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Updates for November 24th

9 Nov - Court Rules Albert Woodfox Can Be Retried a Third Time

We're including a couple of articles on the recent 5th Circuit Court of Appeals decision to let the state of Louisiana retry Albert Woodfox a third time.

MORE:

November 9th - Albert Woodfox, Angola Inmate, Can Be Tried 3rd Time, Court Rules

by Ashley Southall (*New York Times*)

A federal appeals court ruled on Monday that Louisiana could keep an inmate locked up for the 1972 murder of a prison guard and said prosecutors may try him a third time for the killing.

The three-judge panel of the United States Circuit Court of Appeals for the Fifth Circuit decided 2 to 1 to reverse a lower-court ruling ordering the release of the inmate, Albert Woodfox, and barring state prosecutors from retrying him. Mr. Woodfox has served more than 40 years in solitary confinement.

In their opinion, the prevailing judges also said Judge James Brady of United States District Court for the Middle District of Louisiana had abused his discretion when he forbade the state to mount a new trial.

Mr. Woodfox's lawyer, George Kendall, said in a statement that he and his client were "extremely disappointed" with the court's decision.

Mr. Woodfox has been convicted twice for the stabbing death of the prison guard, Brent Miller, 23. Both convictions were overturned on constitutional grounds.

Mr. Woodfox, 68, is the last imprisoned member of a group known as the Angola Three, politically active prisoners who spent decades in solitary confinement in the Louisiana State Penitentiary, known as Angola. One member was released in 2001; another was released in 2013 and died three days later.

The state reindicted Mr. Woodfox each time his conviction was overturned, and did so for a third time in February after a federal appeals court upheld a decision to vacate his second conviction.

Judge Brady in June ordered Mr. Woodfox's immediate release, saying the case presented "exceptional circumstances" that cast doubt on the ability of the state to fairly retry him.

State prosecutors won an emergency motion to keep Mr. Woodfox in jail while they pursued an appeal.

Mr. Woodfox's second conviction was overturned last November after his lawyers argued that racial discrimination in the selection of the jury at the time of his 1993 indictment had violated his due process rights.

Judge Brady identified the state's failure to eliminate the discrimination in the second trial as one of seven factors in his decision to bar a new trial. But the two judges from the Fifth Circuit disagreed.

"The factors identified by the District Court as 'exceptional circumstances' do not merit an unconditional writ and improperly assume that state courts will not provide Woodfox with a fair retrial," they said.

The dissenting judge, James L. Dennis, agreed with Judge Brady that the state had failed to remedy the problem of racial discrimination. Judge Dennis noted that more than a dozen witnesses, including the

state's only purported eyewitness to the murder and two alibi witnesses for Mr. Woodfox, were no longer alive.

"Clearly, the wrongful harm done to Woodfox, not only as a litigant but also as a human being by his two unconstitutional convictions and his egregious four decades of solitary confinement, cannot be rectified by the usual remedy of reversal and reprosecution," Judge Dennis wrote.

November 11th - After 43 Years in Solitary, This Man Faces "One of the Most Surreal Trials of All Time"

by Michael Mechanic (*Mother Jones*)

Imagine spending more than four decades in virtual solitary confinement for a crime you've always insisted you didn't commit—and then, when your freedom is finally at hand, having it snatched away.

That's the blow the Fifth Circuit Court of Appeals dealt on Monday to 68-year-old Albert Woodfox, the last member of the so-called Angola 3 still behind bars. Woodfox, who was twice tried and convicted for his alleged role in the 1972 killing of prison guard Brent Miller, has spent 23 hours a day in a six-by-nine-foot cell at the state penitentiary in Angola, Louisiana, ever since.

The courts eventually overturned both of Woodfox's convictions based on evidence of racial discrimination and prosecutorial misconduct. In June, after determining that Woodfox couldn't get a fair trial so long after the fact, a federal judge ordered his immediate release. But the appeals court blocked the move. On Monday, it announced that Louisiana would be free to try Woodfox yet again.

The other Angola 3 members were Herman Wallace—who was released in 2013, but died of cancer three days later—and Robert King, whose conviction was overturned in 2001 after 29 years alone in a tiny cell. (Louisiana's top prosecutor doesn't consider this solitary.)

"The men contend that they were targeted by prison authorities and convicted of murder not based on the actual evidence—which was dubious at best—but because they were members of the Black Panther Party's prison chapter, which was organizing against horrendous conditions at Angola," wrote James Ridgeway, who covered the Angola 3 for Mother Jones and also profiled the prison's notorious warden, Burl Cain. "This political affiliation, they say, also accounted for their seemingly permanent stay in solitary."

Cain confirmed the latter claim during a 2008 deposition, as Ridgeway noted in a story marking the prisoners' 40th year in solitary. Woodfox's attorneys addressed the warden: "Let's just for the sake of argument assume, if you can, that he is not guilty of the murder of Brent Miller."

Cain responded, "Okay, I would still keep him in CCR [solitary]…I still know that he is still trying to practice Black Pantherism, and I still would not want him walking around my prison because he would organize the young new inmates. I would have me all kind of problems, more than I could stand, and I would have the blacks chasing after them…He has to stay in a cell while he's at Angola."

Amnesty International, which has pursued Woodfox's release, reacted to the latest court ruling with dismay. Woodfox "remains trapped in a nightmare—both by conditions of solitary confinement and by a deeply flawed legal process that has spanned four decades," Jasmine Heiss, a senior campaigner for the group, said in a statement.

"Woodfox should have walked free," she added. "But Louisiana Attorney General Buddy Caldwell continues to relentlessly pursue vengeance over justice."

Indeed, the AG has announced his intention to pursue another trial—even though all of the purported witnesses are dead and the victim's widow is opposed to it. "In what would surely be one of the most surreal trials of all time," notes David Cole, who covered the case for The New Yorker, "the state proposes to retry the case by having stand-ins read from the transcripts of these witnesses' prior testimony."

9 Nov - Chelsea Manning's statement for Aaron Swartz Day + Other Writings and Updates

Chelsea Manning prepared the following special statement for Aaron Swartz Day 2015. It was delivered in San Francisco, California on Saturday, November 7th as part of an Aaron Swartz Day celebration.

MORE:
First, I'd like to apologize for the awkwardness of this written medium. I would love to speak in person – as well as attend and contribute to – events like these, but certain circumstances are complicating my ability to travel and communicate in any fashion recognizable to most of us in the 21st century.

