

PRISONERS' STRUGGLES

Little Rock Reed: America's Most Wanted 'Fugitive from Justice'

Stevan Douglas Looney¹

[Editors Note: The following article was written shortly before the pre curium decision of the Supreme Court of the United States on June 8, 1998. In New Mexico, ex rel Manuel Ortiz v. Timothy Reed, No. 97-1217, the Supreme Court writes:

... the Supreme Court of New Mexico went beyond the permissible inquiry in an extradition case, and permitted the litigation of issues not open in the asylum State. The State's petition, for certiorari is granted, the judgment of the New Mexico Supreme Court is reversed, and the cause is remanded for proceedings not inconsistent with this opinion.]

On April 29, 1998, the New Mexico chapter of the National Lawyers Guild ("NLG") issued a press release in which it proclaimed that Little Rock Reed is "America's truly most wanted fugitive." Officials from all 50 states, the Virgin Islands, Puerto Rico and the District of Columbia (including the attorneys general of forty states) have joined New Mexico Attorney General Tom Udall in petitioning the United States Supreme Court to overturn a New Mexico Supreme Court decision in which the court refused to honour Ohio's demand for Reed's extradition back to Ohio. Never before have all the states taken such an aggressive role in the extradition matters of one individual. The NLG's press release declares that the states' efforts against Reed are "jeopardizing the constitutional rights of all Americans. [They are] asking the high court to declare it illegal for American people to present evidence of government wrongdoing in extradition proceedings even when the misconduct amounts to a conspiracy to commit murder."

The states are appealing the September 9, 1997 decision of the NM Supreme Court in which Chief Justice Gene Franchini, writing for the court, said that "extradition laws are not intended to be - nor can we suffer them to be - vehicles for the suppression of constitutional rights." The court said that Reed's case is unlike any other extradition case because of

“a unique fact pattern that is supported by compelling evidence.” The court affirmed New Mexico district Judge Peggy Nelson’s 1995 decision in which she ruled that Reed proved beyond a reasonable doubt, through persuasive and undisputed evidence, that Ohio’s pursuit of Reed’s extradition “is premised on the desire to silence Reed, in violation of his constitutional rights.” Judge Nelson found that Reed had fled Ohio under a reasonable fear for his safety and his life.

The New Mexico Supreme Court was sceptical. The court examined all of the evidence that Judge Nelson relied on to draw such a severe conclusion. After careful examination, as well as additional briefs and oral arguments from Udall’s office, Reed’s state appellate attorney, and the NLG (who contended that Reed’s extradition would violate international human rights standards), the court issued a landmark decision that rocked the legal community across the nation. The court said that Reed not only fled under a reasonable fear for his safety and his life, but that Ohio officials have actually expressed an intention to cause him death or great bodily harm in retaliation for asserting his constitutionally guaranteed right to nonviolent free speech. The court wrote that Reed was incited to flee Ohio, and would never otherwise have left Ohio, but for the apparently conspiratorial, illegal actions of the Ohio prison and parole officials. “A state cannot now exploit its own unlawful conduct,” the court wrote. “Normally we trust the state to control those who threaten to deprive a person of life without due process. But when the state itself is the one posing the threat and when, as in this case, federal remedies have been refused the only one who can protect the individual is a sister state.”

The court considered the importance of this case to all Americans:

When a person’s life is jeopardized by the state without due process, no constitutional interest is of greater consequence. . . . The transgression is not only against a single human being, but is also against the most basic principles upon which our system of government was founded.

