that hour.

Gordon’s entire narrative about a death squad is inconsistent with Lavelle’s testimony that the morning meeting did not discuss which guard was to be killed, how he would be killed, or when he would be killed, because “the subject was closed until we met back up.”³⁷

Who Killed Officer Vallandingham? What Really Happened

I submit that the actual history of how Officer Robert Vallandingham came to be killed is as follows.³⁸

Beginning Monday, April 12, the prisoners had conducted intermittent telephone negotiations with the authorities. Their first spokesperson was a Muslim, James Bell. Bell has a speech impediment that made it difficult for him to be understood. During the afternoon of April 13, Bell was replaced by Skatzes.

Skatzes proposed the release of two hostages in exchange for 1) restoration of water and electricity in the occupied cell block, and 2) an opportunity to air the prisoners' demands on radio and television. He said that he was seeking a negotiated solution so that no guards would be killed. "I'd like to see those officers get out of here," Skatzes said on April 14, and David Burchett, who was negotiating for the State, replied, "I know that you'd like to see them get out of here, because you care about them too. I know you do. So, you and I can work through this." Skatzes argued that the safety of the officers depended greatly on being able to see what was going on around them, hence that restoration of electricity was in the interest of both the State and the prisoners. He asked Burchett, "Do you realize what [it] is to keep people from going off on one another and to keep peace in here and . . . to keep these people from going at them guards?" Responding to Burchett's concern that there might be competition among reporters who wished to talk to the inmates, Skatzes said, "We're not worrying about hurt feelings, because somebody didn't get to be first. We're worried about lives in here."³⁹

Late on the evening of April 14, after five laborious hours of negotiation, Skatzes and Burchett agreed on the release of two guards in exchange for media broadcasts on radio and TV. The day ended for the exhausted spokespersons like the end of a scene from "The Waltons."

SKATZES. All right, Dave.

BURCHETT. All right. Thanks, George.

SKATZES. All right. Say a prayer for us.

BURCHETT. I sure will.

SKATZES. God bless you.

BURCHETT. You too.

At Skatzes' trial, even prosecutor Hogan conceded that Skatzes and Burchett ended April 14 "on the verge" of the release of two hostages and in "elevated spirits."⁴⁰

But when prisoner representatives met the next morning between 8 and 9 a.m., they pointed out that Skatzes had dropped one of their key demands: restoration of water and electricity. Skatzes was alone in advocating the agreement he had negotiated the previous evening.⁴¹ The meeting ended with agreement that Skatzes should get back on the negotiation phone, and demand restoration of water and electricity.

Meantime Anthony Lavelle, leader of the Black Gangster Disciples (BGD), had decided for himself that a guard must be killed. Lavelle told other prisoners that the Muslims and Aryan Brothers were too soft, and that he and his BGD colleagues would do what had to be done.

Accordingly Lavelle began to recruit a death squad of his own to kill a guard. Three members of the Black Gangster Disciples in April 1993 have stated under oath that on April 14, the day before Officer Vallandingham was murdered, Lavelle tried to enlist them in his plan to kill a guard. Brian Eskridge states that he was beaten for refusing:

Lavelle told me that the Disciples were going to "take care of business" and he wanted me to participate, but I didn't. Lavelle had me held by other inmates because I didn't handle business. The inmates beat me because I had violated the order to take care of business—kill a guard.

Wayne Flannigan declares:

I heard Lavelle tell Aaron Jefferson (AJ), "I've got some business for you to take care of." From my experience in prison and with Lavelle and the BGD, I knew what Lavelle meant—he told AJ to kill a guard.

And Aaron Jefferson affirms:

The first inmate to suggest killing a guard was Lavelle. . . . Lavelle wanted to order me to kill a guard. . . . I was one of the BGD who beat up Brian Eskridge. Lavelle ordered that Eskridge be beaten because he refused to participate in killing a guard.⁴²

Lavelle eventually found two other prisoners who were willing to do as he directed. Next he persuaded his friend Stacey Gordon, a Muslim in charge of security in L-6, to let the BGD death squad proceed. During the uprising Sean Davis slept in pod L-1 which was controlled by the BGD. Davis woke up at about 7 a.m. on the morning of April 15, and heard Lavelle talking with Gordon. Davis heard Lavelle tell Gordon that “he was going to take care of that business.” Gordon responded, “you go ahead, take care of it; . . . I will come clean it up afterward.”⁴³

When the leadership meeting ended at about 9 a.m. that morning, Skatzes returned to the telephone as instructed. He stated that he could not negotiate further until the inmates had water and electricity.⁴⁴ He predicted that an officer would be killed if the water and electricity were not turned back on. When prison negotiator Prise said that there was a possibility of injury because of damage to the electric system, Skatzes responded that he knew what would happen if the electricity were not turned on. A fragment catches these words by Skatzes: “I stress to you, . . . if you turn this on, you, you think you might electrocute somebody. . . . If you don’t turn it on, it’s a guaranteed murder.”⁴⁵

Meantime Lavelle, carrying a weight bar and accompanied by two masked colleagues, went from L-1 to L-6, and told all but a few persons inside L-6 to leave the pod.

Prisoner Tyree Parker testified that on the morning of April 15 he had occasion to go to the door of L-6. He could see a clock as he did so. It was 10:00 a.m. or 10:05 a.m. at the latest. At the door to L-6 he met Anthony Lavelle and two other prisoners, “dressed up or masked up from head to toe.”⁴⁶

Willie Johnson, another prisoner, testified in both the Robb and Were trials. He said that during the riot he celled in L-1. Around 9 a.m. on April 15 he heard Anthony Lavelle tell Johnny Long and one other prisoner that he (Lavelle) had told George (Skatzes) to tell the authorities to turn on the water and electricity by a certain time “or I’m going to send one of these honkies up out of here.” He added, according to Johnson, “the Muslims, they playing peacekeepers and they think that we ain’t serious.” Lavelle then told Johnny Long, “put on your mask,” and Lavelle, Long, and the other man who was already wearing a mask, left the pod. Lavelle was carrying a weight bar.⁴⁷

Later the three men returned to L-1, Johnson continued. Lavelle “was like in a frenzy and he was slamming the pipe down,

saying, see how they like me now, see if they think we bullshitting now. The Muslims just playing games, they ain't serious."⁴⁸

Prisoner Eddie Moss testified that on the morning of April 15, he saw Anthony Lavelle, carrying a pipe, and two masked men, knock on the L-6 door and go into L-6. Soon after, Reggie Williams, Sherman Sims, Sterling Barnes, and Eric Giridy came out of L-6. After a few minutes, Reggie Williams said "they should be finished" and he and the others who had earlier exited L-6 went back in. At about the same time, Lavelle and his two masked associates came out of L-6.⁴⁹

About noon that day, as Moss was collecting water in the gym, Lavelle tried to recruit him to the BGD. Lavelle said, "We took care of business. . . . I ain't gonna tell you, you heard about it on the radio." Lavelle went on to say, Moss reported, "them Muslims and them Aryan Brotherhood, they want to protect these damn polices."⁵⁰

Sterling "Death Row" Barnes likewise testified that on the morning of April 15 he saw Anthony Lavelle and two masked men come from the direction of L-1, go into L-6, and return in the direction of L-1.⁵¹

What makes these witness statements so persuasive is that they come from members of a variety of prison groups. Greg Durkin, a member of the Aryan Brotherhood, recalled under oath that he sat next to George Skatzes when Skatzes was on the phone with negotiators on the morning of April 15. Lavelle came in and handed George a note written on the back of a kite. George read the paper out loud. It read, "The hard-liners are taking over." Then

I saw Lavelle come out of L-1 with two masked inmates. They went into L-6. After Lavelle entered L-6, the Muslim inmates came out. . . . I went back to the hallway and saw Lavelle and the two masked inmates come out of L-6. Lavelle was laughing. He later said that he had taken care of business. . . . Lavelle had been mad about what the prison spokeswoman told the media about not taking the inmates seriously, and he said that showed her that he wasn't joking.⁵²

Similarly the late Roy "Buster" Donald, an unaffiliated African American, executed an affidavit stating:

10. On April 15, 1993, from inside L3 I saw Anthony Lavelle and two masked inmates enter L6. Several inmates exited shortly thereafter, including Sherman Simms, Reggie Williams, Eric Girby, and Inmate Barnes. . . . I asked Girby what was going on and he said Lavelle and his boys put everyone out of the block.

11. . . . Shortly after, Lavelle and the two masked men rushed out of L6 in the direction of L1.

12. Stacey Gordon next entered L6. He was in there a short time and then motioned for Kenneth Law to come inside the block. Moments later, Law, Simms, and two masked inmates drug a body wrapped in sheets out of L6 towards the gym. . . .

14. Later that night, Lavelle was in L3 looking for clothes. I asked him what was going on. Lavelle told me that Gordon had given him the okay to kill a guard and that he took care of his business.⁵³

Officer Vallandingham was killed before 11 a.m. According to the Critical Incident Communications, Skatzes was still on the telephone at 10:50 a.m., “talking about last night[’s] deal.” At 10:53 a.m., a “background voice said something about a dead body.” At 11 a.m., an anguished Skatzes was heard telling Prise that he was “wasting valuable time.”⁵⁴

The murder of a correctional officer transformed the situation. As Skatzes had warned his colleagues, the public reacted to the murder of one officer as it had not reacted (and would not react) to the killing of several prisoners. The prosecutor would later tell the jury at Hasan’s trial that “there can be no doubt in your mind that the most important event in this riot was the killing of Bob Vallandingham.”⁵⁵

All of those who had come forward or would come forward as negotiators and spokespersons, whatever the truth about their individual roles, henceforth would have a large target on their backs. They were all perceived by the public to be cop killers, and the State would be merciless.

CHAPTER FOUR SETTLEMENT OF A SIEGE

Negotiations: Phase Two

DURING THE AFTERNOON OF April 15, negotiators Skatzes and Prise resurrected the idea that the prisoners would release two hostages in exchange for access to the media. As dusk fell, Skatzes took Officer Darrold Clark out on the yard, released him, and made a radio address heard by prisoners all over Ohio. The next morning, as part of the same arrangement, Muslim Stanley Cummings spoke on TV after releasing Officer Anthony Demons. Demons was an African American who appeared in Muslim garb and presented himself as a convert to Islam.

In his address on the yard, speaking both to the prisoners behind him in L block and to radio listeners across Ohio, Skatzes set forth several of the prisoners' demands including replacement of "King Arthur." He also said:

We hope there is no more violence, we hope there are no more unnecessary murders. We as a convict body send our condolences to Bobby's family. I can't pronounce his last name so I'll have to use his first. But that is something that had to happen. A lot of us didn't want it but that's, I'm sorry, that's all I can say.¹

And:

I do have one more thing. A man asked me to do him a personal favor. He asked me to bring a note out here to his people. I wasn't permitted to bring a note, that's fine. I will say Jeff Ratcliff sent his love to his momma and his papa and his people and he said that he is in there hanging in there strong. He was with [Officer] Clark all the time, he's doin' good and I hope we will have him out of here soon too.²

As Skatzes spoke, prisoners listening on the radio applauded thunderously. When he returned to L block, however, he met a

mixed reception. He recalls walking between two lines of prisoners holding lighted candles, almost like a returning hero. But other feelings soon surfaced. Officer Jeff Ratcliff was said to have Aryan Brotherhood tattoos and was disliked by many black prisoners. Jason Robb, although himself a member of the AB, told Skatzes that some of the men felt that he had paid more attention to Vallandingham and Ratcliff than to the prisoners' demands. The upshot was that Robb replaced Skatzes as a negotiator and spokesperson.

Like the prisoners, the State was pursuing two strategies simultaneously. On the one hand, the authorities went through the motions of negotiating. On the other hand, they continued to plan for an assault on L block.

After the officer's death, the authorities did not immediately abandon the idea of assaulting L block. On Monday, April 19, when federal forces stormed the Branch Davidian compound in Waco, Texas, there were persons at the SOCF command center said to have commented, "That's the way to do it," or words to that effect. But this was never the dominant view among the State representatives seeking to end the standoff. As if mutually chastened by the death of Officer Vallandingham, both sides began negotiations in earnest to end the uprising.

Prison negotiator Dirk Prise proposed to Anthony Lavelle and George Skatzes, in separate telephone conversations, that the prisoners choose a leadership committee to meet with a committee of State negotiators at a table in the yard.³ The prisoners designated a negotiating team: Hasan representing the Muslims, Robb for the Aryan Brotherhood, and Lavelle (whose role in killing Officer Vallandingham was suspected but not known for sure by other prisoners) on behalf of the BGD.

The prisoners also firmed up and articulated more clearly their list of demands. (See Appendix 2.) After receiving the prisoners' demands the State proposed a settlement agreement.

This became the instrument for ending the uprising. The subjects covered by the so-called 21-point agreement closely followed the list of prisoners' demands. There was one critical difference: on the majority of points, where the prisoners demanded *action* concerning a problem, the State promised to *consider* the problem or to use its "best efforts" to correct the matter. Here is the text of the 21-point agreement:

(1) SOCF is committed to following all administrative rules of the Ohio Department of Rehabilitation and Correction.

(2) Administrative discipline and criminal proceedings will be fairly and impartially administered without bias against individuals or groups.

(3) All injured parties will receive prompt and complete medical care and follow-up.

(4) The surrender will be witnessed by religious leaders and news media.

(5) The Unit Management system will be reviewed with attempts to improve in areas requiring changes.

(6) SOCF will contact the Federal Court for a review of the White v. Morris consent decree which requires integrated celling.

(7) All close security inmates have already been transferred (on K-side) from SOCF. L-side close inmates will be evaluated.

(8) Procedures will be implemented to thoroughly review inmate files pertaining to early release matters and changes will be made where warranted.

(9) Over 600 inmates have already been transferred from SOCF, greatly reducing population numbers.

(10) Current policies regarding inappropriate supervision will be rigidly enforced.

(11) Medical staffing levels will be reviewed to ensure compliance with ACA [American Correctional Association] standards for medical care.

(12) Attempts will be made to expedite current plans to install a new phone system.

(13) We will work to evaluate and improve work and programmatic opportunities.

(14) There will be no retaliatory actions taken toward any inmate or groups of inmates or their property.

(15) A complete review of all SOCF mail and visiting policies will be undertaken.

(16) Transfers from SOCF are coordinated through the Bureau of Classification. Efforts will be increased to ensure prompt transfers of those inmates who meet eligibility requirements.

(17) Efforts will be undertaken to upgrade the channels of communication between employees and inmates involving "quality of life" issues.

(18) The current commissary pricing system will be reviewed.

(19) We will consult the Ohio Department of Health regarding any future tuberculosis testing.

(20) The Federal Bureau of Investigation will monitor processing and ensure that civil rights will be upheld.

(21) The Ohio Department of Rehabilitation and Correction will consider on a case by case basis inter-state transfer for any inmate, if there is reasonable basis to believe that the Department is unable to provide a secure environment for that inmate. Any inmate denied a transfer, the Federal Bureau of Prisons will review their case.

The copy of the Agreement proffered to the prisoners was signed by “Arthur Tate, Jr., Warden,” and had signature lines for three “inmate negotiators.”

As the prospect of signing a specific document began to become tangible, prisoners asked for a lawyer to assist them. The authorities recruited Attorney Niki Z. Schwartz. This part of the story is perhaps best told in Attorney Schwartz’s own words, as a mitigation witness in the trial of Jason Robb.⁴

Schwartz is a native of Ohio and a graduate of Ohio State University law school. On the stand, he was asked if he had experience in prison condition litigation. He answered that in 1969 he was appointed by the federal court in Toledo to represent prisoners at Marion, Ohio, in a class action. This litigation lasted until 1991. In 1978 Schwartz was asked by the Council for Human Dignity to file a law suit on behalf of the prisoners at the Ohio State Reformatory in Mansfield seeking to close that institution “on the ground that it was unfit for human habitation.” That case also terminated in 1991 with closure of the old Mansfield reformatory and its replacement by a new facility.⁵

On Sunday, April 18, 1993, Greg Trout, chief legal counsel for the Department of Rehabilitation and Correction, telephoned Attorney Schwartz at his home in Cleveland, and asked if he would represent the prisoners in L block. Schwartz said yes and was soon on his way to Lucasville in a Highway Patrol plane.

When he arrived, Schwartz was told that the Department had already prepared a 21-point agreement in response to the inmates’ demands. It was made clear to him that he would not be permitted to try to improve the agreement. Schwartz said that as long as he could make that limitation clear to the prisoners, he would accept

it. Schwartz pointed out that once the Department had their hostages back the State would be free to repudiate the 21-point agreement on the ground that it was negotiated under duress. Did the authorities intend to honor the agreement? he asked. Yes, he was assured.⁶

Then there was a two-day delay. The State wished the prisoners to release three of the remaining five guards held hostage as a “show of good faith” before the prisoners would be allowed to meet with Attorney Schwartz. The prisoners refused. On Tuesday morning, April 20, the State withdrew this precondition and negotiations proceeded to a successful conclusion.⁷

On Wednesday, April 21, between 3:56 and 11:20 p.m., 407 prisoners surrendered in groups of twenty and the five remaining hostages were released. Attorney Schwartz testified that it was, to his knowledge, “the only time a major prison riot has been resolved voluntarily.”⁸

In the broad sweep of late twentieth-century penal history in the United States, Attica, Santa Fe, and Lucasville stand for contrasting paradigms. At the maximum security prison in Attica, New York in 1971, armed forces of the State stormed the occupied recreation yard, killing 29 prisoners and 10 hostages. The facility in Santa Fe, New Mexico, witnessed a comparable blood bath in 1980, except that there 33 prisoners were murdered by other prisoners. The Lucasville uprising was tragically not free of fatalities. But the fatalities were fewer, and the end of the uprising more peaceful, than at either Attica or Santa Fe. As they walked out of L block on the evening of April 21, unkempt and exhausted, the spokespersons and negotiators for the prisoners in rebellion could feel that they had averted a far greater catastrophe.

From Peacemakers to Capital Defendants

What was the actual role in the rebellion of the spokespersons and negotiators who were later found guilty of the aggravated murder of Officer Vallandingham? Why would prisoners whose intent was to assault or kill correctional officers instead go to considerable trouble to ensure that injured officers Fraley, Kemper, and Schroeder were placed outside L block so that they could be retrieved by the authorities? Why would a murderer call attention to himself by going out on the yard to release a hostage, as Skatzes did on April 15 and Muslim Stanley Cummings did the next morning? Why did a series of individual prisoners come on

the telephone as negotiators for the prisoners in L block and give their names, rather than seeking to hide themselves in the anonymous mass of over 400 prisoners in rebellion?

At their trials, the attorney who represented the prisoner negotiators stated under oath that on the basis of what he had experienced they deserved the title “peacemakers.” There is considerable evidence that, each in his own way, the men subsequently convicted of the aggravated murder of Officer Vallandingham had sought to save lives during the eleven days.

Skatzes

George Skatzes volunteered to go out on the yard as a spokesperson on April 12 and 15, and was the prisoners’ principal telephone negotiator until after the death of Officer Vallandingham. Skatzes responded to requests for protection from officers held hostage. A number of individual prisoners and hostage officers credited him with saving their lives.

The first person whose life Skatzes helped to save was Correctional Officer Harold Fraley. After the takeover, prosecution witness Rodger [*sic*] Snodgrass testified, he saw Skatzes screaming to correctional officers on the other side of the gates that there was a correctional officer in L block who needed to be evacuated. Skatzes was saying: “He’s hurt. He needs help. We need to get him out of here before he dies. . . . I am goin’ to take him to the back of L-8 and I will put him there and you all better come and get him.” Snodgrass saw Skatzes pick the man up and take him to the stairwell at the back of L-8.⁹ State of Ohio personnel retrieved Correctional Officer Fraley from the L-8 stairwell at 4:45 p.m.¹⁰

Prisoner Dwayne Johnson described the efforts he and Skatzes made to save the lives of other officers on the first night of the uprising. Johnson, Skatzes and other prisoners wrapped officers Kemper and Schroeder and arranged for them to be carried out to the yard where they could be picked up. Johnson said Skatzes stayed until the last guard was released from the makeshift infirmary in the L-3 dayroom. This was at some personal risk because, as Johnson testified, it required going behind the backs of other persons active in the rebellion to get the injured officers out.¹¹

Skatzes did what he could to ensure the safety and well-being of the guards who remained in L block as hostages. Hostage and prosecution witness Officer Darrold Clark testified that, while

under the control of Muslims in L-6, he asked Skatzes to get him out. Skatzes left, came back and said, “You are going into my block,” and took Clark to L-2.¹² Clark testified that when he could not sleep he asked for George, that George got a mattress and laid down between him and the door, that is, between Clark and anyone who might come to harm him.¹³

When Skatzes heard that Officer Ratcliff had been beaten by prisoners, Skatzes came and got Ratcliff and took him also to L-2.¹⁴ Skatzes removed the blindfold and some red tape from Ratcliff’s eyes, took water, cotton balls and towels, and cleaned away a red substance that was burning Ratcliff’s eyes.¹⁵ Ratcliff testified, “[I]f he wouldn’t have come and got me, I probably wouldn’t be here, I would probably be dead.”¹⁶

Negotiation tapes reveal that Skatzes made rounds to be sure that the hostage officers were safe, delivered food and water, delivered medication to officers Buffington and Dotson, and even offered Officer Dotson his own blood pressure medication.¹⁷

Skatzes also saved the lives of prisoners. Tim Williams, a black prisoner who testified for the prosecution, said that he was accused of being involved in a plot to kill Skatzes and a leader of the Muslims. When Williams was confronted by the Muslim leader, Skatzes said he did not think Williams had anything to do with it. Williams later told the Highway Patrol investigator that Skatzes helped to save his life.¹⁸ When prosecution witness Brookover went to Skatzes and asked whether he was going to be killed, Skatzes assured Brookover that he would not let that happen. Brookover testified: “[N]o matter what George feels about me today, I believe in my heart he saved my life”¹⁹

Namir

Namir conceded in his unsworn statement to the jury that he was in L-6 at the time of Officer Vallandingham’s murder. It appears that Namir did not interfere with the murder because, as he said in his unsworn statement, he was under the impression that Lavelle had obtained permission from Namir’s Muslim superiors and that Namir could do nothing to stop it.²⁰

Later on April 15, Namir talked to senior Muslims such as Hasan and Cummings, who told him that they had *not* approved the killing of a guard. Namir thereupon went to L-1 and knocked Lavelle to the floor, saying, according to the testimony of eye witness Willie Johnson, “Lavelle, you going to be held responsibility

[sic] for what you caused and you're not strong enough to make a decision like that. You ain't nothing but a little punk."²¹

Like Willie Johnson, Eddie Moss testified that on the evening of April 15 he saw Namir knock Lavelle to the floor in L-1. Namir said, according to Moss, "you gonna be responsible for that call you just made, man. You didn't have no business making that call, man."²²

At some point after Namir knocked Lavelle to the floor for killing an officer without a decision by the leadership of the uprising, Leroy Elmore a.k.a. Taymullah Abdul Hakim, came to L-1 distributing food and water. He encountered Lavelle, in an agitated state, on the landing between the upper and lower ranges. Elmore was not permitted to testify at trial about what was said. He has declared in an affidavit:

13. On the evening of Wednesday, April 14, 1993, I slept in L-7. I normally got up between 10 and 11 o'clock in the morning to pass out food. When I got up, I heard a rumor that a body had been dropped off in the yard.

14. I went straight to what we called the sub-kitchen, which was a little hallway between the gymnasium and the recreation yard. That was where we prepared the food.

15. After I prepared the food, I pushed my cart to L-1 to begin to distribute it.

16. As soon as I entered the block, Anthony Lavelle approached me. He said he needed to talk to me. He seemed to be very frightened.

17. Mr. Lavelle and I spoke to each other on the landing of the stairs in L-1.

18. Other prisoners nearby when Mr. Lavelle approached me were Willie Johnson also known as "Chilly Willie," Eddie Moss, and Johnny Long.

19. Mr. Lavelle informed me that Mr. Were had knocked him down. He said he feared that Mr. Were was going to do him bodily harm.

20. I said, "What did you do?" Mr. Lavelle answered, "I had the guard killed."

21. I said, "Why?" Mr. Lavelle stated that when the female on the radio took the inmates' threats lightly, he felt compelled to teach her a lesson. I understood this to refer to a statement that a Ms. Tess[a] Unwin made on the radio on the morning of April 14.²³

If indeed Namir had been responsible for killing Officer Vallandingham, how would one explain why he was so angry at Lavelle?

Hasan

During the early hours of the rebellion, Hasan caused prisoners viewed as snitches and hostage correctional officers to be locked in L-6 for their own safety.

Prosecution witness Miles Hogan testified that on April 11 prisoners Donaldson and Newell approached him with the apparent intent to kill him. Believing he was close to death, Hogan started calling out Hasan's name. Hasan appeared, took Hogan to L-6, and locked him up. Hogan was asked:

Q. Now the man seated right over here at the table, the far end of the table [Hasan], is there any doubt in your mind that that person saved your life?

A. There's not a doubt in my mind.²⁴

Prosecution witness Reginald Williams testified that when he saw another Muslim beating a prisoner named Stockton on the head with a hammer, "I told him that he was out of line because Hasan didn't instruct us to do this."²⁵ Stockton, although badly injured, survived.

Prosecution witness Rodger Snodgrass testified about an alleged plot by prisoners Tim Williams, Doc Creager, Anthony Copeland, and "Buddy" Newell to kill George Skatzes and take over control of the rebellion. Hasan directed that Creager, Copeland, and Newell should be locked up in L-6. Snodgrass testified that he wanted to kill them but that didn't happen, because "they were kept locked up, protected by Hasan."²⁶

Further, Hasan played no apparent role in the meeting on the morning of April 15 that allegedly decided to kill Officer Vallandingham. According to the State's own transcript, Hasan did not chair the meeting. In fact, not a single word was attributed to him. At Namir's second trial, Howard Hudson was asked to identify the prisoners whose voices could be heard on Tunnel Tape 61. He named: Namir, Anthony Lavelle, Jason Robb, Stanley Cummings, Rodger Snodgrass, George Skatzes, Cecil Allen, and Johnny Roper. "I believe that's everybody that is on Tunnel Tape Number 61," Hudson said.²⁷ He did not name Hasan.

Attorney Schwartz testified that during the negotiations leading to a settlement, Hasan expressed concern about the safety of the hostage officers.

All three of the inmate negotiators expressed concern about the safety of the guards, indicated that in fact they had been sufficiently concerned that they gave up some of their own food to give to the guards since very little food was put out, they had worked hard to try to protect the hostages.²⁸

According to Attorney Schwartz, Hasan and the others “were peacemakers, as far as I was concerned, during the time that I was there.”²⁹

Robb

Also according to Attorney Schwartz, Jason Robb was the lead negotiator for the prisoners in the process that eventually produced a peaceful settlement.³⁰

During the two days after Schwartz arrived before he met with the prisoners face-to-face, the prisoner negotiator with whom Attorney Schwartz spoke on the telephone was always Robb.³¹ When a face-to-face meeting finally came about, “Jason was the one who did most of the talking.” Robb’s major concerns were safety, safety of the inmates and the hostages, safety from retaliation by guards or law enforcement officials, inmate safety from each other, hostage safety from other inmates.³²

It was Jason in particular, Attorney Schwartz went on, who

explained this to me, that there were a lot of factions in the L block and a lot of inmates armed to the teeth with a lot of vendettas against each other and . . . he was fearful that if there was just everybody come out all at once, that inmates would use this last opportunity to take out their grudges against each other and inmates would be killing each other.³³

Likewise the prisoner negotiators were concerned, and “again, this was articulated by Jason,” that the prisoners be provided flashlights because the hallway in L block was very dark and “there was a risk of inmate against inmate violence.”³⁴

Overall, Attorney Schwartz testified, he felt that Jason Robb

deserved a large part of the credit for the peaceful resolution of . . . the riot, that he had stuck his neck out as a lead negotiator, that he had been selfless in negotiating, not trying to . . . feather his own nest, but generally negotiated on behalf of the inmates, that his concerns were legitimate ones, that he was reasonable in . . . accepting things that couldn't be changed or negotiated or wouldn't be agreed to by the other side.³⁵

In Schwartz's view, Colonel Thomas Rice on the side of the authorities and Jason Robb on the prisoners' side, deserved the most credit for the successful settlement.³⁶

Targeting or Open-Minded Investigation?

In view of the evidence just set forth, it would seem that the conclusion that Skatzes, Namir, Hasan, and Robb were, in fact, responsible for killing Officer Vallandingham, could have emerged only after months of painstaking investigation. If their guilt were assumed to begin with, it could only have been because the State knew they had been spokespersons and negotiators and the State wanted to target the leaders of the rebellion.

The State denied that it targeted the visible spokespersons and negotiators. Howard Hudson, lead investigator for the Ohio State Highway Patrol, testified as follows in Namir's second trial:

Q. When you began your search for the evidence and the interviewing of the witnesses who were present, did you have a particular suspect or suspects in mind?

A. No, sir.

Q. At that time?

A. No, sir.

Q. What was the goal of the interview process? Was it to get evidence against a certain individual or a group of individuals or how did it go, Lieutenant?

A. No, sir. No, sir. The goal was to find the truth, as in any other investigation. We did not go in this with any preconceived ideas.³⁷

If indeed this was Hudson's approach, he apparently failed to communicate it to the patrolmen he supervised. Immediately after the surrender, prosecutors and investigators from the Ohio State Highway Patrol identified the spokespersons and negotiators for

the prisoner body during the uprising, including Hasan, Robb, and Skatzes, as the persons whose guilt they were trying to establish.

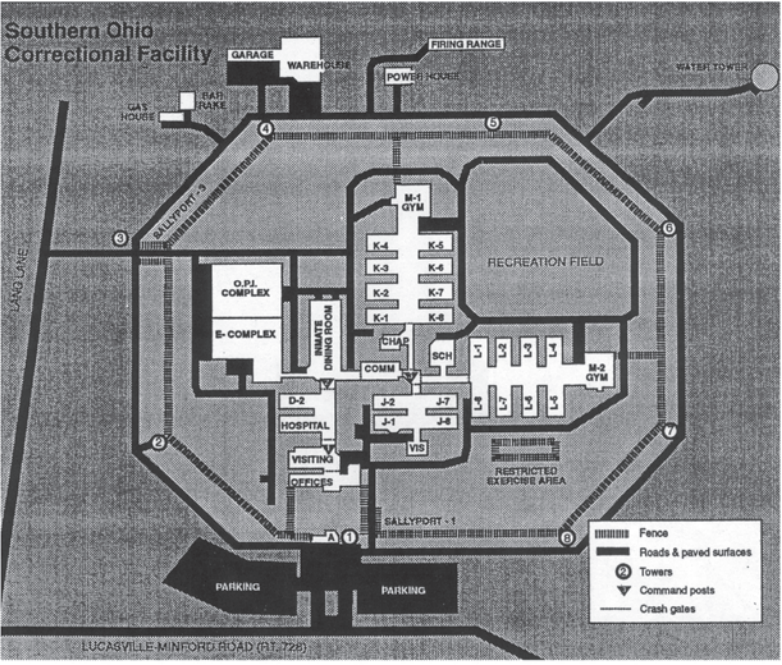
Johnny Fryman had almost been killed by other prisoners at the beginning of the rebellion, and had no reason to wish to protect the leaders of the uprising. Fryman was taken to the SOCF infirmary. He reports that, in the immediate aftermath of the surrender, two members of the Ohio State Highway Patrol questioned him as follows:

They made it clear that they wanted the leaders. They wanted to prosecute Hasan, George Skatzes, Lavelle, Jason Robb, and another Muslim whose name I don't remember. They had not yet begun their investigation but they knew they wanted those leaders. I joked with them and said, "You basically don't care what I say as long as it's against these guys." They said, "Yeah, that's it."³⁸

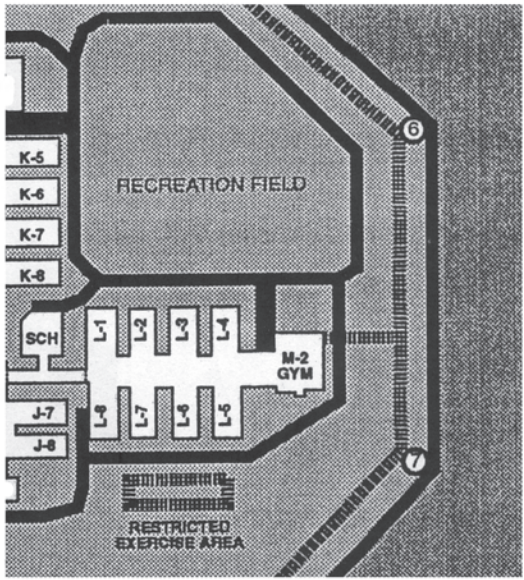
Emanuel "Buddy" Newell, who likewise had been assaulted by prisoners and also was placed in the SOCF infirmary, implicates Hudson himself. This witness reports that on one occasion shortly after the surrender, Lieutenant Root, Sergeant Howard Hudson, Trooper Randy McGough, and Trooper Cary Sayers talked with him.

These officers said, "We want Skatzes. We want Lavelle. We want Hasan." They also said, "We know they were leaders. . . . We want to burn their ass. We want to put them in the electric chair for murdering Officer Vallandingham."³⁹

DIAGRAMS AND PHOTOGRAPHS



76
LUCASVILLE

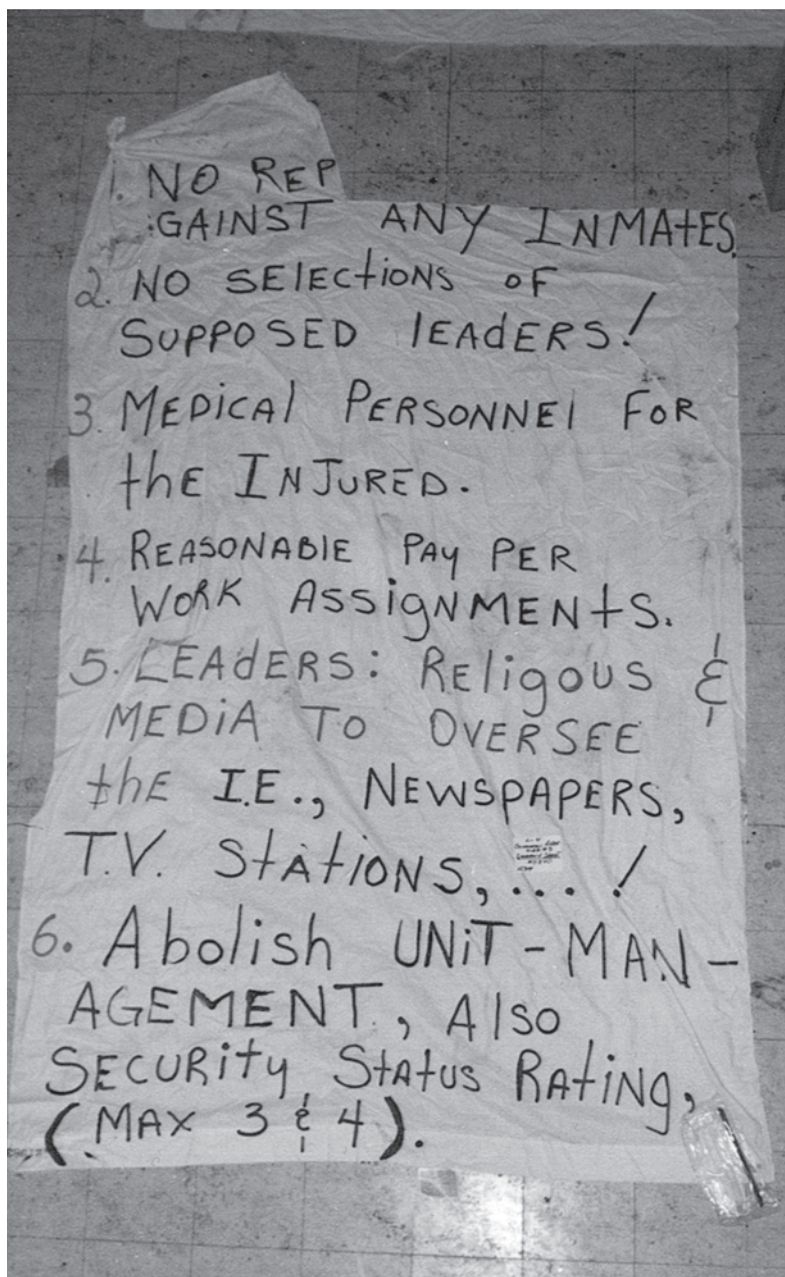


This diagram shows the layout of the Southern Ohio Correctional Facility (SOCF) and of L block within it. The diagram appears in Ohio Civil Service Employees Association, AFSCME Local 11, *Report and Recommendations Concerning the Ohio Department of Rehabilitation and Correction and the Southern Ohio Correctional Facility Lucasville, Ohio*, p. 13.