In fact – seeing that this is a technology event – l'd like to talk about the incredible ubiquity and access that society now has to highly connected information technology devices. It seems to me, at least, that as we enter the era of ubiquitous computing, the so called "Internet of Things" – with cell phones hugging against our hips, laptops and tablets in everyone's bag, and toasters that have the uncanny ability to sort our music libraries in the wrong way and have uncomfortable conversations with our grumpy selves in the morning – we have begun to blur the lines within our Human society in unexpected and even exciting ways.

Looking at the rapid advances in our social and political sphere in the information era – such as the cultural progress queer and trans movements have started to make – the relationships between such things as gender and sexuality, between art and work, between gender and work, and between sexuality and art, have blurred in incredible ways. Now there are elements and ideas which seem to implement the concepts of "transhumanism," and its becoming normal for more and more people who anticipate – as well as fear – the economic, information, and technological "singularity" at the supposed end of our exponential graphs in our own lifetimes.

But, consider the paradox that technology has provided for us. We seem more diverse and open as a society, but isn't it also the case that we are more homogenous and insecure than we ever have been in the last century or so? You might try and tell me something like – "Well, today's tools provide us with the ability to be more independent from the control of our governments and corporations than ever before." But, I ask, do they really? I don't think very many people in here are convinced that technology is a purely liberating tool, as we are now seeing that it can also be used to censor, to control, to monitor, to anticipate, to imprison, and sometimes even kill.

I am arguing that we can be independent and liberated as a society even without advanced technology. It seems that some people today even find their independence by embracing the Luddite philosophy – ditching their cell phones for the weekends, or avoiding the Internet at certain times of the day or week. But, I hope you don't think that you have to run to the hills of Montana and live in a cabin for years on end – that seems a little disproportionate, haha.

Today, as is obvious in some of the headlines that we see online – we are in a constant technological arms race, and I think that it's important to realize that we are always only a single breakthrough away from making the methods of network obfuscation and encryption pointless or unusable. While I agree that it's unlikely, it certainly is well within the realm of possibility that we might wake up tomorrow morning – or, if we're really honest, tomorrow afternoon for some of us – and find out that some truly brilliant or devious

mathematician or mathematicians have solved the Riemann Hypothesis, throwing entire regions of our encryption arsenal into turmoil. Or, we might wake up and find out that a six, eight, or even ten qubit quantum computer with near perfect error correction has been built, effectively accomplishing the same thing.

The point I'm trying to make here is that – and it is sometimes hard for those of us in the tech community to accept – that our technology can only take us so far on its own. Rather, it is the Human element that is so important, and unfortunately very easy to forget.

As most of us are acutely aware, our software can be written to accomplish a task that, in the right hands, solves incredible problems, creates miracles, eliminates boundaries, and saves lives. Think about, for instance, the entertainment provided by streaming videos and video games, the real-time artificial intelligence applications that are used in automated cars, manufacturing plants, and medical equipment, or the so called "big data" platforms being applied for Internet search, marketing, political campaigning, and healthcare.

Yet, that very same software with a few minor tweaks can, in the wrong hands, cause immense problems, create nightmares, raise insurmountable boundaries, and destroy and even end lives. Think about how the same technology used in streaming video, video games, real-time command and controls, and artificial intelligence, can also be used in unmanned aircraft armed with missiles to wreak havoc on barely discernible people hundreds or thousands of miles away. Think about the statistical "nudges" in big data algorithms that create gender, racial, ethnic, gender identity, sexual orientation, religious, political and other biases across large swaths of the online population. Also, think about the intensifying polarization and heavy focus on precision targeting on "swing voters" in the political realm. Real people in real places in real time are affected – sometimes on an immense scale.

Software is only a tool. Technology is only a toolbox. It's what we create our software for, what we intend to use it for, and who we allow to use it, and how much, that really count.

I now believe that today's coders and engineers have an extra "hat" that we have to wear on top of the colorful spectrum of hats we already have – namely, the technology ethicist and moralist hat. Whether we're amateurs or professionals, and despite whether we want to or not, it has now become another duty that we have. I only hope that the majority of us can figure out and fully understand what that is going to entail as we approach the edge of our graphs. In fact, Human lives and the future of Humanity may depend on it.

Thank you for your time everyone, and good luck in your endeavors. I would especially like to thank Lisa Rein for her lovely letter last month inviting me to speak before you all. It was an incredibly warm and heartfelt letter that made my day a little brighter.

Good night, everyone.

November 9th - '60 Minutes' Pushes National Security Propaganda To Cast Snowden, Manning As Traitors

by Kevin Gosztola (*ShadowProof*)

The television program, "60 Minutes," aired a segment on Sunday in which it assassinated the character of Chelsea Manning and Edward Snowden, and even went so far as to question their loyalty to America. The two whistleblowers were compared to the Washington Navy Yard shooter, who killed twelve people.

It was part of an examination of what U.S. government officials perceive to be serious flaws in the process by which the Office of Personnel Management (OPM) reviews security clearances granted to government employees, but the framing made it seem like architects of “insider threat” programs from U.S. security agencies and politicians, who support total surveillance of government employees in the workplace and while they’re at home, had produced the segment.

Using language that would scare everyone’s grandparents, the CBS show used “fugitive” to describe Snowden, “convicted spy” to describe Manning (even though she is not), and “mass murderer” to describe the Navy Yard shooter Aaron Alexis. Anchor Scott Pelley amplified the terror by adding they all had “one thing in common: U.S. government security clearances which they turned into weapons.”

“Some believe that Snowden and Manning were right to expose what they saw as government abuses like the NSA’s domestic surveillance program, but few believe that all of America’s secrets should be at risk to spies, criminals, or the mentally ill,” Pelley added. “That has happened because of short cuts in a system that has placed American security into dangerous hands.” Once more, “60 Minutes” primed grandmothers across the country to tremble in their chairs while thinking of dangerous subversives lurking in the dark corridors of American security agencies.

To make the case that Manning should have never received a top secret security clearance, “60 Minutes” interviewed Jihrleah Showman, who was a supervisor of Manning while she was deployed as an Army intelligence analyst in Iraq. She was responsible for providing some of the most dubious and vile testimony accusing Manning of disloyalty to America during Manning’s trial, and “60 Minutes” had her repeat this fabricated nonsense.