The court wrote that the facts of this case conclusively prove that Ohio’s actions against Reed were not just, and that he was therefore not a fugitive from justice. The court said Reed is a “refugee from injustice” because Ohio’s request for Reed’s extradition “is the direct result of a concerted

effort by the agents of Ohio to deprive Reed of his most basic rights without due process.” Interestingly, Udall’s office, which now serves as Ohio’s agent in the matter, admitted to the New Mexico Supreme Court that Judge Nelson’s findings were supported by “considerable” evidence. However, Udall and his supporting state officials from around the country contend that any evidence of government wrongdoing is irrelevant and inadmissible in the context of interstate extradition proceedings. As the NLG proclaims, “If this were an international extradition case, Reed would receive refuge status with America’s blessing. International extradition law and other human rights treaties forbid a country from extraditing someone to another country under these circumstances.” Even the states admit this in their pleadings to the U.S. Supreme Court: “While a person resisting deportation may rely on potential mistreatment in a foreign country, persons resisting extradition to another State [may not].” As Reed himself frames the question, “If they can forbid us from presenting evidence of government misconduct in the context of extradition court hearings, how long will it be before their warped legal reasoning justifies forbidding evidence of government misconduct in the context of any criminal trial or hearing in this country? It is only through the courts that citizens may truly demand government accountability - short of a revolution.” Indeed, even the New Mexico Supreme Court suggested that government misconduct such as that involved in Reed's case, if gone unchecked, would “invite anarchy.” Meanwhile, according to George Shepherd, professor emeritus and former director of the Center for Human Rights Development at the University of Denver, this appeal itself is deemed by international human rights circles as a glaring example of the United States’ continued refusal to live up to international human rights standards.

“Irrelevant” Facts

The American public should consider these well-substantiated facts:

1. Ohio governor George Voinovich has said that his request for Reed’s extradition was based on the fact that Reed had criminal charges pending in a neighbouring state and because he left Ohio without permission from the parole officials. In fact, Reed did not have any criminal charges pending anywhere (nor does he now) and he would not have left Ohio if

not forced to choose between that or death at the hands of those who wish to silence him, as the New Mexico courts ruled.

- Jill Goldhart, acting chief of the Ohio Adult Parole Authority (“APA”) swore under oath that the reason Reed was wanted by Ohio is because he “failed to report arrest while on parole” and because he had “involved himself in further criminal activity.” These allegations proved to be entirely fabricated. APA head John Kinkela admitted to the Columbus Dispatch that these allegations were not true. Moreover, in Goldhart’s sworn statement, she admits that Reed will be returned to prison before he is allowed any kind of hearing in Ohio.
- Jim Hathaway, another APA spokesman, wrote a letter to the Taos, New Mexico district attorney in which he stated that Reed’s extradition was sought primarily because he had outstanding warrants in Cincinnati and Covington, “verified as active on this day.” In fact, the evidence conclusively proved that no such warrants existed as alleged. Moreover, the court clerk in Covington remembered being contacted by Hathaway when he inquired about an outstanding warrant, and she assured Hathaway that no such warrant existed. Meanwhile, Kinkela has admitted to the Columbus Dispatch that Hathaway’s allegations against Reed were not true.
- Christopher Davey, a spokesman for Ohio Attorney General Betty Montgomery, has said that the Ohio attorney general has no intentions of ever investigating Reed’s claims of misconduct by the parole and prison officials, notwithstanding the APA’S admissions and the New Mexico courts’ decisions.
- Ohio Governor Voinovich refuses to investigate the evidence of prison and parole officials’ misconduct in this case. When several attorneys and professors asked Voinovich to investigate, he simply forwarded their petition to the head of the APA for resolution, refusing to examine the documentation they supplied to him supporting Reed’s claims.

The various state officials who now seek the United States Supreme Court’s intervention contend that these facts are “irrelevant.” However, the facts of this case are no less relevant than each of the laws the Ohio

officials have violated in their capacity as “public servants” in pursuit of Reed. Moreover, if Reed’s *life* is relevant, then so must the facts of this case be. Particularly since, as the NLG pointed out in its press release, Reed “has no outstanding criminal charges anywhere. He is wanted for absolutely no crime.”²

In fact, Reed was convicted in 1982 on two counts of aggravated robbery (both apparently with unloaded guns; however, robbery is robbery). He was sentenced to 7 to 25 years in the Ohio state prison system, and he served ten years - significantly more time than others convicted and sentenced under the same laws. In February 1991, then-APA chairman Raymond Capots unwittingly admitted that Reed’s continued imprisonment was the result of Reed’s free speech activities. Reed asserts that under American jurisprudence, this in itself nullified the state of Ohio’s lawful claim of jurisdiction over him.