On the morning of Monday, April 12, Anthony Lavelle improvised a public address system to broadcast the prisoners' demands. The authorities thereupon turned off electric power for L block. The prisoners responded by writing their demands on bed sheets and hanging the sheets out of L block windows.

THIS
Administration
is Blocking
THE PRESS
FROM SPEAKING
TO US !!!




1. NO REP
AGAINST ANY INMATES.
2. NO SELECTIONS OF
SUPPOSED LEADERS!
3. MEDICAL PERSONNEL FOR
THE INJURED.
4. REASONABLE PAY PER
WORK ASSIGNMENTS.
5. LEADERS: RELIGIOUS &
MEDIA TO OVERSEE
THE I.E., NEWSPAPERS,
T.V. STATIONS, ...!
6. ABOLISH UNIT-MAN-
AGEMENT, ALSO
SECURITY STATUS RATING,
(MAX 3 & 4).

These three bed sheets set forth most of one early version of the prisoners' demands. The final settlement contained twenty-one points (see pp. 64-66).

7. NO MORE FORCED
INTERGRATED CELLING.

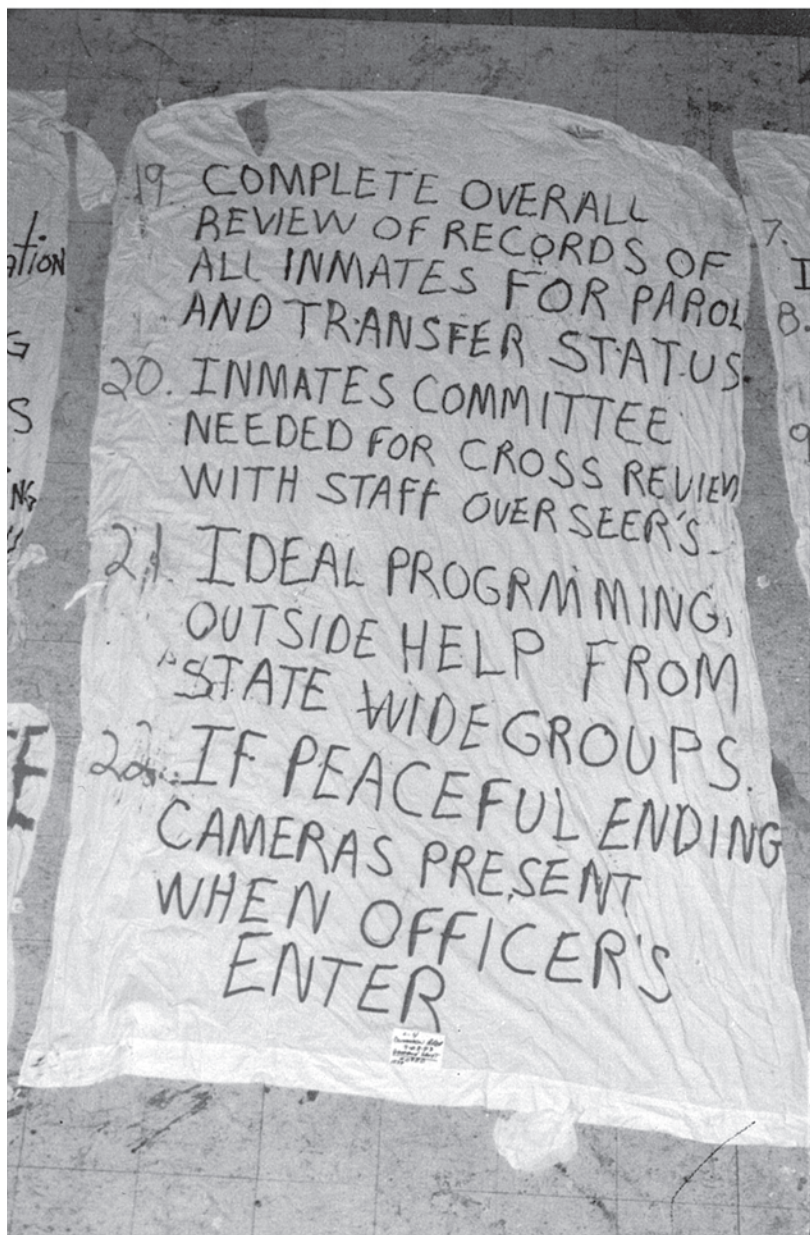
8. LOW SECURITY INMATES
Should-Not BE IN S.O.C.F.

9. BAN the USE OF
UNSUBSTANTIATED CRIMINAL
RECORDS, DISMISSED R.I.B.
& COURT CASES, USED
 BY .. AT PAROLE
HEARING.

10. REDUCE THE OVERCROWDED
PRISON CONDITIONS IN OHIO

11. FOOD PREPERATION AND
VARIETY NEEDS TO BE
SERIOUSLY UPGRADED

Small printed text at the bottom of the bag, likely a manufacturer's mark or recycling information.



19. COMPLETE OVERALL
REVIEW OF RECORDS OF
ALL INMATES FOR PAROL
AND TRANSFER STATUS.

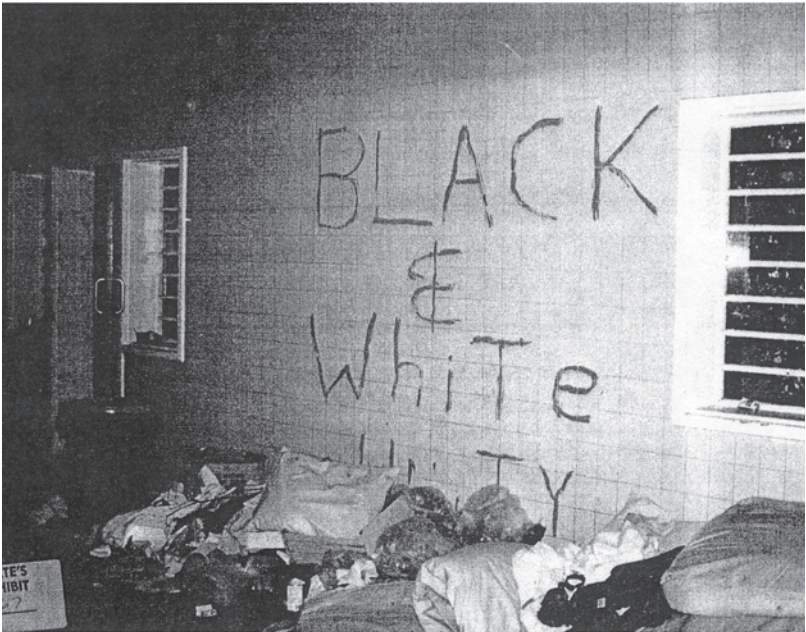
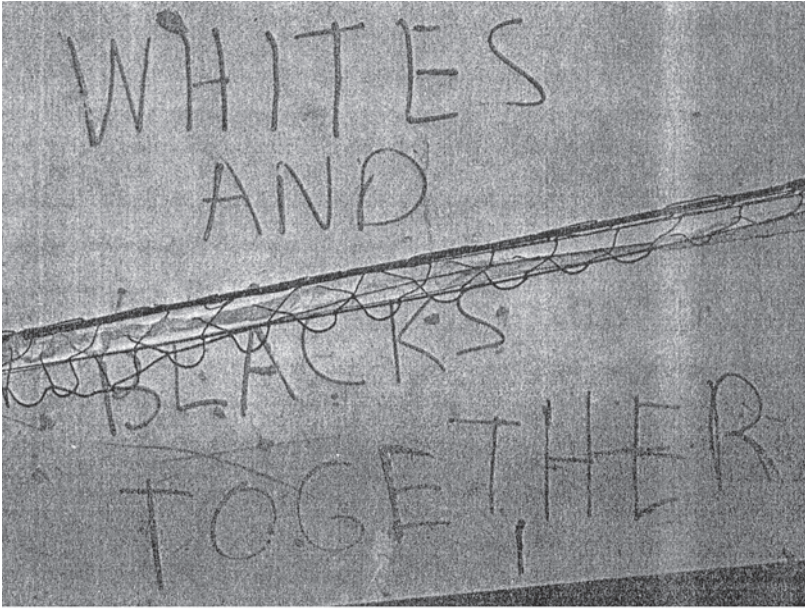
20. INMATES COMMITTEE
NEEDED FOR CROSS REVIEW
WITH STAFF OVERSEER'S.

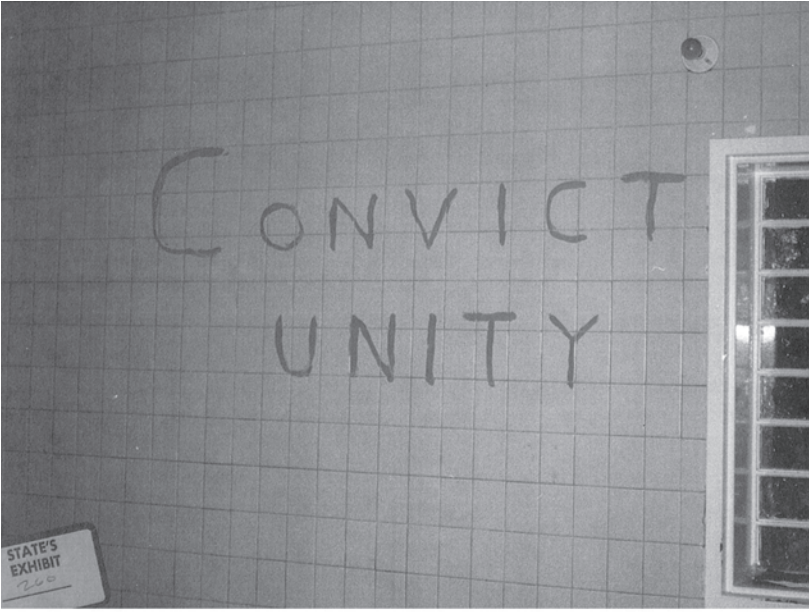
21. IDEAL PROGRAMMING,
OUTSIDE HELP FROM
"STATE WIDE GROUPS.

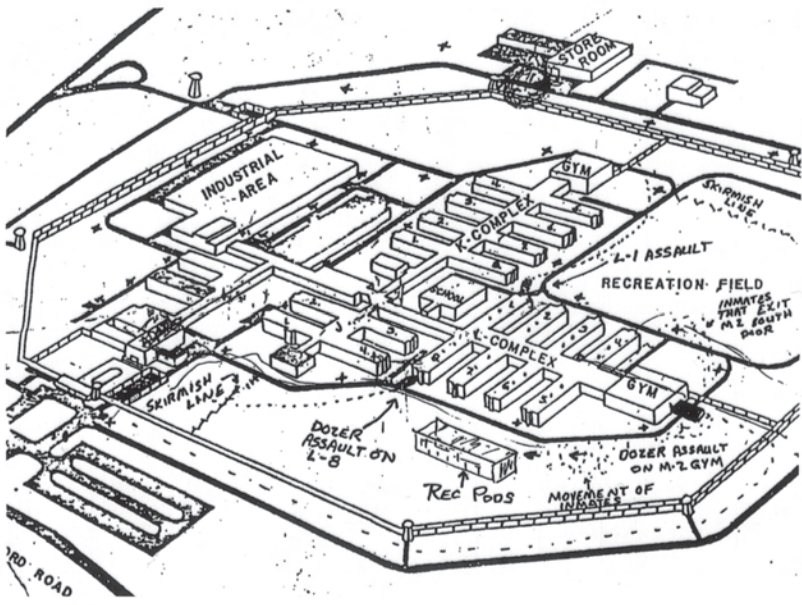
22. IF PEACEFUL ENDING
CAMERAS PRESENT
WHEN OFFICER'S
ENTER



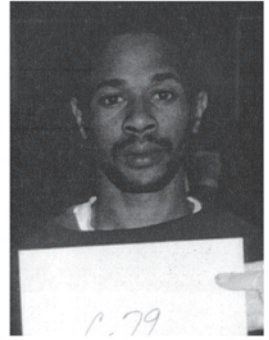
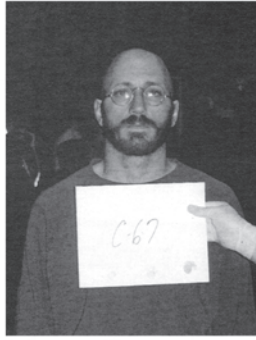
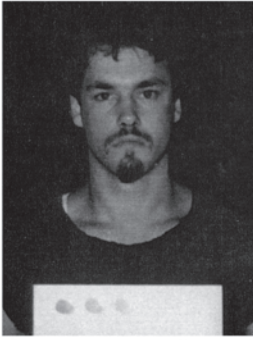
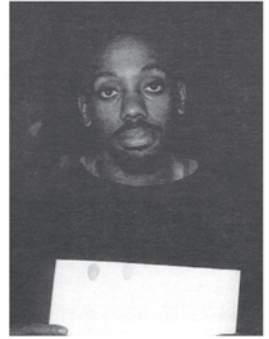
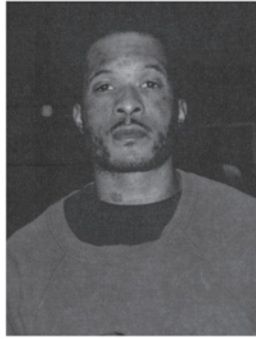
The prisoners covered the walls of L block and the adjacent gymnasium with graffiti. Those shown above and on the following two pages were introduced as exhibits in *State v. Skatzes*.







On the afternoon and evening of Wednesday, April 14, the State made plans to assault L block. The diagram shown above is from Ohio State Highway Patrol, *Southern Ohio Correctional Facility Riot, April, 1993: Supplemental Information* (Nov. 1993), unnumbered page bate-stamped RPT001596. Note skirmish lines.



Shown above are six prosecution witnesses mentioned in the text: top row, left to right, Robert Brookover, Stacey Gordon, Anthony Lavelle; bottom row, left to right, Rodger Snodgrass, David Lomache, Timothy Williams. These photographs were taken as the prisoners in L block surrendered.



**PLAINTIFF'S
EXHIBIT**
|
(Hills) 4-13-97

Correctional officers continued to feel hostility toward Lucasville defendants long after April 1993. In September 1997, high security prisoners at the Mansfield Correctional Institution, including the “Lucasville Five,” took over pod D-4. The officers were released unharmed but there was some violence against fellow prisoners. After about four hours a SWAT team, assembled from several prisons, stormed the occupied pod. Jason Robb, who was in his cell and offered no resistance, was severely beaten.

CHAPTER FIVE

THE CRIMINAL INJUSTICE SYSTEM: BEFORE TRIAL

THE PROCESS OF BRINGING a defendant to trial on a capital charge and then sentencing him (or her) to death goes through certain defined stages. They are:

- *Indictment.* A grand jury is convened and the prosecutor presents evidence intended to convince the grand jury that an indictment (criminal charges) should issue. The defendant does not participate, either personally or through counsel.
- *Appointment of counsel.* If the defendant is unable to afford a lawyer, the court appoints one.
- *Arraignment.* After indictment, the defendant is brought into court, the indictment is read, and the defendant pleads.
- *Discovery.* Before trial, the prosecutor is required to turn over to counsel for the defendant any “exculpatory” material in the possession of the State. Counsel for an indigent defendant ordinarily asks the court for funds to hire an investigator, experts, and a mitigation specialist (see below), as well as to interview potential witnesses and to obtain additional documents from the State. Defense counsel in a capital case may be found to have provided “ineffective assistance” if counsel fails to make every reasonable effort independently and reliably to reconstruct events and circumstances, first as to the events connected with a killing, and second as to the defendant’s life history.
- *Motions practice.* Especially in capital cases, rights are recognized and implemented only to the extent that they are asserted. If a lawyer deliberately or even mistakenly fails to comply with a procedural requirement, the corresponding substantive right may be forever lost. Defense counsel must specifically bring to the attention of judge and prosecutor any circumstance that is believed to affect the client’s position in court.
- *Trial: jury selection.* The jury is selected in a process known as “*voir dire*.” Each side has a certain number of “peremptory”

challenges that cause a juror to be dismissed automatically. Each side may also ask the judge to excuse additional potential jurors “for cause” because an individual’s values and experience substantially impair his or her ability to function as an impartial juror. In capital cases, any potential juror opposed to the death penalty under all circumstances will almost certainly be dismissed.

- *Trial: guilt phase.* The prosecution seeks to persuade the jury that the defendant should be found guilty. Guilt must be established beyond a reasonable doubt and the jury must be unanimous.
- *Trial: sentencing phase.* If the defendant is found guilty in a capital case, a separate hearing is held before the same jury to determine whether the defendant should receive the death penalty. A defendant determined to be mentally retarded cannot be executed. Under Ohio law, the jury recommends the penalty and the judge makes the final decision. In order to recommend the death penalty the jury must find that the “aggravating circumstances” defined by law—such as being a prisoner, or being involved in a course of conduct involving more than one murder—outweigh the “mitigating circumstances.” The jury’s recommendation of death must be unanimous, and the refusal of one juror to recommend death requires that the defendant be sentenced to life imprisonment.

Nuclear Weapons and Slingshots

When he testified in *State v. Robb* early in 1995, Attorney Schwartz was asked whether the State of Ohio had adhered to the 21-point agreement that ended the Lucasville uprising. Yes and no, he answered. Asked to explain, Schwartz stated that some points had been observed commendably, as to some points the results were mixed, and “one of them is an absolute disaster.”

Q. Which one is that?

A. The assurance in Point Two that criminal prosecutions would be fair. [“2. Administrative discipline and criminal proceedings will be fairly and impartially administered without bias against individuals or groups.”]

Q. In what way do you feel that that has not been complied with?

A. I regard the prosecutions as being unfair primarily because of the resources, the allocation of resources to the two sides. To use a metaphor, the prosecution has been provided with nuclear weaponry and the defense has been provided with slingshots.

Attorney Schwartz went on to explain that special prosecutors were being paid \$60 to \$100 “an unlimited hour” for prosecuting these cases. “They have the total investigatory resources of the Highway Patrol with thousands of witness statements all computerized for rapid correlation and retrieval.” By contrast, defendants had been appointed counsel who were paid \$30 an hour out of court, \$40 an hour in court, with a ceiling of \$750 for non-capital cases. “Motions by defense attorneys for the appointment of an investigator have been denied and/or granted with absurdly low funding limits that really preclude any meaningful investigation by and on behalf of the defendants.” It was, Attorney Schwartz concluded, “a very unequal kind of battle.”¹

Lawyers for Robb and Hasan requested access to the voluminous discovery information in computer format used by the prosecution. The request was denied.²

Above the entrance to the Juvenile and Probate Courthouse of Scioto County, Ohio—the county in which Lucasville and the Southern Ohio Correctional Facility are located—appear the words, “Tell Me Your Cause And Ye Shall Have Right.”³ It hasn’t worked out that way for the Lucasville Five. An image that better describes what these capital defendants have experienced as they made their way through the criminal justice system is Dante’s description of Hell in his *Divine Comedy*. Dante wrote that over the gates of Hell are inscribed the words, “Abandon hope, all ye who enter here.” Once within the gates, the traveler descends from one circle of Hell to the next, each circle more frightening than the one before.

Interference with Access to Counsel

In his testimony on behalf of Jason Robb, Attorney Schwartz described how counsel was—and was not—appointed to represent the prisoners who had occupied L block.

When he returned to Cleveland after the surrender, Schwartz testified, he realized that the more than 400 prisoners who had just surrendered were likely to be questioned by the authorities and “wouldn’t . . . necessarily know their rights” to remain silent

or to insist upon having a lawyer present during interrogation. He made arrangements for lawyers acting on his behalf

to go into the prison and briefly counsel each inmate as to what his rights were . . . until they could get individual representation that would permit each of them to make an independent decision about whether and to what extent to cooperate and make a deal.⁴

The Office of the Ohio Public Defender supplied most of the attorneys who, at the request of Attorney Schwartz, conducted the initial interviews with potential defendants to make sure that they knew their rights. Dale Baich recalls that the lawyers left Columbus at 6 a.m. on April 23. One element in the surrender agreement was that prisoners who feared mistreatment by officers at SOCF would immediately be transferred to Mansfield. Accordingly, about eight lawyers went to Mansfield, the remainder to Lucasville. Each attorney interviewed twenty prisoners. The attorneys spoke to the prisoners through the cell doors. They made it clear that they did not want to talk about the events of the riot, only to make sure that everyone knew his rights. Each prisoner was given a two-page questionnaire. After returning to Columbus, the attorneys called prisoners' relatives to report on these visits.⁵

In his further efforts to assure effective defense for each of the more than 400 men he represented, Attorney Schwartz encountered persistent obstruction from Special Prosecutor Mark Piepmeier. It began soon after the uprising ended, Schwartz complained to the Chief Justice of the Ohio Supreme Court. Schwartz made arrangements "to convene a meeting of top State officials to consider ways and means of providing the inmates with the effective assistance of counsel." That meeting, Schwartz says, was aborted by the newly appointed Special Prosecutor. According to Schwartz, *"the Prosecutor told me that he did not want the inmates to have counsel prior to indictment because then they would not incriminate themselves."* (Emphasis added.)⁶

Getting the Public Defender off the Case

Organizations calling for the death penalty had been formed in Scioto County. They were circulating petitions and form letters to "request and demand" that "the Death Penalty in the State of Ohio be applied as the passers intended it to be" and calling on

State officials to “USE the Death Penalty!” (See Appendix 3.) The Public Defender wished to ask potential members of the grand jury whether they had signed these petitions and form letters.

In December 1993, the Public Defender filed a motion in the Court of Common Pleas for Scioto County seeking notice of the date and time the grand jury would convene so as to examine the array for possible bias. Subsequently, after the prosecutor attached the names of the potential grand jurors to a pleading, the Public Defender filed a motion to dismiss the grand jury for bias. The Public Defender named four persons who appeared to have signed the petitions, and four others whose last names suggested that they might be relatives of signers. The Public Defender also moved that grand jury proceedings be recorded.⁷

The Public Defender’s pleadings were signed by Assistant Public Defenders, describing themselves as “counsel for grand jury targets”: that is, for prisoners involved in the uprising who might be indicted by the grand jury.

In response to the Public Defender’s motion for notice, the prosecutor asserted that “before law enforcement could begin the interview process” the Public Defender “got into the prisons, solicited all 407 inmates involved as clients, and advised them not to speak to the police.” The prosecution asked the court not only to deny the motion, but also to find that the Public Defender had “gratuitously intervened in a criminal investigation and . . . made a nuisance of himself,” thereby violating Rule 11 of the Ohio Rules of Civil Procedure.⁸

In later pleadings, the prosecution contended that the Public Defender was “attempting to keep its hands involved in as many cases as possible.” The State’s implicit theory was that the Lucasville prisoners could only be represented one by one and that any attempt to act on their behalf as a class was impermissible. No prisoner had yet been arrested, charged or indicted, the prosecution argued. The Public Defender’s clients included potential defendants, potential victims, and potential witnesses, “whose interests clearly conflict with each other. . . . The same firm cannot represent both sides in a lawsuit.” The court should find a violation of Rule 11 and the Public Defender “should be removed from all representation of inmates involved in the S.O.C.F. riot.”⁹

The Office of the Public Defender, according to Attorney Baich, recognized that it could not represent individual defendants after they were indicted. But like Attorney Schwartz, the attorneys

for the Public Defender believed that all potential Lucasville defendants had certain common interests prior to indictment: to know their rights, to obtain effective counsel for their individual cases, and not to be indicted by biased grand jurors.

The prosecutor's memorandum in opposition to the Public Defender's motion for notice was filed on December 13, 1993, and mailed to the Public Defender that same day. Four days later, on December 17, 1993, *without giving the Public Defender the customary opportunity to respond*, the Scioto County court denied the motion for notice and found a violation of Rule 11.

The executive director of the Office of the Ohio Public Defender was replaced soon after. Since then, the Office of the Public Defender has only occasionally represented individual Lucasville defendants, and only in their appeals.

Henceforth publicly-funded prosecutors would seek to convict Lucasville defendants while the publicly-funded entity dedicated to advocacy for indigent defendants was sidelined. The State would proceed against such Lucasville defendants as it chose to indict, utilizing a single computerized data bank created by the Ohio State Highway Patrol and the prosecutors. The prisoners would no longer be represented collectively or be able to draw on the pooled legal resources of any network or organization.

Allowing Representation Only by Lawyers Who Would Plea Bargain

While the Public Defender was being ejected from Lucasville proceedings, Attorney Schwartz, with the assistance of the Ohio State Bar Association and the Ohio Association of Criminal Defense Lawyers, set about recruiting attorneys from the private bar to provide individual counsel to as many prisoners as possible. Training seminars were conducted. The expectation was that volunteer counsel would form attorney-client relationships with particular prisoners and "would be available . . . to accept appointment for inmates who got indicted."¹⁰

But when indictments began to issue, and there were motions for the appointment of the volunteer attorneys who had been recruited and trained, "the prosecutor filed objections to the appointment of the lawyers that we had recruited, and instead, a variety of Southern Ohio lawyers were appointed."

According to Schwartz, "the Special Prosecutor, who had not wanted the inmates to have counsel at all, then pressured the

OSBA [Ohio State Bar Association] to give assignment priority to those inmates who had indicated they would cooperate with the prosecution if they had counsel.” Schwartz wrote to Chief Justice Moyer that the Special Prosecutor induced Chief Judge Everett Burton of the Scioto County Common Pleas Court to tell volunteer attorneys “that if they cooperated by arranging a plea, they would be appointed to represent their client, but would not be appointed if they did not so cooperate.”¹¹

In connection with arraignments in February 1994, retired Judge Thomas Mitchell—later to be the judge in the trials of Jason Robb and George Skatzes—declared that no public defenders or volunteer attorneys would be appointed to represent Lucasville defendants.

Attorney Schwartz summarized the situation for Chief Justice Moyer as follows:

1) The Prosecutor, who has spent the better part of a year with a huge budget and the entire investigative resources of the Highway Patrol preparing his cases, does not want to face the highly qualified and dedicated volunteers who have attended training programs, have developed ongoing attorney-client relationships, and have acquired relevant knowledge.

2) The Prosecutor and the Court are manipulating the visiting judges you have assigned to preclude the most effective possible assistance of counsel.

3) The strenuous and laudable efforts of the Ohio State Bar Association, the Ohio Association of Criminal Defense Lawyers, and the State Public Defender Commission (to assure quality representation for indigent and despised prisoners in the highest tradition of our profession) are being thwarted.¹²

Schwartz’s letter to Chief Justice Moyer resulted in the appointment of some of the volunteer attorneys. But the State’s interference with access to counsel continued.

Obstructing Appointment of Effective Counsel for Hasan and Namir

Attorney Schwartz, and Attorney Richard Kerger of Toledo (appointed and then dismissed by the court as counsel for Hasan), have prepared detailed statements about Hasan’s frustrations in

obtaining effective counsel.¹³ Hasan's habeas petition concludes, citing the record: "[t]he overall magnitude of petitioner's case put great financial and personal strain on his appointed attorneys. As a result from the time of Hasan's indictment until his trial, petitioner had three different sets of attorneys."¹⁴

The essence of this sorry story is as follows:

- Schwartz and the public interest groups assisting him recruited "extremely competent counsel" to represent Hasan, including Kerger. The prosecutor objected to their appointment.
- The trial court appointed the requested counsel over the prosecutor's objections but denied their motion for timely appointment of an adequately compensated investigator. Early in 1994 the court authorized \$700. Ten weeks before trial, the judge authorized \$25,000.
- The lawyers were also told there would be no "interim billings" for them: "they would have to wait until the conclusion of the case before being paid." Kerger's co-counsel was obliged to withdraw.
- After his co-counsel withdrew, Kerger requested a continuance so that when new co-counsel was appointed the new lawyer could have time to be brought up to speed and to provide competent defense. Judge Cox refused and, so Kerger believes, "determined to remove me." Kerger considers that he was removed "because he had been too aggressive in his attempt to defend his client."
- The new lead lawyer assigned to the case resigned four months before trial because of financial stress. After a month and a half of looking, the judge appointed a lawyer who came into the case less than two months before trial. The judge denied a request for a continuance by this lawyer, who stated throughout the trial that he was not adequately prepared.
- Hasan's two appointed counsel feuded throughout the trial, sometimes in the presence of the jury.
- Not until after Hasan had been convicted did his lawyers begin to prepare what would be presented to the jury in mitigation.
- New counsel appointed to handle Hasan's appeals was utterly incompetent and ultimately had to be replaced by the Ohio Supreme Court.

When one recalls that Hasan was targeted by the prosecution as the ringleader of the rebellion, the difficulties he experienced in finding effective counsel are especially appalling.

All of the Lucasville Five had problems obtaining effective counsel with whom they could communicate. Early in 2002, the Ohio Supreme Court reversed Namir's conviction and sentence on the ground that the trial court had failed to hold a mental competency hearing despite abundant evidence that such a hearing was needed. Here is what happened when Namir's case went back to the Hamilton County Court of Common Pleas for a new trial.

First, Judge Fred Cartolano, who had presided over Hasan's trial, was appointed to be the judge at the new trial for Namir. At Hasan's trial, Judge Cartolano had already heard many bad things said about Namir which Namir, not being the defendant or present in the courtroom, had no opportunity to rebut.¹⁵

Second, Judge Cartolano appointed as defense counsel two courthouse regulars, *one of whom was married to a county prosecutor while the other had been counsel for a prosecution witness in Namir's first trial*. Namir filed a *pro se* motion asking for new counsel. The author filed a friend of the court brief on behalf of the American Civil Liberties Union, supporting Namir's demand for new counsel, and naming the counsel he desired (the lawyer who had successfully handled the direct appeal of his first conviction). Embarrassed, the two appointed lawyers withdrew, and Namir obtained the lawyer of his choice, who vigorously—but unsuccessfully—represented him at his second trial.

Choosing a Hostile Venue

Apart from *who* represented the Lucasville defendants, it mattered a great deal *where* they were tried. Hasan and Namir were both tried in Hamilton County, Ohio, where the city of Cincinnati is located.

All the Lucasville Five were indicted in Scioto County, location of the prison. Hasan's attorneys objected that the number of local residents who worked at SOCF made a fair trial impossible. (They might also have argued that not a single African American lives in Lucasville.)¹⁶ The case was moved to Columbus, the state capital, in central Ohio.

Then the judge assigned to try the case removed himself and was replaced by Judge Cartolano from Hamilton County. Judge Cartolano moved the case to Cincinnati. Attorney Kerger

comments that the special prosecutors came from Hamilton County and Judge Cartolano had himself been a Hamilton County prosecutor.

But this only begins to convey what it meant to try African American “riot leaders” in the city of Cincinnati.

Cincinnati is the death penalty capital of Ohio. As of April 2003, Hamilton County had 7.3 percent of Ohio’s population and almost a quarter of the men on Ohio’s Death Row (47 of 208). The Supreme Court of Ohio has rebuked Hamilton County prosecutors for prosecutorial misconduct in fourteen death penalty cases over a twelve-year period.¹⁷

Professor James Liebman of Columbia University has published a massive study of serious reversible error in capital cases. In testimony before the Criminal Justice Committee of the Ohio House of Representatives in June 2002, Professor Liebman stated:

Hamilton County (Cincinnati) has the seventh highest death-sentencing rate in the nation among relatively populous counties. Hamilton County has twice the death-sentencing rate of Cuyahoga County (Cleveland) and the state as a whole, and nearly three times the death-sentencing rate of Franklin County (Columbus).¹⁸

It is not just a question of lust for the death penalty in Hamilton County, but also of race. Sixty percent of the men on Death Row who were tried in Hamilton County are black. For at least 175 years the city of Cincinnati has been notorious for its racism. In 1834 students at Lane Seminary, caught up in the antislavery sentiments of the time, made contact with free African Americans in nearby Cincinnati, conducting classes and mingling on a basis of social equality. So strong was the hostility of whites that many students withdrew from the seminary, and together with their favorite faculty founded Oberlin College in northern Ohio.¹⁹ In recent years, the killing of young black men by Cincinnati police officers prompted a Justice Department investigation, and an appeal by many members of the African American community in Cincinnati that asked performing artists and organizations seeking conference sites to boycott Cincinnati until further notice.

Attorney Kerger gives an example of how racism can work to disadvantage black defendants in Cincinnati.

[T]he jury pool was stacked against Hasan by the jury coordinator. When defense counsel noticed that three-fourths of the minority jurors were in the second half of the panel, a statistically unlikely event, a hearing was held. The jury coordinator explained that he, a white male, passed out written questionnaires to the jurors who would be selected to appear in court. The order in which they were to be called was the order in which they returned their questionnaires. That is to say, the ones who completed their questionnaires first went to the top of the list. He also said that he would review the questionnaires and if, in his opinion, there were any errors or incompletions, the questionnaires were returned for proper completion. This method effectively vested discretion in the jury coordinator to select Hasan's jury.²⁰

Although 20 percent of the population of Hamilton County is African American, there was only one African American on Hasan's jury.

The Search for Snitches

Nowadays, public opinion in the United States is aware that DNA evidence has proven the innocence of many prisoners on Death Row.

But many murder cases do not involve physical evidence that can be tested for DNA. This was so in all the forty-some prosecutions pursued by the State of Ohio after the Lucasville uprising. Lead investigator Howard Hudson testified that "there was no physical evidence . . . linking any suspect to any weapon or any suspect to any victim."²¹ The prosecutor in Hasan's case conceded in opening statement:

[T]here was very little usable evidence. . . . [W]e're not going to bring in fingerprints. We don't have any. We're not going to bring in footprints. We don't have any. We're not going to bring you blood samples. There isn't any that we were able to match.²²

So what *did* the State have as evidence? Essentially, the statements of prisoner witnesses. More particularly, the statements of prisoner witnesses who stood to benefit from turning State's evidence.

For a moment in recent years, a panel of the federal Court of Appeals for the Tenth Circuit suggested that testimony obtained

by prosecutors in exchange for “something of value” violates the law. A deluge of amicus briefs from prosecutors around the country persuaded the circuit court *en banc* to reverse the panel decision.²³ So it remains a reality that, as in the Lucasville trials, prosecutors are in a position not to indict, to drop or reduce charges, to cause new sentences to run concurrently with older judgments, and to write letters to the parole board, all in bargained-for exchange for testimony that will help them to obtain convictions.

In investigating the Lucasville uprising, the State of Ohio played upon prisoners’ fears to secure and shape their “cooperation.” Agents of the State threatened prisoners with the death penalty if they failed to cooperate. Derek Cannon states under oath:

After the inmate takeover, a state investigator named Howard Hudson, who worked for the Ohio State Highway Patrol, approached me and asked if I knew George Skatzes. When I told him I knew George, he asked me to tell him about George’s involvement in the takeover.

I told investigator Hudson that I did not see George hurt anyone during the inmate takeover.