“60 Minutes” Trashes Manning’s Patriotism

Pelley asked, “Did you have any reason to doubt Manning’s loyalty to the United States?” Showman answered, “Yes.”

“I pointed to the patch of our American flag that was on my shoulder,” Showman claimed. “I said, ‘What does this flag mean to you?’ He said, ‘It means absolutely nothing to me. I hold no allegiance to this country and the people in it.’”

Next, Pelley asked, “How does he get a top-secret security clearance?” Showman answered, “That is a good question.” (Note: The U.S. military has been ordered by a court to use female pronouns when referring to Manning, but Pelley and “60 Minutes” apparently disregarded this when interviewing Showman.)

Showman claimed she went directly to a “superior” and informed this person Manning could not be “trusted with a security clearance. We can’t deploy him and he’s most likely a spy.” And, “60 Minutes” added that superiors maintained they could not lose someone with a “valuable top secret clearance.”

The biggest problem with this exchange, and the decision by “60 Minutes” to paint Manning as anti-American, is testimony during Manning’s military trial proves this is not true.

Showman similarly claimed at Manning’s trial she had said during a counseling session the “flag meant nothing to him, and he did not consider himself to have allegiance to this country or any people.” Yet, when Manning’s defense attorney, David Coombs, cross-examined Showman, Coombs made it clear that Showman never documented her fears of disloyalty in a written counseling form. In fact, she never put this

allegation of disloyalty in writing until after May 2010, when Manning was arrested for providing documents to WikiLeaks.

Showman previously had documented in “counseling statements” how Manning excessively consumed caffeine. She documented how Manning was “late to formation” and lost her “military bearing.” She even put in a monthly counseling statement a note about recommending him for the “soldier of the month board.” But she never wrote anything down about how she came face to face with someone with a top secret security clearance, who she thought was anti-American and disloyal.

This may be because Manning never said the thing Showman claims to have heard. Manning, according to Coombs, was talking about the problem of having “blind allegiance” to the flag. She said a person should not be an automaton. A person should have a “duty to all people regardless of their country.” Plus, no one else was present to witness this exchange so it is Showman’s credibility against Manning’s credibility, and she thus far has been allowed to make these statements in courtrooms and in public without the establishment dismissing her as a liar.

Additionally, it would seem if “60 Minutes” had reasonably adhered to their established framing, they would have accused Showman of failing to document Manning’s “disloyalty” so the military could stop her from releasing classified information.

“60 Minutes” Overlooks Manning’s Gender Identity Issues to Paint Her as a Lunatic Traitor

The program also highlighted an incident, where Manning lost control of herself and punched Showman. Her supervisor responded by pinning her to the ground.

This incident is presented as another signal Manning should not have had a top secret security clearance, but the problem is Manning was struggling with gender identity issues and the punching incident had nothing to do with Showman’s allegations of disloyalty. Captain Michael Worsley, a clinical psychiatrist expert and doctor who had sessions with Manning in Iraq, counseled Manning right after the punching incident and diagnosed Manning with gender identity disorder.

The show omitted the fact that Manning was removed from the facility where she was working when her security clearance was temporarily suspended after the punching incident.

Stunningly, “60 Minutes” called attention to the fact that Manning said she joined the military to “sort out the turmoil and mess in my life” in her enlistment papers, as if this is unusual. Working class Americans like Manning, who struggled to hold a job, lacked money to pay for college, and needed healthcare, are known to join the Army to help them straighten out their life. How many other people have written on their enlistment papers something similar and gone on to have exceptional military careers?

John Hamre, a former deputy secretary of defense who chairs the Defense Policy Board which advises the Pentagon, bluntly accused Manning of lying about her “mental health” on forms she filled out to obtain her security clearance. Yet, “60 Minutes” never points to what she lied about and the Army was well-aware of how Manning was struggling with gender identity disorder. Manning had multiple sessions with Army doctors, and the doctors were doing the best to treat Manning so she could keep her clearance instead of taking it away because she had mental health problems.

“We Have Spies in Our Midst”: Snowden Cast as an Infiltrator

Once more, Hamre and Pelley cranked up the fear for baby boomers in America:

Scott Pelley: Are there people today who have clearances and should not have them?

John Hamre: Yes, there are. We have spies in our midst. I'm convinced of it.

"60 Minutes" presented Snowden as an infiltrator, someone who not only was able to get away with taking massive amounts of classified information because the security clearance system failed, but who also manipulated the system so he could get closer to pilfering secrets.

Scott Pelley: What would you say is the greatest insider threat that we face as a result of the way these security clearances are done?

John Hamre: Snowden was an example of it. He moved into an enormously sensitive position. We control people at the gate and once we give them a credential, they're in the compound, we don't pay attention to where they are after that.

This statement about not "paying attention" to where people with security clearances are after they obtain them is hard to believe because since Manning and Snowden disclosed classified information to journalists the U.S. government has drastically expanded an "insider threat" program to monitor the activities of employees. It has reportedly encouraged government officials to treat potential leakers as people who intend to aid America's enemies.

"We've learned that Snowden's behavior raised concerns when he worked at the CIA," Pelley reported. "And when he left the agency, the CIA put a red flag in his file in case Snowden applied for another job. He did, a civilian job for the NSA where he stole the secrets. Snowden had found a simple way to beat OPM's review of his security clearance."

The show indicated it obtained an "internal memo" showing the OPM head had been warned by the OPM's Inspector General Patrick McFarland that Snowden's background investigation was "deficient in a number of areas." Yet, about a minute later, Pelley acknowledged the show knows little about these "glaring deficiencies" in Snowden's background investigation because files remain secret so the U.S. can prosecute Snowden.

In other words, "60 Minutes" parroted a phrase on television about "deficiencies," which has tremendous propaganda value for U.S. security agencies, and did not care whether these "deficiencies" are actually real or not.

"60 Minutes" Refuses to Reckon with the Whistleblower Motives of Snowden or Manning

Snowden has been open and forthright about why he provided documents on massive global NSA surveillance programs to journalists. For example, he came across a classified 2009 inspector general's report on the NSA's warrantless wiretapping program expanded during President George W. Bush's administration. He found the document while conducting routine work as a system administrator and believed it was illegal.

"You can't read something like that and not realize what it means for all of these systems we have," he told New York Times reporter James Risen. Also, "If the highest officials in government can break the law without fearing punishment or even any repercussions at all, secret powers become tremendously dangerous."

