

“**D**ey, wake up. You have court today”. Finding myself locked up in county jail again is bad enough, but having the jailers wake me up on the morning of sentencing is somehow extra humiliating.

With a past distinguished by deviance, ironically my crimes of yesteryear dwarfed those of the present, but that didn’t matter in this era of drug war justice. I was not much of a criminal anymore. I had become addicted, not so much to drugs, but to the lifestyle of easy money, free dope and loose women.

To me, in my skewed way of thinking, drugs were not a big deal – simply a way to have fun. Unfortunately, Sacramento’s law enforcement community did not share my enthusiasm to get high. Though my involvement in the local drug industry barely even registered in the scheme of things, I had become a man trapped by his own past.

Still in my prime at 33 – this being Sacramento, California in May of 1999 – ‘three strikes and you’re out’ had me entombed like an enemy of the state. California’s three strikes is by far the toughest version of this controversial law in the nation. Those who have two or more serious or violent convictions are eligible for a sentence of 25 years to life for ‘any’ third felony, no matter how minor.

In my weaker moments I tried to convince myself this was not real, wanting to see the friendly face of my mom in the morning, not a deputy sheriff. Instead, because I had been found guilty of possessing and transporting methamphetamine and marijuana – a felony and a misdemeanour – I faced 25 years to life in prison. While not my first rodeo, this would likely be my last.

“Go to hell you fucking pigs”, I felt like saying when the jailers woke me up. But my fight is not with the deputies, who do not respond well to disrespect. “Yeah, I’m awake”, is what I said. The cops, from the safety of the control booth, heard me through the intercom but did not reply.

METAMORPHISIS

Being sent to prison with a life term is like being buried alive, a form of social death. The individual is removed like a malignancy to make society healthier. But society is not some vague thing that does not feel absence. Comprised of our families, friends and loved ones, the pain at our removal

is more acute because we are not really dead. Imprisoned, we can no longer go home at night, hug our mothers or have meaningful interaction with those we hold dear. In practical terms, we are deceased.

For a very few, and 'we' know who we are, all we want to do is die well. By staring down our executioners we let our enemies know we are not afraid. Since unchecked fear is almost worse than death, strength under fire is power without equal. After three months of undergoing the indescribable rigors of a three strikes prosecution, all I wanted to do was bring this abominable manifestation of American justice to a conclusion.

During these three months, under the shadow of spending the rest of my life in prison, I determined to learn everything I could before my exile to the penitentiary. Choosing to represent myself provided an opportunity to take a crash course in criminal justice. With the heart of a gunfighter I would go out in a blaze of glory, but I would be shooting from the lip, not the hip. Rather than allowing the administrators of draconian justice to cast me aside like a piece of societal trash, I chose to redefine the parameters of my departure.

Nietzsche had it right when he wrote: "That which does not kill me, makes me stronger". No matter how hopeless the situation or crippling the pain, transcendence is made possible through tenaciousness. Being a warrior at heart, I would go out in the appropriate fashion: on my shield. Walking proudly into death's chamber, I would make my own miracle by finding resurrection in the exercise of execution.

The jailers woke me after my late night of reviewing various aspects of three strikes, sentencing procedures, and my ideological position of absolute defiance. My mind raced with nervous anticipation as I calmly washed my face and brushed my teeth. While gathering various legal notes and documents arranged before falling asleep, life's memories flashed before my eyes. With a heavy-heart my kinfolk came to mind. They would be in attendance for the family gathering from hell. Parents should not have to see the life of their only son come to an end. Mixed emotions and memories long forgotten swirled about as I prepared to say goodbye. "Any last words, sir?", asked the phantom executioner. "Mom, I love you".

This day was inevitable. I had spent the last seven months in a pod – a two-tiered housing unit containing 30 to 40 two-man cells – where the stream of those eligible for a life sentence seemed to have no end. The jail itself is an eight story, three strikes super jail. Seeing them come and go, I

realized my turn had arrived. With the game on the line and the count full, I would take a final swing.

My resolve stiffened like the rock-hard jail bed on top of which I sat and waited. Knowing the path to resurrection passes through death's door, I had to die well. Since I still harboured a glimmer of hope that the judge would hand down a sentence proportionate to the crime, the task at hand was all the more difficult. Man's will to survive is unmatched in nature. No one in his right mind wants to die – I didn't.