Investigator Hudson then threatened me and said that, if I did not cooperate with the prosecution and testify against George Skatzes, they would find a way to charge me with murder. I was frightened by this threat.²⁴

Hiawatha Frezzell likewise affirms in a notarized affidavit:

I was approached by Trooper Long to act as a witness for the State of Ohio. Trooper Long informed me that if I did not testify, he would see that I was charged with a murder or murders from the incident known as the Lucasville riot and that these charges would carry the death penalty.²⁵

David “Doc” Lomache, one of the prosecution witnesses against several of the Five, wrote Prosecutor Daniel Hogan: “You want me to beg, I’ll beg. You want me to crawl, I’ll crawl.”²⁶

When the desired effect had been obtained, the investigators offered protection and security in exchange for the frightened prisoner’s testimony. The following is a garden variety example of the Lucasville investigation process.

The man being interviewed celled in L-6 where six prisoners were murdered on April 11 and Officer Vallandingham was killed

on April 15. These excerpts from the transcript of his interview with two Highway Patrolmen show how the State persuaded him to talk in return for vague promises of a letter to the Parole Board, lesser charges, a lesser sentence, and protection from other prisoners.

The prisoner was questioned by Ohio State Highway Patrol troopers Brink and Shepard.²⁷

Q [by Brink]. I'm seeing who is going to be truthful with me and who I'm going to try and remain in prison for a long time. Okay.

A. But you know I was going to the Parole Board today?

Q. I knew you were having some parole difficulties I know you got a chance to go home. I'm going to try to keep that chance, okay? Like I said, the prosecutors are coming here today. I will sit down with the prosecutors today and discuss what [you have] to discuss.

Q [Shepard]. What do you want us to tell them? . . .

A. I, I don't know. I could say that I could clear a lot of shit up if they guarantee me a parole.

Q. Okay, how much can you clear up for us?

A. I can clear up everything.

Q. What's everything? W[h]et my appetite. Give me something to take to them.

. . .

A. If I get a written, if I get a written statement saying that I'm guaranteed a no conditional parole, I clear up everything.

Q. Okay. Understand that we don't have anything to do with the Parole Board except to say with a letter [that you have] cooperated with us in a very serious matter. I can guarantee that. I can guarantee that right now. Okay?

A. I'm saying I go to the Parole Board today.

Q. You'll still go. I'm not going to stop that. Okay? Now we may stop your release, okay? . . .

A. I believe that I'm going to get some time behind this.

Q. Okay, would that be acceptable?

Q [Shepard]. What's the least you want out of this? . . . What's the least that would be acceptable to you?

A. Pheew!! Parole.

Q [Shepard]. Now that's the most. . . . If you didn't get a parole.

Q. I'm here to help you. . . . You have some great information. You cleared up a lot of stuff for us. Okay? And I don't believe that deeds should go unpaid. But there is the one little problem with [naming one of the murdered prisoners]. That has to be straightened out. Okay? See what I'm saying? And that's something that I will discuss with the prosecutors today. You know I need to know what I can take to the prosecutors. . . .

Q [Shepard]. See we got this sliding scale. If you'd said, "I ain't saying nothing." (Inaudible). We go to (inaudible)—we're doing something like Aggravated Murder. But now, look, you've talked to us. . . . Are we going to go to the prosecutor and say, "Hey, think we ought to fry this guy." I can tell you that right now—no. Okay? But we want to know what's in line with you. Do we walk in and say, "Look he was forced to do it". What do we say, murder? Okay. Without any spec[ification]s. Concurrent . . . with whatever he's got right now and if the Parole Board paroles him out, we're done. Is that what I go to them and say? I mean that sounds like a pretty decent deal to me. Okay. But I'm not here to make deals but I will . . . go to bat, says "Look, he's told us all this information. Good information. . . ."

A. Pheew! I'd like to go home, I done been here 12 years, I'm tired. I want to go home.

Q. . . . What can you clear up for me that I can go tell the prosecutors about that we don't already know? I've got to have something. . . .

Q [Shepard]. You know what they're going to say though? They're going to say, "What can you tell us about Vallandingham?" They say that every single time. "What can this guy tell us about Vallandingham?" . . .

A. I ain't going to have to testify or nothing like that in court or nothing.

Q. That might be part of the deal. That may be part of the prosecutor's things.

A. I'm saying how am I going to testify and be in the same camp with these guys.

Q [Shepard]. Well, you won't.

Q. You won't.

A. Why won't I?

Q. Where do you want to go? This is stuff that I have to tell them. "Hey, he'll testify if we can guarantee his protection. He'll testify if we can work something out about [the murdered prisoner] with him." . . . And then of course

they'll come back with their counter offer. You know how it goes. Okay. . . You know when attorneys sit down and talk, you know how it goes back and forth. But I have to know what you need for your testimony.

A. You, uh, talk to the prosecutor and try to work out something. I'll probably have some more for you.

Q. Well, I need to tell them what more might be.

A. I, I have some more for you. I had, I have some further.

Q. I need to w[h]et them a little bit. The more I w[h]et them, the more they're willing to deal.

A. I have something for you. I'm ready to go home. I think you know what I'm saying.

Q. Are you going to give me Vallandingham?

A. Yep.

Q. Honest to God, straight up.

A. I'm going to give you Vallandingham. Yep. . . .

Q. No specifics. I just want to know how you know.

Q.[Shepard]. Cause they're going to say, "How is he going to give us Vallandingham?"

A. I was there. I seen it.

Q. The murder?

A. Yeah.

Q. Okay, let's end it right there. Okay. And I will take that to them. Okay?

This prisoner testified falsely against Namir. Today he believes that his testimony was coerced.

Prisoners induced in this manner to turn State's evidence were assembled at the Oakwood Correctional Facility so that they could coordinate what they would say at trial. One prisoner who was there described the process under oath.

Sir, I was in the witness-protection program, Oakwood Correctional Facility, and there they have guys that are being witnesses for the State. . . . They went to trial and made a plea bargain with the Court and told the Court that they will commit to a lesser crime, you know, to save their self from going to death row and doing a lot more time.

And during that time, you know, a lot of guys, you know, we all there. We talk to each other, and we show each other, you know, different things that we are doing, our statements, you know, different things like that. And guys, you know,

spoke about things that they were going to say in trial. And they didn't care, they were going to help themselves. Whatever they had to do to get out of their crimes, they would do it to keep from doing more time in prison.²⁸

Other prisoners dubbed Oakwood the “snitch academy.”

Robert Brookover

Prosecutor Hogan told the *Columbus Dispatch* how he trained prisoner informant Robert Brookover in what to say as one would train a dog to be house broken.

Prosecutors spent hours preparing Brookover . . . to testify. Their frustration boiled each time they asked a question because Brookover always began his answer: “I wouldn't lie to you.”

“You have to stop doing that, because when we get in the courtroom, I don't want my jury to hear 500 times, ‘I'm not going to lie to you,’” said Dan Hogan, a former Franklin County prosecutor who is now a judge.

Hogan rolled up a newspaper as Doug Stead, a prosecution-team attorney from Franklin County, continued asking questions. Each time Brookover used the phrase, Hogan hit him in the face with the paper.²⁹

On the witness stand in *State v. Robb*, Brookover admitted that when first questioned by the authorities, in June 1993, “I was lying.”³⁰ He stated that at his next interrogation, in January 1994, he wasn't truthful and honest in that statement, either.³¹ He lied about helping an injured prisoner (Johnny Fryman) and an injured officer, and he lied about staying in the gym throughout the eleven days, Brookover conceded.³² Nor did he tell the investigators at that time that he had helped to murder David Sommers.³³

As is often the case with informants, however, when he took the stand to testify against Robb, Brookover insisted that now he *was* telling the truth, the whole truth, and nothing but the truth. What Robb and his counsel did not know at the time was that even the prosecutor wondered whether Brookover was still lying.

In his direct examination at Jason Robb's trial, Mr. Brookover alleged that he had carried on certain undercover activities at the

request of State officials in various Ohio prisons. Robb's counsel began cross-examination of the witness by asking him what he had done at Warren.

A. I infiltrated drug activity there for the major at Warren Correctional Institute [*sic*]. . . . They wanted me to bust who was bringing drugs into their institution, and I did exactly that.

Q. Did they accuse you of having friends of yours bring drugs into the institution?

A. That's the way they started the intimidation, yes.

Q. In fact, there was a friend of yours who was found with drugs in the visiting area, correct, or trying to come in?

A. No, that's a lie. I've never had a visitor or anyone ever try to bring any contraband on to prison property or anything, so that's an error on your part, sir.

Q. Well, among the things that they accused you of was having a hollowed out bone containing residue of marijuana, correct, sir?

A. That was at London Correctional Institution. . . .

Q. Now, while at London, were you accused of dealing in drugs.

A. At London Correctional Institute [*sic*], the same thing happened to me. . . . I was taken down to the Warden's office and I was questioned about drug activity Subsequently I was involved in some investigations to where I busted . . . staff members there at that institution for bringing drugs into the institution. . . .

Q. So you were working for the administration as an informant at London, correct?

A. Yes, sir, I was.

Before then, Brookover added, he had told the authorities "about some stuff that was going on" at the Ohio Penitentiary, and certain officers were busted.³⁴

So, Attorney DeVan concluded, you were "providing information at three institutions before you ever got to Lucasville, correct, sir?" And Brookover answered, "Yes, sir."³⁵

After the Robb trial, Prosecutor Piepmeier asked the Ohio State Highway Patrol to attempt to "validate Inmate Robert Brookover's claims of past assistance to DR&C [Department of Rehabilitation and Correction] officials." Sergeant Howard Hudson relayed Trooper Sayers' findings to the prosecutor.

The first incident alleged by Brookover occurred at the Ohio Penitentiary. Trooper Sayers found that the incident had occurred “but review of the OSP [Ohio State Patrol] report finds no mention of Inmate Robert Bobby Brookover.”

Brookover next claimed to have been involved in two incidents at London. As to one of these, the patrolman concluded “that Brookover was not involved in the incident in any form or fashion.”

Finally, regarding assistance claimed by Brookover at Warren, knowledgeable officials said that information had been received from Brookover but, in most cases, “this same information had been previously received from other inmates.”³⁶

Thus the State’s own investigation of one of its key witnesses—*after* Robb’s trial—revealed a tendency on Mr. Brookover’s part to embroider and exaggerate even as he supposedly told the truth in *State v. Robb*.

Anthony Lavelle

The most consequential snitch testimony came from Anthony Lavelle, leader of the Black Gangster Disciples and one of the three men who agreed to the surrender agreement on behalf of the prisoners. Reginald Wilkinson, Director of the Ohio Department of Rehabilitation and Correction, has written about Lavelle:

According to Special Prosecutor Mark Piepmeier, the key to winning convictions was eroding the loyalty and fear inmates felt toward their gangs. To do that, his staff targeted a few gang leaders and convinced them to accept plea bargains. Thirteen months into the investigation [in May 1994], a primary riot provocateur agreed to talk about Officer Vallandingham’s death. He later received a sentence of 7 to 25 years after pleading guilty to conspiracy to commit murder. His testimony led to death sentences for riot leaders Carlos Sanders, Jason Robb, James Were, and George Skatzes.³⁷

Lavelle testified in the trial of George Skatzes that he turned State’s evidence because he did not want to die or spend his life in prison and he thought he would go to Death Row if he did not inform.³⁸ According to Prosecutor Hogan, Lavelle made his decision to cooperate with the State when Prosecutor Stead told

Lavelle, you are either going to be my witness, or I'm going to try to kill you.³⁹

In fact we know in detail the steps in the process that caused Lavelle to become an informant.

During the winter of 1993-94, three of the targeted leaders of the uprising—Hasan, Lavelle and Skatzes—were housed in adjacent cells in the Chillicothe Correctional Institution. The authorities interviewed Skatzes three times, on October 13, 1993, March 31, 1994, and April 6, 1994. On each of these occasions the authorities invited Skatzes to assist them and he responded that he could not help them.

The climactic meeting came on April 6. Skatzes was induced to leave his cell by the completely false statement that he had an “attorney visit.” He was then taken to a room where, as Skatzes recalls, he was cuffed to an eye bolt in a table at the center of the room, and remained standing. Sergeant Howard Hudson, lead investigator for the Ohio State Highway Patrol, and Sergeant McGough of the Patrol, entered the room and took up positions on either side of Skatzes. In Skatzes’ words: “As I am standing there with a trooper on either side of me, they start talking to me.” The following dramatization is drawn from Skatzes’ description in contemporaneous letters, a letter of protest from Skatzes’ attorney Jeff Kelleher to Special Prosecutor Mark Piepmeier written on April 13, 1994, and Sergeant Hudson’s trial testimony.⁴⁰

HUDSON: Now is the time for decision, George. We can drop Vallandingham and Elder, but you have to stand for Summers. You will be indicted for three capital murder cases if you do not cooperate with us.

SKATZES: I cannot help you.

(The troopers leave. Three correctional officers enter. Skatzes gets ready to go, turning in the direction of his cell. Ralph Coyle, a Deputy Warden, enters the room.)

COYLE: George, I am Deputy Warden Coyle. Do you think it would be wise for you to go back to the North Hole?

SKATZES: Yes! I have done nothing wrong. I have nothing to hide. And if I *don't* go back to the North Hole, it will make me look like a snitch.

COYLE: Maybe the other inmates in the North Hole will think of you as a snitch, anyway.

SKATZES: Why should they even have such a thought

in their minds? I'm not going to any lock except the North Hole. Period!

(Coyle leaves. Skatzes sits down and waits. The three guards remain in the room. Nobody says much. Coyle reenters.)

COYLE: Central Office has decided that you *cannot* go back to the North Hole. The decision is *non-negotiable*.

SKATZES: You people have created a very serious situation for me. I have nothing to run and hide from. You're setting me up to look like a snitch. I went out on a visit and did not return. Anybody who knows anything about prison life will understand how inmates will take that information and run with it. When I don't come back, Lavelle and Sanders will figure I turned State's evidence. Serious damage is being done to my character. You are putting the life of my loved ones in danger. You're going to get me killed.

(The three guards form up around George, unbolt him from the table, and escort him out of the room.)

The next day, April 7, Hasan was taken to the county jail in Scioto County for indictment. Ordinarily he would have been locked up at some distance from other prisoners. On this occasion, however, Hasan was placed on the range, so that (in Skatzes' opinion) it would be easy for him to spread the word that George had not returned to his cell and had apparently turned State's evidence.

But Hasan did not immediately conclude that Skatzes had snitched. When Skatzes came back to his cell on April 8, the two men talked. Hasan wrote a note to the effect that he believed George Skatzes was telling the truth, which, according to Rodger Snodgrass, had a powerful effect on the opinions of other Muslim prisoners.⁴¹

It was otherwise with Anthony Lavelle. The day after Skatzes failed to return to his cell, Lavelle wrote the following to Jason Robb.⁴²

Jason:

I am forced to write you and relate a few things that have happened down here lately.

With much sadness I will give you the raw deal. Your brother George has done a vanishing act on us. Last Friday, the OSP came down to see him. Now the truth is that he was only in the room for 7-10 minutes. With

only a short meeting I truly believed his word that he told them he was solid.

The strange thing I should have seen was what he said happened that day. He related to Hasan and me that “they said they were giving him one last chance before indictments come out to help them. He said that they claimed he would be charged with three capital murder cases.” I won’t put any names in the letter but I will say he acted scared.

On Wednesday, April 6, 1994, George said about 8:00 a.m. that he had a lawyer visit coming and before they were here the COs wanted to move him to the room. Now to be short and simple, he failed to return that day. Today they came and packed up his property which leads me to the conclusion that he has chosen to be a cop.

Now if I am wrong, I will do all I can to correct the problem. But JR, I am not wrong. . . . I called Niki [Schwartz] today and advised him of the situation. . . . If you don’t believe my words check it for yourself, and then get back with me as soon as you can. . . .

Time to close. Hope to hear from you soon.

Lavelle.

Before Skatzes was returned to his cell the next day, Lavelle had been transferred.⁴³

Thereafter the State moved quickly to finalize a plea agreement with Lavelle.⁴⁴ Prisoner Antoine Odom testified in the Robb trial about Lavelle’s behavior when Lavelle decided to turn State’s evidence.

Q. Tell us what he said.

A. He said the prosecutor was sweating him and he had to do what he had to do—he was gonna cop out cause the prosecutor was sweating him, trying to hit him with a murder charge.

Q. Did he say . . . what he meant by he was going to do what he had to do?

A. He just said he was . . . gonna get a deal for his self. . . .

Q. Uh-huh. Did he say anything about the story he was going to tell the prosecutor?

A. . . . He said he was going to tell them what they wanted to hear.

Q. . . . Did he say anything about the Muslims and the

Aryan Brotherhood?

A. Yes, he said fuck the Muslims and the Aryan Brotherhood cause he a Gangster for life.

Q. . . . Did you write it out that day, the next day, or a day later?

A. That day. The day it happened, when he was talking to me.⁴⁵

The State of Ohio's statutory scheme purports to assure "proportionality" in the administration of the death sentence. The Lucasville sentences and plea bargains fly in the face of that claim. The following are only a few of the manifest inequalities:

- *Anthony Lavelle* plea bargained for conspiracy to murder with a sentence of 7 to 25 years to run concurrently with his previous sentence, but members of the Five who sat in the same meeting with Lavelle on the morning of April 15 were found guilty of aggravated murder. (Hasan, Namir and Robb were sentenced to death. Skatzes was not given the death penalty for the murder of Officer Vallandingham, apparently because of his kindness to hostage guards Clark and Ratcliff. He was given the death penalty for his alleged role in the murders of prisoners Elder and Sommers.) Lavelle was promised a transfer out of state after he finished testifying. He was to be eligible for parole in December 1999.⁴⁶
- *Rodger Snodgrass*, who also turned State's evidence, admitted participation in the killing of Elder and Sommers. He plea bargained a 5 to 25 year sentence for the involuntary manslaughter of Elder to run consecutively with the 5 to 25 years he was already serving for aggravated robbery. Snodgrass was never charged in connection with Sommers' death. He also attempted to murder prisoner Newell and took part in assaulting prisoner Francis, but was never charged. Finally, Snodgrass "kidnapped," in the sense of guarding, officers Clark, Hensley and Ratcliff. He was charged with two of these kidnappings but the charges were later dropped.⁴⁷
- *Robert Brookover* testified that he had killed, or at least taken part in killing, David Sommers. He pleaded guilty to involuntary manslaughter during the commission of a felonious assault, and testified that his conviction would not add one day to the time he served.⁴⁸

None of this concerned prosecutors in the Lucasville trials. The State of Ohio did not care whether Skatzes or Lavelle would be induced to snitch, or whether Skatzes or Lavelle would be executed. Prosecutor Hogan told the Skatzes jury in closing argument:

Mr. Skatzes had his opportunity and he chose not to take it. Had Mr. Skatzes taken it, . . . Mr. Skatzes, assuming he would tell us the truth, would be up there on the witness stand testifying and Mr. Lavelle could be sitting over there [at the defendant's table]. I make no apologies for that.⁴⁹

CHAPTER SIX THE CRIMINAL INJUSTICE SYSTEM: TRIAL AND APPEAL

The “Death-Qualified” Jury

AFTER THE MANY PHASES of pre-trial procedure described in the preceding chapter, each of the Lucasville Five eventually went on trial. The first thing that happens in a criminal trial is to pick a jury. The process is known as “*voir dire*.” But when the prosecution is seeking the death penalty there is something different about the process: persons opposed to the death penalty are excluded.

Perhaps 60 percent of the people of the United States will tell a poll-taker that they favor the death penalty. (If the poll-taker gives people a choice between the death penalty and life imprisonment, the percentage of those favoring the death penalty drops significantly.)

But a jury’s recommendation of the death penalty must be unanimous. It takes only one juror in twelve to prevent a recommendation for death. Therefore, most randomly selected juries would contain at least one opponent of the death penalty and there could be very few death sentences.

This posed a problem for advocates of the death penalty. They have solved the problem—until our courts become more enlightened—with a doctrine known as the “death-qualified jury.”

This doctrine is as follows. Any potential juror who states that he or she opposes the death penalty under all circumstances will almost surely be automatically excused. A juror who indicates support for the death penalty is asked another question, namely, would you follow the instructions of the judge about the law? If the juror answers, yes, then that juror may be seated *even though the juror favors the death penalty just as strongly as opponents of the death penalty oppose it*.

The following are extracts from the *voir dire* at the beginning of the trial of George Skatzes. They show the doctrine of the “death-qualified jury” at work to disadvantage a defendant.

Juror #1

THE COURT. . . . I have a question I want to ask you. . . . [I]n a proper case where the facts warrant it and the law permits it, could you join in with others in signing a verdict form which might recommend to the Court the imposition of the death penalty?

A. No, sir.

THE COURT. You don't believe you could do so?

A. I don't believe so.

THE COURT. Under any circumstances?

A. No.

THE COURT. Could you tell me why?

A. I had a brother who was murdered and I found it in my heart to forgive that man. I would not have found him guilty to the extent that his life would be taken.

THE COURT. In other words, you feel that if you didn't do it in your brother's case, you wouldn't do it in any other case, right?

A. Right. . . .

[DEFENSE ATTORNEY]. . . . Do you feel that this is a teaching of your church?

A. Not so much a teaching of my church as it is an understanding of mine that I do not create life. I am not giver of life, so I feel that it's not my responsibility or within reason to expect me to take a life. . . .

THE COURT. You may step down.

Unidentified woman²

THE COURT. [I]n a proper case, where the facts warranted it and the law permitted, could you join with the rest of the jurors in signing a verdict recommending to the Court the imposition of the death penalty?

A. . . . [M]y religious beliefs do not support the death penalty, but in a case where there was complete evidence and there were no circumstances that would lead me to believe otherwise . . .

THE COURT. There could be situations, is that what you are trying to say, in which you might be willing to sign a verdict imposing the death penalty?

A. That's correct.

THE COURT [to prosecuting attorney]. You may inquire.

[PROSECUTING ATTORNEY]. . . . Do you recall anything about the Lucasville prison riot.

A: Yes, I do.

[PROSECUTING ATTORNEY]. Tell us what you remember

A. During that time period I was a graduate student at Ohio State University in Columbus. I was a member of the negotiation class. . . . [A]s part of our class work, we used this case as a case study and we had some in-depth discussion. . . .

[PROSECUTING ATTORNEY]. . . . [D]id you personally come to a feeling that the thing was handled properly, improperly?

A. Yes, I did. . . . I feel that some things could have been handled differently and that lives did not need to be . . . lost . . . , especially in the situation of the guard. My godfather is a prison guard. One of my ex-boyfriends is a prison guard. I understand what they go through every day. My heart went out to that guard and his family. . . .

[PROSECUTING ATTORNEY]. . . . Did you arrive at the opinion that the state somehow blew this thing, they screwed it up?

A. Yes, I did. I don't think they took the inmates' demands seriously. They took away water, electricity, tried to starve them out. They are prisoners, but they have human rights also. I just think it should have been handled a little differently and maybe those people would not have gotten killed. . . . I don't think I can . . . keep separate the riot from the murders because I think that they are all interrelated. . . .

[DEFENSE ATTORNEY]. [T]he real question is regarding your ability . . . to put aside that class, focus on what you hear here and make a verdict based solely on what you hear here; could you do that?

A. I find it difficult to answer that question. . . .

THE COURT. This particular juror is completely unable to be the kind of objective juror which the law requires. . . . The Court will dismiss her. . . .

Juror #8³

THE COURT. . . . In a proper case, where the facts warrant it and the law permits it, could you join in with the other jurors in signing a verdict form which would recommend to the Court the death penalty?

A. Yes, your Honor.

[PROSECUTING ATTORNEY]. . . . We brought you here because we want to discuss with you your views on capital

punishment. Can you share them with us, please?

A. I strongly believe in them. I wish they were enforced more often.

[PROSECUTING ATTORNEY]. . . . Do you believe the death penalty is the only appropriate penalty in all cases of an intentional killing?

A. Pretty much.

[PROSECUTING ATTORNEY]. Does that mean?

A. Yes.

[PROSECUTING ATTORNEY]. . . . You can think of the wors[t] crime that comes to your mind and if you find that person guilty at the first phase, we don't go straight to death. We have the second hearing at which point you would get additional evidence to consider in making your decision as to what punishment is appropriate. . . .

What we need to know is whether you could set aside your thoughts as to what you think the law should be and follow the law that the Judge gives you?

A. Yes.

[PROSECUTING ATTORNEY]. If you found someone guilty of a horrible, horrible crime, as bad as you can think of, would you be willing to keep an open mind and listen to the evidence at the second phase before making a decision as to which penalty is appropriate?

A. Yes.

[PROSECUTING ATTORNEY]. No matter how bad the crime?

A. Yes.

[PROSECUTING ATTORNEY]. . . . Do you see how under Ohio law you could do the exact same crime and get a different penalty?

A. Yeah, because of the circumstances and the aggravating and mitigating factors.

[DEFENSE ATTORNEY]. . . . You mentioned in your questionnaire you have a friend . . . [who] works in the sheriff's department?

A. He used to. He's a Kettering police officer now.

THE COURT. . . . We want you back [f]or the next phase in the questioning.

Juror #38⁴

THE COURT. . . . In a proper case, where the facts warrant it, and the law permits it, could you join other fellow jurors in signing a verdict that might recommend to the Court the imposition of the death penalty?

A. I don't believe that I could. . . .

[PROSECUTING ATTORNEY]. . . . Can you expand upon your feelings? . . .

A. My problem . . . is my children. . . . I think in the end, I would be looking at another woman's child and I don't think that I could ever be the person to say there's no good there at all. I just don't think I could do that. I can't imagine any instance.

[PROSECUTING ATTORNEY]. . . . [I]t's not a question of does he deserve death or does he deserve life. It's a question of which way does the balance come out [between aggravating circumstances and mitigating factors].

A. . . . I understand what you've said, but . . . I believe I would be hanging on to those mitigating things for life. . . .

Based on my personal moral compass, I would be trying very hard never to put anyone with a death sentence because . . . I would be afraid of the weight that that would give me for many years. . . .

THE COURT. Under the circumstances, ma'am, I think we are going to excuse you.

Juror #42⁵

THE COURT. . . . In a proper case, where the facts warrant it and the law permits it, could you sign your name with other jurors to a verdict form which might recommend to the Court the imposition of the death penalty?

A. I don't think so.

THE COURT. By that, do you mean under no circumstances could you do that?

A. I don't believe in it. Is that what you are asking?

THE COURT. . . . Under the circumstances, with the way you feel about things, we are going to let you off. You are dismissed.

Juror #46⁶

THE COURT. . . . In a proper case, where the facts warrant it and the law permits it, could you, along with other jurors, fellow jurors, sign a verdict form which might recommend to the Court the imposition of the death penalty?

A. It's hard to say categorically, but probably not, I would say not. . . . I couldn't imagine circumstances in which I would sign something like that.

[PROSECUTING ATTORNEY]. . . . Can you envision circumstances under which you would pick up a pen and sign your name in ink on a verdict form saying that a person should be put to death?

A. Let me answer that by saying that I spend most of my free time doing things for people, not to people, and it would be a contradiction in what I do outside of this room on a regular basis to do something like that, so the answer is I cannot imagine myself signing that.

[PROSECUTING ATTORNEY]. Challenge.

THE COURT. You are going to have to step down, sir.

*Juror #56*⁷

THE COURT. [In a] proper case, if the facts warrant it and the law permits it, would you be willing to sign a jury verdict along with other jurors which might recommend to the Judge the death penalty?

A. Yes, sir.

[PROSECUTING ATTORNEY]. . . . We brought you in individually to discuss your personal views on capital punishment, you tell us how you feel.

A. I do believe in it. I think there should be more of it.

[PROSECUTING ATTORNEY]. . . . Do you understand that under Ohio law there is no such thing as an automatic death penalty?

A. Yes, sir.

[PROSECUTING ATTORNEY]. . . . Would you be willing to keep an open mind and listen to everything before choosing among the . . . penalties?

A. Yes, sir. . . .

THE COURT. Come back Wednesday morning.

*Juror C*⁸

THE COURT. . . . In a proper case where the facts warrant it and the law permits it, could you sign your name on a verdict form with other members of the jury which might recommend to the Court the imposition of the death penalty?

A. No, sir.

THE COURT. . . . Is this a personal or religious belief?

A. Both.

[PROSECUTING ATTORNEY]. We're in agreement.

THE COURT. I will let you be dismissed.

Juror #75⁹

THE COURT. . . . In a proper case where the facts warrant it and the law permits it, could you sign your name to a verdict form along with other members of the jury that might recommend to the Court the imposition of the death penalty?

A. If the evidence and the facts of the case support that, I would feel comfortable with doing that, yes, sir.

[PROSECUTING ATTORNEY]. . . . Do you recall anything about the Lucasville prison riot?

A. Yes, I do. I worked close to there about a year before that happened. . . . I was a psychologist supervisor at Ross County Correctional Institution and I believe . . . this happened around a year, year and a half afterwards, so I did know about it and followed it somewhat in the newspapers. . . .

THE COURT. Sir, we are going to have you come back tomorrow at nine.

Juror #76¹⁰

THE COURT. In a proper case where the facts warrant it and the law permits it, would you be able to sign the verdict form with other jurors which might recommend the imposition of the death penalty?

A. Yes, I would. . . .

[DEFENSE ATTORNEY]. . . . [I]f you found the defendant guilty beyond a reasonable doubt of all those murders, even though the Judge would tell you to consider . . . life sentences, the truth is you really couldn't; isn't that correct?

A. Well, no, I guess I couldn't. . . .

THE COURT [after prospective juror steps outside]. Is there a challenge?

[DEFENSE ATTORNEY]. Yes, your Honor. We challenge her. . . . This wom[a]n is deeply troubled by the prospect of having to vote for a life sentence with the prospect of parole, it's clear that that is foreclosed in her mind. She said she's so troubled by the prospect that this man could get out that there's no doubt she would vote for the death penalty. I think she deserves to be excused.

THE COURT. Motion overruled. Note your objections.

THE COURT [before the prospective juror]. I want you to come back at nine tomorrow. . . .

Unfair? You bet. But that is “the law” at the present time.

The Saran Wrap of Conspiracy and Complicity

In every one of the Lucasville capital trials, the essential charge against the defendant was the whole dreadful scenario of killings and kidnappings throughout the eleven days. Each jury was presented with gruesome photographs and testimony about inexcusable acts even though the particular defendant on trial had no demonstrable connection with the actions shown in the pictures or described in the testimony.

The legal doctrines that allowed prosecutors to proceed in this broadbrush manner are “conspiracy” and “complicity.”

To “conspire” is, according to its Latin roots, to “breathe together.” The word itself conjures up an image of plotters huddling together over a single candle in a darkened room.

In Anglo-American criminal law, proof of conspiracy requires 1) an agreement to commit one of a long list of serious crimes and 2) a “substantial overt act” by at least one of the conspirators to carry out the agreement.¹¹ Related doctrines hold that:

- Each conspirator is responsible for any criminal act within the scope and in furtherance of the agreement that is committed by any other conspirator;
- If A knows or has reason to know that B, with whom A is planning criminal action, is conspiring with C to commit the same action, A is guilty of conspiracy with C even if A does not know the identity of C;
- Conspirators are guilty even if commission of the planned action was impossible;
- Unless a conspiracy has been “abandoned,” it is no defense to a charge of conspiracy that the planned criminal action was not carried out.

From an Ohio prosecutor’s standpoint, there is only one problem with the concept of “conspiracy.” It cannot be punished by death.

Fortunately for prosecutors and sympathetic judges, there is a substitute doctrine with much the same content for which the

death penalty is available: “complicity.” Complicity includes conspiracy, and also includes “soliciting” another to commit a crime or “aiding and abetting” in committing a crime. One who is complicit in the commission of a crime “shall be prosecuted and punished as if he were a principal offender.”¹²

Complicity casts an even broader net than conspiracy. Portraying Hasan to the jury as the sole cause of the disturbance, prosecutors also used the concept of “complicity” to connect him with everything that had happened during the eleven days.¹³ The trial judge assisted them in this strategy by three times instructing the jury that they could link the defendant with the misconduct of other prisoners by means of what he called “the Saran Wrap of complicity.”¹⁴

Finally, the concept of “course of conduct” is akin to conspiracy and complicity and is one of the specified aggravating factors that an Ohio jury is instructed to consider when deciding whether to recommend the death penalty. The death penalty may be imposed when “the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.”¹⁵ This language may have prompted the prosecution to indict each of the Lucasville Five for two (Hasan, Namir, Robb) or more (Lamar, Skatzes) murders.¹⁶

What facts justified the application to these defendants of the concepts of conspiracy, complicity, and course of conduct?

Conspiratorial Agreement to Take Over the Prison?

Witnesses testified to an agreement by the Muslims, Aryan Brotherhood, and Black Gangster Disciples before the uprising to prevent petty differences between members of different organized groups from escalating into violence. There was no testimony that these discussions included planning a riot.

Witnesses testified that in the days just before the uprising certain Muslims and certain members of the Aryan Brotherhood were seen talking together on the recreation yard, an unusual event. No one stated that he had been present at such conversations and there was only hearsay testimony as to what had been talked about.

Reginald Williams described a discussion among Muslims on the recreation yard during the early afternoon of April 11. However, Namir testified that he was in his cell in L-1 at the time, and Hasan testified that before the discussion concluded he left the meeting and went back into L block. Before he could return

to the yard, according to Hasan's unrebutted statement, the attack on guards in L block had begun.

At the trial of George Skatzes, Prosecutor Hogan told the jury that no one alleges that Skatzes was involved in planning the take-over of L block.¹⁷

One concludes that evidence of an agreement involving the Lucasville Five to take over L block is sketchy at best. Moreover, as emphasized at the beginning of Chapter 3, the witness who testified about an agreement among Muslims to take over part of the prison (Reginald Williams) was equally clear that the plan did *not* involve harming or killing guards, nor assaulting any of the prisoners who were subsequently killed. Thus, even as to those defendants who might be thought to have entered into an agreement, it was not an agreement to murder. Any murders that happened later were not within the scope or in furtherance of the agreement.

Conspiratorial Agreement that Whites Would Kill Whites, and Blacks Would Kill Blacks?

In the trial of George Skatzes, it was alleged that prisoner Earl Elder was killed after an emergency meeting of Muslims and Aryan Brothers late on April 11. The Muslims and the ABs agreed, so the prosecution claimed, that before any white was killed the ABs would be consulted and would be asked to do the dirty work themselves, and likewise, if a black were sought to be killed the Muslims would have to agree and to take part in the killing. According to Prosecutor Stead:

[T]he Aryans and the Muslims had gotten together, and they had come to an agreement. They were running the show together, and there had been a lot of white people killed that first night, and to keep harmony between the groups that were in control, a decision had been made: Whites will kill whites; blacks will kill blacks.¹⁸

But no witness at any trial said that he was present when this supposed agreement between the Muslims and the ABs was negotiated. The character of the evidence for the alleged agreement is suggested by the testimony of Rodger Snodgrass, an AB who turned State's evidence.

At the Robb trial, Snodgrass testified to the existence of a pact between the Muslims and the ABs. This exchange followed:

Q. Were you present when that pact was made?

A. No, sir.

Q. Were you told that a pact was made?

A. Yes, I was.

Q. By whom were you told the pact was made?

A. By Paul Johnson, Tramp.¹⁹

At the Skatzes trial, Snodgrass attributed his supposed knowledge of a pact to two other persons.

A. Well, from my understanding, a pact was made with the Muslims.

MR. KELLEHER. I object.

THE COURT. Never mind what you understand. If you know or talked to somebody . . .

THE WITNESS. Jason Robb told me a pact was made with the Muslims; therefore, when George told me that he, that no more white guys were going to be killed in that riot, without sanctions from the AB, you know, that if they were to be killed, they were goin' to be killed by their own kind or at least given that opportunity, you know, that's basically what was said.

Q. Mr. Skatzes said that?

A. I can't be positive about that neither, but I believe it was.

MR. KELLEHER. Object. Move to strike.

THE COURT. No, it's his best estimate, best opinion. Overruled.

Q. If it was not Skatzes, who was it that said it?

A. If it wouldn't have been Skatzes, it would probably have been Robb.²⁰

This evidence is worse than “sketchy.” It is unadulterated hearsay, it is internally contradictory, and it is so vague that a reviewing court should consider it unconscionable to use such evidence in sentencing a man to death.