Reed’s Free Speech Activities

While in prison, Reed’s speech activities included advocating for the religious rights of Native American prisoners in Ohio and throughout the United States, and litigating and writing articles (as well as an award-winning book) on human rights abuses against prisoners in general. When he was released from prison in 1992, he continued his work on Native American religious rights, and he continued to speak and write about other highly sensitive prison issues which the Ohio officials have good cause for wanting to suppress from the public. His statements about the 1993 uprising at the Southern Ohio Correctional Facility in Lucasville, for example, are quite revealing. Here is one such statement.³

In 1990, the warden of the state prison in Chillicothe, Ohio, Arthur Tate, was transferred to Lucasville. The Ohio officials felt that he was the man most capable of overseeing what they officially termed “Operation Shakedown.”

Operation Shakedown was the extreme and unjustified result of a horrible incident in which a mentally unstable prisoner killed a young, beautiful school teacher who worked at the prison assisting prisoners to achieve their high school diplomas. Although the prisoner had a documented history of mental

instability including violence against women, the administration carelessly assigned him to work as the teacher's aide, where he would be in a room with her at times alone, with no supervision. The prisoner took her hostage and ultimately cut her throat with a coffee can lid, nearly ripping her head from her shoulders. Many prisoners thought highly of the young teacher, and were outraged at her senseless and brutal death. In fact, if the prisoners could have gotten their hands on the guilty prisoner, he would have found himself in serious trouble.

Nevertheless, immediately following the incident, the prison was placed on lockdown. The guards came into each cell block, armed in full riot gear, and systematically ransacked every prison cell while the prisoners could only stand helplessly and watch. If we attempted to interfere with the guards' intentional destruction of our personal property, such as our family photographs, it was clear that we would be beaten or killed by a gang of angry guards who were looking for any reason to 'get even' with the prisoners for the brutal killing of their friend and community member (it wasn't enough that they had dropped her killer on his head from two stories up after getting him placed in handcuffs). Meanwhile, local citizens banded together in front of the prison demanding that the prisoners be stripped of all privileges, holding placards with such proclamations as "Kill the killers," and telling the hungry media that every prisoner in Lucasville should be put to death (little did they know that many prisoners were sincerely mourning the terrible death of the teacher). As far as the locals, the prison guards and Arthur Tate were concerned, every prisoner in Lucasville was devoid of human value.

When Arthur Tate brought Operation Shakedown to Lucasville, life inside was changed forever. All educational programs were terminated indefinitely, and recreational, religious and rehabilitation programs were severely restricted or eliminated altogether. The prison was placed under lockdown, and policies and practices were implemented which made living conditions at Lucasville intolerable from a human rights standpoint. For example, when the prisoners were hustled to the chow hall to eat, we were taken in lock step fashion, surrounded by guards who

would brutalize anyone who dared to step out of line or talk to anyone. Moreover, we were given literally only a couple of minutes to eat each meal, and were threatened with violence if we dared take another bite off our unfinished plate once informed that our meal was “terminated.”

To make matters worse, there were unnecessary body searches intended merely to harass and impress upon the prisoners that Tate had absolute control over every aspect of our lives. The body searches involved anal intrusions by prison guards, the most demeaning and dehumanizing aspect of everyday prison life. When the prisoners attempted to communicate with Tate regarding these unnecessary policies and practices, he ignored us or cautioned us not to complain or things would get worse. He instructed us in memoranda distributed into every cell that his “program” was for our own good, and that it was intended to make the prison “safer” for us, and that we should be grateful to him.