This is but one small example of the whistleblower motive Snowden had when he made the decision to disclose information the U.S. government had classified about secret surveillance programs. It is perhaps the most glaring defect in the "60 Minutes" segment.

At no point does "60 Minutes" reckon with the fact that it is presenting a national security state argument, which insists more should have been done to catch people like Snowden or Manning, who saw waste, fraud, abuse, and illegality, and decided to expose the information to the public. To add on extra layers of scrutiny directed against them inevitably means creating an increasingly chilly climate for potential whistleblowers. It means people who go through "proper channels" and hide their actions from superiors—because their complaints implicate their superiors—are treated as spies.

It does not reckon with how U.S. security agencies—bolstered by the U.S. Justice Department—have successfully blurred the lines between spies and leakers to the point where one's intentions do not matter anymore. Simply causing classified information to be published on the internet by a news organization, which happens every week, can be prosecuted as a violation of the Espionage Act by an "insider" if the government wants to make an example out of someone.

The show does not deal with the broad, catch-all term that "insider threat" has become. In a post-9/11 world, grandparents are now made to fear national security and military whistleblowers as much as individuals who go on rampages and kill innocent people.

This Edition of "60 Minutes" Might as Well Have Been Brought to You By Rep. Peter King

Finally, "60 Minutes" seems to have taken its framing from Representative Peter King, a vindictive and raving-mad member of Congress who is the author of DHS "insider threat" program legislation recently passed in the House of Representatives.

King has called Snowden a "traitor" and argued journalists like Glenn Greenwald, Laura Poitras, and Barton Gellman, who published stories about NSA documents, should be prosecuted. He has previously pushed for WikiLeaks, a media organization, to be designated a "terrorist organization" by the U.S. Treasury Department. The congressman wanted the Treasury Department to do this so the government could seize funds from the media organization and pursue anyone who provided WikiLeaks with "any help or contributions or assistance whatsoever." He has backed legislation to help the Justice Department crack down on leaks even more severely than the agency has already.

Last night's edition was in the tradition of a previous edition, where then-NSA director Keith Alexander was invited on the show to help the NSA tell the story about Snowden and NSA surveillance, which the NSA wanted to be told. It was aimed at making Americans fearful the government is not doing all it can to protect against infiltrators and lunatic government employees.

The program was exactly the kind of propaganda U.S. security agencies need Americans to believe to expand surveillance of government employees, dole out lucrative contracts to companies, and get away with expanding systems, which not only infringe upon constitutional rights but also violate confidential whistleblower communications when employees go through what officials refer to as proper channels to raise concerns about corruption.

November 14th - 'Any Alleged Discrimination Is Justified': Justice Department Opposes Chelsea Manning Growing Her Hair
by Kevin Gosztola (*ShadowProof*)

The Justice Department has moved to dismiss a lawsuit brought by Chelsea Manning against United States Army personnel at the military prison in Leavenworth, Kansas, for prohibiting her from growing her hair.

The department argues in a brief submitted to the U.S. District Court for the District of Columbia, "Any alleged discrimination is justified as substantially related to important governmental interests." These interests include "ensuring safety and security within a military prison environment."

Manning is serving a thirty-five year prison sentence at Leavenworth. She was convicted of offenses stemming from her decision to provide WikiLeaks over a half million U.S. government documents, which exposed war crimes, diplomatic misconduct, and other instances of wrongdoing and questionable acts by U.S. officials.

She sued the Department of Defense (DOD) and several DOD/Army officials because they will not allow Manning to grow her hair longer than the two-inch regulation, which applies to males in military prisons. The ACLU contends prohibiting her from growing her hair violates her Eighth Amendment rights by not permitting her to wear a feminine hairstyle and her Fifth Amendment rights, by depriving her of equal protection.

"I believe that defining ourselves in our own terms and in our own languages is one of the most powerful and important rights that we have as human beings," Manning declared, in response to the Justice Department's move to dismiss her lawsuit. "Presenting myself in the gender that I am is about my right to exist. What the government is basically telling me is 'you cannot exist,' that 'you are wrong,' and that 'you do not exist.' What they are doing is taking away our right to exist."

"I think this is the kind of situation that justifies all kinds of terrible things like ignorance, maltreatment, torture, murder, and genocide," Manning boldly stated.

She added, "You do not know my gender better than I do. A doctor doesn't know it better than me. My parents don't know it better than me. No one experiences my gender in the way that I experience it. Gender presentation should reflect the person that you are. When you lose control of your gender presentation, you lose an important aspect of your identity and existence."

The Justice Department maintained throughout its brief calling for dismissal that Manning "has not plausibly alleged that the defendants are actually aware that Manning's treatment is inadequate and yet are deliberately indifferent to that need." The officials are motivated by "significant" and "legitimate security, military, and penal concerns," which preclude any court from ruling officials are "deliberately" indifferent.

Attorneys took issue with Manning's comparisons to female inmates because she is not confined with female inmates. Manning is in a male facility, which has standards that do not apply to female inmates. It would pose a "significant security risk" and "undermine" Leavenworth's "important military mission" to allow her to grow her hair longer.

The court, the Justice Department argued, must show "substantial deference to military and corrections' judgments." Leavenworth's decision to discriminate against Manning and not allow her to grow her hair is "fully consistent with equal protection."

This decision is "intertwined with preserving core prison security and military values," which include "uniform treatment and good order and discipline."

Also, government attorneys maintained Manning's lawsuit was improper because she currently has not pursued claims of rights violations in a military court. She may raise these issues in a military court, as part of her appeal, but the federal court should not review her claims of discrimination.

Manning's ACLU attorneys filed her lawsuit on October 5. They argued growing her hair was part of treating her serious medical condition, gender dysphoria, of which she has been receiving medically necessary treatment, including hormone therapy.

On August 27, 2014, Dr. Randi Ettner, who is an "expert in the diagnosis and treatment of gender dysphoria," which Manning "retained," made the recommendation after a clinical interview that Manning should be able to "express her female gender through growing her hair" and have access to "other grooming standards and cosmetics that female prisoners are permitted." Hormone therapy was also recommended.

The military prison has already accepted that Manning should be able to wear female undergarments and "prescribed cosmetics." It is unclear how this would not present a threat to the good order and discipline of the facility in the same manner the Justice Department argues growing her hair would.