Conspiratorial Agreement to Kill an Officer?

Of course the heart of the theory of group guilt—whether labeled conspiracy or complicity—concerned the murder of Officer Vallandingham. The prosecution argued that at a meeting of leaders of the three organized groups on the morning of April 15,

there was a *decision* to kill an officer. Therefore each person present was guilty of murder even if he had nothing to do with the hands-on killing.

As set forth in Chapter 3, the transcript of the meeting between 8 and 9 a.m. reports discussion of killing a guard but no decision. The only show of hands or voice vote mentioned on the tape of that meeting concerns negotiating demands for the day. The transcript indicates that if the State did not respond promptly to demands that electricity and water be turned on again, there was to be another meeting of the leaders before a guard was killed.

We demonstrated further that the key witness by means of whom the prosecution sought to supplement the transcript, Anthony Lavelle, testified in the trials of Namir, Skatzes, and Hasan that the meeting did *not* come to a final decision to kill a guard. Lavelle said in Namir's trial: "When I left the meeting, the understanding was we was going to meet up later on that afternoon and give them our final ultimatum."²¹ He said in Skatzes' trial that "we was going to meet back up later that afternoon" to evaluate the results of negotiations.²² Finally, in Hasan's trial, Lavelle for a third time affirmed that at the end of the morning meeting, "We hadn't made a clear decision" to kill a guard. Rather, the group decided that they would "meet back up later and decide on whether this is what we want to do, be sure that this is what we want to do."²³

To repeat what was concluded earlier: Lavelle's testimony, taken as a whole, was that the morning meeting discussed the murder of a guard but did not come to a final decision, and that another meeting during the afternoon was to happen before a guard would be killed. The testimony of the prosecution's lead witness thus suggests that when a guard was in fact killed that morning, it was *not* as a result of the morning meeting but because a group of prisoners, in a rogue action, decided to take the decision into their own hands.

In summary, there is very little evidence for conspiracy, complicity or a pre-planned course of conduct in the murders that occurred between April 11 and 21.

- Muslims may have planned to take over L-6, but Namir was not at the meeting, Hasan appears to have left before the discussion ended, and Skatzes was not a part of any agreement. Moreover, it does not seem to have been anyone's

intention that guards be harmed, let alone killed.

- Once L block was occupied there is no solid evidence of a group decision to kill any prisoner or any guard. As we have seen, the evidence is overwhelming that Lavelle himself independently initiated a rogue action to kill Officer Vallandingham.

Result-Oriented Jurisprudence

It would be unfair to point the finger of blame only at Hamilton County prosecutors and the Ohio State Highway Patrol. The state courts of Ohio have thus far been grievously at fault in their rulings in the Lucasville cases.

What is ultimately disturbing about these opinions is that they are result-oriented: as in Alice's adventures in Wonderland, the verdict comes first and the judicial rationale later.

Professor James Liebman of Columbia University, author of a massive study of reversible error in death penalty appeals, states that Ohio "has one of the largest and slowest moving capital systems in the nation." (For example, George Skatzes' direct appeal from the verdicts in the Court of Common Pleas to a decision by the Court of Appeals took seven years: from January 1996 to January 2003.) Because of these delays, Professor Liebman continues, Ohio had no "track record of federal court outcomes" during the period of his study. He observes, however, that the Ohio Supreme Court has developed the habit of passing on serious problems to the federal courts.

[A]lthough the Ohio Supreme Court very frequently *finds* error in capital cases, it also very frequently goes on to *approve* the capital verdict on the ground that the error—and even patterns of error in particular counties [such as Hamilton County]—are not serious enough to warrant reversal. As the experiences of Georgia, California, and Pennsylvania suggest, the Ohio Supreme Court's forgiving approach to identified error is a recipe for high rates of reversal years later, once Ohio cases reach the federal courts.²⁴

Here are a few examples of the state courts' result-oriented jurisprudence.

Misstating the Facts

A pattern of carelessness pervades the presentation of facts by Ohio appellate courts in these cases.

The following misstatements are drawn from the opinions of the trial court, the Court of Appeals, and the Ohio Supreme Court in *State v. Robb*.

The trial court stated in its judgment that “nine inmates were killed during the early days of the riot.”²⁵ In fact, only seven prisoners were killed at that time.

The trial court also declared that “around the 5th of April, apparently by lottery, a victim, [Officer] Robert Vallandingham, was selected.”²⁶ The disturbance lasted from April 11 to 21, a period that did not include the 5th of April. The evidence concerning the April 15 meeting says nothing about a lottery.

The Court of Appeals stated that at a meeting on the morning of April 15, leaders of the three gangs represented in the rebellion chose a “set time” to kill a guard.²⁷ This may have been the origin of the previously-quoted statement by the Ohio Supreme Court that the meeting “issued a strict timetable for compliance.”²⁸ But Tunnel Tape 61 contains no reference to any particular set time or timetable for compliance, nor did any witness who took part in the meeting allege that a set time or strict timetable had been established at the meeting.

The trial court said that Robb was “the main leader of the White [*sic*] Aryan Brotherhood.”²⁹ The Court of Appeals opined that “the AB . . . were led by defendant [Robb] and George Skatzes during the riot.”³⁰ The Supreme Court found that “Defendant [Robb], along with Freddy Snyder, led some twenty to thirty Aryans during the riot.”³¹ Seemingly as long as defendant Robb was said to have been a leader, it didn’t matter who else was named. Moreover, Freddy Snyder was not in L block at any time during the uprising.

With regard to the death of prisoner David Sommers, the trial court stated: “On the last day of the riot . . . Carlos Sanders and Robb ordered the killing of David Sommers, an inmate, because he knew too much.”³² But no witness testified to any such order on the last day of the riot. And in its opinion in *Robb*, the Supreme Court offered a completely different scenario: “While the surrender was underway, the Aryans decided to kill inmate Sommers.”³³

And that is not all that is wrong with the Supreme Court’s narrative about Robb’s alleged participation in Sommers’ death.

The Court's complete statement is as follows:

While the surrender was underway, the Aryans decided to kill inmate Sommers because he knew too much about what had happened in L-2, the Aryan stronghold. In fact, even earlier, defendant had talked with Hasan about killing Sommers or putting his eye out with a cigar. While defendant, Bocook, Skatzes, and a recent Aryan recruit, Robert Brookover, were together in L-7, they talked about killing different inmates. At one point, defendant left, returned, and announced, "We still got one." Bocook then said, "Go get that bitch, Sommers." Defendant left, then came back in running with Sommers running behind him. [As other Aryans stabbed, choked, and beat Sommers, petitioner] stood by and watched from a distance on a walkway.³⁴

Consider these asserted facts in chronological order.

The only witness as to an earlier conversation about killing Sommers is the unreliable Stacey Gordon. Gordon was unable to say on what day and time this purported conversation occurred. Moreover, he said that it took place after one of a series of meetings between only three persons: Anthony Lavelle, Jason Robb, and Hasan.

Q. Mr. Gordon, I believe you indicated you stood guard outside of a number of meetings that took place in the L2 unit offices; is that correct?

A. Yes, it is.

Q. Who were the people who would routinely come to those meetings?

A. Anthony Lavelle, Carlos Sanders, and Jason Robb.

Q. Now, would other people be involved in the meetings or be present when the meetings took place?

A. No.³⁵

But no other witness, in any trial, ever testified that there had been such meetings. The State's own tunnel tapes, like Tunnel Tape 61, without exception reported the presence of many more than three persons at all leadership meetings.

Supposing for the moment that Robb did say, "We still got one," he was not referring to David Sommers. The testimony at trial was that a number of Aryans went to L-7 with the intent of

doing harm to fellow prisoners Creager, Copeland, and Newell, who were thought to have planned to kill Hasan and/or Skatzes earlier in the riot. Creager and Copeland were found to have converted to Islam and the Muslim prisoners would not release them to the AB. If anybody said, “We still got one,” the words referred to Emanuel “Buddy” Newell, who, indeed, was later assaulted by Rodger Snodgrass and Aaron Jefferson.

There was no decision by the Aryans to kill Sommers. According to the trial testimony, Mr. Sommers was *not* mentioned in any conversation among Aryan prisoners before Bocook blurted out, “Go get that bitch, Sommers.”

Above all, the Ohio Supreme Court does not explain why (still assuming that the trial testimony was truthful) Robb returned to L-7 “running with Sommers running right behind him,” and if this was so, how it constitutes evidence of aggravated murder. On its face it would seem to be evidence that Sommers intended to assault Robb. But if so, Robb did *not* respond violently but turned aside, or retreated, to a walkway.

How are these narratives created? Juries do not find facts in capital murder cases. They only render verdicts. The facts set forth in the opinions of trial judges in these cases are cursory and, as we have seen, unreliable. Yet at the outset of appellate decisions, detailed histories blossom forth. Do the judges of these courts wish us to believe that they have read the 4000, 5000, or 6000 page transcripts of the cases before them? If not, were law clerks asked to prepare factual summaries? And if this is so, how did the law clerks know which witnesses the trial juries found to be credible? Or did the law clerks, without the opportunity to assess witness demeanor, substitute their own impressions of the evidence? Or—worst case scenario—did they merely replicate the factual summaries in prosecutors’ briefs? In the decisions of the Ohio Supreme Court in *State v. Robb* and *State v. Sanders*, there is not a single citation to the record to support the facts asserted in their preliminary factual narratives.

One is left with the impression that for these decision makers the facts are of secondary importance. If this impression is correct, we confront both bad history and grave legal error.

Withholding Exculpatory Evidence

In *Brady v. Maryland*, a 1963 decision of the United States Supreme Court, prosecutors were ordered to provide the defense

prior to trial with any “exculpatory” evidence in their possession. In the trial of Keith Lamar, the prosecution produced summaries of witness statements, and a list of witnesses, but refused to say which witness had made which statement. The prosecution did provide complete statements—the same material the defense requested in Lamar’s case—in the trials of two other SOCF prisoners accused of some of the same crimes. Moreover, after trial Lamar’s defense identified six additional witnesses whose potentially exculpatory statements had not been turned over.³⁶

The Ohio Supreme Court held that there was no *Brady* violation because all of the witness statements at issue either identified Lamar as one of the assailants or “did not exculpate Lamar because each victim had been attacked by multiple assailants.” However, prisoner Aaron Jefferson (whose statement was made available to the Lamar defense) confessed to the Highway Patrol that he *and he alone* had killed one of the men Lamar was accused of murdering, Darrell Depina.

Q. Were you alone?

A. Yeah. By myself. . . .

Q. You were the only one in there?

A. Yeah I was the only one. . . .

Q. Okay, did someone tell you to go in there and get Depina?

A. No. . . .

Q. And you done this on your own?

A. Done this on my own accord.

Q. Nobody told you to do it?

A. Nope.³⁷

Lamar’s defense counsel should have been provided all the potentially exculpatory statements.

Judicial Overreaching

In Namir’s second trial, his counsel protested the admission into evidence of the State’s transcript of Tunnel Tape 61 because the prosecution could not produce the person who had transcribed it. The trial judge thereupon directed the court reporter to transcribe the tape over the weekend. She reported on Monday that it appeared there would be significant differences between her transcript and the transcript that the State wished to put in the record. At that point Judge Cartolano said he had been thinking

about it all weekend, and he was going to let the State use its transcript, after all.³⁸

Similar judicial overreaching was evident in the trial of Robb. In *State v. Robb*, the Court of Appeals decided that the “tunnel tapes” had been recorded in violation of Ohio wiretap law as it was in 1993, so that the tapes and their transcripts should not have been used at trial. The violation of the statute was apparent. Yet the Ohio Supreme Court reversed the Court of Appeals, stating in pertinent part:

[W]e cannot reasonably interpret former R.C. 2933.51 *et seq.* as granting a statutory right to privacy in communications between rioting inmates. The General Assembly could not have envisioned creating such a right in a state prison under siege. Granting privacy rights in these circumstances makes no sense in view of the state’s interest in operating a prison and, in this case, restoring order, saving the lives of hostages and nonrioting prisoners, and protecting state property. . . . The idea that rioting prisoners are entitled to privacy in plotting the deaths of guards and other prisoners is absurd.³⁹

In other words, if the court were to do what the law required the prisoner might win . . . which would be “absurd.”

Overriding a Juror’s Reservations

Even more troubling is the Supreme Court’s endorsement of the treatment of Robb juror Katrina Fehr. During the third day of penalty deliberations, the jury foreman sent out a note that (because of Fehr’s refusal to recommend death) said, “We have become deadlocked.” The trial judge then suspended jury deliberations and questioned each juror separately. Thereafter, the trial judge asked the jury, “Can you continue to deliberate or are you unalterably deadlocked?” The jury foreman answered, “We cannot agree unanimously on either verdict [that is, death or life imprisonment].” The judge told the jury to continue deliberating. After further deliberation, the jury asked if the judge could impose a life sentence even if the jury recommended death. The judge said, yes. The jury then unanimously recommended death and the judge accepted their recommendation, to the consternation of juror Fehr who thought the judge was going to override the jury’s recommendation.⁴⁰

Ohio law is clear that if one juror declines to recommend the death penalty, the trial judge must impose a life sentence. But the Ohio Supreme Court affirmed what the trial judge had done in *Robb*.

Jason himself sums up as follows, writing in 2003 at the Ohio State Penitentiary.

The system is flawed. Look at the Lucasville prosecutions. In this book you read of five examples of the injustice system but that is only five out of 47 people who either pled guilty to reduced charges or went to trial and were found guilty. Their struggle is not being heard and they remain victims to this injustice. It's bigger than just five people's journey in chaos and torture. Who will take up the torch for them? Or do they just gather dust and remain forgotten?⁴¹

CHAPTER SEVEN OVERCOMING RACISM: THE LUCASVILLE REDEMPTION

ONE OF THE MANY WAYS that Attica lived on in the uprising at Lucasville had to do with race.

Tom Wicker's memorable book on the Attica rebellion drew on the experience of a prisoner named Roger Champen.

"You're *always* going to have a problem" with black-white relations, Champen believed. But in D-yard, "as days went by, food got scarce and the water began to be scarce, [blacks and whites] became more friendly. The issue about race became minimal. . . . Nothing means anything except the issue at hand." When he made his first D-yard speech, Champ saw that "the whites had backed off and had a little, like, semi-circle off to the left." He told them that the revolt was not a "racial thing," that they had "one common enemy, the wall. The wall surrounds us all. So if you don't like me, don't like me, don't like me after, but in the meantime, let's work together." That advice had prevailed.¹

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Pondering the totality of his own immersion in what happened on the Attica rec yard,

Wicker thought again that there was little evidence of black-white antagonisms in D-yard in what the observers could see and hear. When black orators like Florence spoke of unity in the yard but coupled this with blasts against "The Man" or "Whitey," white inmates seemed to be cheering with the rest. Similarly, Florence, Champ [Roger Champen], Brother Herb, and Brother Richard all seemed to accept white inmates as legitimately a part of the oppressed class.

Could he be seeing in D-yard, Wicker wondered, that class interest might overcome racial animosities? Was it possible that the dregs of the earth, in a citadel of the damned, somehow in the desperation of human need had

cast aside all the ancient and encumbering trappings of racism to find in degradation the humanity they knew at last they shared?²

This is a very different vision from the suggestion of some historians that white workers in the United States are incurably racist. These historians ask us to recognize that the racism of white workers is an aspect of their “class formation” and to a significant degree the product of their own “agency,” that is, their own will and desire. The making of the American working class, it is proposed, has been in part a process whereby immigrants from Ireland and Eastern Europe learned to “become white” so as to appropriate the “wages of whiteness,” both economic and psychological.³

These historians accurately describe a good deal of observed behavior. One may nonetheless argue that the racist behavior of white workers, when and where it has occurred, is the product of specific historical circumstances rather than of something essential about white workers in the United States. When white workers have behaved in a racist manner it has typically occurred in one or more of the following circumstances:

- Whites were a majority in the workplace and in the local union, if there was one;
- The number of persons seeking work exceeded the number of available jobs, or the number of jobs was decreasing;
- Employers, usually white males, deliberately pursued hiring policies that separated black and white workers and set them at each other's throats.

Perhaps if the circumstances were different, whites (and blacks, who have often become strikebreakers) might behave differently. What if we could change the context? What if we could vary the variables? We might then have a method of analysis that could account both for racist behavior and for behavior that overcomes racism. It could account for the comradeship of Red and Andy in *The Shawshank Redemption*; and for the love between a black man, Othello, and his white wife, Desdemona, as well as for the acceptance of that love by the audiences who saw Shakespeare's play at the Globe Theater in London at almost the same time that the first permanent English colony, Jamestown, was established in what became the United States.

Suppose many decisionmakers were black, competition between the races was not objectively demanded, and the numbers of minorities and whites were approximately equal. The United States military since World War II has moved in that direction. Prison may on occasion do so even more completely.

Lucasville

African Americans were 57 percent of the prison population at SOCF before the uprising.⁴ Thus the Lucasville Five, three blacks and two whites, mirror the make-up of the prisoner body at SOCF at the time. No one—administrators, guards, white prisoners, or black prisoners—had ever experienced this degree of numerical racial equality outside prison walls.

Both white and black prisoners found confinement at SOCF to be racially discriminatory. Whites emphasized the high percentage of African American prisoners, and the fact that the Warden, a Deputy Warden, and the Director of the Ohio Department of Rehabilitation and Correction were all black.

But black prisoners could make an even stronger case for racial discrimination. As the Cleveland *Plain Dealer* commented at the time of the uprising, 85 percent of the guards at SOCF were white, the town of Lucasville had no black residents, and for these reasons, “the Southern Ohio Correctional Facility should not have been built in Lucasville.”⁵ The Mohr Report found that:

A review of use of force incidents at SOCF from January 1992 to the time of the disturbance not only reflects a very high rate but also indicates a disparity in use of force against black inmates. Specifically, 74% of all use of force cases involved black inmates compared to their percentage of the SOCF population being 57%.⁶

And although prisoners of both races were *beaten* by the guards, it appears that the only SOCF prisoners *killed* by guards in the years preceding the uprising were black.

How did interracial ceiling affect these dynamics? The Mohr Report says that interracial ceiling increased beginning in 1991 after the decision in a federal court case, *White v. Morris*. But there is reason to believe that what prisoners—black and white—most resented was *forced* ceiling with another prisoner, whether or not that prisoner was of the same race. “Little Rock” Reed asserts:

Before Tate, wardens allowed prisoners to cell with each other if they asked to do so. Tate told people where to live and moved men who had lived in particular cell blocks for years.

The entire time I was in Lucasville prior to Tate's administration [1984 to 1990], at least a third of the cells were racially integrated on a volunteer basis. Tate believed that this quota was a constitutional requirement. But he intended to fill his quota with blacks and whites who hated each other. He wanted the inevitable explosion to be between blacks and whites, rather than between prisoners and the administration.⁷

During the uprising, black and white prisoners alike demanded that the policy of *forced* integrated celling should be rescinded.⁸ At the trial of George Skatzes, the State's principal investigator testified that "many" SOCF prisoners objected to racially-integrated celling. He was asked, "Black and white?" and answered, "Yes, sir."⁹

Consider what happened to a black prisoner, as narrated by "Little Rock" Reed.

One day an 18-year-old black kid named William, who weighed no more than 125 pounds, arrived at Lucasville and was ordered to room with a member of the Aryan Brotherhood. The AB proclaimed that if they placed a "nigger" in his cell, he would kill him.

The little black guy was terrified. He turned to the guards who were escorting him and pleaded for help. They made it clear that if he didn't step into the cell, they would beat him themselves.

William had barely entered the cell when the white man hammered him in the face with a padlock inside a sock. He ran down the cell block crying for help. He was placed in the hole for disobeying a direct order when he ran from the cell.

When William returned to the cell block, he agreed to let me file a law suit on his behalf.¹⁰ Attached to the law suit were affidavits from prisoners and two criminologists which stated that Tate's policy of forced integration would result in a riot if we didn't obtain an injunction. I also wrote to Warden Tate asking him if he was trying to start a riot. Unfortunately, the court, the governor, the prison director,

the chief inspector of the prison system, and everyone else with authority to intervene, ignored our pleas.

Forming a Convict Race

Once the uprising began, the overriding problem for the prisoners in rebellion was the possibility that what had begun as a protest against the authorities might turn into a race riot among prisoners. *All* of the prisoners killed during the first hours of the Lucasville uprising were white, and *all but one* of the guards taken hostage were white. A war of race against race in L block could easily have come about. Toward the end of that first afternoon, many of the insurgent prisoners gathered in the L block gym, whites in the bleachers, blacks on the other side. The atmosphere was tense.

According to an eyewitness, two black men—one of them named Cecil Allen—approached George Skatzes.

[They] said, George. Would you please be a spokesman? This thing has gotten out of hand, and we need some help.

. . . [George Skatzes] was a little reluctant at first because he didn't know what was happening. . . . But then, as he looked around, he said sure. If I can help in some way, I will do that. . . .

Mr. Allen . . . said, tell them that this is not a race thing. This is not a race war. It is a war against the administration, against Arthur Tate.¹¹

Another African American previously unknown to Skatzes, Little Willie, said, "George, come over to the gym. The whites are all on one side, the blacks on the other."

As Skatzes remembers it, he went to the gym and stood facing his fellow whites in the bleachers, with Little Willie beside him. George recalls that he had never been a public speaker, but that a kind of power came into him at this moment. He put his arm around Little Willie's shoulders and said words to this effect:¹²

This is against the administration. We are all in this together. They are against every one in here who's blue [the color of the prisoners' uniforms]. . . . Don't be paranoid. Mix it up. . . . This is no time for you to be calling me

“honky” or me to be calling you “nigger.” If they come in here, they’re going to kill all of us. They’re going to kill this man and me, no matter what color we are. . . . Is everybody in agreement?

Skatzes remembers that one of the Aryan leaders in the bleachers was visibly uncomfortable with his remarks.

The prospect of a race war abated. Several later incidents required mediation. But when Skatzes went out on the yard as a spokesperson for the prisoners on April 15 he announced:

We are oppressed people, we have come together as one. We are brothers. . . . We are a unit here. They try to make this a racial issue. It is not a racial issue. Black and white alike have joined hands in SOCF and become one strong unit.¹³

After the prisoners surrendered and the Ohio State Highway Patrol entered L block, they found a variety of graffiti on the walls. Some expressed the ideology of the different groups involved in the takeover. These included a crescent moon, which the authorities understood to represent the Islamic community; a six-pointed star, said to be associated with the Black Gangster Disciples; and swastikas and lightning bolts together with the words “Honor,” “Aryan Brotherhood Forever,” and “Supreme White Power.”¹⁴

But a greater number of graffiti testified in substantially similar words to something quite different. Sergeant Hudson identified a photograph taken in the L corridor.

Q. On the wall on the right there appears to be something written?

A. Says, “Black and White Together.”

Q. Did you find that or similar slogans in many places in L block?

A. Yes, we did, throughout the corridor, in the L block.

A. Yes, sir.¹⁵

Further:

Q. [What is photograph] 260?

A. 260, the words, “Convict unity,” written on the walls of L corridor.

Q. Did you find the message of unity throughout L block?

A. Yes. . . .

Q. Next photo?

A. 261 is another photograph in L corridor that depicts the words, “Convict race.”¹⁶

Evidently the cultural creation of racial identity can work in more than one way. At Lucasville, the process operated not to create separation of the races, but to overcome racism.

Explanations

So what explains the Lucasville Redemption? The lives of the two white Aryan leaders—Skatzes and Robb—and Hasan, the Sunni Muslim imam, offer clues.

George

In Marion, Ohio, where George Skatzes grew up, neighbors regarded the Skatzes family as “white trash.”¹⁷ George felt more welcomed on the black side of town than by the people next door. One of his best friends was the child of an interracial couple.

According to George, he has never felt racial superiority. “You won’t find anyone at Lucasville I judged because of the color of his skin,” he insists. Black prisoners, both at trial (whether testifying for the prosecution or the defense) and in private conversation, agree.

Skatzes nonetheless joined the Aryan Brotherhood because he perceived whites at SOCF to be a minority who needed to band together for self-protection.

Jason

Jason Robb is no doubt more typical.

There was a lot of racial tension in the penitentiary, Jason told his jury in his unsworn statement. He had grown up in predominantly white neighborhoods. He had had little contact with blacks. Now he was in a prison community where—at least in his perception—“it was basically two, three blacks to every white.” And what Jason Robb called his first “real contact” with blacks was “not positive.”

Robb didn’t have to cell with blacks because he had a “separation tag.” But at SOCF he worked with blacks and, as he did so, “got to talking” with them.

Jason worked as a plumber and came in contact with a black electrician. According to Jason, “This guy’s showing me how to do electric work and I’m showing him how to do things and basically we’re teaching each other how to do work.”

The electrician was a pretty militant black guy, Jason recalled. Black prisoners had “their own little cliques.” Their “thing was Black Power.”

But we talked and it surprised me that me and him could talk. And he explained to me his beliefs. And that kind of surprised me that he would be open with me like that. So I explained to him how I felt. And we built a respect between us.

Thereafter, Jason says, he was a separatist but not a racist. “A racist is a person filled with hate who’ll cause trouble between the races. You don’t do that in a penitentiary. It don’t work like that. You live together.” What then is separatism?

They stay on their side. I stay on my side. They do their thing, I do my thing. They have different beliefs, I have different beliefs. Their culture’s different, my culture’s different. Their music’s different, my music’s different. Can’t be in a cell and play country music and he wants to play rap. They just don’t mix in a cell. There would be a conflict there.

Summing up, Jason Robb said: “I gave them respect, they give me respect. We just stay separate.”¹⁸

At my request, Jason Robb has described what it means to him to be an Aryan Brother.

A big part of who I am is shaped around my belief in Asatru and following the Norse traditions. My beliefs in Asatru and in the Aryan brothers are not one and the same but distinct in themselves.

In Asatru, one does not surrender his belief to a god, or pray to a god. Basically it’s a combination of a pantheistic notion that holds nature sacred with a polytheistic view of a plurality of gods and goddesses, allowing a closer bond between gods and man.

Asatru, Jason continues, “is the ethnic religion of Northern Europeans. It is a tribal religion that studies as well as encourages European traditions, history, art and culture.” He states that nowadays this attitude is considered politically incorrect. We are taught to be ashamed of our ancestors’ warrior nature.

Jason believes that without reason or the ability to think we remain in a state of limbo, thus making much easier the job of the powers-that-be to subjugate and control us. He was blind to this for many years until he read *The Prince* by Machiavelli. “Then it was like a door into my inner consciousness opened wide,” he writes. “In the prison system everyone is stripped of their identities coming in the door. They give you the same clothes and haircut. All personal property is taken. You become a number as in George Orwell’s book *1984*.”

Hate is a tool used by the administration to control prisoners, something they manipulate very well. “I choose,” says Jason, “not to be a puppet to that manipulation, and to separate myself from that thought process and brainwashing tactic.” In this prison system, whites, blacks, Hispanics all strive to educate themselves about their culture and history. In the process they become politically conscious as well.

He goes on: “In prison all we have is our word, our honor. Without that you become only a number.” He believes “that only a white man can speak for a white man’s point of view and vice versa for blacks and Hispanics, because the truth is we are all treated differently. That’s a fact. We experience life by shades of color and belief.”

When he came to prison, Jason explains, “I became for the first time in my life a minority! . . . Because of this I could truly see what it meant to be in the minority, and how important it was to keep in touch with my heritage and culture by all means, and not to become assimilated.” It’s also true for blacks in prison, he believes.

I’ve witnessed blacks who came up in bi-racial families and lived in white neighborhoods become victimized in prison by other blacks for being too white. The same [is true] for whites who came up in ghettos and black communities and become targets for other whites because they act black, not white.

Those who are proud of their skin color, heritage, and culture become labeled as a threat to the safety and security of the prison system. They are labeled gang members and racists, and are isolated and punished by the prison administration “be you white or black.”

Jason Robb states that he tries to live his life to the best of his ability according to the “Noble Values”—courage, truth, honor, fidelity, discipline, hospitality, self-reliance, industriousness and perseverance—and by:

The Nine Charges

1. To maintain candor and fidelity in love and devotion to the tried friend: Though he strike me I will do him no scathe.

2. Never to make wrong-some oath: For great and grim is the reward for the breaking of plighted troth.

3. To deal not hardly with the humble and the lowly.

4. To remember the respect that is due to great age.

5. To suffer no evil to go un-remedied and to fight against the enemies of faith, folk, and family: My foes I will fight in the field, nor will I stay to be burnt in my house.

6. To succor the friendless but to put no faith in the pledged word of a stranger people.

7. If I hear the fool’s word of a drunken man I will strive not: For many a grief and the very death groweth from out such things.

8. To give kind heed to dead men: straw dead, sea dead, or sword dead.

9. To abide by the enactments of lawful authority and to bear with courage the decrees of the norms.

“What you do in life comes back around to you in the circle of life,” Jason believes. He does what he does “for my brothers’ advancement in knowledge, treatment, etc., and if others benefit because of it, so be it.”

Finally, Jason writes, he wishes to define the word “Aryan” not as it came to be defined in propaganda after World War II, but as defined in *Webster’s Illustrated New Standard Dictionary*, published by Albert Whitman & Company in 1935. There “Aryan” is defined as follows:

Aryan, belonging to the Indo-European family of language, supposed to have existed in Central Asia in

prehistoric times, and from which Hindu, Persian, Greek, Latin, Slavonic, Teutonic and Celtic descended. The original language of the Aryans.

I am, adds Jason, Greek and Irish in ancestral lineage.

Most people mistake the word “Aryan” for Hitler’s philosophy of the Aryan *Uebermensch* and the Third Reich, according to Jason. The true definition refers to the Europeans who conquered India and Iran (2500 B.C.E.), and is taken from the Sanskrit “arya,” meaning “noble” as well as “Lord and Ruler.” He says, “I strive to be noble and hope my life will reflect that fact when I have moved on to Valhalla.”

At the Ohio State Penitentiary, Jason Robb served as one of two spokespersons for the class of prisoner plaintiffs in the law suit that sought to improve conditions there. The other spokesperson was a black. When the black spokesperson was transferred, Jason urged lawyers to recruit another black man. “The blacks need to be represented,” he said.

Hasan

SOCF, Hasan says,¹⁹ was similar to the ghettos outside prison in some ways, different in others. The vices were the same, from “alcohol, drugs, hatred, violence, cheating, gambling, killing, lying, pimping, stealing to idleness, illiteracy, lack of educational and vocational pursuits, lewd sexual behavior and appetites, lack of respect for self and others, profanity and provocative epithets for women.” To that extent black prisoners felt right at home.

On the other hand, there were no poor whites or pockets of Asians, Arabs or Hispanics in the segregated communities, Bayview and Yamacraw Village, where Hasan was raised. “Except for one white family who temporarily lived in Yamacraw Village, but moved when their children were being physically harassed by other residents, I cannot recall any whites ever living in my neighborhoods.”

Residential segregation was the rule in virtually all the lower-income housing projects and ghettos—Fellwood, Katon Homes, Fraizer Homes, Garden Homes, Hitch Village, Fred Wessal and Frances Bartow—in which he socialized. While there were white ghettos in Savannah and their inhabitants “most likely experienced the same problems as blacks living in ghettos,” according to Hasan, he made it his business never to socialize in places where he was not welcomed and wanted.

“Before becoming a Muslim in 1981, I had basically seen everything in either black or white,” Hasan writes. However, “Islam has instilled in me the belief that we do not live in a bipolar world, but in a multiracial society, and should *recognize one another’s differences* and right to exist and worship the Creator.” He cites texts from the Qur’an:

O mankind! Verily, We have created you from a male and a female, and We have made you into nations and tribes that you may recognize one another. Verily, the noblest of you by Allah are your most pious. Verily, Allah has knowledge (of everything) and is fully aware. (Chapter 49, Verse 13)

Mankind was one community. (Chapter 2, Verse 213)

“Islam negates racism and sees it for what it’s worth,” Hasan continues, “a disease of the heart that instills bigotry. If any man thinks that he’s better than or superior to another person because of the pigmentation of his skin, then he’s actually living an illusion about his own worth and humanity, and he needs to immediately wake up and smell the coffee.”

On Death Row

Whatever the explanation, the solidarity of the Lucasville prisoners condemned to death continued after their trials.

Keith Lamar recalls how he was befriended by George Skatzes. “I’ve never seen George as a racist,” Keith recalls.

In fact, he was the first one out of the so-called Lucasville Five who embraced me and let me know that we were all in this together, and that, I think, is what cemented our bond. Being the only one who didn’t stay inside the whole eleven days, and the only one not affiliated with any group, I felt like an outsider, like I was in this all by myself. George saw that and moved to assure me that that was not the case.²⁰

Of course it has been a struggle to create and maintain solidarity. Skatzes recalls the time when he, Hasan, and Anthony Lavelle were confined in adjacent cells in the North Hole at Chillicothe. Lavelle was forever throwing out anti-white barbs, George recalls. According to George, Lavelle wrote on the shower wall the

words, “Die, nigger scum, die,” hoping to make Hasan believe that Skatzes had written them.

Yet both Hasan and Lavelle shared extra food with Skatzes that they received during the Muslim holy month of Ramadan. At the time Lavelle was a Muslim, George says, and “Muslims are not supposed to let a neighbor go to bed hungry.”

The moment of truth for Skatzes and Hasan came when George, having been removed from his cell on April 6, 1994, was allowed to return on April 8. George says he immediately went up to the bars that separated his cell from Hasan’s. Grasping the bars he said, “You don’t know me, I don’t know you. I didn’t tell them anything.” Hasan believed him, and as described in Chapter Five, volunteered to write a note saying so to other black prisoners.

Confined together under harsh conditions the five Lucasville prisoners have launched several hunger strikes. An early reference to the group as “the Lucasville Five” is in a statement by George Skatzes explaining the reasons for a hunger strike in 1996. “I’m sure,” Skatzes wrote, “that we—the Lucasville Five—have been placed . . . under these conditions . . . so as you may continue to maintain a safe prison environment.” How do we defuse this situation? he went on. “Very simple—place the ‘Lucasville Five’ on their proper level, which is B level.” Concluding, Skatzes wrote: “Let me state a fact—you have not had any problems from any of the ‘Lucasville Five.’ All we want is what we have coming to us—and that is being placed on our proper level.”²¹

During another hunger strike by the Five the next year, Lamar drafted their demands. The first demand was better medical care for a white man. “At the forefront of our list of concerns,” he wrote, “we are asking that George Skatzes receive immediate medical attention for what is, as yet, an undiagnosed problem he’s been having with his stomach. With respect to this,” Lamar continued,

he has repeatedly tried, to no avail, to have the Doctor order some tests in order to determine what the problem is. Surely, he is entitled to the same attention that is accorded to everyone else and we’re asking that he be given the attention capable of addressing these concerns and preventing his problem from becoming any worse, than what it already is.²²

When the Five were transferred to the Ohio State Penitentiary in Youngstown in May 1998, Skatzes and Hasan undertook yet another hunger strike. After it had lasted for a week, a savvy member of the prison administration approached each with the rap, “Look, we know we have problems. Just start eating again so we can work on them together.” And each responded, “Let me talk with the other guy. When he’s ready to eat, I will think about it.”

The following morning all of Hasan’s complaints were resolved, but not Skatzes’. When the prison officials brought Hasan his meal, he refused to eat until Skatzes’ issues were also settled or until he received word from Skatzes that his issues would be resolved. After talking to the prison authorities about his complaints and receiving a satisfactory answer, Skatzes sent a coded message to Hasan to resume eating. Hasan explained in a letter:

Since these people always come to me and try to discuss and work out any problem, I chose to stay on the fast to let them know that I was down with George’s struggle too and I would not sit quiet and allow the system to mess over him. As anticipated, they got the message and know that we are one and will keep on pushing until we reach our destiny, i.e. equal protection under the laws as other general population inmates.²³

Black and White Together?

In prison, it seems, the rewards for interracial solidarity may be more substantial than the wages of whiteness. A young white prisoner from the South describes how his attitudes changed while imprisoned at the Ohio State Penitentiary.