‘PRO PER’

Once I expressed my desire to represent myself – known as going ‘pro per’ in the legal community – Judge Roland Candee of the Sacramento Superior Court repeatedly tried to convince me to take another lawyer. I would not listen – I had grown weary of a passive role while officers of the drug war judiciary droned on in their pre-programmed vernacular. After being convicted, with nothing to lose and everything to gain, I had things to say as well. I waived my right to counsel.

When prisoners represent themselves in a post-conviction matter, the appellate courts are required to afford them wide latitude. For non-capital prisoners, appointment of counsel only extends to a one-time review of the transcripts. Since due process guarantees that prisoners will be afforded the opportunity to litigate their claims, the courts are forced to generously apply their skill and expertise to make sense of poorly written appeals by semi-literate prisoners. This is called ‘liberal construction’.

Trial courts are much different. They are under no obligation to liberally construe anything – ‘pro pers’ will be afforded no leeway whatsoever. A criminal defendant had the constitutional right to be represented by counsel – whether or not he or she has funds – at every stage of the proceedings, including sentencing. Judges have little patience for defendants who waive their right to be represented by an attorney. Considered a menace in the eyes of the court, ‘pro pers’ tend to waste scarce judicial resources fumbling to make a point or arguing motions with questionable merit – offences real attorneys would never commit.

During my short tenure as a lawyer with a fool for a client, I transgressed on a myriad of levels. In my month practicing law without a license – or any training whatsoever – I failed miserably to move the court on a number

of issues. The judge must have envisioned a circus as he brushed aside my arguments. Despite being college educated, an experienced activist and a published writer,¹ I did not have the necessary legal experience to impose my will on an unsympathetic judge who made short work of my litigious efforts.

Judges want to see remorse, not attitude. I had none of the former and plenty of the latter. While being more or less guilty of the drug crime, I fixated on what I perceived as an unfair trial and a punishment that far exceeded the severity of the situation. Because I faced a life sentence for the relatively inconsequential act of driving down the road with drugs in my vehicle, I generously shared my displeasure with the courts by holding the entire system in contempt.

While I could have been more tactful in my legal manoeuvres, I simply did not care anymore. All this had gone on long enough. Any chances I had to pull on Candee's heartstrings and convince him I fell outside the spirit of three strikes were abandoned during numerous passionate disagreements leading up to sentencing. My fate had been sealed and I expected the judge to do his worst – he would give me no quarter.

Though my legal performance fell well short of the mark, psychologically I felt I had chosen the correct tactic. After months of intense stress and making everyone miserable, including myself, I had control of my destiny again. Finally, I had a chance to comprehensively express my opinions about three strikes, the war on drugs and what I thought of those who pounded the pulpit of prisondom. Sick and tired of being a prisoner, my metamorphosis would begin today.

Refusing to go out in a manner of my enemy's choosing, I took a path less traveled. That day I took the high ground.

BEHIND ENEMY LINES

For those locked up in the county jail, getting ready for court is like preparing for a day of torture. "Welcome to Abu Ghraib, enemy combatants. This is the war on terror, resistance is futile". Deemed incorrigibles, it is do exactly as they say or suffer instantaneous police brutality.

One of the primary duties of the deputy sheriffs who operate the Sacramento County Jail is to ensure the multitudes of defendants are transported to court on time. They accomplish this task through fear of

force. By virtue of the sheer volume of defendants created by the lock 'em up methodology, people are herded and driven like cattle to the nation's courts on a daily basis. Just like the jailers at Guantanamo Bay – or even Nazi death camps – domestic agencies of law enforcement hone their skills through institutional dehumanization.

Regardless of the nature of our crimes, we are still people. Since no one likes being treated badly by a perfect stranger, the end result is 'us against them'. They hate us and we hate them right back. It is a vicious cycle and both sides do their part to keep it going. This unwritten detestation results in fierce beatings of individuals like Rodney King as well as prisoners in places like Pelican Bay or Corcoran by out of control cops and guards.

Other than failing to embrace sobriety, what fuelled my anger was how I could have avoided this whole ordeal. After posting bail and being out for 10 short, stress filled days, I was railroaded right back into custody – not because of my current drug offence, but because of my past. Having been a fugitive before – and it's no fun – I still wish I had jumped bond. Living a life on the run would have better than being punished for crimes for which the time had already been long since served, buried alive by my addictions.