In a letter exchange published at *Shadowproof*, Manning shared, "I can't be myself. Every time I try to assert my existence or define myself on my own terms, I get beat up by the world. I'm really scarred, bloodied, and bruised at this point."

Chase Strangio, Manning's ACLU attorney, reacted, "The government is attempting to complicate and diminish Chelsea's core constitutional rights to be treated equally and to be free from cruel and unusual punishment."

"Chelsea's demand is simple: that she be treated with her medically necessary treatment and like all other women in military custody. Her fight is central to the pursuit for justice for transgender people and for those who are incarcerated and we are honored to fight alongside her," Strangio asserted.

11 Nov - Resisting the Animal Enterprise Terrorism Act

November 22nd to 28th is a National Week of Action against the Animal Enterprise Terrorism Act.

MORE:
by Amanda Schemkes, CLDC Staff Attorney
The Week of Action precedes the sentencing hearings of Tyler Lang and Kevin Johnson (aka Kevin Olliff) who have plead guilty to charges under the AETA for freeing animals from fur farms; Tyler's sentencing hearing is scheduled for December 18, and Kevin's is scheduled for February 8. As people plan events for the Week of Action and prepare to show support for Tyler and Kevin as they face sentencing, protest against the AETA must be accompanied by a discussion of how the AETA is crafted to stifle dissent—so as to prevent it from being a legislative monster-under-the-bed that actually has a chilling effect.

As many longtime CLDC supporters know, it was in 2006 that the AETA was passed into law and the CLDC began advocating and litigating to have the law found unconstitutional. The AETA was crafted by the American Legislative Exchange Council, a group of corporate power players who write pieces of model legislation that suit their interests, and then ALEC passes off the legislation to members of Congress. Many members of ALEC are part of the pharmaceutical, big agriculture, and other industries that exploit and kill animals for profit—industries that have a huge interest in stopping animal liberation activists from being effective. The AETA was also pushed by the Animal Enterprise Protection Coalition, which was started by

the National Association of Biomedical Researchers and is comprised of members of the animal testing, pharmaceutical, fur, ranching, animal entertainment, and other industries.

Prior to the AETA, the Animal Enterprise Protection Act had been in play since 1992, but the AETA expanded the AEPA to include secondary and tertiary targets (because of the infamous Stop Huntingdon Animal Cruelty—SHAC—campaign, which also targeted suppliers, financial supporters, etc. of Huntingdon Life Sciences, a notorious contract animal testing laboratory). The crafting of the AETA also exchanged the word "protection" for "terrorism"—a sign of the times in the post 9-11 era.

ALEC, AEPC, and the government are able to use their power to carry out their interests in deterring people from engaging in animal liberation activism because the government uses the label of "terrorism" with a lot of flexibility in order to be able to manipulate public fear based on its interests of the day, and this context left the label open for ALEC to apply it to the animal liberation movement. And so ALEC devised the AETA– legislation not meant so much for prosecuting activists (Tyler and Kevin are among only a handful of people who have actually been indicted under the AETA), but to conjure public fear of the animal liberation movement and deter people from even getting involved in activism, let alone have an actual impact on animal enterprises. The original draft of the AETA was actually the Animal and Environmental Terrorism Act and would have applied to environmental actions as well.

As people fight back against the AETA, the fight can't be waged in a way that simply gives more exposure to the terrorism rhetoric and of course we should not be astonished that a resistance movement would become the target of some of the tactics of government repression. The best way to combat such repression is to engage even more strategically and effectively in your activism—fear and paralysis is exactly what the government and industries are hoping for. The U.S. government, often in coordination with corporations, has a long and continued history of targeting all those who are political threats in attempts to silence stirrings of dissent and resistance. Becoming a part of that history should mean accepting a responsibility to fight for and with all who struggle against colonialism, imperialism, capitalism, and other intersecting forces that create and perpetuate the oppression of both human and non-human animals—rather than letting the State divide and destroy.

A spirit of solidarity in resistance should be the normative framework through which we view legislation such as the Animal Enterprise Terrorism Act. Every inclination to be astonished by labeling people as terrorists for opening cages to free animals should be met with the reminder that it's not about what people actually do, but how much what they do is a threat to the status quo—and being a threat to the status quo is a first spark of change. Every inclination to act like animal liberation activists are special for experiencing State repression should be met with the reminder that there are many movements and communities that have a deep history of repression that hasn't ceased—and that unbreakable bonds can be formed out of having each other's backs in struggle. Every inclination to consider abandoning work for animals should be met with the reminder that many don't have the privilege of escaping that which brings attention from the State—and attention from the State should teach us how important our dedication to each other is. Every inclination to feel powerless against the government and corporations should be met with the reminder that it is their goal to make us feel like that—and so it must be our goal to not let that feeling settle inside us, to not let it stop us.

Perhaps someday a legal challenge will mean that the AETA is no longer on the books, but real pushback has to come from multiple avenues, with one of the most powerful being for political movements to show the government and corporations that their attempts to label us in ways that leaves us vulnerable to intrusions from the State won't work to slow down movements. Even when we are fearful, we have to bring our focus and dedication back to why we are fighting. And at the times when our friends and comrades are taken from us and held far away, we have to show that will only motivate us to build our

strength together. The Civil Liberties Defense Center has attempted to be both attorneys and comrades in struggle. When people are locked in jails, CLDC lawyers can provide trusting attorney visits with those incarcerated. When they are charged with unconstitutional laws, CLDC lawyers fight in the courts as well as in the public domain to demonstrate injustice. Assert your rights, we've got your back!

17 Nov - Leonard Peltier and Public Displays of Art—The Government Taking Sides on Whose Paintings are Shown Stirs Up First Amendment Problems

An art exhibit, that includes works by Leonard Peltier, commemorating National Native American Month at the state Department of Labor and Industries building, in Tumbwater, Washington, is being dismantled in response to complaints received from cops.