I have to say that I came to O.S.P. a stone cold racist. I wasn’t racist when I was first imprisoned, but prison quickly turned me into one because of who was picking on me. . . .

Note that the young man’s experience in this respect parallels that of Jason Robb. He continues:

Three years at O.S.P. has changed that 100%. It’s the WHITE police, administrators and nurses who treat me like a “nigger”; treat all of us like that. It is *so frustrating* to live under such an intense, voiceless oppression; to be

picked on just because I'm an inmate; to be pushed and harassed, physically, while I'm in full restraints, and to be antagonized non-stop.

Then we come to the ideological consequences of the oppression shared by white and black prisoners.

I used to be proud of white historical domination, the way whites just crushed and conquered all who stood in their path historically. But now when I watch documentaries on PBS like "Conquistadors" or "The West" it makes me mad because in those conquests and legal genocides I now see the arrogance of Lt.—or the administrators at O.S.P., with the blind assumption of superiority by all the frontiersmen/conquistadors/correctional officers. It's the same mentality really. Nothing on this planet has equaled the juggernaut force of white violence, ingenuity, conquest and superiority-through-numbers moving in coordination, but in that there was an *ignorance* that led to the death of millions and the extinction of entire cultures and animal species. And this continues still today.

And he concludes:

I guess living under this O.S.P. stuff has sapped my view of white nobility and made me realize just how impossible it is to fight the entrenched administration (on all levels of life) of an established majority. It makes me respect the Indians who fought to the death when the white man just wrote up a document (manifest destiny) which made it perfectly legal to annihilate the Indians; or the Incan/Aztec natives who stood up to the conquistadors (and were mauled as a society); or the slaves who found the courage to revolt, knowing that there was no real win to be had except self satisfaction.

That's not to say I'm a bleeding heart liberal now, but I have a new perspective now when I see black ignorance because I see "the machine" that maintains that level of ignorance and oppression on others; I see how the foot is on the necks of second class citizens; how the whole set-up is impossible to defeat until the entire administration of all levels (president, judges, police, etc.) has been renewed by several generations. Sadly, I fear that whites will have a tough time once that overhaul takes place.²⁴

Conclusion: Race in Prison

Thinking of all the complex facts set forth in this chapter, I conclude the following:

- Many young whites who are imprisoned have had relatively little experience with blacks on the street.
- In prison, the young white man finds himself in a situation where whites do not outnumber blacks eight to one (as in the United States as a whole) but (as in the Ohio prison system) blacks and whites are approximately equal in number. Moreover, in the prison system blacks may occupy more important administrative posts, relative to whites, than they would be likely to hold outside the walls.
- This combination of circumstances may cause such young white men, when they experience harassment from black prisoners, to become more racist than they were before incarceration and to join a whites-only group for protection.
- From the point of view of the black prisoner, in contrast, the white oppression that existed before he went to prison continues behind the walls.
- In the long run, the common oppression experienced by black and white prisoners may cause them to join together in resisting the authorities.
- It can be a step toward such a common front for white and black groups to enter into agreements to settle disputes without violence, to make joint demands on the prison system, and the like. At this point, the ideology of both groups will likely be: you respect our autonomy, we will respect yours. Thus at Lucasville both blacks and whites opposed forced interracial celling.
- Ultimately, prisoners stand together against dehumanizing treatment not as blacks or whites, but as human beings. The qualities all prisoners respect are: courage; the ability to “maintain,” to “stay strong”; respect for oneself and for others; refusal to snitch. Not all prisoners display these qualities, and those who do are not all of one skin color.
- As the process unfolds, black and white prisoners like the young man in his letter will begin to feel solidarity not only with each other, but with people outside prison who are struggling against the same oppressive system: for example, rank-and-file workers; farmers displaced from their land in

the Third World; Puerto Ricans struggling for self-determination; young people protesting economic inequality as promoted by the World Bank, the International Monetary Fund, and the World Trade Organization; and the victims of military occupation in Palestine and Iraq.

The process I have described—this “Lucasville Redemption”—contains a message for organizers outside prison.

Toward the end of the 1960s, black organizers in the civil rights movement said to their white colleagues, in effect: “Look, for a time we are going to organize Black Power in the black community. We suggest you do parallel work among working-class whites. Then, after a few years, we will bring the two movements together in an interracial movement of the poor that can change this society.” In the labor movement, too, African Americans frustrated by the hostility of white fellow workers have organized their own all-black enclaves of power or, at least, organized separately within their plants and unions to seek equality.²⁵

The problem is that the separate currents of struggle, black and white, have not been brought back together. The prisoners described in this book therefore have something to teach us all. Like blacks and whites on the outside, they first organized as Muslims and as Aryan Brothers. Then, under the hammer of common oppression, these groups joined to wage a struggle against an oppression shared by all.

To be sure, not every prisoner did so. There were informants in every group, such as Muslim Stacey Gordon, BGD leader Anthony Lavelle, and ABs like Snodgrass. And of course, as in any human enterprise under difficult conditions, cooperation was ragged and uneven. Still, on the whole, Lucasville offers an extraordinary instance of blacks and whites overcoming their differences in common struggle.

We may yet be able to bring to birth a new world from the ashes of the old.

CHAPTER EIGHT ATTICA AND AMNESTY

They came for the communists, and I did not speak up because I was not a communist; They came for the socialists, and I did not speak up because I was not a socialist; They came for the union leaders, and I did not speak up because I wasn't a union leader; They came for the Jews, and I did not speak up because I wasn't a Jew. Then they came for me, and there was no one left to speak up for me.

—Martin Niemöller

THERE IS A PATTERN. It is a pattern of responding to violence with ever more repression and violence. Rather than addressing the causes of discontent and rebellion, the perpetrators of the pattern respond with greater and greater violence of their own. The pattern has been described as a “culture of control.” More specifically, it is

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a highly efficient and technically controlled system of crime management directed almost exclusively at protecting crime's potential victims instead of coping with its causes. Its principal instruments [are] swift arrest, tough sentencing, and extensive incarceration. Penal welfare and rehabilitation got lost in the process.¹

Ten years after the Lucasville uprising, there were four times as many persons in prison in the United States as there had been thirty years earlier, and there was an incarceration rate between four and ten times that of other industrialized countries; while the overall rate of crime held steady and, after 1992, the rate of violent crime had actually decreased.²

The experience of the Lucasville Five illustrates this pattern of official behavior. As a young man George Skatzes was imprisoned at the old Ohio Penitentiary in Columbus, where a rebellion occurred in the late 1960s. The State of Ohio responded to

the rebellion by building its first maximum security prison, the Southern Ohio Correctional Facility in Lucasville. When Beverly Taylor was killed by a prisoner at SOCF in 1990, the system reacted by sending in Warden Arthur Tate and instituting “Operation Shakedown.” All the activities that might have encouraged prisoners to pursue alternatives to violence—educational programs, the opportunity for social interaction, access to the law library—were curtailed. Not surprisingly, the uprising that is the subject of this book erupted three years later.

In the aftermath of the Lucasville uprising, all arms of Ohio government—the Department of Rehabilitation and Correction, state court judges, the Ohio State Highway Patrol and the special prosecutor—pursued a policy of seeking vengeance rather than rehabilitation.

ODRC’s False Solutions

After the Lucasville uprising, ODRC director Reginald Wilkinson took three steps intended to show that there would never be another Lucasville. All exemplified the pattern: instead of going to the root of a problem, he built on top of it an ever more shaky scaffolding of suppression and control.

First, Wilkinson promulgated a new rule that no Ohio prisoner classified maximum security (and later, high maximum security as well) could be paroled until reduced to “close” security, now Level 3.³ This rule did not directly affect the Lucasville Five since they are sentenced to death. It penalized many of the other participants in the 1993 uprising who were reclassified high maximum security and transferred to the Youngstown “supermax.” The new rule sent a message to all high security prisoners: no matter how many years you have served beyond the “guidelines” for your particular offense, and no matter how exemplary your conduct while in maximum or high maximum security, the Parole Board is denied discretion to release you. Thanks to a class action in which Lucasville defendants Robb and Lamar were class representatives, this rule was done away with in 2007, but the policy persists *de facto*: if you were a participant in the Lucasville uprising, and did not testify for the State, you will have a hard time reducing your security classification and getting out of prison.

Second, Wilkinson institutionalized new regional Special Tactics and Response (STAR) teams and Special Response Teams (SRT) at each prison. The teams’ first major outing was directed at

a group of three dozen men on Death Row who took over one of the living units, DR-4, on September 5, 1997. The Lucasville Five were all housed in DR-4. The prisoners who began this action overpowered and then released the three officers on duty. When the STAR and SRT teams stormed the block, almost all prisoners in DR-4 were in their cells, including George Skatzes who never left his cell at any time. As the officers entered the block they could be heard shouting, "Where's Robb?" Robb, although he offered no resistance, was beaten so severely that his skull was fractured. When dragged from his cell, he was covered with blood and a prison official who knew him well could recognize him only by his tattoos.⁴

A Use of Force Committee entirely made up of Department employees was appointed to investigate the incident. The Committee concluded among other things:

- "The Assault Teams . . . were all dressed in black and wore gas masks. Therefore the ability of the Committee to pursue investigation of specific personal identification of any employee or inmate was severely compromised."
- "The use of gas, mace, and distraction control devices was excessive."
- "A general loss of control existed in the manner in which inmates were controlled, restrained, and escorted from the cell block. The failure of supervisory staff to provide videotaping was instrumental in providing an environment for this to take place."⁵

Finally, Director Wilkinson caused to be constructed the new "supermax" prison in Youngstown, the Ohio State Penitentiary (OSP). The Lucasville Five were among the first prisoners to be transferred to OSP when it opened in May 1998. Indeed, one can plausibly suggest that OSP was built for them: that is, that this new, expensive prison is intended to send the message that the State of Ohio is *doing something* to prevent another Lucasville uprising. Unlike most supermax prisons, OSP was constructed with no outdoor recreation of any kind. Director Wilkinson was asked at a deposition conducted by the author why this was so. He answered that the Lucasville uprising of 1993 began on the rec yard. Federal Judge James S. Gwin has concluded that OSP was "constructed in reaction to the April 1993 riot at the Southern

Ohio Correctional Facility at Lucasville,” and in 2005 the United States Supreme Court agreed.⁶

Judge Gwin also noted that evidence presented at trial suggests that Ohio does not need a high maximum security prison or, at least, does not need one with the capacity of OSP. Judge Gwin stated:

Peter Davis, a member of the Ohio Parole Board and former executive director of the Correctional Institution Inspection Committee of the Ohio General Assembly, testified about the Department of Rehabilitation and Correction’s use of the J-1 cellblock at the Southern Ohio Correctional Facility. The Southern Ohio Correctional Facility is Ohio’s only maximum security prison, the security level immediately below the OSP’s high maximum security level. . . . The J-1 cellblock is the most restrictive cellblock within the Southern Ohio Correctional Facility. . . .

Suggestive that Ohio never needed the 504-inmate capacity of the OSP, before the OSP was built Ohio did not fill the J-1 cells at the Southern Ohio Correctional Facility. Instead, Ohio . . . did not have a sufficient number of maximum security cells.

Judge Gwin concluded: “After the huge investment in the OSP, Ohio risks having a ‘because we have built it, they will come’ mind set.”⁷

In OSP’s first four months of operation, more than a hundred prisoners were transferred to OSP without notice or hearing of any kind. The former director of the Correctional Institution Inspection Committee testified that there were no criteria as to which prisoners were sent to the supermax and which, among those who had committed similar offenses, remained in other facilities.

Several prisoners were sent to OSP although they had been acquitted by juries of the claimed offenses that were used to justify their transfer. One prisoner was transferred to OSP after being hit over the head in the chow line by another inmate. A second prisoner was kept at OSP because the way he made the capital letter “B” was viewed by authorities as an expression of disrespect by the Crips toward the Bloods. On the witness stand, this man turned to the judge and said that he had made his “B”s in that fashion since third grade. Approximately sixty prisoners were transferred to the supermax for placement offenses that involved nothing more than conspiracy to convey, or possession of, small quantities of drugs.

Once at OSP, prisoners faced conditions that Judge Gwin found to constitute “atypical and significant hardship as compared to the ordinary incidents of prison life.” OSP prisoners typically spend years there, alone for a minimum of twenty-three hours a day in a cell about the size of a small bathroom or the parking space for a compact car. Cell doors are solid metal, not bars as at SOCF. The OSP Warden had metal strips welded to the sides and bottom of the cell doors with the result that communication between prisoners was further hindered. There are no contact visits for high maximum security prisoners. Although separated from visitors by a solid sheet of plexiglass, prisoners are shackled and subjected to humiliating strip searches coming and going between cell and visiting booth.

Getting out of the Ohio supermax is as problematic as getting in. These administrative detentions are reviewed once a year by a committee of prison officials. But even when the committee determines that the prisoner is ready for release, a higher official can veto the recommendation.

The four members of the Lucasville Five who are still at OSP⁸ have been informed, in writing, that they should expect their placement there to be permanent. Along with other prisoners at the supermax who are accused of killing prison staff, Hasan, Lamar, Robb and Namir were told in August 2003:

You were admitted to the OSP in May of 1998. We are of the opinion that your placement offense is so severe that you should remain at the OSP permanently or for many years regardless of your behavior while confined at the OSP.⁹

The indefinite solitary confinement of these men does not allow for the possibility of change. The prisoner is locked up with his past and can do nothing about it. “Solitary” without end takes away hope and meaning in life: it is slow-motion death, inch by inch, moment by moment. The Supreme Court of the United States said about solitary confinement 125 years ago:

A considerable number of the prisoners fell, even after a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide;

while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.¹⁰

Austin v. Wilkinson, the class action on behalf of OSP prisoners, was filed after three prisoners committed suicide.

“This Is a Murder Case”

Like the Department, the state courts of Ohio have been interested only in punishment of Lucasville offenders, not in understanding why they rebelled. Disregard for the *causes* of the discontent felt by prisoners at Lucasville continued in court proceedings after the surrender.

Anyone trying to respond to a conflict between other human beings is likely to begin by saying, “Tell me how this got started.” Once the origin of irritation, anger and violence have been discerned, it becomes possible to make amends and to change future conduct. Similarly, one might reasonably have hoped that somewhere in the more than 25,000 pages of transcript in the trials of the five Lucasville prisoners sentenced to death there would be indication of an effort to find out why the uprising occurred. Even in a homicide arising from a bar room brawl, a criminal defendant is allowed to put on evidence of provocation. The Lucasville Five, however, were not allowed to call witnesses or enter documents into the record that might have helped their juries to understand why the uprising happened.

The most determined effort to introduce such evidence came in the trial of the alleged leader of the disturbance, Hasan. In *State v. Sanders*, the trial judge permitted the prosecution to dwell at length on the State’s one-sided and highly prejudicial “history” of how the riot came about, but prevented defense counsel from presenting evidence in rebuttal.

Prosecutor Krumpelbeck began his opening statement to the jury in *State v. Sanders* as follows:

Ladies and gentlemen, let me introduce you to the riot at the Southern Ohio Correctional Facility of Easter Day, April 11, 1993.

The evidence will show, to begin with, that this riot is misnamed. This riot was the idea of one man. This riot was planned by one man. This riot was organized by one man.¹¹

Co-prosecutor Gibson sounded the same theme at the beginning of his closing argument:

Now before I get into talking about the specific offenses with which Carlos Sanders is charged, there's one issue that I think is very important to you that you, as a jury, really need to decide in deciding what he's guilty of, and that is this question: Whose riot was this? . . . Who called for this riot? . . . Ladies and gentlemen, first and foremost, without question this was his [Sanders'] riot.¹²

To counter this broadbrush prosecution strategy, Hasan's counsel first tried to cross-examine prosecution witness Warden Arthur Tate about prison conditions that caused the riot. The prosecutor objected and the court barred the question, ruling that the riot was "only incidental. . . . This is a murder case. It has nothing to do with the riot, except that it happened in a prison at the time of the riot."¹³

Then, in presenting its own case, the defense tried to call witnesses to testify about the riot's causes.

First, Hasan's defense team called Frederick Crowder. Crowder was a Muslim prisoner who would have testified that in 1992-1993 while housed at Mansfield Correctional Institution (ManCI) he and other Sunni Muslims expressed their objections to the form of testing for tuberculosis proposed at ManCI and were able to resolve the issue peacefully with the administration there. The judge refused to let Mr. Crowder testify, explaining:

This case is not a case concerning the riot. The riot occurred incidentally, as far as I'm concerned. We're concerned with a number of charges that Mr. Sanders or Mr. Hasan is charged with—two aggravated murders, some kidnapping, some felonious assaults. They happen to have occurred in an institution.

The justification or the necessity or the right or wrongness of the riot is irrelevant. The TB testing, whether or not they were justified to riot because they were going to be subjected to it, is irrelevant to me.

This is a murder case, a felonious assault case, a kidnapping case. I don't care what they did in Mansfield concerning a TB testing. It is irrelevant. There was no murder in this courtroom in Mansfield, Ohio.¹⁴

When the exclusion of this testimony came before the Ohio Supreme Court on appeal, the Court opined:

Sanders . . . argues essentially that, if the state was permitted to show that he was responsible for the riot, then the defense had a right to show that the prison administration also bore some responsibility for it. . . .

Evidence that Sanders instigated and led the riot was not introduced for the purpose of showing that Sanders, as opposed to the prison administration, was “responsible” for the riot. Instead, it was introduced to show that he was an inmate leader whose orders were obeyed—a fact that was directly related to his culpability for Vallandingham’s murder.¹⁵

This retrospective rationale for the prosecution’s strategy is not supported by the record. The prosecution went far beyond seeking to prove Hasan’s alleged authority over other prisoners. The prosecutors presented him to the jury as the sole malevolent force behind everything that happened during the riot, including the death of Officer Robert Vallandingham.

Finally, in the sentencing phase of the trial after Hasan was found guilty, the defense called as its first witness Joseph R. Rowan. Mr. Rowan is an authority on prisons who has testified as an expert in 350 trials.¹⁶ The judge asked the witness what he was going to say. Mr. Rowan said he would testify about “the impact of administration and the total system at Southern Ohio Correctional Facility which led to this riot . . . which could have been easily prevented.” “Is there anything else?” the judge inquired. Yes, Mr. Rowan responded: “that David See, if his advice was followed—and there are other good approaches—it is highly likely this riot could have been prevented. But the warden refused to follow it.”¹⁷

The judge excluded the testimony, explaining:

He’s just going to criticize the administrator of prisons, and riots are not created by the prison. Riots are created by the inmates.

Now I said before in this trial, it is not going to be a trial of the riot. What this is is a murder that happened to happen in a prison during a riot.¹⁸

On appeal, the Ohio Supreme Court said that Rowan should have been permitted to testify. But, the Court added, the exclusion of his evidence was harmless error.

This error does not require a new sentencing hearing. . . . We have held that, when independently reviewing a death sentence . . . , we may “consider proffered evidence that the jury was erroneously not allowed to consider.” . . . [W]e find that it deserves no weight. . . . [W]hatever mistakes prison administrators may have made, Sanders need not have ordered Vallandingham’s murder.¹⁹

The Attica Example

Nearly twenty years after the negotiated surrender, the Ohio State Highway Patrol and the office of the Special Prosecutor implacably seek to add five more premeditated deaths to the ten deaths tragically experienced in April 1993. Now that the trials are over and the appeals are not yet concluded, public opinion has a further—and final—opportunity to put a stop to the pattern of ever-escalating violence.

Attica offers an instructive alternative. At Attica, armed forces of the State assaulted the occupied recreation yard on the last day of the riot, killing twenty-nine prisoners and ten hostage guards. But if one sets to one side the dreadful events of that last day, there is more similarity than commonly supposed between what happened at Attica in 1971 and what happened, twenty-two years later, at SOCF. The violence initiated by prisoners at Attica and Lucasville may be compared as follows:

	<i>Attica</i>	<i>Lucasville</i>
Officers killed	1 (Officer Quinn)	1 (Officer Vallandingham)
Alleged prisoner “snitches” killed	3 in 4 days	9 in 11 days

Moreover, there were seven additional prisoners at Attica who kept to themselves in a tent near the handball court. One of them put a white cloth on a stick on top of the tent. The seven were thereupon accused of being “traitors” and the committee that sought to coordinate the uprising repeatedly debated their fate, some prisoners favoring their execution. In view of the similarity

between the charges against these seven prisoners and the accusations directed at the three who were killed, at least some of the seven might well have been killed had the disturbance lasted longer. Indeed, on the final morning, the young man who hoisted the white flag and one other were blindfolded, bound and left in an exposed position to await the assault.²⁰

Thus the apparent misdeeds of prisoners at Attica and Lucasville were similar, and so were the initial judicial proceedings. At Attica a special prosecutor was appointed and grand juries were convened. Three prisoner leaders were charged with felony murder resulting from the kidnapping of two of the supposed snitches, Hess and Schwartz. Two other prisoners were charged with actually killing them, and two more for murdering Officer Quinn. In all, 62 prisoners were charged with more than 1,000 counts of criminal activity.²¹ Similarly after the surrender at Lucasville, 152 indictments were brought against fifty prisoners, charging them with much the same kinds of crime.²²

What was most different in the two situations was what happened next. At Lucasville, prosecution was pursued. There were fifty trials in ten counties, forty-seven guilty verdicts or plea bargains, and five death sentences.²³

Judicial proceedings after Attica had an altogether different conclusion. According to Useem and Kimball:

Scandal broke out in 1975, when a chief assistant to the special prosecutor went public with charges that his investigation of reprisals and reckless use of firearms by guards and police was being stifled from above. In the clamor over his disclosures, *a general amnesty was declared*. All outstanding indictments of inmates were dropped. Seven inmates who had pleaded guilty to reduced charges were pardoned by Governor Hugh Carey. The sentence of John Hill (Dacajaweah), convicted of killing Quinn, was commuted, and he was paroled in March of 1979.²⁴

The unraveling of the Attica prosecutions began in January 1975, when a former prisoner at Attica named Charles Crowley testified in a pretrial hearing that he had lied to the grand jury because he was beaten and coerced by guards. Then in April, as described by Useem and Kimball, assistant prosecutor Malcolm Bell resigned and charged chief prosecutor Anthony Simonetti

with covering up possible crimes by law enforcement officers. In February 1976, special prosecutor Alfred Scotti requested that all but one of the remaining indictments should be dismissed “in the interest of justice.”²⁵

The end came in a dramatic statement by New York Governor Carey on December 31, 1976. Explaining that “we now confront the real possibility that the law itself may well fall into disrepute” and that “equal justice by way of further prosecutions is no longer possible,” Governor Carey vacated the plea agreements of seven former Attica prisoners, commuted the sentence of the prisoner convicted of killing Officer Quinn, and barred disciplinary action against twenty state troopers and correctional officers. His statement also said:

I am moved to recognize that Attica has been a tragedy of immeasurable proportions, unalterably affecting countless lives. Too many families have grieved, too many have suffered deprivations, too many have lived their lives in uncertainty waiting for the long nightmare to end. For over five years and with hundreds of thousands of dollars and countless man-hours we have followed the path of investigation and accusation. We have succeeded in dividing and polarizing the people of this state without satisfying the quest for justice in this tragedy. To continue in this course, I believe, would merely prolong the agony with no better hope of a just and abiding conclusion.

The governor concluded by saying that his actions should not be understood to imply “a lack of culpability for the conduct at issue.” Rather, “these actions are in recognition that there does exist a larger wrong which transcends the wrongful acts of individuals.”²⁶

The Attica Example Applied

As this book has sought to show, the prosecutorial misconduct that triggered a general amnesty of prisoners involved in the Attica rebellion had its Ohio counterpart. Indeed prosecutors in New York and Ohio displayed the same “arbitrary, reckless, and some would say malicious, pursuit of the death penalty” as prosecutors in Texas, Illinois, and other states across the nation.²⁷

The Ohio Special Prosecutor must be assumed to be familiar with the overwhelming evidence pointing to Anthony Lavelle as

the actual killer of Officer Vallandingham. The very first prisoner from L block to be questioned by the Ohio State Highway Patrol, at 11:48 p.m. on the night of the surrender, was Emanuel “Buddy” Newell. He told Troopers West and Rogols:

That head guy of the disciples, the leader, I heard him one day, you know, talking . . . about executing police he said and I want to execute some more police. Those were his words. He said I want to execute some more police but the Aryans don't want me to do it.²⁸

Moreover, Lavelle himself had a videotaped interview with Trooper Shepard in May 1994 and told a story wholly at variance with the testimony he later offered to convict Robb, Namir, Skatzes and Hasan.

Lavelle confessed to Shepard that he “was there” when Officer Vallandingham was strangled. He had been able to recognize the officer who was murdered by his bandaged shoulder. He was three or four cells away from the cell or shower in which Officer Vallandingham was killed. “When they brought his body out, I was standing at the top of the range,” Lavelle concluded.²⁹

Yet in trial after trial Lavelle was permitted to tell unsuspecting juries that he was nowhere near L-6 at the time Officer Vallandingham was murdered.

Kenneth Law, a key witness against Hasan and Namir, was likewise permitted to present perjured testimony. Law has since stated under oath that: 1) He, Sherman Sims and Stacey Gordon made up a story about the Vallandingham murder, which they knew “was the key to the door [out of prison].” 2) The State did not believe his story and tried him for the kidnapping and aggravated murder of Vallandingham. He was found Guilty of kidnapping but the jury hung on the murder charge. 3) The State then told him he would be retried for aggravated murder unless he agreed to testify against Hasan and Namir. “I was interviewed several times before both trials and was told what to say,” Law now states in his affidavits. What he was told to say was precisely the fictitious story that he, Sims, and Gordon originally concocted and which the State did not believe.³⁰

Law has also stated under oath that he knew Lavelle had killed Officer Vallandingham and so informed the State.

On the morning of April 15, 1993, I was in L-1 and heard Anthony Lavelle, Aaron Jefferson, and Tim Williams talking about killing a guard. Lavelle left L-1, along with two others whom I recognized to be Gangster Disciples, despite their masks.

A few minutes later, I also left L-1 and went toward L-6. As I approached the door of L-6, the two masked Disciples came out. I entered L-6 and saw Lavelle inside. I looked into the shower and saw Officer Vallandingham dead. It was very clear to me what had just happened: Lavelle and his associates had killed the guard. . . .

During his interrogation, Law went on,

prosecutors, including Brower, and troopers, including McGough, placed tremendous pressure on me, saying that they would convict and execute me for killing Vallandingham, which I had nothing to do with, unless I said that Hasan had commanded the killing. At one point, I revealed to them that Anthony Lavelle had killed Vallandingham. *The prosecutor told me that my story would have to change, because Lavelle was a state witness.*³¹

A man named Alvin Jones, also known as Mosi Paki, was also accused of helping to kill Officer Vallandingham. Mr. Jones was tried, not in court, but by an administrative body known as a Rules Infraction Board. One of the witnesses was Sergeant Howard Hudson of the Ohio State Highway Patrol, the chief investigator for the State in the Lucasville cases. Hudson testified in part: “Law failed polygraph. Law took himself out of act [of killing Officer Vallandingham] and replaced himself with inmate Darnell Alexander.”³² Nonetheless, after Jones’ RIB proceeding the State called Law as a witness in the later trial of Hasan and permitted Law to testify to the narrative the State believed to be false.

Supposing the convictions of Hasan, Robb, Skatzes and Namir for the murder of Officer Vallandingham to be fatally flawed, what is left of the other aggravated murders for which members of the Lucasville Five have been convicted?

Hasan and Namir

Hasan and Namir were each found by a jury to be Not Guilty of the only other murder with which each was charged, the killing

of prisoner Bruce Harris on April 21. Therefore, if their convictions for the death of Officer Vallandingham are vacated, neither can remain on Death Row.

Robb and Skatzes

Robb was convicted for the aggravated murder of prisoner David Sommers, and Skatzes for the aggravated murder of prisoners Sommers and Earl Elder. It is impossible within the scope of this book to examine each of these murders in detail. At least two eyewitnesses, one of whom has confessed to taking part in killing Elder, state that Skatzes was nowhere in the vicinity and had nothing to do with it. Prisoner Aaron Jefferson was tried and found guilty for killing Sommers by a massive blow to the head with a baseball bat, the very crime for which Skatzes had previously been found guilty and sentenced to death.³³

But it is not necessary to descend to this level of detail to see why the death sentences of Robb and Skatzes for the killing of Elder and Sommers should be vacated. In their trials, prosecutors insisted—over the objections of defense counsel in each case—on trying the defendant in one proceeding for a single “course of conduct” that included all the crimes with which he was charged. The evidence in support of these alleged additional crimes was shaky and might well have resulted in findings of Not Guilty had each crime been tried separately. The charge of killing Officer Vallandingham was obviously that most likely to influence their juries. By trying the additional charges as part of a single course of conduct together with the charge for the murder of Officer Vallandingham, the prosecution inevitably caused the Robb and Skatzes juries to be prejudiced against defendants and to be more likely to convict for the murders of Elder and Sommers.

The lengths to which prosecutors went to implicate defendants in the murder of Officer Vallandingham, because of its predictable effect on juries, is most dramatically illustrated by the case of Derek Cannon. Cannon was indicted for the murder of prisoner Darrell Depina on April 11. However, during Cannon’s trial the prosecution called Dwayne Buckley, an inmate at the Hamilton County jail where Cannon was being held for his trial. Buckley testified that Cannon told him that Cannon and some of his friends had “taken” a guard (who could only have been Officer Vallandingham) and tortured the officer before they killed him. According to Mr. Cannon’s defense lawyer, the judge commented

that it was this witness who “impressed a lot of the jury as to what kind of person” Cannon was. There was only one difficulty: on April 15, when Officer Vallandingham was killed, Cannon was not in L block. The State has certified that Cannon was transported from SOCF to Lebanon Correctional Institution on April 16. Since no prisoner entered or left L block between April 11 and April 21, he could only have been *outside* L block on the day Officer Vallandingham was murdered there.³⁴

The prosecution having insisted that the charges against Robb and Skatzes for murdering Vallandingham should be tried together with the other charges against them, and the Vallandingham charge having been shown to be unfounded, the Elder and Sommers convictions should also be vacated.³⁵

Lamar

It was shown above that Aaron Jefferson confessed to killing *by himself* one of the prisoners (Depina) whom Lamar was convicted of murdering. (Another prisoner who was present states that he witnessed Lavelle apparently directing Jefferson in killing Depina.) The witnesses to the other murders for which Lamar was convicted were in many instances the same men who testified, apparently untruthfully, to his responsibility for killing Depina. Moreover, Lamar was tried in rural Lawrence County in southeastern Ohio, where there was not a single African American on his jury and only two blacks in the “pool” from which the jury was selected.³⁶

A Case for Amnesty

Thus at Lucasville, as at Attica, there is a strong case for vacating all convictions and sentences. Amnesty should also extend to administrative proceedings that found other Lucasville prisoners guilty of crimes. For example, the Rules Infraction Board which found that Alvin Jones had helped to murder Officer Vallandingham relied on testimony by a witness who said he had seen Jones standing on a weight bar and rocking back and forth on it so as to crush the neck of Officer Vallandingham, lying prone on the ground. But the evidence of the coroner, not considered by the RIB, was that Vallandingham was killed by strangulation. The coroner found no evidence of use of a rigid object like a weight bar and that the larynx was not crushed.³⁷

It may be objected that a general amnesty for all crimes charged against all Lucasville defendants is “impossible.” This is precisely

what was said at Attica. Negotiations during that uprising collapsed when the State refused to offer amnesty to the prisoners in rebellion, and thirty-nine human beings, including ten hostage correctional officers, died as a result. Later, as described above, amnesty was provided. Ohio can and should do the same.

In the words of Professor Michael Nagler, an authority on nonviolence: “We don’t need to find out who is to blame for all the violence; we just need to find out how to make it stop.”³⁸

“Treat Us Like Human Beings”

The most difficult and challenging concept of Mahatma Gandhi is “satyagraha.” The literal meaning of these words is, “clinging to the truth.” Gandhi said that “satyagraha” defined what he believed in, and he entitled his autobiography, *The Story of My Experiments with Truth*.

What sort of definition of nonviolence is this supposed to be? What can Gandhi mean when he says that the opposite of violence is truth?

Prisoners have their own ideas about the judicial system, about incarceration for long indefinite sentences, and about the death penalty. Underlying any specific solutions they may propose is a widely-held value that prisoners articulate in the word “respect.”

The word “respect” derives from the Latin verb “to see.” It might be paraphrased in Gandhian terms as, *seeing* the truth or reality of another person. To respect someone is *not to overlook* him: it is to recognize who he is. Or as Mumia Abu-Jamal puts the same idea, “[T]he greatest love we can show our children is the attention we pay them, the time we take for them. Maybe we serve children best simply by noticing them.”³⁹

Thus Keith Lamar relates that he grew up without caring about his own feelings, and so he did not care about the feelings of others. When he began to care about his own feelings, Keith believes, he could begin to care about others, too.⁴⁰

There is an interesting resonance between “respect” in the sense of “really seeing me” and the judicial concept of habeas corpus. The ancient writ of habeas corpus—the foundation of the Anglo-American system of criminal justice—requires the State to produce a prisoner in open court so that friends and relatives can *see* the prisoner, and can *confirm with their own eyes and ears* that the government informs the prisoner of the specific crimes with which he or she is charged.

After the second suicide at the Ohio State Penitentiary in July 1999, an assistant to the warden asked Alice and Staughton Lynd what OSP could do to make life there more worth living. Attorney Alice Lynd sent a form letter to prisoners at OSP in which she asked them what they would answer if someone asked them that question. More than a hundred prisoners replied. The following are quotations from these letters. Think of them as graffiti written on the walls of the supermax cells, supplements to the affirmations found on the walls of L block after the Lucasville uprising:

“I ask for the respect I give to the staff to be given back to me. Let me do my time in peace.”

“It doesn’t matter if you gave me all the television and commissary in the world. None of those [things] will make a difference if the willingness isn’t there to treat me like a human being.”

“If you hate me it’s only natural I hate back.”

“Nothing is done to help me cope or prepare me to re-enter general population or society.”

“[We want to go outside for recreation] in rec cages like at Lucasville. We feel like rats in a tube who need air.”

“There will be more suicides here. It’s sad because the conditions and staff contribute to it. I see it every day. I’m living it!”

“I’ve heard Correctional Officers and Lieutenants say to inmates on suicide watch, ‘you ain’t dead yet’ (while kicking the door). Then as they depart, ‘We’ll come back when you’re dead.’”

“The overall problem [is that] people don’t care if we live or die.”

“Treat us like humans.”

Jason Robb, himself an artist with pen and ink, has brought to my attention the fact that Bomani (also known as Keith Lamar) is a poet. Here is a poem by Bomani that can serve as a last reflection.

Stop the Violence

God is alive and
resides inside of us.
All we have to do is trust
and have faith,
stop the madness and give thanks

for the blessings that shape
our lives. . . .

We have to look ahead instead
of always looking back at the past,
slow down instead of moving so fast,
and laugh, reach deep and have
the courage to dream
about beautiful days
and different ways
to give, with love . . . in peace.

CHRONOLOGY OF LUCASVILLE UPRISING

The following chronology is drawn primarily from the testimony of Sergeant Howard Hudson of the Ohio State Highway Patrol, chief investigator of the Lucasville events for the State of Ohio, in *State v. Skatzes*.

Sunday, April 11, 1993

3:00 p.m. As prisoners returned from the yard at the end of recreation period, the disturbance began.

4:45 p.m. Officer Harold Fraley was released through the end of L-8 stairwell with severe head injuries.

6:46 p.m. Johnny Fryman, white inmate, was put on the yard, severely beaten.

8:05 p.m. Officer John Kemper was placed on the yard, severely beaten.

9:17 and 9:27 p.m. The bodies of white inmates William Svette, Bruce Vitale, Franklin Farrell, Albert Staiano, and Darrold Depina were placed on the yard. "Itchy" Walker and Andre Stockton, black inmates, were placed on the yard with severe injuries.

11:02 p.m. Officer Robert Schroeder was placed on the yard with severe injuries.