Being transported from the jail to court is something I would not wish on my worst enemy. Conditions at the jail are intentionally made so deplorable, the trip to court so agonizing, that defendants become anxious to plea-bargaining away their right to trial – prison being slightly more tolerable than jail. After going back and forth to court enough times, many will agree to anything just to make it stop.

On the day of court, they wake up the accused at the crack of dawn. They do so over the intercom right after breakfast, which comes even earlier. From this moment onward, the defendants are herded from one holding area to another, eventually chained together like a road gang.

We are packed sardine style into a small transportation vehicle. Sitting shackled inside a cargo van or bus, all too easily calls to mind a coffer of slaves chained together in the bowels of a slave ship. Along for the bumpy, shackled ride from the jail to court, those accused of crimes both small and large – while suffering from various levels of shock and desperation – are frequently depicted by filmmakers. But pictures cannot capture the utter helplessness such ceremonies of oppression inflict on the psyche. The hollow, empty and frightened look of these prisoners is something I will never forget, especially the reflection of myself glimpsed in the window.

SHOW TIME

Seeing no need to wake up my cellmate, I quietly conduct my affairs within the nine-by-nine confines of my concrete coffin. On numerous occasions I had shared with him my enormous anguish. As if others did not have their own problems, at one time or another I shared with whomever I could trap into listening to how I felt. That is what we do in jail, we bellyache. We become a community of complainers. With my stress level through the roof, I spent hours discussing convoluted constitutional theories with often toothless, tattooed semi-literates who probably thought I had gone insane. Yet I loved them all for putting up with me. Their kindness in a time of difficulty inevitably helped me prepare for my dissertation of defiance.

“Good luck, Eugene. Give ’em hell”, my celly said from the warmth of his jail bed. “You can count on it”, I assured him, genuinely appreciating his support. In this horrible little cell, the poor guy had listened to me drone on and on for weeks. “A walk through the park, bro. A piece of cake”.

As is so often said, “one cannot judge a book by its cover” – this is especially so in my case. Everyone in the pod thought I had nothing about which to worry. They assumed because of my boyish charms, college education and contractor’s license, not to mention writing credits, that any judge would automatically show leniency. But this book had become a dark opus in the eyes of the judiciary. Though significant minorities of non-serious three strikes defendants were getting non-life sentences in Sacramento, I knew that I would not be among them.

In order to secure such a deal, a defendant would have to sit ‘quietly’ in the jail for a year or more – in some cases many years. These deals usually involved something along the lines of six to eight years, with a minimum of 80 percent of the sentence to be served. This is called ‘striking a strike’ in the interest of justice.

Such tactics of delay are common when an acceptable deal is not immediately forthcoming. One basically clogs up a court’s calendar, which usually relies on plea bargains to move defendants along in an expeditious manner. The prosecutor and judge, in their overworked state and facing constitutional time limits, simply have to offer deals to clear their caseloads and make room for the next wave of defendants. In order to secure a favourable deal, one must be willing to rot in jail for as long as it takes. I

will not begrudge someone a chance to secure a lesser sentence, but I would not employ such a tactic. Exercising my right to a speedy trial, I determined I would not volunteer to be held indefinitely in this wretched gulag. Either I would beat the case outright or take one right in the heart. Since my fate had been sealed, I prepared to go out with my dignity intact.

As I stepped out of the cell, a flood of emotions kept me in an over-stimulated state of jittery anticipation, buttressed by an inability to relax. Thoughts, memories and regrets played games with my tired mind. For a lifetime of failing to completely conform to the norms of the majority, I would be removed from the land of milk and honey – exiled to a factory that produces hatred, hopelessness and subjugation. Welcome to hell. “Good luck Eugene. I’ll be praying for you”, yelled out a guy I befriended in the jail’s 12 step, chemical dependency programs.

This pod had a rather large contingent of similarly situated unfortunates facing life sentences for minor transgressions, in addition to the regular assortment of deviants from every criminal category imaginable. Sharing the common bond of targeted elimination, the enslaved collective showed their support and solidarity for a comrade about to suffer permanent incapacitation. I had given similar salutations on many occasions. Every time I meant what I said and I knew they did too.

“Thanks bro”, I said while smiling, raising my fist in a show of strength. God had a lot of friends in jail and I even feigned a half-hearted foxhole conversation. But the extent to which I would go to appear worthy of a break only went so far. “Prayers ain’t gonna help me now, bro. No worries, I’ll be just fine”.