MORE:
by Nicholas O'Donnell (*Art Law Report*)
An exhibition in Washington (state) that included art by a number of Native Americans, including Leonard Peltier, has provoked an outcry that may have Constitutional dimensions that went unconsidered. Peltier is a controversial Native American activist who was convicted of murdering in 1975 two FBI agents, Jack R. Coler and Ronald A. Williams. His conviction has long been a Rorschach Test for responses to Native American activism and the federal government's response—Peltier has strenuously insisted he is innocent, and the FBI has adamantly maintained he was properly convicted. This has now raised its head in the realm of the public display of art, and whether the government may, or should discriminate among artists. After an outcry about the inclusion of Peltier's art by a number of current and retired law enforcement officials, the Washington Department of Labor and Industries has announced that it will remove Peltier's paintings from the display that marked Native American Indian Heritage Month there, and has apologized. Yet regardless of one's opinion if Peltier's guilt or innocence, the government has stepped in a First Amendment quagmire when it made a public forum available for expression and then removed the expressive work of only one person because of who he is. The First Amendment, after all, acts to protect expression regardless of popularity, indeed, particularly so. It is hard to argue that his work was removed for any of the reasons that courts generally permit restrictions on speech in the various kinds of public forums. It remains to be seen whether Peltier will object on those grounds.

The full story of Peltier's notoriety has been the subjects of books and movies, but a quick overview will suffice to contextualize the current dispute over his art. Peltier was originally from North Dakota, of Lakota Sioux and Chippewa, descent, among others. After living in Seattle briefly, Peltier became involved with a number of causes championing Native American rights, and joined the American Indian Movement (AIM), returning to the Pine Ridge Reservation in South Dakota in around 1973. AIM quickly became one of the most prominent Native American activist groups, and the source of considerable controversy itself. AIM is best known for the occupation of the offices of the Bureau of Indian Affairs in 1971, seizing the Mayflower replica in Boston, occupying Mount Rushmore, and the armed occupation of the Wounded Knee historic site in the Pine Ridge Reservation in 1973 by the self titled Guardians of the Oglala Nation (GOON). Peltier was in jail on another charge at the time. The Wounded Knee event was followed by a period of intense violence within AIM, during which dozens of its members were murdered.

It was during this time that Peltier again returned to Pine Ridge. Pine Ridge is a place of intense and tragic beauty, no place more so than Wounded Knee (I took the picture above there in 1997). The shootout that killed Coler and Williams occurred on June 26, 1975. Peltier admitted shooting at the agents who were killed, but denied actually firing shots that hit them (they were shot at close range). Peltier was sought after events that included the recovery of Coler's handgun from a car that Peltier was driving and an AR-15 shell casing. Peltier fled to Canada, was extradited, and tried for murder in Fargo, North Dakota. Despite later disputes about the ballistic evidence offered and alibis presented by Peltier (and witnesses that placed him

at the shooting who later recanted), Peltier was convicted and sentenced to two life terms. Those convictions have been upheld in a variety of appeals, and Peltier's parole has always been denied. He is presently incarcerated in Coleman Federal Correctional Facility in Coleman, Florida.

Not surprisingly, the question of Peltier's guilt has been a hot button issue since he was convicted. Law enforcement officials are incensed at the notion that there is any dispute, while Peltier's supporters argue that the circumstantial case was based on deeply flawed foresensic evidence.

No one seems to have thought of any of this, remarkably, when Peltier's paintings were included in the Washington exhibit. After making the connection, retired FBI agent Ray Lauer gave an interview to the local television in which he called Peltier a "thug" and "an unrepentant cop killer." The National Retired Agents Association also formally complained.

A spokesperson for the Washington agency responded that the department "felt bad" and that the exhibition was not meant as an endorsement of Peltier's cause. In response to the complaints, Peltier's paintings will be removed.

Here is the problem: the government has a right to display, not display, or even destroy, art that the government owns. A case in recent years involving a mural in a government office in Maine underscored the point: when Maine's governor decided that he disliked the pro-labor message in a mural, lawsuits to stop him from doing so were unsuccessful because the government has the right to speak, or not to speak, a particular message. A choice to make or withdraw approval for a particular expression, whatever one thinks of it, does not infringe the free expression or speech of anyone else.

This is entirely different, however. The Maine mural belonged to the government. The Washington agency opened its doors to private individuals to showcase their expressive content. This is what First Amendment lawyers call a "forum," and what kind of forum it is drives many First Amendment cases. First, there are "traditional public forums." Traditional public forums include public parks, sidewalks and areas that have been traditionally open to political speech and debate. These forums enjoy the strongest First Amendment protections. The government may only impose content-neutral restrictions as to time, place, and manner of speech (only during daylight hours, no amplification, etc.), it may not engage in viewpoint discrimination (no pro-war speech, no anti-war speech). Any restriction of speech in such a forum will be reviewed with strict scrutiny and will survive only if it serves a compelling state interest.

Next, there are "designated public forums," in which the government opens public property for expression that is not ordinarily a forum for public expression. The government may close a designated public forums at any time, but so long as it is available, it must be content neutral in the same manner as a traditional forum.

Lastly, government may limit access to a "limited public forum" to certain kinds of expression or speech. Even though the government may discriminate against certain classes of speakers, it still may not discriminate based on viewpoints.

If the Native American Heritage exhibition is anything other than a limited public forum, then removing Peltier's art from the show seems to be a cut and dry First Amendment violation. If the agency is a traditional public forum (probably not), there is no question that removing one artist is not a neutral time, place, or manner restriction. If the show were a designated public forum, the government's only recourse is to close the whole show so that there is no speech, not remove one speaker. So in either case the government's actions could not survive review, certainly not under strict scrutiny.

What about if the show is a limited public forum? It's plausible the government could argue it was restricting one class of speakers—convicted murderers—so long as it applied that restriction evenly. Yet the only "class" of speaker in the show on its own terms was that of Native American artist. Peltier is clearly still that regardless of what happened at Pine Ridge in 1975. Inventing the category of restricted speaker for exclusion only after the fact does not pass muster.

If one thinks of a similar hypothetical, the problem is easy to see. Assume Government Agency X wanted to honor Veterans Day, and put up an exhibition of paintings by veterans. After one of the paintings arouses controversy as either critical or supportive of some military decision, the government removes the painting but does not restrict any of the other veterans' works. In colloquial terms it is flagrant censorship. In First Amendment terms, it is viewpoint discrimination, and it is not allowed.

Peltier is, to many, an unsympathetic figure, particularly with law enforcement. Their revulsion at celebrating Peltier is not hard to understand. To many others he is a symbol of prosecutorial excess. Whatever one's opinion about him, however, arguably the most consistent thread in First Amendment case law is that the right exists precisely to protect those with whom the government disagrees or finds unfavorable. From here it looks like the State of Washington has neglected to do just that. Whether anything comes of it will be interesting to watch.