[First night, time unknown] Earl Elder, white inmate, died of stab wounds in cell L-6-60.

Monday, April 12, 1993

1:30-3:21 a.m. Inmates on the yard surrendered and were locked ten to a cell in K complex.

8:05 a.m. Water and electricity were turned off in L complex.

10:15 a.m. Earl Elder's body was placed on the yard.

[**Date unknown**] Dennis Weaver, black inmate, was strangled in a cell in K-2.

Tuesday, April 13, 1993

5:56 a.m. Recording of negotiations by the authorities began.
Wednesday, April 14, 1993

10:45 a.m. Tessa Unwin, ODRC public information officer, stated that threats against officers were part of negotiations. Inmates interpreted her remarks as a sign that the State was not taking them seriously.

3:30-3:40 p.m. First delivery of food and water, and of medications for officers, was made.

Thursday, April 15, 1993

11:05-11:10 a.m. Officer Robert Vallandingham's body was placed on the yard by four inmates.

7:30 p.m. Officer Darrold Clark was released in exchange for live radio broadcast by George Skatzes.

Friday, April 16, 1993

1:35 p.m. Officer Anthony Demons was released in exchange for live television broadcast by Stanley Cummings.

Saturday, April 17, 1993

Robb took Skatzes' place as negotiator.

4:55 p.m. Second delivery of food and water occurred.

Sunday, April 18, 1993

Warden Arthur Tate signed 21-point agreement proposed by the State.

Monday, April 19, 1993

Negotiations continued.

Tuesday, April 20, 1993

11:59 a.m. Attorney Niki Schwartz met with inmates Anthony Lavelle (Black Gangster Disciples), Jason Robb (Aryan Brotherhood), and Carlos Sanders (Muslims).

7:08 p.m. Third delivery of food and water occurred.

Wednesday, April 21, 1993

11:00 a.m.-12:37 p.m. Schwartz met with Sanders, Lavelle, and Robb.

3:56 p.m. Inmates began to surrender in groups of 20; 129 inmates were immediately transported to Mansfield Correctional Institution. The remaining inmates were locked in K complex.

10:40 p.m. The five remaining hostages were released.

11:20 p.m. The last inmate surrendered.

Thursday, April 22, 1993

The body of white inmate David Sommers was found by State Highway Patrol in cell L-7-41. The body of black inmate Bruce Harris was found in cell L-6-31.

APPENDIX ONE

TRANSCRIPT OF TUNNEL TAPE 61

Using sensitive recording equipment in the tunnels under L block, the authorities recorded meetings of the leaders of the Lucasville uprising. Everyone agrees that these recordings are imperfect: parts of the conversations are inaudible, background noise sometimes drowns out the words spoken.

The most important of the so-called “tunnel tapes” is Tunnel Tape 61, which purports to record a meeting held between 8:07 a.m. and 8:52 a.m. on Thursday, April 15. Officer Vallandingham was killed later that morning.

There are a number of different transcripts of Tunnel Tape 61 prepared by the State with the assistance of prisoner informants and offered by the State at the trials of Robb, Were, and Skatzes to “assist” the juries in listening to the tape recording. What follows is the transcript marked as Exhibit 322A in *State v. Skatzes*.

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Tunnel Tape #61

4-15-93

0807-0852 Hours

Location L-2

JAMES WERE. The only thing I care about is dying right . . . the other . . . right now . . . you, you guys . . . everyone’s in on it . . . this is what we got to come together for . . . Now if we come together, come together, and be real strong brothers sustained . . . we can achieve something.

Part of the thing is bodies is bodies . . .



In so many day, in so many days what have we achieved . . . Everybody in the world is looking at this. What have we achieved. They don’t know what’s happened . . .

UNKNOWN. The first thing we want to discuss is the people in the med unit . . .

ANTHONY LAVELLE. Me and my brothers, I am the only one to make decisions for . . . what I say to the man . . .

Be solid be together be solid they are not principled . . . if we all stay together . . .

I'm the one . . . George

PHONE RINGS TRAIN WHISTLE

JASON ROBB. As far as, ahh George coming down . . . coming down . . .

JAMES WERE. . . . If we all be together

Just like he . . . came in and told them . . .

Tell them cut that fan off right now. What did they do, what did they do they . . . cut it off. That's because they fear . . . They have more fear than we do . . .

They know when they come in here they got to bring artillery artillery



STANLEY CUMMINGS. . . . when I said that I would ask for a show of hands, I want to hear a voice. When we leave up out of here this morning, let's have this established. All three things. Going to the phone. All that what we talked about in the past concessions . . .

PHONE RINGS

Let's this be the format . . . We might have to sit a day or two to do that. Stall to them. Tighten our own belts like they been doing us. Let the first business be our first format for the day. Let us tell them. Water, electricity, turn it back on . . . People up underneath this basement out from down there. Let this be our first format before we even talk about. You know we won't be losing. You understand what I'm saying.

This is as it should be these things, for the officers

Do this as good faith for the well being of your officers. Cut the lights, water and get your police out from underneath these tunnels.

MANY TALKING

JASON ROBB. We only flush one flush and it stops. We got to get buckets and get that water?

CUMMINGS. Some cells, I think, some cells still have . . . and should be the only one allowed to use it . . . Everybody understand what I said . . .

We ain't asking for nothing else today but for the water, lights, and power, and the people down there get out from in there. This is what negotiations is now. You can do this as good faith for all your officer in here. They suffering just like we suffering. Okay. We ain't going to mention the news media if at all possible, we ain't going to mention that, okay. First of all, we want what we had when we started plain and simple. Now we can talk and say deliberate on that for a half hour with them. That's all, that's all we going to talk on. Then, they say well, I got to get with such and such. Well, when you come up with a decision you call me back and then we going on about our business planning ahead what we gonna do next. If we get this here we're not talking about you know ahh, the news media. Okay, we gonna move these hostages out or we gonna pay enough now . . . We already got the fans out we already did that

If you don't comply with this here however long the heads sit here figuring like they should have the appropriate time to adhere to this here then we will, ahh, we will resort to drastic measures and we will let them see. This is what's gonna happen because you are bullshitting with us. Excuse my expression. I want to know if we all in accord that when we go out here on this phone, whoever does this, I got no problems with George talking on the phone or somebody else can talk on the phone or myself use the phone, but I want to know is this the format here. We ain't talking about the media we ain't talking about high ranking FBI official now. We want what we started with lights, water, people out from in that tunnel out from down there.

SNODGRASS. I had a question.

CUMMINGS. I want a show of hands on the force, after you say, what you say. This is what we going out with today. Let that stand for negotiating. Ain't nothing else to talk about.

SNODGRASS. We already understand that once we give our demands . . . they're not going to meet those demands before they try and throw a diversion or give us something else that we did

not demand. We already seen that. Okay. So if, in the event that they say, well, we're going to send you in this do you want it, that should be we shouldn't even have to confirm that. We should say no we don't we told what we want, we don't want your charity, we don't want no, we don't want nothing but what we was owed. Please give us back its gonna be, it's ours, it's . . .

CUMMINGS. We don't want no news media until you cut the lights.

JAMES WERE. I think . . .

I think . . . expect us, expect us to choose by . . . negotiating on that phone

Give us back respect that you had . . .

Give us back what we had or the hardliners . . . that way if you put it like that, and everything still have respect . . . see what's I'm saying

SKATZES. Let me say this . . .

That's exactly the way I left it with them . . .

That's exactly what we're saying right now. He's talking on this here tape stuff . . . that was my, that was my conversation. They wanted hostages . . . not giving you nothing for this electricity and this water and your gonna . . .

Now the way I left it . . . We want, the . . . we want the . . .

UNKNOWN. We want water back on, now hold on hold on

. . .

JAMES WERE. . . . we have control up to the gate when they come over this side past that gate they violated our rights. We have a home this side of that gate . . . This is our area. This is our home. They violating our home . . . I don't give a damn what they allow or do not allow, it's what we allow if we allow them to decide . . . we will get control back . . . right now



ANTHONY LAVELLE. . . . just shut the fuck up we don't want that. We want what we said, the media we'll would hold off on that. The FBI will hold off on that we want the lights and the power, that's it . . .

SKATZES. . . . The way I left it the other night . . . that is exactly the way I left it. I told that man that we want power, the t.v. and water back on and if he doesn't agree with that then . . . we have nothing more to say and I put down . . . the conversation . . .

if you are not going to give us this stuff we have nothing to say to you and hang up the phone that all I told him I said. If you want to talk to me turn on these lights. When I left out of here somebody else begin negotiating with FBI or something . . .

JAMES WERE. George you get on there say that there. Say from this point we, turn it over to the hardliners. There will be no more conversation.

Until we have everything that they took from us from day one you understand? That must be said.

Don't worry about . . . don't worry about . . . Don't worry about that no more. Their lives are in your hands and everyone lives are in Allah's hands. See what I'm saying?

UNKNOWN. We got that part but what kind of timeframe . . . say like . . .

JAMES WERE. At what point . . . At what point . . . If they refuse to give us . . .

ANTHONY LAVELLE. What should our next step be . . .

CUMMINGS. Hold up Nameer. You said . . . You're talking about our original plans . . . we got to show everybody . . .

How long do we wait? . . .

JASON ROBB. Well, we want some daylight left so we can talk you . . . Know what I'm saying. So it's got to be a . . . you know what I'm saying . . .

. . . told them yesterday . . . on the bullhorn, telling these people we gonna off this motherfucker . . . you know what I'm saying . . .

Hey man, this motherfucker is going to take us serious. I mean, they're jacking us off I I I believe this the only way they gonna take us serious . . . because as soon as I made them announcements with that bullhorn like that that's when all that movement started happening . . .

JAMES WERE. . . this is what, this is what's happening . . .

UNKNOWN. Make it very clear, very clear . . .

HEAVY EQUIPMENT NOISE COVERING
CONVERSATION

UNKNOWN. We identify the degree of force . . .

JAMES WERE. I agree I want it back on . . .

UNKNOWN. I feel . . . Should have been done a couple of days ago . . .

It's gonna be after this . . . if we . . . water . . . then we kill one

of them . . . of the water . . . that's the end of it . . .

If they give us water . . . we say it right then

Then we kill another that day. The same thing. That's where I'm . . . the rest of it. That's what I'm saying. That's not righteous but that's what we had coming into this . . .

UNKNOWN. We want our lights and . . . then we're talking killing . . .

JASON ROBB. . . . So that's what I'm saying.

JAMES WERE. . . . water . . . turn it back on we ask them to turn it off. If we want it off we ask them to turn it off or we turn it off ourselves

What we're saying you understand after we get what we supposed to, after we get what he supposed to have that they took from us in this situation, then we start . . . The point is your questioning you understand . . . after he says we want our lights turned back on. He didn't . . .

. . . talking . . . something . . .

We give a certain time a certain time. If it's not on in a certain time that's when a body goes out . . . Part of the body going out because it better be . . .

MANY TALKING AT SAME TIME

ANTHONY LAVELLE. . . . I'm just using this as a time frame. We give them until 2 o'clock to make their decision. Hang up the phone. Don't answer the phone until 2:00. If they say, well, we gonna give you . . . tell them NO. You got one minute to decide whether you gonna give it all to us or we send somebody out . . .

UNKNOWN. . . . 1:30 . . .

Hold on, hold on.

MANY TALKING

ANTHONY LAVELLE. . . . hypothetical time . . . And then you tell them you got one minute to decide. What you gonna do? You've had an hour to decide. Alright you count your one minute is up. What are you going to do. They say we'll give you water. Hey alright, well you're going to get a body. Hang up the phone. All of us get together. We've already said we're going to do this. We send them a body part up out of here.

UNKNOWN. But but let's stress the fact that we sending

it because you did not meet all of our demands, not because the water or electricity because you didn't send nothing in here.

CECIL ALLEN. Uhh . . . unconditional . . . They said five unconditionals, five unconditionals you understand. These are the main things.

ANTHONY LAVELLE. You must tell them through whoever is talking on the phone, must tell them there is, you know, you been on this thing, it looks like it could be a good day for all of us, there is a possibility that we could end this as soon as possible.

UNKNOWN. Give them an ultimatum alright.

ANTHONY LAVELLE. . . . have to put an end it. You can't keep it up. The media is tearing your ass apart and you know it. You can't keep this shit up this way.

UNKNOWN. . . .

ANTHONY LAVELLE. What can you do to us. We, you already took everything. We want it back. We want what we asked for from the very fucking beginning . . .

JASON ROBB. . . . problems . . . they ain't going to get this guy until after our shit's broadcast.

SKATZES. Live.

JASON ROBB. . . .

SKATZES. Get it live.

UNKNOWN. . . . live on t.v.

SKATZES. . . . We are running into a lot of problems here . . . we right now are at the point where we can go over there. We can have . . . we can go over and we can have . . . this live, live news media tape . . .

Tell these people you got the water cut off let them start putting pressure on them to turn that shit back on. Exactly, it's exactly the way I left them guys last night. Turn the fucking shit on or we are not talking no more

CUMMINGS. Okay. Hold it, hold it, can I say something . . .

I hear what you are saying and I heard what you said also

You said quote unquote get the media in here now . . . We will give two hostages right. Now get the media in here and give us all that back that we had and ahh, ahh, officially that we want then we give a hostage . . . one hostage, ONE HOSTAGE.

SKATZES. Now we're stepping backwards . . .

MANY TALKING

CUMMINGS. Okay. Let me finish . . . hold on hold on, let me finish . . . Okay . . . I'm gonna go on and get this out. We all men I'm gonna say this right now because I'm not the type person that like to pull punches because we all men . . . You negotiated two. You never conferred with me, I think Jason was there . . . he already looked at me because . . . because he and I, he looked at me and I look at him. First you was talking about let's take 'em all over there. I'm like, you know, I said I don't know if . . . on the phone . . . so called . . . but you negotiated two. Ain't none of us in here that ever said nothing about two, I mean you was on the phone talking, well ahh, I'll stand up for it and I think Jason or even your brother over here . . . if we do anything to get the media to get these people to give back what you took we will give you one hostage. We not giving you no two or no three . . .

SKATZES. Night before last everyone was in agreement with the two

UNKNOWN. No no never never . . . just one

JASON ROBB. Ratcliff . . . We can't give them . . . we gave them too much already . . . We already them too much they ain't giving us . . .

They can only have one man because that's cutting us down. They got below the numbers. They been set down so far so many hostages, we got to think of that

We don't know how many that is . . .

UNKNOWN. . . . we got eight . . . five . . .

MANY TALKING

ANTHONY LAVELLE. . . . and one of these five hostages gonna have to be sacrificed if we have to . . .

Even if they kill these motherfuckers everybody has heard of Attica and all these other places where they rioted the OP. If they come in here, if they can get one of these guards one of them, if they do what we said . . . they fucking around . . . they still be alive. So everyone of us. They going to hype this shit up saying we the one that . . . We're the ones stab them. We gonna take this shot or whatever. We're the ones that did this to them. They the only ones to be had.

If one guy is still alive all the rest of them already dead.

MANY TALKING

Plus we have to consider once we get this live, we see it live. What is our next step, I me myself I see if we get the live coverage plus what we already said, the water the lights, are non-negotiable, and the people in the tunnel, it's non-negotiable. We got their book. And the things they say is non-negotiable. I think we ought to do is get that book and read to them. Okay. You said weapons and transportation are non-negotiable. This is what your rules and regulations say. We got it here so don't play fucking games with us about what you can and can't negotiate. We know!

This is what we're going to negotiate with you we want light, we want power back on we want the guards out of the tunnel. These are our non-negotiables. Point blank. Here is what you gonna get. You get that for us. Now we are going to negotiate upon good faith you bring us the media we will take a guy out, we'll take a guard out of here. Once we get this live media. We can start closing this, this show down.

You can do whatever you want to as rebuttal to our comments, or whatever. We can't stop you but you do not have, and as far as the rights over those tapes, you do not have the state Supreme Court to commandeer them tapes or hold it as evidence and keep them locked away. Or the feds can lock them away. You must make it clear that the media is to maintain possession it has to. You have to tell them you want the cameras. The cameras will be property of the media. You want the film to be the property of the media.

UNKNOWN. . . .

ANTHONY LAVELLE. That way copyright laws and everything will be observed so they can't say, well, wait a minute it was the federal government's cameras, it was the state this, it's not theirs, it's ours. You must make clear to them . . . they have it.

We get out there and air our views, by the time we air our views, we should be able to close this shit down

CUMMINGS. We give them one hostage

JASON ROBB. Did I tell you all what they said about that t.v., now that they was supposed to give us last night . . . set up already and we can play it straight . . .

EVERYBODY TALKING

UNKNOWN. We want our power. We got our own t.v.'s . . .



JASON ROBB. They didn't want to give us that that's what I figured . . . batteries . . .

ANTHONY LAVELLE. We can, we can rig a t.v. from batteries

ROPER. Okay. This is a closing thing . . . I talk with all these guys. Okay, your guys and your guys. I talk with everybody in the joint man. And I had conversation with guys that they have been supportive with us from the word go. But when we made statements like we gonna do this and do this. And we didn't fulfill these statements. When we make serious statements. A lot of the guys morale are down because they don't have the confidence that they had when we first come up in it. Because we ain't made no progress. See what I'm saying. They also, they also conveyed to me, that, ahh, well ahh, I had to explain to them the Muslims did this . . . or the Aryan Brotherhood did this. We might have a different reason, but everybody needs this shit that we did because everybody's getting stepped on. We getting stepped on our way, you getting stepped on your way, your getting stepped on your way. We all should have the same basic needs. And that's to win and, and, and to get out from under oppression. But like I say, they're real supportive, but their morale is going down. Because you guys, they told me yesterday, you guys was gonna do this two days ago and we ain't did nothing. And they go you know ahh so we need to make progress to ahh, because you can't ask guys tho to ahh, keep supporting us if we ain't making no change . . . no progress . . . we have to make progress . . .

ALLEN. . . . Top priority . . . they gotta go to that and these guys . . .

. . . some got in they have their head cracked . . . they saying something about killing a guard, killing a guard . . . We use them

ANTHONY LAVELLE. . . .

ROPER. We use them.

ANTHONY LAVELLE. For what we're doing

ROPER. We use, that's right, we using them

ANTHONY LAVELLE. They wouldn't be here so

ROPER. I'm gonna tell you. I know for a fact . . . I've been talking about it for a long time. I have accepted the reality that we need to . . . but the thing is like we using people to help us benefit. If you go out in the hallway . . . these people, they out there they talkin' they don't want to be part of it, don't be . . . We should be able to get everybody integrated. We shouldn't be using . . . we

need everybody's support. Not just in here but everybody that's a part . . . those guys come to use and they . . .

JASON ROBB. Whatever.



HEAVY EQUIPMENT

CUMMINGS. Say, ahh, can we move to close this up. An we put it out there I ain't got no can we close this up . . . you'll before . . . put it out there.

I ain't got no additional comments. The phone call . . . Listen up. Lights, water, peoples out from in the tunnel.

HEAVY EQUIPMENT

ROBB. . . .

CUMMINGS. . . . Jason made a good statement like that. If we're not talking about water and lights, don't be tricked now about the media . . . on the phone . . .

Okay. You come right back with your live media but we still want the lights and water turned back on before we bring your hostage out of here. . . .

ROBB. . . . this is priority . . . this is priority.

CUMMINGS. The priority is you've got to get the light and water back on and the peoples out from in the tunnel.

ROBB. That's non-negotiable.

CUMMINGS. That's non-negotiable.

ROBB. Okay. So the media and etc. is negotiable.

CUMMINGS. Yeah. You see, that's the point. After we get over the non-negotiables . . .

ROBB. . . . get . . .

CUMMINGS. Right.

Let that be our agenda for the day . . . we going to give them a time element for this here to give us what is non-negotiable. I mean, I want us to leave out of here with an understanding that the non-negotiable things is all that we talking on. Even if he ask you when you if you happen to be on the phone.

. . . but what about the . . . talking to your . . . and, ahh, . . . something about movement progress with the hostages.

First and foremost this is what's happening now. The hardliners

like he used that word . . . the hardliners are came in effect now.

We want back what you took. Once you do that then we going to the next phase.

JAMES WERE. After you say the hardliners are in place, then we say . . . the hardliners . . .

ANTHONY LAVELLE. He should be the first one to talk to them . . . as a matter of fact, he would be the first one to talk. Let him talk once then said okay, when you get back to me cuz when he gets back to him we know that when they first get back they gonna say well we can't do this. Okay. I have nothing else to do with it.

SNODGRASS. Hold on . . .

ANTHONY LAVELLE. The hardliners gonna take care of the situation now.

JAMES WERE. When you have talked to them . . . From this point on we're turning it over to the hardliners . . .

CUMMINGS. You understand they held you in great esteem. They held you in great esteem, that you ahh, you two guys working with the understandings . . .

I really tried, ahh, I really tried to work with you to ahh, George, we know you're a good guy but like the guy said you losing control over things and we try to work with you. And you said but I need you to work with me. And the talking about but I need you to give me something. Tell them the non-negotiable things. This is what is happening now, and the hardliners are coming and I don't know where I'm at.

JAMES WERE. you should try to work with them . . . trying to work with you . . . and the hardliners appear to be . . . control of this . . . after you got off the phone with me talking about being . . .

All that stuff . . . they're asking about coffee on the phone, about we give you some toilet paper you know all of this goofy stuff . . .

CUMMINGS. Total disrespect.

. . .

EVERYBODY TALKING

Hardliners . . .

CUMMINGS. I am ready to go . . . we can do that and have somebody sit by the phone.

ROPER. What you need to do is don't forget that negotiable and non-negotiable things and what they got.

UNKNOWN. Now look, look when we send this guy up out of here, if we don't get no demands. I said . . .

UNKNOWN. . . .

CUMMINGS. Okay, we can but we can sit down and come back in and we put the non-negotiable things up then we came back with the time element that we give them to do it. Hey Jason, ahh, Hassaan, why don't we put the non-negotiable things up, George, go back in. Talking about the hardliners came up with non-negotiable things. Then we going to set down and go over the time element, if they don't do these things . . . if you don't give us these things, the non-negotiable things we going with the time element, then we gonna kill them one. Then we open up negotiations again. I mean, is everybody in agreement on that?

BELL. . . .

JASON ROBB. Yeah, at nine o'clock.

EVERYBODY TALKING

ANTHONY LAVELLE. Why don't we all meet at 10:15 . . . Why don't we all meet in unit 2 at 2:30.

JAMES WERE (?). Better yet, better yet, because because I'm gonna be staying here, . . . we say at such and such a time we meet . . . security will come and get you all and we all meet at a certain place . . .

UNKNOWN. Okay . . . that way we got . . . right here.

SNODGRASS. Could I make one more point? Yesterday we all agreed that all day long we were saying . . .

JASON ROBB. Well, we really ain't up for that right now.

ANTHONY LAVELLE. Okay, wait a minute if you didn't tell none of us until 3 days later fuck it . . . yeah . . . fun and games . . .

I would suggest that if we find these guys going around here trying to rape these guys. I already told my brothers if they catch somebody trying to rape somebody in our block . . . which I know I don't have to do hopefully I know it ain't no Muslims . . .

JASON ROBB. In this town, rape is death it's as simple as that.

ANTHONY LAVELLE. . . . and the Aryans . . . if I catch anybody in that block trying to rape anybody I am going to fuck em up.

JASON ROBB. Rape is death.

ANTHONY LAVELLE. I'm not going to kill them but I'm gonna fuck em up and then if one of y'all brothers was raping then and you'll do what you have to do.

EVERYBODY TALKING

CUMMINGS. Ahh . . . Hold up . . . Jason another thing . . . ahh . . . between ahh . . . Hassaan okay,

Me and him gonna get on the phone, okay? I'm gonna send somebody down to get . . .

. . . see we meet back after we put our non-negotiable things out . . .

MANY TALKING

CUMMINGS. First you going to let me tell them this on the phone. George tell them this on the phone. Before we go down there.

MANY TALKING

JAMES WERE. Hold on. Just like, just like we had agreed when we said that had enough time to move out before we start . . .

CUMMINGS. But it might be

ANTHONY LAVELLE. Okay. They gonna know, they gonna know, they know that we know that they're there

CUMMINGS. If they know that we getting ready to go down there . . .

JASON ROBB. I want security on that spot, whatever we decide . . . I want it tight man I want it 24 hours a day, that's the schedule, man, 24 hours a day man . . .

CUMMINGS. When we, ahh, when we mention on the phone about people getting out from in the tunnel.

UNKNOWN. . . .

CUMMINGS. When George, when George mention to them about getting out from in the tunnel would it be prudent, would it be prudent to let them know we gonna give you enough time to get out from in the tunnel just like you did when you brought the food and back up because a one of our people, some of my people go into it and let them think if one of them go down

and get harmed. One of your officers is going to get harmed. So this will really assure that they get up out of the tunnel.

How does that sound? Will you tell them that?

Get your people out of that tunnel. We gonna give them enough time like you did when you got off the yard out there. Then one of our people is going down there in the tunnels, you know, but if something happens to one of our peoples . . .

END OF TAPE

APPENDIX TWO

DEMANDS OF THE PRISONERS IN L BLOCK

The following list is drawn from Lucasville Telephone Negotiations (inmate tapes), Tape X. Similar lists will be found at Lucasville Telephone Negotiations (inmate tapes), Tape IV, pp. 26-31, 33, and the State's Negotiation Tape 11, pp. 9-15, 17.

1. There must not be any impositions, reprisals, repercussions against any inmate as a result of this that the administration refers to as a riot. Reprisals means beating by staff members, starved, locked in strip cells with no clothes for a long period of time other than what ARs [Administrative Regulations] state.

2. There must not be any singling out or selection of any inmate or group of inmates as supposed leaders in this alleged riot.

3. We want adequate medical treatment for inmates that have been injured, will provide list of names.

4. We want religious leaders present as well as the media when any statement is made concerning the inmates' surrender. When we surrender we want some type of media present to record this live. That one is non-negotiable.

5. The system commonly known as unit management must be revised or abolished. This shall include the system commonly known as the point system where convicts are judged by arbitrary process by the unit management to determine one's security status, supervision level and possible transfers.

6. Rescind policies that force integrated celling. We should not be forced to integrate racially or religiously.

7. SOCF is a maximum security facility. Inmates that are classified as close or medium security must be transferred to an appropriate facility. We are tired of having to give up certain things to close or medium security. L-8 should be set up for inmates that have proved themselves to be responsible and should have certain privileges as max inmates.

8. The procedures for determining early release on parole must be reviewed and revised or abolished. Currently criminal and institutional records used in determining the possibility of parole

are not accurate; institutional file[s] contain notations or conduct reports that are in whole or in part lies by the reporting officer, and in the subsequent appeals process and/or grievance procedure, all SOCF employees stand by one another. We want to have guarantees that counselors, sergeants, unit managers, or anyone else who has authority to go in inmates' files and place documents in there, that all files, all police records, everything is double-checked before it is taken to the parole board for consideration, because a lot of inmates here find things in their files that they knew nothing about. They are supposed to be allowed to review their files and they're not allowed that.

9. Reduce overcrowding conditions at SOCF and all of the institutions in the State of Ohio. Most of the cells have two men. Overcrowding is a problem as far as the [day] room, rec periods, and library are concerned.

10. Create and enforce policy to stop prison officials, especially officers and unit managers, from harassing inmates using the power of their positions in prejudicial or discriminatory manners, including speaking to inmates in a demeaning manner.

11. Review and impose guidelines for the infirmary to properly treat medical problems. We are given Tylenol . . . for just about everything. If guys have a severe problem we want it looked at and addressed. We want guys to receive adequate medical attention within set guidelines and a set time span. Some guys have been waiting for months to go to OSU or Frazier.

12. Implement a phone call program as promised years ago. Currently we get one five minute call on Christmas. We were promised when new construction began that telephones will be placed in all these blocks. We haven't seen them yet.

13. Reduce the amount of idle time inmates spend in their cells. Implement progressive rehabilitation programs. We want college and voc school opened up for max 4s. The majority of population here are max 4s, longtimers. Guys that have just got out of AC [Administrative Control] and have more than five years to parole board, these guys cannot participate in any of these programs. We feel that is an unfair practice set up by this institution.

14. Do not damage or destroy any inmate's personal property as a result of this incident. A lot of guys have TVs and radios and stuff, they cannot get another one, and they may be here for years. We want a guarantee that the inmates' property will not be destroyed.

15. Review and amend the policy for imposing visiting restrictions. Some guys that receive mail or money or a contraband item, the person is taken off the visiting list and the guy doesn't know anything about it. There is no formal investigation by the mail and visiting supervisor to ascertain the problems and find an equitable solution for the inmate and the institution.

16. Order exhaustive and complete review of all inmate security supervision status, review in-for-transfer. Some close security and medium 3s have been here for the longest time waiting to be ridden out of here and no one has taken an initiative to have these inmates transferred. Some are in max 3 blocks.

17. Create and establish an inmate advisory committee to work in cooperation with an appointed institution employee that will have reasonable say-so in various matters that affect inmate life. We want something like the review board that you use for reviewing inmates' cases, whether they are to go parole board at their half times. Only we want to set up to review certain guidelines with inmate groups. The institution select inmates to perform on this committee.

18. Review and implement new and/or revised regulations. Increase in inmate pay. Commissary prices on everything continuously increase but our pay remains the same. Some guys make \$16-17 a month, but the way that the prices keep increasing in the commissary these guys couldn't even afford to buy hygiene [articles] for the money. They only receive state pay. The prices keep increasing, inmate work increases, but their pay remains the same. We want that looked into.

APPENDIX THREE

DOCUMENTS CIRCULATED BY ADVOCATES OF THE DEATH PENALTY FOR LUCASVILLE RIOTERS

The following documents were prepared by a citizens' committee that sought, during the spring of 1993, to ensure that whoever was condemned to death after the Lucasville uprising would be executed as rapidly as possible. They were filed by the Ohio Public Defender as Exhibits 3 and 13 in support of a Motion for Notice in Order to Challenge Array of Grand Jury, *In re Grand Jury Target Wayne Bell; Concerning Inmate Disturbance at Southern Ohio Correctional Facility in April 1993*, (Ct. Com. Pl. Scioto Cty.), Case No. 93 CI 433 (Dec. 7, 1993).

The first document is a petition addressed to Governor Voinovich, to the President of the Ohio Senate, and to the Speaker of the Ohio House. Signed petitions were to be returned to "Death Penalty, P.O. Box 1761, Portsmouth, Ohio 45662." Portsmouth is the county seat of Scioto County, in which the Southern Ohio Correctional Facility is located.

The Office of the Public Defender identified four persons who signed the petition and whose names also appeared on the "array" from which a grand jury would be chosen to indict Lucasville defendants. The arrow at the left-hand side of the petition points to the name of one of the four. (See Chapter 5.)

The second document, also circulated for signatures, calls on Governor Voinovich to "USE the Death Penalty!"

Petitions and letters were signed by an estimated twenty-six thousand persons.

The Honorable George V. Voinovich, Governor, State of Ohio
 The Honorable Stanley Arnoff, President, Ohio Senate
 The Honorable Vernal G. Riffe, Speaker, Ohio House

We the undersigned request and demand that the present statute of the Death Penalty in the State of Ohio be applied as the passers intended it to be.

We feel that Governor George V. Voinovich, President of the Senate Stanley Arnoff, and Speaker of the House Vernal G. Riffe must accept their responsibility to carry out the wishes of the Voters of the State of Ohio. Two appeals are enough.

Request for petitions or to return, write: Death Penalty, P.O. Box 1761, Portsmouth, Ohio 45662.

Residents of the State of Ohio from high school age and up may sign this petition.

Name	Address	Name	Address
Margaret Ruggles	1409 7th St. W.P.	LORRY DIKES	307-A CLAYTON CT. W.P.
Brianne Christoph	227 Cabana w.p.		
Lucretia Hill	1364 15th W.P.	Lynn A. Nantz	1839 11th St. W. P. P.O.
Thomas M. Christy	227 Cabana w.p.	Walter W. Wink	Rt 5 Box 502 1/2 W.P.
Jeff Cope	902 N. Ruckman Park	Karla Coleman	1525 6th St. W.P.
John August	104 W. 1st St. W.P.	Carl A. Scott	W. P. P.O.
Robert Ross	1463 Washington Blvd. W.P.	Patricia J. Lee	330 1/2 Wood St. W.P.
Brett Horton	1430 15th St. West P.O.	John J. Lee	1515 4th St. W. P. P.O.
Teri Tolliver	1340 Carolyn W.P.	Judy M. Wadsworth	1431 W. 1st St. W.P.
CAROL SHY	2214 BUSE AVE. W. P.O.	Johnny Spivey	615 Box 528 P.O.
Melanie West	335 S. Belmont W.P.	Patricia M. Mervin	310 Lincoln St. W.P.
Gary Haglip	129 Cityview W.P.	Wm. Hammett	5188 Rt. Box 301 C.
Harley Fisher	1315 1st St. W.P.	Sandy Taylor	1800 2nd St. W.P.
Jenny Cullum		Melba Spethbeck	Rt 5 Box 104 W.P.
Bumper Mervin	1501 7th St. W.P.	Dorinda Spillman	1507 1st St. W.P.
Mary Jo Adams	1002 Oak W.P.	Wanda Stachler	1157 8th St. W.P.
John Lee Rich	1414 Canton Street W.P.	Kathleen Bunnell	1314 5th St. W.P.
Herman Anthony	9th St. W.P.	David McDaniel	1324 W. P. P.O.
Barbara Nicks	1201 10th St. W.P.	James Cohen	1902 1/2 N. 1st St. W.P.
Angela Howell	1257 5th St. W.P.	Charles Green	408 Short St. W.P.
James	2130 W. P. P.O.	Thomas McRay	P.O. 485 P.O.
Daron W. [unclear]	107 E. [unclear] W.P.	David Mervin	Rt 34 W. P. P.O.
Janet A. [unclear]	1st St. W.P.	Dora Faith	Rt 6 Box 94 Lucasville
Samuel Phillips	2021 [unclear] W.P.	Wanda Stachler	1324 W. P. P.O.
Wendell Lipp	1022 1/2 Lincoln St. W.P.	ANNIX DITZER	Rt 2 Box 1
Jeff Mervin	1431 Washington P.O.	Missy Jarvis	428 East Street
Donna Joanne Smith	2409 17th P.O.	Walter [unclear]	319 Cityview
Pat Coleman	1363 14th St. W.P.	Donna Boyd	2126 P.O. OH.

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Governor George Voinovich
Members of the Ohio State Legislature

Your worst nightmare: You arrive for work prepared for the usual rounds of meetings and correspondence. Instead, you are handed a stick and ushered into an area where you are surrounded by hardened, violent criminals. Your assignment is to ensure that the criminals – *who are free to wander around, work out in a gymnasium, entertain visitors, browse through a law library, and pursue a free college education* – obey the rules and do not harm one another, their visitors, or their teachers. You are warned that the criminals may taunt you, throw excrement in your face, seriously injure you, hold you hostage, or even kill you; but, should you be “proven” to have been “unnecessarily rough” trying to restrain them, you will be suspended, possibly fired, probably sued, and maybe even imprisoned. You snudder at the prospect of your day on the job. Then you awaken, greatly relieved that this has been just a horrible dream.

Unfortunately for the Correctional Officers at the Southern Ohio Correctional Facility, this nightmare is their everyday reality. The state must wake up and eliminate the extremely dangerous working conditions for SOCF Officers and the expensive; unnecessary privileges being dished out to the inmates:

- ♦ Make SOCF a real maximum security prison with complete lockdown of prisoners.
- ♦ Stop trying to rehabilitate the hardened, end-of-the-line criminals housed at SOCF, and stop giving them privileges denied the Correctional Officers and other law-abiding citizens:
 - ♦ Take away free higher education privileges for prisoners.
 - ♦ Stop allowing prisoners to wile away their hours in their free gymnasium, building their bodies into more potent killing machines.
 - ♦ Stop allowing prisoners to spend their days in the law library becoming legal experts on the side of crime.
- ♦ institute severe punishment for prisoners who throw urine and feces on Correctional Officers.
- ♦ Pass legislation that prevents prisoners from filing law suits; or, in the event that is not possible, ensure that all monies collected go directly to the Ohio Victims Fund.
- ♦ USE the Death Penalty!