Structurally, the Lucasville prison cells were built to accommodate one man per cell. To force more than one man to live in such a cell constitutes a violation of international human rights standards. However, due to overcrowding, most of the cells had two men in them the entire time I was at Lucasville (from 1984 through 1992). In order to reduce the potential violence resulting from forced double-celling, Arthur Tate’s predecessors at Lucasville had always maintained the practice of allowing prisoners to cell with each other if they requested to do so. Common sense indicates that forcing two enemies into the same cage is going to result in violence quicker than allowing two friends to live in the same cage. In fact, if Tate didn’t have any common sense, he had some experience to rely on. For example, two cell mates who did not want to cell with each other made it known to Tate and his administration that they did not want to live in the same cell with each other. They repeatedly requested to be separated from each other and one of them, Charlie, expressly told his unit manager that if they could not be separated, there would be violence. The unit manager, as per Tate’s policy, responded that nothing less than violence would

result in their being separated. Charlie was informed that the only other alternative was to be placed in administrative segregation (solitary confinement) for one or two years, which is equivalent to what would happen if he killed another prisoner.

Charlie was doing life and he refused to do it in a cage with someone he could not tolerate. Since his repeated requests for a separation were denied, he stabbed his cell mate 42 times, cutting him so badly that the officials found one of his eye balls on the floor under his bunk the day after they carried his shredded body out to the morgue. I remember being woken by the screams for help. Everyone in my cell block remembers. And those of us who weren't absolutely insane remember how we all lived in fear that Tate would force us all into such a situation.

Tate refused to comply with common sense or experience. The entire time I was in Lucasville prior to Tate's administration, at least 33 percent of the prison cells were racially integrated on a volunteer basis.

When Tate took over, he expected to maintain the 33 percent quota that he thought was a constitutional requirement (his "interpretation" of federal case law prohibiting racial segregation). However, with "Operation Shakedown" came a policy of prohibiting prisoners from celling with each other if they requested it. Tate intended to fill his quota with blacks and whites who hated each other. His oppressive policies and practices were bound to cause an explosion sooner or later, and he wanted the explosion to be between the whites and blacks, rather than the prisoners and his administration.

The forced-integrated celling policy was creating violence. Those of us in my cell block got word of various "isolated incidents" in other cell blocks in which prisoners were being assaulted by other prisoners when they were forced into the same cells. And then, one day an incident occurred in my cell block that would provide me with the opportunity to file a federal civil rights lawsuit on behalf of the Lucasville prison population in an effort to force Tate to put an end to some of his insane policies.

In accordance with Tate's policy, an 18-year-old black kid, William, who weighed no more than 125 pounds, just arrived at Lucasville. He was ordered into the cell of a confirmed member of the Aryan Brotherhood who had expressed to Tate's administration that if they dared place a "nigger" in his cell, he would kill him.⁴ The little black guy, William, was terrified. He was brand new to the prison system and didn't know what to do when the white man stepped out of the cell and loudly proclaimed: "If you step into my cell, nigger, you're gonna die!"

William stopped in his tracks, turned to face the guards who were escorting him, and pleaded for help. The white guards made it very clear to William, and to the several dozen witnesses including me, that William was going to have to fight for his life on that day. If he didn't step into the white man's cell, he would have to deal with them. And even newcomers know: you can't beat the guards. They'll handcuff, shackle and beat you with their sticks, half a dozen at a time, if they want to, and there's not a damned thing you can do about it. William hesitatingly walked into the white man's cell when it was clear he had no choice.

Before William got his second leg into the cell, he was hammered in the face with a padlock that the white man concealed inside a sock. William instantly turned running down the cell block calling out for help. He was ultimately placed in the hole and charged with the offense of failure to obey a direct order because he ran from the cell.