November 18th - 2015 Leonard Peltier Holiday Gift Drive

Send children's winter clothing, toys, and school supplies. Please only send new items for children of all ages.
Pine Ridge Reservation:
Holiday Gift Drive
c/o Paul Waha (Shields) Peltier
Post Office Box 646
Pine Ridge, South Dakota 57764

Turtle Mountain Reservation:
Holiday Gift Drive
c/o Anthony Peltier
Post Office Box 2395
Belcourt, North Dakota 58316

Or make a monetary donation:
Holiday Gift Drive
Indigenous Rights Center
202 Harvard SE
Albuquerque, New Mexico 87106

Or donate securely online at indigenousrightscenter.org

15 Nov - New Poem and Request from Jalil Muntaqim

Here is a request from Jalil Muntaqim as we begin his parole campaign for his hearing in June 2016.

MORE:
Jalil would like people to contact Tavis Smiley and request that he interview Ward Churchill about Jalil's book *Escaping the Prism*. tavis@tavistalks.com and www.facebook.com/TavisTalks

He would also like people to contact Amy Goodman and request that she interview Jalil at Attica: 212.432.9090 www.democracynow/contact and www.facebook.com/AmyGoodman.DemocracyNow/

Jalil will be going to the Parole Board once again in June of 2016, and he would like to form our own media campaign to counteract the PBA propaganda around his case.

Of course, he is officially known as Anthony Bottom #77A4283, so that should be included when contacting Tavis Smiley and Amy Goodman.

November 15th - Apartheid Attica

Nestled in the upstate New York rural
community, stand grey walls and ominous
gun towers, inside 24 hundred souls
captured and confined.

Marching two by two, 40 strong,
escorted by club wielding
guards enter a messhall, a sea
of Black and Brown faces, under
camera surveillance and controlled,
by the threat of club wielding
automatons.

The Administration is colorless,
in fact, non are Captains,
Lieutenants or Sergeants.

1863 The Emancipation Proclamation
Not in Attica.

Apartheid Attica!

Banning of books keeping in
the dark, truth denied by law
law disguised as truth, the
captured and confined lost
and confused, trying to teach,
an elder deemed a threat by the
powers that be.

1865 The 13th Amendment Ends Chattel
Slavery and Involuntary Servitude,
Not in Attica.

Apartheid Attica.

Solitary confinement, brutality
and beat downs—prisoners
toe the line doing the time
for being Black in America,

the legacy of slavery, Black
Codes and Jim Crow.

Do Black Lives Matter?

1868 The 14th Amendment gave
Equal Protection
Due Process and
Liberty Interest,
Not in Attica.

Apartheid Attica.

No life skills education or training,
no computer literacy, no automotive
engineering no Bachelor or Master
Degrees, wonder why recidivism is
high, STEM only a Dream.
1965 Brown v. Board of
Education ending school
segregation, yet here the
curriculum is like the 1960's.
Yes, here in Attica.

Apartheid Attica

Paroled to a community, if paroled,
void of any understanding when the
system is a lie. There is no correction
when the problem has not been defined.
Rehabilitation we all decry, but we
know the system can not provide.
No transition absent the conniption of
the friction of the return of the
reborn Sons.

1965 Voters Rights Act, but today
there is a roll back, like a
hijack, not unlike the pipeline
from school to prison. Where is
the community's derision?

Right here in Attica.
Apartheid Attica.

Calling for Boycotts, Divestments
and Sanctions for the closing of
Apartheid Attica!

"We will not be driven like beasts,

We are Men!"—L.D. Barkley September 1971.

16 Nov - Robert Seth Hayes Urgent Medical Update

Seth is grave medical condition and his condition is worsening.

MORE:
Seth's has had many close calls with code blues concerning low blood sugar with his mismanaged diabetes. His diabetes has never been under control nor has he seen an endocrinologist, but now Seth faces now more pressing issues with a cough and breathing difficulties. Since the beginning of this year Seth has not gotten the proper diagnosis or treatment for his breathing difficulties. Seth also has swelling in his feet, thighs and entire legs. These conditions combined make everything from walking to talking extremely difficult and exhausting activities for Seth. Seth passed out from shortness of breath and sudden disorientation on Saturday. Because of this medical reality Seth is unable to attend college which he had to personally pay for. Seth is requesting a wheel chair and any other reasonable accommodation for his current condition. Seth cannot sleep with his shortness of breath and cough.

We are asking that Seth be immediately brought to a Pulmonary and Heart Specialist to address his cough, swelling legs, and breathing difficulties. That secondly the facility stick to the medical plan given by this specialist.

We also need people to call and fax Dr. Koenigsmann and Nancy Lyng in Albany to demand that Seth be immediately brought to a Pulmonary and Heart Specialist to address his cough, swelling legs, and breathing difficulties. That secondly the facility sticks to the medical plan given by the specialist. We also are asking that Seth be given a wheel chair and any other reasonable accommodation for his medical needs. We also are asking that C.O. Slater be prohibited from accompanying Seth to the clinic in the future. This is attempted medical murder of one of our beloved freedom fighters and we must do everything possible to help Seth at this time.

Superintendent Keyser at Sullivan: 845.434.2080
Dr. Koenigsmann: 518.457.7073 (phone) and 518.445.7553 (fax)
Nancy Lyng: 518.445.6176

November 17th update
Thank you to everyone who called, wrote and faxed for Seth!

Seth was taken to an outside hospital (Albany Medical Center) on Sunday morning unbeknownst to us and we have received confirmation that he is alive and undergoing tests.

Though we have not heard directly from Seth, we are are going to call off the call in campaign for now until we find out the results of these actions. We are hopeful but not naïve. We are so thankful for people's vigilance and we will keep you abreast of the situation as it unfolds.

Seth's lawyer is working assiduously, making phone calls to both Sullivan and Albany Medical Center to see if his wife Sheila can visit him or at least speak to him or to a nurse over the phone about his condition.

We know ultimately Seth needs to come home to get healthy. Prison life is not meant for health. He goes to the parole board in June 2016 for the 9th time, not including other parole appeal denials in between the two year hits.

Being outside prison, Seth could receive true medical, family, nutrition and other related aspects of life that can contribute to the immense healing process that is needed.

Thank you again. As soon as we have more information, we will let people know immediately.