SOCF is supposed to be a maximum security prison, not an educational/recreational center for criminals. As a taxpayer, I strongly object to paying for inmate privileges denied to the law-abiding population. As a citizen of a nation that is preoccupied with safety and health, I am outraged that the SOCF Correctional Officers are subjected to such nightmarishly unsafe working conditions.

I urge immediately introduce and support legislation or take other actions needed to bring about the reforms cited above.

Very respectfully,

EXHIBIT

13

APPENDIX FOUR SELECTIVE PROSECUTION OF LEADERS OF THE REBELLION COMPARED WITH INFORMANTS WHO CONCEDEDLY COMMITTED THE SAME ACTS

Prisoners whose names are followed by an asterisk (*) became witnesses for the State.

DEFENDANT	ACTION ALLEGEDLY COMMITTED	ULTIMATE DISPOSITION
Hasan (Carlos Sanders)	Allegedly planned aggravated murder of Officer Vallandingham	Death
Namir (James Were)	Allegedly planned aggravated murder of Officer Vallandingham	Death
Jason Robb	Allegedly planned aggravated murder of Officer Vallandingham	Death
George Skatzes	Allegedly planned aggravated murder of Officer Vallandingham	Life imprisonment
Anthony Lavelle*	Allegedly planned aggravated murder of Officer Vallandingham	7-25 years concurrent with previous sentence; eligible for parole in 1999
George Skatzes	Allegedly planned aggravated murder of prisoner Earl Elder	Death
Johnny Roper	Allegedly took part in killing Earl Elder	Indictment dropped
Rodger Snodgrass*	Allegedly took part in killing Earl Elder	5-25 years consecutive to previous sentence; paroled in 2006
Tim Williams*	Implicated by other prisoners in murder of Earl Elder	Paroled in 1998

Jason Robb	Allegedly took part in killing David Sommers	Death
George Skatzes	Allegedly took part in killing David Sommers	Death
Robert Brookover*	Admitted taking part in killing David Sommers	5-25 years concurrent with previous sentence; no additional time; paroled
Rodger Snodgrass*	Admitted taking part in killing David Sommers	Not indicted
Hasan (Carlos Sanders)	Allegedly took part in killing Bruce Harris	Not guilty
Namir (James Were)	Allegedly took part in killing Bruce Harris	Not guilty
Stacey Gordon*	Admitted taking in killing Bruce Harris	Not indicted; paroled in 2007
Reginald Williams*	Allegedly took part in killing Bruce Harris	Not indicted

**APPENDIX FIVE
SELECTIVE PROSECUTION
BASED ON IDENTITY OF VICTIM**

Exhibits A and B in their original form were attached to a motion filed by defense counsel for George Skatzes. The exhibits indicate that, except for Keith Lamar, the State sought the death penalty only for prisoners alleged to have been involved in the murder of Officer Vallandingham.

Exhibit A: Inmates Indicted Without Death Penalty Specifications

DEFENDANT	VICTIM	CHARGE
Rodger Snodgrass	Elder	Aggravated Murder
Johnny Roper	Elder	Aggravated Murder
Thomas Taylor	Staiano	Murder
Timothy Grinnell	Depina	Aggravated Murder
Eric Girby	Farrell, Svette	Aggravated Murder
Gregory Curry	Vitale, Svette	Aggravated Murder
Derek Cannon	Depina	Aggravated Murder
Rasheem Matthew	Vitale, Depina	Aggravated Murder
Stanley Cummings	Vallandingham	Conspiracy to Commit Aggravated Murder
Eric Scales	Vitale	Aggravated Murder
Michael Childers	Weaver	Murder
William Bowling	Weaver	Murder

Ricky Rutherford	Weaver	Murder
Frederick Frakes	Svette	Aggravated Murder
Jesse Bocook	Sommers	Aggravated Murder
Anthony Lavelle	Vallandingham	Conspiracy to Commit Aggravated Murder
Robert Brookover	Sommers	Involuntary Manslaughter
Aaron Jefferson	Vallandingham	Conspiracy to Commit Aggravated Murder
	Sommers	Aggravated Murder

Exhibit B: Inmates Indicted with Death Penalty Specifications

DEFENDANT	VICTIM	CHARGE
Keith Lamar	Depina, Svette, Staiano, Vitale, Weaver	Aggravated Murder
Hasan (Carlos Sanders)	Vallandingham, Harris	Aggravated Murder
Jason Robb	Vallandingham, Sommers	Aggravated Murder
George Skatzes	Vallandingham, Elder, Sommers	Aggravated Murder
Kenneth Law	Vallandingham	Aggravated Murder
Namir (James Were)	Vallandingham, Harris	Aggravated Murder

ENDNOTES

INTRODUCTION

1. E.g., Reply Brief to Brief of Amicus Curiae, American Civil Liberties Union of Ohio Foundation, *State v. Skatzes* (Ct. App. Montgomery Cty.), Case No. 15848, p. 8. Similarly, hostage Officer Larry Dotson's memoir (as told to ODRC Training Officer Gary Williams) repeatedly refers to the Lucasville events as "the longest and third most bloody prison riot in U.S. history." Gary Williams, *Siege in Lucasville: The 11 Day Saga of Hostage Larry Dotson* (Bloomington: 1st Books Library, 2003), pp. viii, xiii, xv, 1, etc.

2. Reginald A. Wilkinson and Thomas J. Stickrath, "After the Storm: Anatomy of a Riot's Aftermath," *Corrections Management Quarterly* (1997), p. 16. The Lucasville uprising lasted from about 3 p.m. on April 11 to about 11:20 p.m. on April 21, a total of approximately 248 hours. (See Chronology.) Cuban detainees at the United States Penitentiary in Atlanta seized the facility in November 1987 and appear to have held it, without fatalities, for over 260 hours. Bert Useem, Camille Graham Camp, George M. Camp, and Renie Dugan, "Resolution of Prison Riots," National Institute of Justice Research in Brief (Washington, D.C.: U.S. Department of Justice, Oct. 1995), p. 1; Reid H. Montgomery, Jr., and Gordon A. Crews, *A History of Correctional Violence: An Examination of Reported Causes of Riots and Disturbances* (Lanham, MD: American Correctional Association, 1998), pp. 77-78.

3. Williams, *Siege in Lucasville*, p. 5.

4. Bruce Porter, "The Lucasville Follies: A Prison Riot Brings Out the Worst in the Press," *Columbia Journalism Review* (May/June 1994), p. 2.

5. These examples from Porter's article (*ibid.*) are highlighted in Joe Hallett, "Pack journalism added to the confusion during the '93 Lucasville riot," *Columbus Dispatch*, Apr. 13, 2003.

6. Kevin Mayhood to Siddique Hasan, Feb. 19, 2003. Hasan reports that the Ohio Department of Rehabilitation and Correction has denied access to him by reporters Tim Clifford and Malka Margolies of *48 Hours*; reporter Bruce Porter of the *New York Times*; reporter Greg Donaldson for *Vibe* magazine; and

author Maryhard Horowitz, who wanted to write a book about the investigation of the Lucasville rebellion. S. A. Hasan to Staughton Lynd, Jan. 6, 2004.

7. *Morris, et al. v. Voinovich, et al.*, Civ. No. C-1-93-436 (S.D. Ohio 1994).

8. Williams, *Siege in Lucasville*, pp. 218-19.

9. Opinion, *State v. Sanders* (2001), 92 Ohio St.3d 245, 260.

CHAPTER ONE

1. This anecdote may be apocryphal. It seems to have first appeared in a history of the American Revolution by Jared Sparks in the 1840s. See Carl Van Doren, *Benjamin Franklin* (New York: Viking Press, 1938), pp. 551-52.

2. Jack A. Goldstone and Bert Useem, "Prison Riots as Microrevolutions: An Extension of State-Centered Theories of Revolution," *American Journal of Sociology*, v. 104, no. 4 (Jan. 1999), p. 986.

3. John Perotti, "Lucasville: A Brief History," *Prison Legal News* (Dec. 1993), pp. 7-9. Much of Perotti's narrative is corroborated by the findings of fact of federal courts in the following cases: *Haynes v. Marshall*, 704 F.Supp. 788, 790 (S.D. Ohio 1988), *aff'd in part and rev'd in part*, 887 F.2d 700, 701-02 (6th Cir. 1989) (guards beat Haynes after he was shackled and restrained, and continued to beat him while dragging him to a strip cell and "as he lay in a subdued condition in the strip cell. It was while in the strip cell that another officer allegedly placed his foot on Haynes' neck, applied his body weight, and inflicted the blow that led to his death"); *Wolfel v. Morris*, 972 F.2d 712, 717-18 (6th Cir. 1992) (punishment for circulating petitions to Amnesty International must be rescinded because prison permitted other petitions to be circulated). Officer Larry Dotson says that between the date SOCF was opened and April 10, 1993, thirty-eight prisoners and five staff members were murdered at SOCF. Williams, *Siege in Lucasville*, p. 29.

4. Excerpt of Proceedings, *State v. Cannon* (Ct. Com. Pl. Hamilton Cty.), Case No. B-957633, p. 7.

5. Lucasville prisoner Bill Martin says of Lincoln Carter that "he was not beaten to death. After he touched the nurse's hand, he knew he was going to be severely beaten and took a handful of pills to dull the pain. After he was beaten, Carter died of a drug

overdose.” Bill Martin to Staughton Lynd, Dec. 10, 2003.

6. Also in his letter to Staughton Lynd of Dec. 10, 1993, Martin described the “Lucasville 14” who sought to be released to various countries in Eastern Europe.

Not everybody wanted to go to the Soviet Union. I was born in Augsburg, Germany, so I wanted to emigrate to East Germany. The legal authority we were using was the Helsinki Accords of Human Rights and the Universal Declaration of Human Rights.

The guys who cut off their fingers were Richard Armstrong, August Cassano, and David Cattano. (Cattano actually cut off *two* fingers.) The self-mutilation caused such a stir that the Tass news agency tried to get permission from the State Department to interview all of us. We knew this from a Freedom of Information Act request we made.

The law governing someone renouncing their citizenship required them to travel to a foreign country and renounce their citizenship at a U.S. embassy. To get around this, three of us gave power of attorney to a well-known human rights activist in the Netherlands and she went to the U.S. embassy at the Hague and attempted to renounce our citizenship.

Armstrong’s attempt to renounce his citizenship is described in Aaron Caleb with Douglas Slaton, *Subpoena George Bush: The Anatomy of a Cover-Up* (Trotwood, OH: Cedar Mills Publishing, 1993), p. 8. Cassano states: “In the late 70s I cut off my left pinky finger and sent it to President Carter. He never received it, but it went out from the super max part of Lucasville which was call[ed] J block. I did this ’cause I renounced my U.S. citizenship, ’cause the conditions were so bad in lockup.” August Cassano to Staughton Lynd, Dec. 27, 2003, p. 5.

7. Shirley Pope, Senior Research Associate, CIIC, to Terry Morris, Warden, SOCF, Nov. 30, 1989, re: “Concerns Pertaining to Unit Management and Snitch Games,” pp. 1-2.

8. *Ibid.*, pp. 5-6 (emphasis added).

9. Little Rock is quoted in an article by his New Mexico attorney Steven Douglas Looney, “Little Rock Reed: America’s Most Wanted ‘Fugitive from Justice,’” *Journal of Prisoners on Prisons*, v. 9, no. 1 (1998), pp. 57-58, and in Original Action in Habeas Corpus, *Timothy “Little Rock” Reed v. John F. Kinkela, Chief, Ohio Adult Parole Authority, et al.*, in the Supreme Court of Ohio, Case No. 98-2041, filed Oct. 5, 1998. Subsequent statements by Reed

in this book are drawn from these same two sources.

10. Keith Lamar to Staughton Lynd, Jan. 2003.

11. Chrystof Knecht, "Letters from Lucasville Prison," *Race Traitor* (Spring 1994), p. 2; and William Martin, letter to Atty. Richard Kerger, Feb. 20, 1995.

12. CIIC, "Concerns Pertaining to Unit Management and Snitch Games," p. 5.

13. Keith Lamar to Staughton Lynd, Jan. 2003; Taymullah Abdul Hakim (Leroy Elmore), "Lucasville—an inside view," *Prison News Service* (Jan.-Feb. 1994), p. 5.

14. William Martin to Atty. Richard Kerger, Feb. 20, 1995.

15. *Southern Ohio Correctional Facility: Disturbance Cause Committee Findings*, June 10, 1993, Executive Summary, pp. 1-3.

16. *Disturbance Cause Committee Findings*, p. 5.

17. Keith Lamar to Staughton Lynd, Jan. 2003; *Disturbance Cause Committee Findings*, Executive Summary, p. 2.

18. *Disturbance Cause Committee Findings*, Executive Summary, p. 3.

19. Interview with George Skatzes, Jan. 14, 2003.

20. *Disturbance Cause Committee Findings*, p. 13. Hasan explains that: "Except for a death in one's family or some other major emergency, prisoners were not privileged to any other phone calls. I was briefly in the honor block prior to the uprising and we were allowed one phone call per week. Since there was no double-celling in the honor block, only about eighty prisoners were privileged to the one weekly call. The one five-minute call per year was only given to those in general population, not those in any of the lock-up blocks." S. A. Hasan to Staughton Lynd, Jan. 20, 2003. However, general population prisoners at ManCI were permitted one twenty-minute telephone call daily. *Disturbance Cause Committee Findings*, p. 13.

21. CIIC, "Concerns Pertaining to Unit Management and Snitch Games," p. 6, and "Quarterly Report of the Correctional Institution Inspection Committee, January 31, 1991 thru March 31, 1991," pp. 107, 111.

22. "The Prison's Attitude," enclosed in a letter from S. A. Hasan to Staughton Lynd, Jan. 20, 2003.

23. Taymullah Abdul Hakim, "Lucasville—an inside view"; S. A. Hasan, "Synopsis," contained in a letter to Staughton Lynd, Oct. 5, 1998.

24. Major Roger Crabtree, in charge of security at SOCF, was

also present.

25. Warden Tate testified at Hasan's trial that Hasan said: "You do what you have to do and we'll do what we have to do." Testimony of Arthur Tate, Transcript, *State v. Sanders* (Ct. Com. Pl. Hamilton Cty), Case No. B-953105, pp. 1277-78. However, in a deposition in a civil case arising from the uprising, Warden Tate said that he did not recall inmate Sanders (Hasan) making the statement and that inmate Elmore (Taymullah) "may have" made it. *Ibid.*, pp. 1304-05. Hasan emphasizes that what Taymullah meant was not, we will create a riot, but rather, we will refuse to take the test. Interestingly, the report that reached Officer Larry Dotson was that it was *Warden Arthur Tate* who said, you do what you gotta do and we'll do what we gotta do. Williams, *Siege in Lucasville*, p. 27.

26. These words are taken verbatim from a copy of the internal communication or "kite" sent by Hasan to Warden Tate, stamped "Received, April 7, 1993."

27. Robert L. Cohen, M.D. to Staughton Lynd, Dec. 26, 2003 (emphasis added). "PPD" means purified protein derivative. The alcohol to which Muslim prisoners objected was phenol.

28. Deposition of David See, p. 54, quoted in Report of Plaintiffs' Expert Steve J. Martin, Feb. 28, 1996, p. 14, in *Morris, et al. v. Voinovich, et al.*, Civ. C-1-93-436 (S.D. Ohio 1994).

29. Transcript, *State v. Sanders*, p. 4678.

30. The Warden's memo of April 8, responding to Hasan's kite, is attached to *Disturbance Cause Committee Findings*, p. 579. After his release on parole in 1992, "Little Rock" Reed wrote to Warden Tate criticizing the lack of religious services for Native American prisoners at Lucasville. Tate replied, using the same word he would later use to Hasan, that he resented Reed's attempts to "dictate" how to run the prison. Original Action in Habeas Corpus, *Reed v. Kinkela*, p. 9.

31. Keith Lamar to Staughton Lynd, Jan. 2003.

32. Martin Report, *Morris v. Voinovich*, p. 15.

33. *Disturbance Cause Committee Findings*, Executive Summary, p. 4.

34. Martin Report, pp. 16-17, citing the depositions of the two lieutenants.

35. Keith Lamar to Staughton Lynd, Jan. 26, 2003. The quoted words are from *Macbeth*, Act I, Scene 3.

36. SOCF staffing rosters cited in Martin Report, p. 7.

CHAPTER TWO

1. The petition and letter will be found in Appendix 3.

2. Testimony of Dr. David Hammer, Transcript, *State v. Were* (Ct. Com. Pl. Hamilton Cty.), Case No. B-9508499 (2003; hereafter “*Were II*”), p. 2336, and of Jacalyn McCullough, Transcript, *State v. Were II*, pp. 2554-64. Namir was tried for a second time after the Supreme Court of Ohio found that he had not had a mental competency hearing during his first trial.

3. Transcript, *State v. Were* (Ct. Com. Pl. Hamilton Cty.), Case No. B-9508499 (1995; hereafter “*Were*”), p. 2247.

4. *Ibid.*, pp. 2250-51.

5. *Ibid.*, pp. 2247-48.

6. Conversation between Derek Cannon and Staughton Lynd, May 21, 2003. As Cannon had foreseen, in Namir’s second trial his testimony in the Cannon case was used against him to prove that he had been in L-6 at the time of Officer Vallandingham’s death. Testimony of Mark Piepmeier, Transcript, *State v. Were II*, pp. 1954-55.

7. Transcript, *State v. Robb* (Ct. Com. Pl. Franklin Cty.), Case No. 94CR-10-5658, pp. 5462-63.

8. *Ibid.*, pp. 5465-66.

9. *Ibid.*, pp. 5472-75.

10. *Ibid.*, pp. 5474-76.

11. *Ibid.*, pp. 5476-78.

12. *Ibid.*, pp. 5478-83.

13. *Ibid.*, pp. 5483-85.

14. The following account was set forth by Hasan in a letter to Staughton Lynd, Mar. 31, 2003. Many of the key episodes were also described by a family member during the mitigation phase of Hasan’s trial, and in an interview reported by Kristen Delguzzi, “Violent inmate: I’ve changed; Lucasville riot leader spent most of life in prison,” *Cincinnati Enquirer*, Mar. 4, 1996.

15. *Ibid.*

16. Only live testimony can be accepted in mitigation, but Skatzes’ defense team sent Ms. Bowers forth in January cold and snow to collect affidavits from friends and relatives of the defendant. They could not be used in court. Although Ms. Bowers mailed the documents she had collected to the judge, and they were made part of the record after sentencing, the jury never saw them. The most poignant of these affidavits is her own. I have supplemented its contents from conversations with George

Skatzes, especially on May 26, 2003, from his own account written in April-May, 2003, and from a second affidavit by Ms. Bowers, Petition for Post-Conviction Review, *State v. Skatzes* (Ct. Com. Pl. Montgomery Cty.), Case Nos. 94-CR-2890 and -2891 (hereafter, “*State v. Skatzes*”), Exhibit 39.

17. George Skatzes to Staughton Lynd, July 29, 2003.

18. Testimony of James Rogers, Transcript, *State v. Skatzes* (Ct. Com. Pl. Logan Cty.), Case No. 83CR-3, p. 1366.

19. Testimony of Danny Stanley, Transcript of hearing on motion for new trial, *State v. Skatzes*, Case No. 83CR-3, pp. 101-102, 107-108.

20. George Skatzes “To Whom It May Concern,” Apr. 11, 1993.

21. The following is drawn nearly verbatim from the opinion of the Ohio Supreme Court in *State v. Lamar* (2002), 95 Ohio St.3d 181, 219-21.

22. Keith Lamar to Staughton Lynd, Apr. 3, 2003.

23. Keith Lamar to Staughton Lynd, Jan. 16, 2003.

24. These additional comments are from a transcript of his remarks contained in a letter to Staughton Lynd from Angela Merles Lamar, Jan. 6, 2003.

CHAPTER THREE

1. John Perotti, “Lucasville: A Brief History,” p. 9. Williams, *Siege in Lucasville*, p. 13. This source states that after the inmates listened to their demands on radio, broadcast by a local station, they surrendered. The prisoner identified in this source as “Eric Swafford” is Eric Swofford, #178-862.

2. Testimony of Reginald Williams, Transcript, *State v. Sanders*, p. 2129.

3. *Ibid.*, p. 2215.

4. Testimony of Reginald Williams, Transcript, *State v. Were II*, pp. 1644-45, and 1697.

5. Testimony of Reginald Williams, Transcript, *State v. Sanders*, p. 2140.

6. *Ibid.*, pp. 2140-41.

7. Prisoners Dennis Weaver (black), David Sommers (white), and Bruce Harris (black) were killed later.

8. Testimony of Rodger [*sic*] Snodgrass, Transcript, *State v. Robb*, p. 3926.

9. Testimony of Inmate #1 in the anonymous history of the rebellion entitled "To Whom It May Concern," July 5, 1993, p. 8.

10. Testimony of Inmate #2, *ibid.*, pp. 10-11.

11. Paul Mulryan, "Eleven Days under Siege: An Insider's Account of the Lucasville Riot," *Prison Life*, n.d., pp. 32, 33.

12. Mark Colvin, *The Penitentiary in Crisis: From Accommodation to Riot in New Mexico* (Albany: State University of New York Press, 1992); Useem and Kimball, *States of Siege*, pp. 104-05, 212.

13. A videotape of the exchange was entered into evidence as Exhibit 315 in *State v. Skatzes*. I have transcribed it.

14. *Ibid.*

15. Testimony of Sergeant Howard Hudson, Transcript, *State v. Sanders*, pp. 2719, 2721.

16. Testimony of Anthony Lavelle, Transcript, *State v. Sanders*, pp. 3632-33 (emphasis added).

17. Williams, *Siege in Lucasville*, pp. 120-21. Officer Dotson also reports that his fellow hostage, Officer Anthony Demons, stated immediately after his release on April 16 that Officer Vallandingham's death was caused by cutting off water and electricity in L block. *Ibid.*, p. 166.

18. The sheets were apparently left hanging at the time of the surrender. Photographs of sheets with these hand-lettered messages were taken by the Ohio State Highway Patrol, turned over to defense attorneys, and entered into evidence at trials.

19. These demands appear on additional OSHP photographs. The demands are numbered but there is no single complete list.

20. Jill Riepenhoff, "The blame game: Spokeswoman heals after war of words over guard's death," *Columbus Dispatch*, Apr. 11, 2003, p. C3.

21. Williams, *Siege in Lucasville*, p. 139. Officer Dotson adds that Ms. Unwin left for her Columbus home soon after the news conference, emotionally distraught. *Ibid.*, p. 131.

22. Testimony of Anthony Lavelle, Transcript, *State v. Sanders*, p. 3646.

23. Williams, *Siege in Lucasville*, pp. 129, 131, 143.

24. Opinion, *State v. Robb* (2000), 88 Ohio St.3d 59, 62.

25. *State v. Skatzes*, Exhibit 322A (the State's transcript of Tunnel Tape 61), pp. 2-3. There is serious disagreement as to 1) whether a meeting took place on the morning of April 15, 2) whether Tunnel Tape 61, which purports to record what happened at the meeting was fabricated from tapes recording meetings at

other times. Here I make the assumptions most favorable to the prosecution: that a meeting occurred, and that Tunnel Tape 61 records with substantial accuracy what was and was not said at the meeting.

26. *Ibid.*, pp. 13-18.

27. Testimony of Anthony Lavelle, Transcript, *State v. Were*, p. 1238.

28. Testimony of Anthony Lavelle, Transcript, *State v. Skatzes*, pp. 3909, 4066-67, 4098-99, 4176; see also Transcript, p. 5379.

29. Testimony of Anthony Lavelle, Transcript, *State v. Sanders*, pp. 3649-50.

30. *Ibid.*, pp. 3786-87.

31. There was also testimony in the trials of Namir and Hasan that the two Muslims were in L-6 just before (Hasan) or at (Namir) the time that Officer Vallandingham was murdered, and supervised the killing of the guard. However, as I shall demonstrate in a later chapter, the key witness to this scenario—Kenneth Law—has twice stated under oath that his testimony at the trials of Namir and Hasan was false.

32. Opinion, *State v. Robb* (2000), 88 Ohio St.3d 59, 62-63.

33. Testimony of Stacey Gordon, Transcript, *State v. Robb*, p. 3529.

34. Testimony of Stacey Gordon, Transcript, *State v. Skatzes*, p. 4253.

35. Testimony of Stacey Gordon, Transcript, *State v. Robb*, p. 3530. See also Gordon's testimony, Transcript, *State v. Skatzes*, p. 4253.

36. Interview with Sergeant R. T. McGough, Tape A-194, Jan. 5, 1995, p. 15 (one and a half to two hours); Transcript, *State v. Robb*, p. 3534 (one to one and a half hours); Transcript, *State v. Skatzes*, p. 4256 (one to one and three-quarters hours); Transcript, *State v. Sanders* (one to one and a half hours).

37. Testimony of Anthony Lavelle, Transcript, *State v. Skatzes*, pp. 3864, 3909, 4066-67, 4098-99, 4124-25, 4134.

38. See also, Staughton Lynd, "Napue Nightmares: Perjured Testimony in Trials Following the 1993 Lucasville, Ohio, Prison Uprising," *Capital University Law Review*, v. 36, no. 3 (Spring 2008), pp. 583-600.

39. *State v. Skatzes*, Exhibits 295A and 296A (the State's transcript of Negotiation Tape #4, 4:51-8:20 p.m., pp. 29-30, 63, and Negotiation Tape #5, 8:23-10:50 p.m., p. 20).

40. *State v. Skatzes*, Exhibit 296A, p. 32, and Transcript, p. 2158.

41. Transcript, *State v. Skatzes*, pp. 3919, 4104, 4112-14.

42. Testimony of Brian Eskridge, Transcript, *State v. Were II*, pp. 2044-48, and Aaron Jefferson, Transcript, *State v. Were II*, pp. 2071-72; affidavits of Brian Eskridge, Wayne Flannigan, and Aaron Jefferson, Second Petition for Post-Conviction Review, *State v. Sanders*, Exhibits 9, 10, 11.

43. Testimony of Sean Davis, Transcript, *State v. Were*, Transcript, pp. 1644-46.

44. Transcript, *State v. Skatzes*, pp. 2238, 5377-83. Inexplicably, there exists only a fragmentary record of Skatzes' negotiations during the morning of April 15, even though both the State and the prisoners were independently recording the negotiations. Sergeant Hudson read into the transcript of Skatzes' trial his notes on the conversation between Skatzes and prison negotiator Dirk Prise. Some notes were also made by persons listening to negotiations in the tunnels under L block. *Ibid.*, pp. 2193, 2195-96, 2235-39; Exhibits A, B, C, and D.

45. *Ibid.*, pp. 2195, 2237-38, 5380-81; Exhibit 297A, p. 2; Exhibit A.

46. Testimony of Tyree Parker, Transcript, *State v. Were*, pp. 1686-88.

47. Testimony of Willie Johnson, Transcript, *State v. Robb*, p. 4651; *State v. Were*, p. 1762.

48. Testimony of Willie Johnson, Transcript, *State v. Were*, p. 1764; to the same effect, *State v. Robb*, p. 4653.

49. Testimony of Eddie Moss, Transcript, *State v. Robb*, pp. 4503-12; *State v. Were*, pp. 1808-09.

50. Testimony of Eddie Moss, Transcript, *State v. Robb*, pp. 4513-18.

51. Testimony of Sterling Barnes, Transcript, *State v. Were*, pp. 1859 ff.

52. Testimony of Greg Durkin, Transcript, *State v. Were II*, pp. 2027-29; affidavit of Greg Durkin, Second Petition for Post-Conviction Review, *State v. Sanders*, Exhibit 8.

53. Affidavit of Roy Donald, Second Petition for Post-Conviction Review, *State v. Sanders*, Exhibit 16.

54. These statements were written down in two separate pages of notes by "Pence," submitted by R. Cunningham, in Critical Incident Communication, Apr. 15, 1993. One of these pages

contains the two statements beginning “talking about” and “background voice,” and is *State v. Skatzes*, Exhibit D. The second page containing the statement about “wasting valuable time” was not made part of the record.

55. Transcript, *State v. Sanders*, p. 5202.

CHAPTER FOUR

1. *State v. Skatzes*, Exhibit 309A, pp. 2-3.

2. *Ibid.*, p. 4. Ratcliff testified at Skatzes’ trial that his parents were across the highway in a school, and that “every time you turned around [my mother] was collapsing.” When George transmitted Ratcliff’s message, “a buddy of mine . . . ran over to the school and said, as long as he’s with inmate George, you might as well believe he’s going to be okay. And that gave them hope and faith.” Testimony of Jeff Ratcliff, Transcript, *State v. Skatzes*, pp. 5998-A - 5999-A.

3. Prise’s proposals will be found in Lucasville Telephone Negotiations (inmate tapes), Tape XIII, pp. 8-9, 12-15, as well as on the State’s Negotiation Tape #12, *State v. Skatzes*, Exhibit 303A, pp. 22-30.

4. Attorney Schwartz’s good work in helping to end the Lucasville standoff was recognized in Patrick Crowley, “Against All Odds,” *ABA [American Bar Association] Journal* (Dec. 1993), pp. 66-69.

5. Testimony of Niki Z. Schwartz, Transcript, *State v. Robb*, pp. 5577-79.

6. *Ibid.*, pp. 5579-84.

7. *Ibid.*, pp. 5585-88.

8. *Ibid.*, p. 5606. At Attica, the rebellion ended with a massive and bloody assault on the occupied recreation yard by armed forces of the State. At Santa Fe, “negotiations with inmates had very little to do with the release of hostages or ending the riot.” Colvin, *The Penitentiary in Crisis*, p. 191. Such negotiations as occurred are described by a prisoner who was there in W. G. Stone, *The Hate Factory* (Agoura, California: Paisano Publications, 1982), pp. 160-86, and by Useem and Kimball, *States of Siege*, pp. 108-09, 111.

9. Testimony of Rodger Snodgrass, Transcript, *State v. Skatzes*, pp. 4379-80; see also Testimony of John Powers, Transcript, pp. 5911-16.

10. Stipulation, Transcript, *State v. Skatzes*, p. 6058; Testimony of Howard Hudson, Transcript, p. 1858. Officer Dotson offers essentially the same account. Williams, *Siege in Lucasville*, p. 65.

11. Testimony of Dwayne Johnson, Transcript, *State v. Skatzes*, pp. 5939-48; see also Transcript, pp. 1858-59, 6040. John Fryman, a prisoner assaulted by other prisoners on April 11, describes in an affidavit how Skatzes helped to save both Officer Kemper and himself:

It had just gotten dark when I heard George's voice again. He was talking about a CO whom they were carrying. Then I heard him say to bring me too. The CO, who I later learned was Kemper, and I were left in the middle of the yard. I heard George tell the others to be careful with the CO.

Affidavit of John L. Fryman, June 17, 1998.

12. Testimony of Darrold Clark, Transcript, *State v. Skatzes*, pp. 2328-29.

13. *Ibid.*, pp. 2380-81; see also Transcript, pp. 5152-53.

14. Testimony of Jeff Ratcliff, Transcript, *State v. Skatzes*, pp. 5995A, 5999A-6000A.

15. *Ibid.*, pp. 5145-46, 5199.

16. *Ibid.*, p. 6000A.

17. Testimony of Larry Dotson, Transcript, pp. 4219-20, 5995A; Testimony of Jeff Ratcliff, Transcript, p. 5995A; Neg. Tape #4, Exhibit 295A, pp. 4-5; Neg. Tape #5, Exhibit 296A, p. 21; Neg. Tape #12, Exhibit 303A, p. 29, all in *State v. Skatzes*. Officer Dotson speaks of Skatzes making his rounds, offering Dotson medication that Skatzes had in his possession, and checking on Officers Dotson and Buffington every day. Williams, *Siege in Lucasville*, pp. 163-64.

18. Testimony of Tim Williams, Transcript, *State v. Skatzes*, pp. 3087, 3195.

19. Testimony of Robert Brookover, Transcript, *State v. Skatzes*, p. 3771.

20. Transcript, *State v. Were*, p. 2240.

21. Testimony of Willie Johnson, Transcript, *State v. Robb*, pp. 4661-62; Transcript, *State v. Were*, pp. 1783-84.

22. Testimony of Eddie Moss, Transcript, *State v. Robb*, pp. 4525-28; Transcript, *State v. Were*, pp. 1824-25.

23. Declaration of Leroy Elmore, Aug. 26, 2002, restating in

expanded form Affidavit of Leroy Elmore, Dec. 20, 1995.

24. Testimony of Miles Hogan, Transcript, *State v. Sanders*, pp. 1981-87, 2006-07.

25. Testimony of Reginald Williams, Transcript, *State v. Sanders*, p. 2148.

26. Testimony of Rodger Snodgrass, Transcript, *State v. Skatzes*, p. 2526.

27. Testimony of Howard Hudson, Transcript, *State v. Were II*, pp. 1369-73.

28. Testimony of Niki Z. Schwartz, Transcript, *State v. Sanders*, p. 5495.

29. *Ibid.*, pp. 5496, 5526-30.

30. *Ibid.*, p. 5491.

31. Testimony of Niki Z. Schwartz, Transcript, *State v. Robb*, pp. 5589-90.

32. *Ibid.*, p. 5592.

33. *Ibid.*, p. 5596.

34. *Ibid.*, p. 5598.

35. *Ibid.*, p. 5605.

36. *Ibid.*, p. 5606.

37. Testimony of Howard Hudson, Transcript, *State v. Were II*, pp. 1515-16. Hudson, a Sergeant at the time of the investigation, was later made a Lieutenant.

38. Affidavit of John L. Fryman, June 17, 1998.

39. Affidavit of Emanuel "Buddy" Newell, Dec. 30, 1998.

CHAPTER FIVE

1. Testimony of Niki Z. Schwartz, Transcript, *State v. Robb*, pp. 5614-15. Reporter Bob Fittrakis determined that Assistant Special Prosecutor Daniel Hogan earned nearly a hundred thousand dollars of extra income from his work on the Lucasville cases "while at the same time working full-time as an assistant Franklin County Prosecutor." Bob Fittrakis, *The Fittrakis Files: Free Byrd and Other Cries for Justice* (Columbus: Columbus Alive Publishing, 2003), p. 31.

2. Motion for an Order to Compel Discovery, *State v. Robb*, pp. 5614-15; Second Petition for Post-Conviction Review, *State v. Sanders*, p. 95 and Exhibits 34B-D. The State of Ohio spent \$892,000 funding the defense in all riot-related cases, including payment for attorneys, investigators, and expert witnesses. In

contrast, approximately \$1,400,000 was paid to the prosecution and another \$1,300,000 to the Ohio State Highway Patrol, the agency investigating on behalf of the State. *Ibid.*, Exhibits 34A and E.

3. Editorial, *Cleveland Plain Dealer*, Apr. 25, 1993, p. C-12.

4. Testimony of Niki Z. Schwartz, Transcript, *State v. Robb*, pp. 5624-25.

5. Telephone interview with Atty. Dale Baich, Oct. 17, 2003.

6. Niki Z. Schwartz to Chief Justice Tom Moyer, Feb. 24, 1994, p. 1.

7. Motion for Notice in Order to Challenge Array of Grand Jury, filed Dec. 7, 1993; Application to Record All Grand Jury Proceedings, filed Dec. 8, 1993; and Motion to Dismiss Grand Jury Due to Biased Grand Jurors, filed Jan. 5, 1994, all in *In re Grand Jury Target Wayne Bell*, Case No. 93 CI 433 (Ct. Com. Pl. Scioto Cty.).

8. Memorandum in Opposition to Motion for Notice in Order to Challenge Array of Grand Jury, Request for Sanctions, filed Dec. 13, 1993, *ibid.* Rule 11 states in part: "The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is . . . signed with intent to defeat the purpose of this rule, it may be stricken as sham and false . . . For willful violation of this rule an attorney may be subject to appropriate action."