When he returned to the cell block a couple of days later, I met with him in the day room and he agreed to let me file a federal civil rights lawsuit on his behalf, as it would benefit all the prisoners and perhaps put an end to Tate's insane policy.

My lawsuit included affidavits from dozens of prisoners asking for a restraining order or injunction forbidding the forced integrated celling policy as it was creating violence and would result in a riot if we didn't obtain the injunction. I also included a survey of the general prison population which indicated that every prisoner was living in a state of fear due to Tate's insane

policy, and that we all knew there would be a riot if the court refused to intervene. I also included the affidavits of two criminologists whose opinions were that Tate's policy was insane and that the only logical result would be a bunch of "isolated incidents" or a riot.

Unfortunately, the court ignored our pleas for intervention, as did the governor, the prison director, the chief inspector of the prison system, and everyone else with the authority to intervene. The prisoners had exhausted every possible non-violent remedy available to us, and the only alternative remaining was a riot.

When I was released from prison, I assured my comrades inside Lucasville that I would do my very best to make the public aware of Tate's insane policies and the impending riot. I kept my promise, and was even ordered by my parole officer to stop speaking and writing about the prison system in Ohio or my parole would be revoked. However, no one would listen to what I had to say about the riot. The result? On Easter Sunday 1993, the longest prison uprising in the history of the United States was initiated at Lucasville. Fortunately, only 11 people were killed, but 43 were seriously injured, and Tate's administration saw to it that prisoners like me - those who are outspoken and articulate - were convicted as "ring leaders" and now sit on death row, awaiting their execution.

In my opinion, Arthur Tate and his administration were principally responsible for the riot and should be held accountable. Under Ohio law, Tate should rightfully be tried on no less than 11 counts of involuntary manslaughter, 43 counts of assault, conspiracy to commit murder in the case of William and others who were forced into cells with people Tate believed would kill or assault them, and inciting the riot. But Tate has never been held accountable, and neither have the other couple of hundred prison wardens around the country who have implemented policies and procedures modelled on Operation Shakedown.

The average citizen should ask himself or herself: what motive could Tate have for inciting the riot and orchestrating violence at Lucasville? If we exclude criminal insanity as a possibility, there is only one logical explanation in my mind. The administration wanted more funds from the legislature for prison operations. In fact, prior to the riot, Tate had suggested in a letter to the Ohio prison director that the Ohio legislature denied the Department of Corrections' request for a new maximum-security prison because Lucasville was sufficient for the state's needs. From Tate's perspective, the riot proved that Lucasville did not serve the state's needs. The legislature agreed. Not long after the riot, it appropriated \$86,000,000 for the construction of a new maximum security prison in Ohio.

Prisons are big business, for sure. In fact, prisons in the United States are the largest growth industry on the planet, and if it is to grow in accordance with the desires of the Arthur Tates of this country, violence is a necessity. I think the citizens of this country should really consider that.

In my opinion, the Lucasville prisoners should be commended for maintaining non-violence for as long as they did under such intolerable circumstances. Contrary to Hollywood's and the mainstream media's portrayal of prisoners, prisoners do not want violence. I think the actions of the Lucasville prisoner population for the three years of brutality preceding the riot confirm this point. They made every effort to resolve their legitimate grievances nonviolently, but received nothing but brutality in response.⁵ They resorted to violence only after the governor, the courts, the prison warden, the prison director, and the grievance inspector made it absolutely clear that there was no alternative but violence. And when the prisoners finally took over the prison, what was their simple demand? **"Let us see the media"** That's all they were asking for, because nobody else would listen to them. When I got on *ABC* during the uprising, I told the world that the prisoners would carry out their threat to kill the first hostage by noon the following day if they were still denied access to the media. The world wouldn't listen (perhaps

it craved another killing). Meanwhile, Tate and his cohorts **knew** the prisoners would kill a guard at noon if they were not given access to the media. Tate and his cohorts intended for the guard hostage to be killed so that they could say to the public, “See? We told you the Lucasville prisoners are a bunch of animals and we need more money!” If Tate were held accountable under the same laws as other citizens, he would be on death row today for the premeditated murder of that prison guard. He is the one responsible. He was given the choice of letting the prisoners talk to the media, or killing the guard. It is Tate, the director and the governor who made the choice to let the guard die. They are each responsible. They are state-sanctioned murderers and nothing more.