November 21st update
Seth's wife Sheila said that he is now back at Sullivan Correctional Facility from Albany Medical Center. He was in ICU at Albany for two days, then in the general prison ward.

Seth had a huge buildup of fluid in his lungs, which has now been relieved. Will send more details as soon as they are available.

November 22nd update
Seth said he is doing much better. He is in good spirits. They took a cat scan of his heart, lungs, blood tests.

Seth said they said there was no heart problem or lung infection; he said it was just the build up of fluids. I asked why the fluids built up but he said the main adjustment they gave was to his diabetes treatment. They changed his medication, and amount.

They put him on anti-clotting meds because he was just laying down in the hospital for the entire week, so his breath is much better but he has to build up to walking longer distances and exerting himself again, because small amounts of exertion still put him out, but he is excited to start building up strength with the way he feels now.

He of course was unhappy with how long it took and the complications that could have been avoided had they taken care of it earlier, and not being able to call out while in the hospital, but he is in good spirits, happy to have that problem looked at how he feels now.

17 Nov - Support political prisoner Zolo Azania

The following is an open letter written by Zolo Azania as he prepares for eventual release.

MORE:
This is an open letter requesting your help to garner support for my plight. i am currently serving a fourteen (14) year sentence for class B-robbery. i have less than 15 months left on the sentencing judgment. i have completed previously a sixty (60) year sentence. My first twenty-seven years and three months was spent on death row in Indiana. i want to be moved into some type of viable program or positive position for these last few months so that i can effectively earn credit time and additional life skills in preparation for my eventual reentry into the community. i have been held in continuous confinement since August 11, 1981, and i will need more quality time in the reentry program than someone who has served only two (2) or three (3) years, for example.

In 1967, the Indiana General Assembly enacted a statute (law), which allowed the development and implementation of a Work Release Program in this state. The purpose of the Work Release Statute is to permit qualified applicants committed to the DOC to participate in a program in which the participant resides in or near his or her home community and is allowed to secure gainful employment or to further educational goals prior to actual release from prison. This type of habilitative or rehabilitative program was expanded in recent years to include a Pre-Work Release Re-entry program as well. The staff people are charged with the duty of assisting people like me in making the transition or re-entry to the community with some type of financial self-reliance.

i meet all qualifications for these programs. The crux of my genuine complaint is this: Each prisoner's success is dependent upon his or her own initiative and ability to practice a high level of personal responsibility. i have properly done just that, and i continue to do the same. i have continued to do everything i am supposed to do under the sun necessary to work my way out of prison, but these prisoncrats always overlook my achievements. i am being held in a dormitory setting outside the Indiana State Prison walls. This is not a true minimum security facility. It is also illegally overcrowded; both the ceiling and floor are not strong enough to carry the extra weight of steel bunks, cabinets, and humans stacked on top of one another. Recently, in 2013, an electrified, barbed wire chainlink fence, topped with coils of razor wire was erected around the building here. I.S.O. not only has a fence around it, but the back of the outer perimeter is marked by a thirty-foot wall and guntowers! This brick building is a two story dormitory with a prisoner population of more than 380.

A minimum security assignment constitutes an assignment of a convicted person to a work release center or program, to intermittent service of a sentence, or to a program requiring weekly reporting to a designated official. Moreover, an assignment to minimum security need not involve a penal facility. It is just unconscionable to think these DOC officials can go and do anything they want to confine people in a condemned, overcrowded building because they want more taxpayer money for each bed filled with a warm human body. i would like for you to contact Indiana DOC officials and voice your concerns. i want to be transferred from this place to a real minimum security facility.

Please call to Indianapolis at 317.233.5541 or 317.232.5755, www.in.gov/idoc

29 Nov - Black & Pink Holiday-Card Writing

WHAT: Holiday-Card Writing
WHEN: 2:00pm, Sunday, November 29
WHERE: Bluestockings - 172 Allen Street, New York, New York 10002
COST: FREE

MORE:
Black and Pink will gather with the Queer Detainee Empowerment Project (QDEP) to make holiday cards for trans and queer prisoners. Join us to write holiday cards to help alleviate some of the isolation that occurs while in prison.

3 Dec - Honoring Oscar Lopez in East Harlem

WHAT: Film Screening & Panel Discussion
WHEN: 6:00-7:30pm, Thursday, December 3
WHERE: El Museo del Barrio - 1230 Fifth Avenue New York, New York
COST: Free (donations accepted)

6 Dec - Send Love Through the Walls 2015

WHAT: Send Love Through The Walls Holiday Card-Writing For Political Prisoners
WHEN: 4:00-8:00pm, Sunday, December 6th, 2015
WHERE: 263 Eastern Parkway, Apartment 5D (Direction Below) phone: 718.783.8141
COST: FREE (Donations to cover the cost of stamps greatly appreciated)

MORE:
In what many prisoners have told us is their favorite event of the year, Resistance in Brooklyn and NYC Anarchist Black Cross again join forces to bring you the annual holiday card-writing party for U.S. held

political prisoners, prisoners of war, and prisoners of conscience. This event is always a lot of fun, the food outstanding, the camaraderie lively, and the handmade cards flat out amazing. This year will be no different. So plan to bring your friends, your creativity, and a healthy appetite. We'll have updates on the pp/pow campaigns as well as paints, markers, crayons, and envelopes.

Directions:
Getting to 263 Eastern Parkway is simple:
From the 2/3/4/5 or Franklin Avenue Shuttle:

Franklin Avenue Stop: Walk west on Eastern Parkway (away from Franklin Avenue, toward Classon Avenue). We're about half a block down on the north side of the street. When you go into the building, take the elevator to your left.

For more information, contact:
Resistance in Brooklyn– resistanceinbrooklyn07@gmail.com
NYC Anarchist Black Cross– nycabc@riseup.net

7 Dec - No Separate Justice! Vigil

WHAT: Vigil
WHERE: Metropolitan Correctional Center (MCC) - 150 Park Row, New York, New York
WHEN: 6:00-7:00pm, Monday, December 7
COST: FREE

MORE:
All are welcome. We have plenty of signs to share. DIRECTIONS TO THE VIGIL: The closest subway to MCC is the 4, 5, or 6 train to Brooklyn Bridge. Walk up Centre Street to Foley Square and look for Pearl Street which is in between the two huge federal courthouses on Foley Square. Walk down Pearl Street one black to where it dead ends on Park Row – our vigils take place there on the corner across from the entrance to MCC.