While I sat in the dayroom, occasionally someone appeared to give me a nod or a wave through the small glass window in the door of his cell. Never before had I felt more alone: like David going up against an army of Goliaths. Except for the handful of us going to court, the dayroom was empty – and none in my shoes. Months of suspended free fall had turned fatal as my chute failed and the ground was coming up quickly.

The silence is deafening. I had never really understood what that meant until now. In our post-slumber states of quasi-consciousness, this pre-court session of tranquility is the quiet before the storm – like being on the freeway just before the morning rush hour begins. Regardless of our personal circumstances, while sitting in that dayroom where 20 or 30 prisoners at a time later play cards, use the telephone and engage in conversation, the

bigger picture did not escape me. This demonstration of American justice played out on every working day of the year, in every county jail in the country: forever.

DEAD MAN'S WALK

As if on signal, like a pack of Pavlov's dogs, we all responded to some sound, a click of sorts, made by one of the deputies over the intercom, then off we went to the control booth to confirm our identities. Once they – the button-pushers, turnkeys, and gatekeepers – decided they have the correct assemblage of unfortunates, it is off to the elevator for the contemporary drill in psychological torture.

Incrementally, each stage takes us that much further away from the familiar surroundings of the pod and into the waiting arms of the machinery with which justice is administered in Sacramento. "Hurry up and wait" is the program from here on out as we undergo a series of moves from tanks and cells of various sizes, shapes, and degrees of separation. "Hurry up and move when we tell you, dirt bag", are the marching orders, balanced by "Hurry up and shut up" – and they mean it too.

Despite my anarchist disdain for the nation's drug laws, the necessity for law and order is not lost on me – it should be used to protect those unable to protect themselves. In my youth, I had been in real trouble and understood the consequences of criminal misconduct. I took my chances. Sometimes I won and went home. Other times they won and I went to jail. After a four-year spree of outlawry, I served a sentence of six years on 12 and deserved it.

"Dey". "Yeah, right here", I said from one of the jam-packed holding pens in the courthouse. "You have court in department 17 with Judge Candee", said one of the two escorting deputies. For potentially volatile occasions, like when a jury is done deliberating or when someone is to be sentenced, they come in pairs. "It looks like you're being sentenced". "Excellent", I thought to myself. Having already made the metamorphosis, I disregarded the furtive looks by my fellow defendants at the deputy's confirmation of my fate. My nerves were steadied, and face emotionless.

Neither mad nor sad, I willingly allowed my captors to place restraints on my wrists for the mind-bending walk through the labyrinth-like corridors

of the courthouse. I had made this trip many times during my sham of a trial, and the kangaroo court hearings before, during and after. While technically a public building, the trails we blaze are beyond the view of non-court personnel. As we make our escorted sojourns through the underbelly of the building, we become a silent symphony of defendants under guard – to and fro we go like patients in an asylum.

“Are you being sentenced?” said the deputy who, by departmental policy, kept a hand on one of the restrained appendages while his partner backs him up from a few feet away. “Absolutely”, I say casually, as if unconcerned. “What’s the charge?”, good cop asks while bad cop appears uninterested. “It’s just a drug charge. But it’s a third strike, so I’m facing a life sentence”. “Serious? I thought they already changed that”, he said, appearing genuinely confused by my dilemma.

That is the point I have been making for years (Dey, 2004a)² – and why I will never quietly accept my punishment. Three-strikes had been sold to the public as a way to target those who murder, rape and molest. Even though these deputies do this everyday, seeing a decent looking, well-mannered guy about to get life for drugs did not make a lot of sense on the face of it. Yet here I am, under escort by my death row deputies.

It made perfect sense to me. Going into court with the weight of the world on my shoulders, I knew that justice had become my enemy. “I’m not trippin’”, I say, as if I knew something they did not. “Judge Candee can go right ahead and strike me out for all I care. This law and order crap isn’t going to go on forever”.

Taking a second for my words to sink in, regardless of the initial confusion my individual situation created – believing in what they do, this being their profession – both looked at each other and grinned. Inside I laughed while outwardly holding my head up high, peacock proud. Preparing to go out like a gunfighter, I could not care less what they thought.