9. Memorandum in Opposition to Motion to Dismiss Grand Jury, filed Jan. 14, 1994, *ibid.*

10. Testimony of Niki Z. Schwartz, Transcript, *State v. Robb*, pp. 5622-23.

11. Schwartz to Chief Justice Tom Moyer, Feb. 24, 1994, pp. 2, 2n, 3.

12. *Ibid.*, p. 5.

13. Schwartz, "To Whom It May Concern," Dec. 1, 1998; statement by Atty. Richard M. Kerger, Mar. 21, 2000.

14. Petition for a Writ of Habeas Corpus, *Siddique Abdullah Hasan v. Todd Ishee*, Case No. 02-MC-051 (S.D. Ohio 2003), pp. 6-8.

15. Similarly, Judge Mitchell heard testimony about Skatzes in the Robb trial, when Skatzes was not present and had no opportunity to respond.

16. Editorial, Cleveland *Plain Dealer*, Apr. 25, 1993, p. C-12.

17. Howard Tolley, Jr., Professor of Political Science, University of Cincinnati and Amnesty International representative in Ohio, "Hamilton County Death Sentences: Overzealous Prosecutors and Jailhouse Informants," Apr. 11, 2003. An exasperated Chief Justice Moyer declared in 1999:

Clearly, our protestations have failed to change the advocacy of some prosecutors. It is as if they intentionally engage in improper conduct, safe in the belief that this court will continue to protest with no consequences.

Moyer, Ch. J., concurring and dissenting, *State v. Fears* (1999), 86 Ohio St.3d 329, 352.

18. "The Risk of Serious Error in Ohio Capital Cases," Testimony of James S. Liebman before the Criminal Justice Committee of the Ohio House of Representatives in Support of H.B. 502, June 4, 2002, p. 6. The "death-sentencing rate" is the number of death verdicts for every 1000 homicides. *Ibid.*, p. 5.

19. Staughton Lynd, *Intellectual Origins of American Radicalism* (Pantheon Books: New York, 1968), pp. 120-21. Professor Jules Lobel of the University of Pittsburgh Law School describes the "deeply racist" character of ante-bellum Cincinnati. In all of Ohio, "Black Laws" adopted in 1804 denied blacks the rights to vote, to testify in court, to serve in the militia or to receive a public education. Cincinnati racists additionally practiced direct action. In 1836 a Cincinnati mob broke into the office of an antislavery spokesperson, James Birney, destroyed his printing press and then "rampaged through town, systematically looting black neighborhoods." Jules Lobel, *Success Without Victory: Lost Legal Battles and the Long Road to Justice in America* (New York: New York University Press, 2003), pp. 51-52.

20. Statement by Atty. Kerger, Mar. 21, 2000. See, with citations to the record, Petition for a Writ of Habeas Corpus, *Hasan v. Ishee*, pp. 10-12.

21. Testimony of Howard Hudson, Transcript, *State v. Skatzes*, p. 1913. Accord, Transcript, *State v. Were II*, p. 1514.

22. Opening Statement of Prosecutor Krumpelbeck, Transcript, *State v. Sanders*, pp. 1224-25.

23. The panel decision later reversed by the Court of Appeals *en banc* is *United States v. Singleton*, No. 97-3178 (10th Circuit

Court of Appeals, July 1, 1998), 1998 WL 350507. Attorney John Val Wachtel, counsel for appellant, describes the case in the *OACDL Vindicator* (Fall 1998), pp. 12-16.

24. Affidavit of Derek Cannon, Petition for Post-Conviction Review, *State v. Skatzes*, Exhibit 33.

25. Affidavit of Hiawatha Frezzell, Sept. 26, 1996.

26. David “Doc” Lomache to Prosecutor Daniel Hogan, no date, but apparently soon after a previous letter dated June 12, 1995.

27. Interview #945 (no date), Tape A-245, Transcript, pp. 92-101.

28. Testimony of Emanuel “Buddy” Newell, Excerpt of Proceedings, *State v. Cannon*, pp. 28-29.

29. Kevin Mayhood and Jill Riepenhoff, “Lucasville: The Untold Story,” *Columbus Dispatch*, Apr. 6, 2003, p. C3.

30. Testimony of Robert Brookover, Transcript, *State v. Robb*, p. 2569.

31. *Ibid.*, p. 2600.

32. *Ibid.*, pp. 2609, 2614, 2617, 2623.

33. *Ibid.*, pp. 2632-33.

34. *Ibid.*, pp. 2518-23.

35. *Ibid.*, p. 2524.

36. Inter-Office Communication, From: Sergeant Howard Hudson, To: Mark Piepmeier/Special Prosecutor, Subject: Robert Brookover, July 26, 1995. The following paragraphs are also based on this source.

37. Reginald A. Wilkinson and Thomas J. Stickrath, “After the Storm: Anatomy of a Riot’s Aftermath,” *Corrections Management Quarterly* (1997), p. 21.

38. Testimony of Anthony Lavelle, Transcript, *State v. Skatzes*, pp. 4054-55.

39. Statement of Prosecutor Hogan, *ibid.*, p. 4047.

40. Testimony of Howard Hudson, *ibid.*, pp. 2215-18.

41. Rodger Snodgrass to George Skatzes, Apr. 24, 1994.

42. Anthony Lavelle to Jason Robb, Apr. 7, 1994, *State v. Robb*, Defendant’s Exhibit 8. This letter is written in run-on sentences. I have inserted periods to make it more readable.

43. Conversation with George Skatzes, June 20, 2003.

44. Lavelle was charged with conspiracy to commit aggravated murder on June 9, 1994, and entered into a plea bargain on June 10.

45. Testimony of Antoine Odom, Transcript, *State v. Robb*, pp. 4853-55.

46. Testimony of Anthony Lavelle, Transcript, *State v. Skatzes*, pp. 4052-53, 4160-61.

47. Testimony of Rodger Snodgrass, Transcript, *ibid.*, pp. 4390-96 (stabbed Elder); 4477-82 and 4487-90 (tried to kill Newell); 4656 (never charged in connection with murder of Sommers); 4413-14, 4430-31, 4593-05 (helped to guard hostage officers but kidnapping charges dropped).

48. Testimony of Robert Brookover, *ibid.*, p. 3688.

49. Closing Statement of Prosecutor Hogan, *ibid.*, p. 5751.

CHAPTER SIX

1. *State v. Skatzes*, pp. 168-69, 171-72, 178-79.

2. *Ibid.*, pp. 224-25, 228-29, 231-32, 236, 243, 246.

3. *Ibid.*, pp. 425-26, 429-30, 434, 437. This person was seated on the jury that found Skatzes guilty and condemned him to death.

4. *Ibid.*, pp. 655, 657, 660-62.

5. *Ibid.*, pp. 714, 720.

6. *Ibid.*, pp. 729-30, 736, 742.

7. *Ibid.*, pp. 886-87, 891, 900. Defense counsel used a peremptory challenge to prevent this person from serving on Skatzes' jury.

8. *Ibid.*, pp. 1088-89.

9. *Ibid.*, pp. 1089-90, 1095, 1099.

10. *Ibid.*, pp. 1100, 1108-10. Defense counsel used a peremptory challenge to prevent this person from serving on Skatzes' jury.

11. See Ohio Revised Code § 2923.01 Conspiracy. Mumia Abu-Jamal has called my attention to provocative comments on conspiracy by some very distinguished legal minds. Clarence Darrow offered the example of a boy who steals candy and is punished for a misdemeanor whereas two boys who *plan* to steal the candy, but don't, are punished for a felony. The conference of Senior Circuit Judges, chaired by Chief Justice William Howard Taft, warned that "the rules of evidence in conspiracy cases make them most difficult to try without prejudice to an innocent defendant." Supreme Court Justice and Nuremburg prosecutor Robert H. Jackson called conspiracy "that elastic, sprawling and pervasive

offense [that] defies definition.” Judge Learned Hand termed it the “darling of the modern prosecutor’s nursery,” because of the many advantages it affords the prosecution. See Donald Freed, *Agony in New Haven: The Trial of Bobby Seale[,] Erika Huggins and the Black Panther Party* (New York: Simon and Schuster, 1973), pp. 102-04.

12. Ohio Revised Code § 2923.03.

13. Transcript, *State v. Sanders*, pp. 5052-54.

14. *Ibid.*, pp. 5225, 5227, 5232.

15. Ohio Revised Code § 2929.04(A)(5).

16. Hasan and Namir were found not guilty of murdering prisoner Bruce Harris and guilty only for the murder of Officer Vallandingham. Several other “aggravating factors” besides course of conduct were available to justify a recommendation of the death penalty: the offense was committed while the offender was in detention, and the victim of the offense was a law enforcement officer. Ohio Revised Code § 2929.04(A)(4) and (6).

17. Transcript, *State v. Skatzes*, p. 6096.

18. *Ibid.*, p. 5668. See to the same effect the statements of co-prosecutor Hogan, *ibid.*, pp. 5746-47, 5777, 6096-97.

19. Testimony of Rodger Snodgrass, Transcript, *State v. Robb*, pp. 3942-43.

20. Testimony of Rodger Snodgrass, Transcript, *State v. Skatzes*, pp. 4399-4400.

21. Testimony of Anthony Lavelle, Transcript, *State v. Were*, p. 1238.

22. Testimony of Anthony Lavelle, Transcript, *State v. Skatzes*, pp. 3909, 4066-67, 4098-99, 4176.

23. Testimony of Anthony Lavelle, Transcript, *State v. Sanders*, pp. 3649-50, 3786-87.

24. James S. Liebman, “The Risk of Serious Error in Ohio Capital Cases,” pp. 4, 6-7.

25. Opinion of the Court of Common Pleas of Franklin County, *State v. Robb* (Apr. 17, 1995), p. 2.

26. *Ibid.*, p. 3.

27. Opinion of the Court of Appeals of Ohio, Tenth Appellate District, *State v. Robb* (Apr. 30, 1998), p. 7.

28. *State v. Robb* (2000), 88 Ohio St.3d 59, 62.

29. Opinion of the Court of Common Pleas, *State v. Robb*, p. 1.

30. Opinion of the Court of Appeals, *State v. Robb*, p. 6.

31. *State v. Robb*, 88 Ohio St.3d 59.
32. Opinion of the Court of Common Pleas, *State v. Robb*, p. 3.
33. *State v. Robb*, 88 Ohio St.3d 59, 64.
34. *Ibid.*
35. Testimony of Stacey Gordon, Transcript, *State v. Robb*, pp. 3560-61.
36. There is no dispute as to these facts. See Opinion, *State v. Lamar* (2002), 95 Ohio St.3d 181, 186-88.
37. Interview #1264 with Aaron Jefferson, June 23, 1994, Tape A-190, pp. 7-12.
38. Transcript, *State v. Were II*, pp. 1231-37.
39. Opinion, *State v. Robb* (2000), 88 Ohio St.3d 59, 66-67.
40. *Ibid.*, pp. 78-79.
41. Jason Robb to Staughton Lynd, June 18, 2003.

CHAPTER SEVEN

1. Tom Wicker, *A Time to Die* (New York: Quadrangle, 1975), p. 169.
2. *Ibid.*, p. 238.
3. The books presenting this “whiteness” theory of labor history are discussed and critiqued in Eric Arnesen, “Whiteness and the Historians’ Imagination,” *International Labor and Working-Class History*, No. 60 (Fall 2001), pp. 3-32; Eric Arnesen, “A Paler Shade of White,” *The New Republic*, June 24, 2002, pp. 33-38; and Peter Kolchin, “Whiteness Studies: The New History of Race in America,” *The Journal of American History*, v. 89, no.1 (June 2002), pp. 154-73.
4. *Disturbance Cause Committee Findings*, Executive Summary, p. 3.
5. Editorial, *Cleveland Plain Dealer*, Apr. 25, 1993.
6. *Disturbance Cause Committee Findings*, Executive Summary, p. 3.
7. This and the following statement by “Little Rock” Reed are drawn from the sources cited in Chapter One, note 9.
8. See Chapter 3 for evidence of opposition to forced integrated celling shared by blacks and whites alike.
9. Testimony of Sergeant Howard Hudson, Transcript, *State v. Skatzes*, p. 1904.
10. *William Rogers v. Department of Corrections, et al.*, No. C-1-

91-688 (S.D. Ohio).

11. Testimony of Charles Valentine, Transcript, *State v. Skatzes*, pp. 4921, 4923-24.

12. Skatzes' words are drawn from the recollection of an eyewitness now at another Ohio prison; from the testimony of Brian Michael Young in *State v. Skatzes*, Transcript, pp. 5082-83, and of Thomas Blackmon in *State v. Were II*, Transcript, p. 1982 ("George Skatzes . . . made a statement, saying, this is . . . not a black thing. This is not a white thing. This is our thing against [the] administration"); and from Skatzes himself.

13. *State v. Skatzes*, Exhibit 309A.

14. Testimony of Sergeant Howard Hudson, Transcript, *State v. Skatzes*, pp. 1930-45, 1950.

15. *Ibid.*, pp. 1922, 1978.

16. *Ibid.*, pp. 1993-94.

17. The description of Skatzes' experience with African Americans is drawn from conversations with him on Nov. 10, 1999, Apr. 21, 2003, and May 27, 2003.

18. Unsworn statement of Jason Robb, *State v. Robb*, pp. 5486-89.

19. The following is drawn from a letter from Hasan to Staughton Lynd, June 26, 2003.

20. Keith Lamar to Staughton Lynd, Apr. 25, 2003.

21. George W. Skatzes, Hunger Strike Statement Form, Apr. 22, 1996.

22. "Re: Hunger Strike," signed by the Five and another Death Row prisoner, John Stojetz, and addressed to Warden Ralph Coyle, July 14, 1997.

23. Siddique Abdullah Hasan to Alice Lynd, July 26, 1998, and to Staughton Lynd, July 28, 2003.

24. ----- to Mr. and Mrs. Lynd, May 19, 2001.

25. Bruce Nelson tells how black longshoremen in New Orleans declined to join the International Longshoremen's and Warehousemen's Union (ILWU), believing that locally-negotiated arrangements that gave blacks control of "most waterfront occupations" provided greater security than the race-neutral labor market advocated by the ILWU. Bruce Nelson, *Divided We Stand: American Workers and the Struggle for Black Equality* (Princeton: Princeton University Press, 2001), pp. 101-10. The oral histories collected by Michael Honey in *Black Workers Remember: An Oral History of Segregation, Unionism, and the Freedom Struggle* (Berkeley:

University of California Press, 2001) show how blacks struggled together with whites when possible but, more commonly, alone, to overcome Jim Crow on the shop floor. Ruth Needleman in *Black Fighters in Steel: The Struggle for Democratic Unionism* (Ithaca, NY: Cornell University Press, 2003), pp. 197-200, explains that African American steelworkers in northern Indiana insisted on building separate black organizations “because they had seen their cause set aside in the name of political expediency by white unionists on the left and the right.”

CHAPTER EIGHT

1. Jerome Bruner, “Do Not Pass Go,” a review of David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*, in *The New York Review of Books*, Sept. 25, 2003.

2. *Ibid.*

3. Department of Rehabilitation and Correction, Parole Board Hearing Policy 105-PBD-03, section VI(D)(7): “Any inmate with a maximum security classification or any other classification title used to denote the most serious security risk inmates, at the time of release eligibility, shall not be granted parole.” As a result of class litigation by prisoners confined at the Ohio State Penitentiary (see below note 6), this provision was rescinded on May 16, 2007.

4. The author is one of the attorneys who represented Robb, Skatzes and a third DR-4 prisoner, Ronald Combs, in a § 1983 action against employees of the Mansfield Correctional Institution arising from the events of September 5, 1997.

5. *Use of Force Investigation Report: Death Row 4 Riot of September 5, 1997*, pp. 15-16.

6. *Austin, et al. v. Wilkinson, et al.*, 189 F.Supp.2d 719, 722-23 (N.D. Ohio 2002); *aff’d in part and rev’d in part, Wilkinson v. Austin*, 545 U.S. 209, 214 (2005). The author was one of the attorneys for plaintiffs in this class action concerning conditions of confinement at the Ohio State Penitentiary.

7. *Ibid.*, pp. 723-24 (citations to record omitted).

8. In May 2000, George Skatzes was transferred back to Death Row at the Mansfield Correctional Institution. Alone among the Five, Skatzes never left his cell during the DR-4 disturbance in September 1997.

9. “Notice of Anticipated Length of Stay at Level Five Security

Classification,” Aug. 4, 2003.

10. *In re Medley*, 134 U.S. 160, 168 (1890) (describing effects of solitary confinement as practiced in the early history of the United States).

11. Transcript, *State v. Sanders*, p. 1153.

12. *Ibid.*, pp. 5055, 5067.

13. *Ibid.*, pp. 1398-1400, 1414. In other contexts, the State insisted on stressing that what happened at SOCF *was* a riot. For example, Skatzes was not indicted for conspiracy to riot. But Prosecutor Hogan argued in the Skatzes trial: “We need to prove a conspiracy to commit aggravated riot in order for a number of what would normally be hearsay statements to come into evidence.” Transcript, *State v. Skatzes*, p. 4887.

14. Transcript, *State v. Sanders*, pp. 4665-66.

15. Opinion, *State v. Sanders* (2001), 92 Ohio St.3d 245, 260.

16. Transcript, *State v. Sanders*, pp. 5309.

17. *Ibid.*, pp. 5327-28.

18. *Ibid.*, p. 5332.

19. Opinion, *State v. Sanders*, 92 Ohio St.3d 245, 266-67, 281.

20. *Attica: The Official Report of the New York State Special Commission on Attica* (New York: Praeger Publishers, 1972), pp. 283-84.

21. Bert Useem and Peter Kimball, *States of Siege*, p. 56; Tom Wicker, *A Time to Die*, pp. 309-10.

22. Reginald Wilkinson and Thomas Stickrath, “After the Storm: Anatomy of a Riot’s Aftermath,” *Corrections Management Review* (1997), p. 21.

23. *Ibid.*

24. Useem and Kimball, *States of Siege*, p. 56 (emphasis added).

25. *The New York Times*, Jan. 23, 1975; Apr. 8, 1975; Feb. 27, 1976.

26. *Ibid.*, Dec. 31, 1976. Governor Carey’s statement is on page A10.

27. Judge Daniel Gaul of the Cleveland Court of Common Pleas, foreword to Mike Gray, *The Death Game: Capital Punishment and the Luck of the Draw* (Monroe, ME: Common Courage Press, 2003), p. ix. Daniel Hogan, one of the prosecutors in the Lucasville trials, was alleged by defense counsel to have withheld the identity of an exculpatory witness in the unrelated case of Kim Hairston.

“Without assigning blame, the appeals court said Hairston should get a new trial. Then, during the second trial, a key prosecution witness recanted her story. Hogan had to dismiss the charges.” Jeb Phillips, “Few Ohio prosecutorial mistakes found in study,” *Columbus Dispatch*, June 28, 2003.

28. Interview #104, Apr. 21, 1993, Tape A-19, p. 8.

29. Video Tape of Anthony Lavelle, Polygraph Test of May 27, 1994, pp. 94-101.

30. Affidavit of Kenneth Law, Mar. 9, 2000.

31. Affidavit of Kenneth Law, Sept. 19, 2003, Petition for Post-Conviction Review, *State v. Skatzes*, Exhibit 27 (emphasis added).

32. “Testimony at Rules Infraction Board,” Jan. 8, 1996. This document contains the following verifications: “I have read the above and find that it is an accurate summary of testimony before the Rules Infraction Board,” (signed) Andrea Carroll, Secretary, Rules Infraction Board; “I have read the above and certify that it is a true and accurate summary of testimony given before the Rules Infraction Board on the date written above,” (signed) Sergeant Howard Hudson.

33. Assistant Special Prosecutor Hogan asserted in closing argument during the penalty phase of the Skatzes trial: “[T]hink about David Sommers, the third, the last of the three killings, the one where [Skatzes] *wielded a bat and literally beat the brains out of this man’s head. . . .*” Transcript, *State v. Skatzes*, p. 6108 (emphasis added). During the penalty phase of Aaron Jefferson’s trial, Assistant Special Prosecutor Crowe told the jury:

If there was only one blow to the head of David Sommers, the strongest evidence you have [is that] this is the individual—I won’t call him a human—this is the individual that administered that blow. . . . *If there was only one blow, he’s the one that gave it. He’s the one that hit him like a steer going through the stockyard, the executioner with the pick axe, trying to put the pick through the brain.*

Transcript, *State v. Jefferson*, pp. 656-57 (emphasis added).

34. Testimony of Dwayne Buckley, Excerpt of Proceedings, *State v. Cannon*, pp. 6, 14; Atty. Joseph L. Hale to Derek Cannon, Oct. 11, 1995, p. 2, reporting the comments of Judge Cox about Buckley’s testimony; Judith K. Wise, Chief, Bureau of Records

Management, Department of Rehabilitation and Correction, Certification of Record, Feb. 11, 2004. Derek Cannon's name does not appear on the list of prisoners in L block who surrendered on Apr. 21, 1993.

35. The convictions for kidnapping hostage correctional officers are no more persuasive. Officer Darrold Clark asked Skatzes to remove him from L-6, the pod controlled by Muslim prisoners. Skatzes arranged with the Muslims to move Clark to the pod controlled by the Aryan Brotherhood, L-2, where Skatzes protected Clark until personally releasing him on April 15. Further, Skatzes was not involved in capturing and restraining either prisoner Elder or Officer Vallandingham. But Skatzes was sentenced to an additional fifteen to twenty-five years for "kidnapping" each.

36. Lamar's counsel moved to reopen his appeal under Ohio Appellate Rule 26(B) and *State v. Murnahan* (1992), 63 Ohio St.3d 60. Assignment of Error No. 2 concerns the prosecutor's use of peremptory challenges "to exclude the only two African American jurors on Mr. Lamar's venire." Counsel argues in support of this assignment that the prosecutors' reasons for excluding Mr. Ramsey and Ms. Nelson, the two African Americans, were pretextual and therefore violated *Batson v. Kentucky*, 476 U.S. 79 (1986).

37. Testimony of Dr. Patrick M. Fardal, Transcript, *State v. Skatzes*, pp. 4865, 4867, 4870-71, and Transcript, *State v. Were II*, pp. 1256-58, 1267-70, 1273-75. Officer Dotson observes that the preliminary autopsy report by Scioto County Coroner Tom Morris said that the cause of death was strangulation with no other signs of torture or injuries. Williams, *Siege in Lucasville*, p. 187.

38. Michael N. Nagler, *Is There No Other Way? The Search for a Nonviolent Future* (Berkeley: Berkeley Hills Books, 2001), p. 53.

39. Mumia Abu-Jamal, *Death Blossoms: Reflections from a Prisoner of Conscience* (Farmington, PA: Litmus Books, 1996), p. 83.

40. Interview with Keith Lamar, Sept. 25, 2003.

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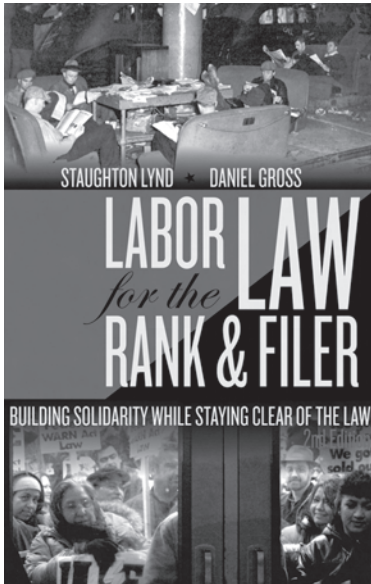
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From Here To There:
The Staughton Lynd Reader

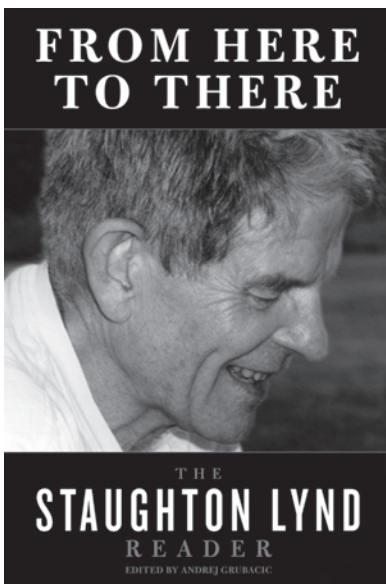
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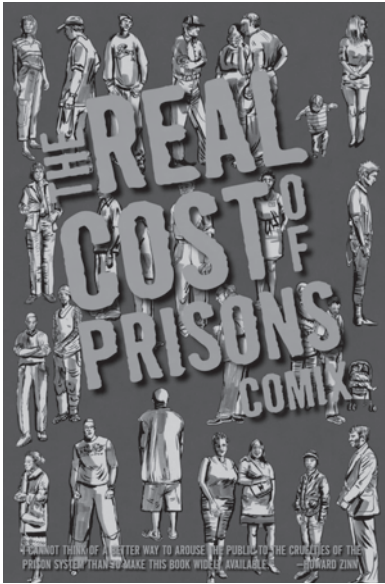


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Prisoners of a Hard Life: Women and Their Children includes stories about women trapped by mandatory sentencing and the “costs” of incarceration for women and their families. Also included are alternatives to the present system, a glossary and footnotes.

Resistance Behind Bars: The Struggles Of Incarcerated Women

VICTORIA LAW

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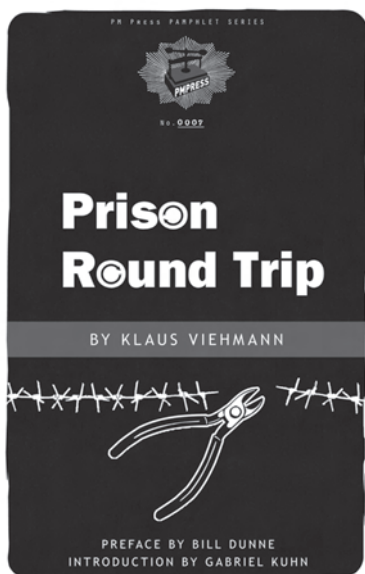
In 1974, women imprisoned at New York's maximum-security prison at Bedford Hills staged what is known as the August Rebellion. Protesting the brutal beating of a fellow prisoner, the women fought off guards, holding seven of them hostage, and took over sections of the prison.

While many have heard of the 1971 Attica prison uprising, the August Rebellion remains relatively unknown even in activist circles. *Resistance Behind Bars* is determined to challenge and change such oversights. As it examines daily struggles against appalling prison conditions and injustices, *Resistance* documents both collective organizing and individual resistance among women incarcerated in the U.S. Emphasizing women's agency in resisting the conditions of their confinement through forming peer education groups, clandestinely arranging ways for children to visit mothers in distant prisons and raising public awareness about their lives, *Resistance* seeks to spark further discussion and research into the lives of incarcerated women and galvanize much-needed outside support for their struggles.

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Prison Round Trip

KLAUS VIEHMANN

PREFACE BY BILL DUNNE

INTRODUCTION BY GABRIEL KUHN

978-1-60486-082-5

\$4.95

Bang. The door to your cell is shut. You have survived the arrest, you are mad that you weren't more careful, you worry that they

will get others too, you wonder what will happen to your group and whether a lawyer has been called yet—of course you show none of this. The weapon, the fake papers, your own clothes, all gone. The prison garb and the shoes they've thrown at you are too big—maybe because they want to play silly games with you, maybe because they really blow “terrorists” out of proportion in their minds—and the control over your own appearance taken out of your hands. You look around, trying to get an understanding of where you'll spend the next few years of your life.

Prison Round Trip was first published in German in 2003 as “Einmal Knast und zurück.” The essay's author, Klaus Viehmann, had been released from prison ten years earlier, after completing a 15-year sentence for his involvement in urban guerilla activities in Germany in the 1970s. The essay was subsequently reprinted in various forums. It is a reflection on prison life and on how to keep one's sanity and political integrity within the hostile and oppressive prison environment; “survival strategies” are its central theme.

“Einmal Knast und zurück” soon found an audience extending beyond Germany's borders. Thanks to translations by comrades and radical distribution networks, it has since been eagerly discussed amongst political prisoners from Spain to Greece. This is the first time the text is available to a wider English-speaking audience.

***THE PRISON-INDUSTRIAL
COMPLEX AND THE GLOBAL ECONOMY***

LINDA EVANS & EVE GOLDBERG

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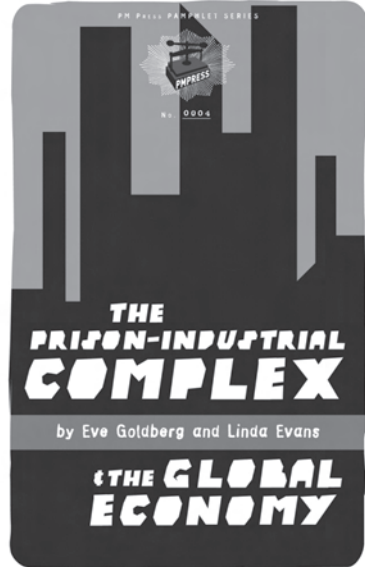
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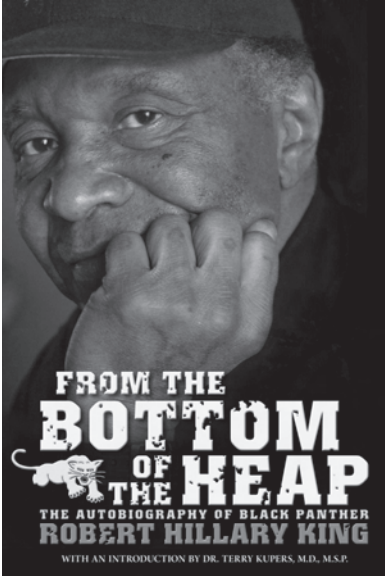
The prison business in the US is not based on locking up, punishing, or rehabilitating dangerous hoodlums. Follow the money and find how the prison-industrial complex fits into the New World Order of free trade and imprisoned people, the war on drugs, and capital flight.

About the Authors:

Linda Evans is a former anti-imperialist political prisoner. She was incarcerated at the Federal Correctional Institute in Dublin, California for 16 years. Linda was released in 2001 via a pardon by president Bill Clinton, along with Susan Rosenberg, another political prisoner.

Eve Goldberg is a writer, filmmaker, and prisoners' rights activist.





***From the Bottom of the Heap:
The Autobiography of Black
Panther Robert Hillary King***

ROBERT HILLARY KING

INTRODUCTION BY TERRY KUPERS

978-1-60486-039-9

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In 1970, a jury convicted Robert Hillary King of a crime he did not commit and sentenced him to 35 years in prison. He became a member of the Black Panther Party while in Angola State Penitentiary, successfully organizing prisoners to improve conditions. In return, prison authorities beat him, starved him, and gave him life without parole after framing him for a second crime. He was thrown into solitary confinement, where he remained in a six by nine foot cell for 29 years as one of the Angola 3. In 2001, the state grudgingly acknowledged his innocence and set him free. This is his story.

It begins at the beginning: born black, born poor, born in Louisiana in 1942, King journeyed to Chicago as a hobo at the age of 15. He married and had a child, and briefly pursued a semi-pro boxing career to help provide for his family. Just a teenager when he entered the Louisiana penal system for the first time, King tells of his attempts to break out of this system, and his persistent pursuit of justice where there is none.

Yet this remains a story of inspiration and courage, and the triumph of the human spirit. The conditions in Angola almost defy description, yet King never gave up his humanity, or the work towards justice for all prisoners that he continues to do today. *From the Bottom of the Heap*, so simply and humbly told, strips bare the economic and social injustices inherent in our society, while continuing to be a powerful literary testimony to our own strength and capacity to overcome.

**LET FREEDOM RING: A COLLECTION OF
DOCUMENTS FROM THE MOVEMENTS TO
FREE U.S. POLITICAL PRISONERS**

EDITED BY MATT MEYER

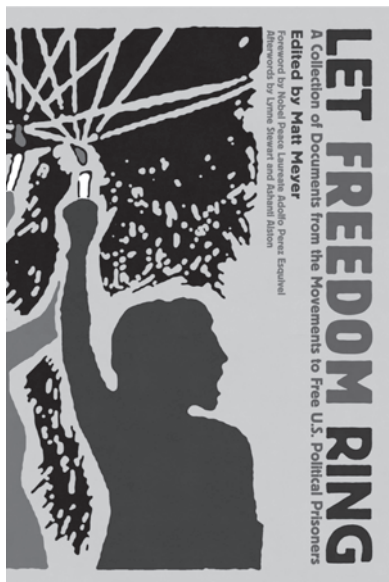
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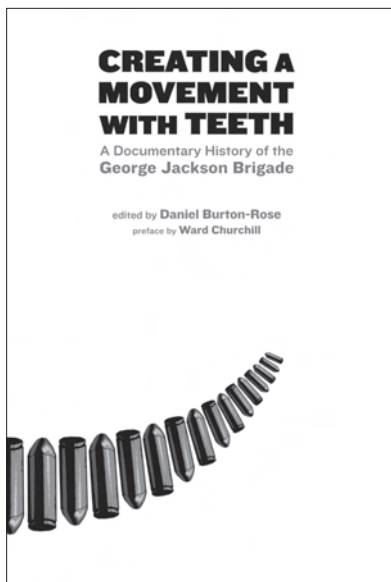
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Let *Freedom Ring* presents a two-decade sweep of essays, analyses, histories, interviews, resolutions, People's Tribunal verdicts, and poems by and about the scores of U.S. political prisoners and the campaigns to safeguard their rights and secure their freedom. In addition to an extensive section on the campaign to free death-row journalist Mumia Abu-Jamal, represented here are the radical movements that have most challenged the U.S. empire from within: Black Panthers and other Black liberation fighters, Puerto Rican independentistas, Indigenous sovereignty activists, white anti-imperialists, environmental and animal rights militants, Arab and Muslim activists, Iraq war resisters, and others. Contributors in and out of prison detail the repressive methods--from long-term isolation to sensory deprivation to politically inspired parole denial--used to attack these freedom fighters, some still caged after 30+ years. This invaluable resource guide offers inspiring stories of the creative, and sometimes winning, strategies to bring them home.

Contributors include: Mumia Abu-Jamal, Dan Berger, Dhoruba Bin-Wahad, Bob Lederer, Terry Bisson, Laura Whitehorn, Safiya Bukhari, The San Francisco 8, Angela Davis, Bo Brown, Bill Dunne, Jalil Muntaqim, Susie Day, Luis Nieves Falcón, Ninotchka Rosca, Meg Starr, Assata Shakur, Jill Soffiyah Elijah, Jan Susler, Chrystos, Jose Lopez, Leonard Peltier, Marilyn Buck, Oscar López Rivera, Sundiata Acoli, Ramona Africa, Linda Thurston, Desmond Tutu, Mairead Corrigan Maguire and many more.



***CREATING A MOVEMENT WITH TEETH:
A DOCUMENTARY HISTORY OF THE
GEORGE JACKSON BRIGADE***

EDITED BY DANIEL BURTON-ROSE

PREFACE BY WARD CHURCHILL

978-1-60486-223-2

\$24.95

Bursting into existence in the Pacific Northwest in 1975, the George Jackson Brigade claimed 14 pipe bombings against corporate and state targets, as many bank robberies, and the daring rescue of a jailed member. Combining veterans of the prisoners' women's, gay, and black liberation movements, this organization was also ideologically diverse, consisting of both communists and anarchists. Concomitant with the Brigade's extensive armed work were prolific public communications. In more than a dozen communiqués and a substantial political statement, they sought to explain their intentions to the public while defying the law enforcement agencies that pursued them.

Collected in one volume for the first time, *Creating a Movement with Teeth* makes available this body of propaganda and mediations on praxis. In addition, the collection assembles corporate media profiles of the organization's members and alternative press articles in which partisans thrash out the heated debates sparked in the progressive community by the eruption of an armed group in their midst. *Creating a Movement with Teeth* illuminates a forgotten chapter of the radical social movements of the 1970s in which diverse interests combined forces in a potent rejection of business as usual in the United States.

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