Despite their professionalism and politeness, my escorts are from the wrong side of the tracks – going to all the wrong schools. While I am no angel, for all practical purposes I am not the devil, either. Ever since three strikes dominated the national debate on crime and punishment in 1994, I have vigorously participated in the discourse. I have argued it at every level – in the media, at the university and now for my life.

I am a warrior.

IN MEMORIAM

Through the process of being sentenced to 26 years to life I metastasized into a political prisoner. While challenging Judge Candee to do the right thing, it became obvious he did not have the strength to break ranks. My conscience, however, is crystal clear. I died well. All the while, reforming California's three strikes methodology, like the death penalty and the drug war, has proven to be an impossible task. In 2003, the Supreme Court held that giving life sentences to minor offenders does not run afoul of the Eighth Amendment of the United States Constitution, that prohibits cruel and unusual punishment (*Ewing v. California*, 2003; *Lockyer v. Andrade*, 2003; see also Dey, 2004b).

Further, in 2004, California voters rejected a hotly-contested, state-wide ballot initiative that would have granted relief to thousands of non-violent three strikers (Dey, 2006). As a human being serving a life sentence for a non-violent drug crime, I argued in favour of the three strikes initiative for my hometown newspaper (Dey, 2004c; Poochigian, 2004).

Taking the pro-side of an editorial debate against a state senator – a Republican, no less – resulted in numerous attacks from the proponents of heavy-handed justice (Scully, 2004; Lundstrom, 2004). My booking photo mysteriously appeared in an array of mug shots used in a last minute television campaign designed to scare, not enlighten, the electorate (Furillo, 2004; Dey, 2004d). Fear is a powerful political tool.

My sojourn has now entered a second decade. As of May 2009, ten years later, I continue to fight the good fight. Winning cases for fellow prisoners does take some of the sting off of an unjust life sentence.³ Rejecting the mindset of the institutionalized “lifer”, I regularly chronicle the inequities that flow from the Golden State's vast penological landscape.⁴

Litigating a myriad of topics in the courts of appeal, public opinion and now academia, I am fully engaged. I am alive.

ENDNOTES

¹ See Dey, Eugene (1994) “Three Strikes: A View From Inside”; Dey, Eugene (1994) “Education is the Key, Even For Prisoners”, *San Francisco Chronicle* – May 23; Dey, Eugene (1994) “It Would be a Crime to Cancel Learning Time for Prisoners”, *Christian Science Monitor* – May 31. These pieces, among others, led to an offer

to work with the Prisoner's Rights Union once I complete my prison term. From 1994 to 1996, I served the PRU as a member of their Board of Directors, as well as Associate Editor for their publication, *The California Prisoner*. Moreover, common among the non-profit organizations, I also did a multitude of duties and tasks.

- ² This piece opens with an intense three strikes debate in which I participated while studying criminology in the Sociology Department at the California State University – Sacramento in 1994.
- ³ *People v. Dey*, published in 2000 (84 Cal. App. 4th 1318), launched my career as an appellate and habeas practitioner out of necessity when my conviction and sentence were affirmed. On April 27, 2009, the United States Supreme Court denied my Petition for Writ of Certiorari (*Dey v. Barnes* (08-8851), effectively ending a ten year struggle to win relief.
- ⁴ See Dey, Eugene Alexander (2006) "My Mistriss Methamphetamine", *The North Bay Bohemian* – August 30; Dey, Eugene Alexander (2007) "Lockdown Blues", *North Bay Bohemian* – December 13; Dey, Eugene Alexander (2008) "Frontline Reflections of a Drug War Journalist", *PEN American Center*, 3rd Place, Nonfiction. The above pieces primarily address my personal struggles, while the following address a myriad of issues of great importance: Dey, Eugene Alexander (2007) "Hepatitis C and the California Prisoner", *Journal of Prisoners on Prisons* 16(2): 53-58; Dey, Eugene Alexander (2006) "Civil Death", *North Bay Bohemian* – November 29; Dey, Eugene Alexander (2005) "Locked Up Learning", *North Bay Bohemian* – December 14; Dey, Eugene (2004) "Free Speech Lockdown", *Silicon Valley Metro* – June 2.

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Poochigian, Chuck (2004) "No. The Law's a Big Deterrent for Repeat Cases", *The Sacramento Bee* – August 12.

Scully, Jan (2004) "The Rap Sheet", *The Sacramento Bee* – August 5.

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