It is apparent that some Ohio officials would stand to benefit by having Reed’s criticisms silenced. In fact, it does not surprise me that Ohio has utilized more resources in its pursuit of Reed than it has utilized in the apprehension and extradition of anyone in U.S. history. However, many state, county, city, and federal officials throughout the country would benefit if Reed could be silenced. For example, in one of the most well-orchestrated prisoners’ rights projects ever, in his capacity as vice-president of the **Center for Advocacy of Human Rights**, Reed organized dozens of jailhouse lawyers and outside supporters from 43 states to conduct a major investigation of the **American Correctional Association** (“ACA”). In the final report, which was published in a previous issue of the *JPP*⁶, the ACA was condemned as a fraud. The largest accrediting agency of prisons, jails and juvenile facilities in North America, it is apparently comprised of officials who merely accredit themselves at taxpayers’ expense, and is held accountable to no one, as the report cogently demonstrates.⁷

In addition to his First Amendment activities regarding the rights of prisoners in general, Reed continued his advocacy for the religious rights of Native American prisoners. Ohio’s efforts to silence him have not deterred him in the least. For example, in March 1998, he was responsible for organizing some panels and the “Major Address” for the annual conference of the national Academy of Criminal Justice Sciences (“ACJS”). According to *Indian Country Today*, there was a strong Native

American presence at the convention. Reed was there in his capacity as the president of the **National Center for American Indian Prisoners' Rights**.

The "Major Address" began with a warm welcome by Milton Blue House, Vice President of the Navajo Nation. Mr. Blue House thanked the ACJS members for their interest in hearing from the Native American community on concerns regarding the criminal justice system. He urged those in attendance to give some consideration to the struggle for religious freedom that many American Indians are faced with in the prisons of North America. Mr. Blue House pointed out that the specific issues many prison officials must deal with have already been addressed by many prison officials including those in the New Mexico Department of Corrections.

He then introduced Little Rock Reed, pointing out that Reed has been instrumental in the struggle for American Indian religious freedom in the prisons of this country for many years. Reed began by calling on Selo Black Crow, a traditional elder, to offer a prayer. Mr. Black Crow asked God, in his Lakota language, to bless all the educators with understanding of what the Native people were here to achieve.

Following the invocation, Reed made a compelling presentation urging the ACJS to adopt a Resolution Regarding the Practice of Native American Spiritual and Cultural Freedom within the Context of America's Prisons and Jails. The resolution encourages all legislatures and prison administrators to adopt legislation and policies modelled on those which exist in the State of New Mexico regarding the practice of American Indian religious freedom within the correctional context. It also encourages prison officials who are in dispute about certain matters relating to the subject to consult with Native spiritual leaders and prison officials from some of the states that have already dealt with these issues, such as New Mexico, South Dakota and Nebraska.

Reed pointed out that in all the cases that have been litigated regarding the practice of American Indian religious freedom in the prisons throughout the country, the prison officials have asserted that Native practices will pose a threat to security. The courts have generally agreed

with these speculative assertions. However, none of those officials have ever substantiated their claims with any documented evidence. Meanwhile, Reed asserts that states such as New Mexico have allowed full-blown programs for the Native American prisoners with no problems whatsoever. In fact, Native spiritual and cultural programming has resulted in a reduction of recidivism and misconduct rates which speak to the rehabilitative value of Native American practices, Reed said.

Reed then introduced Jerry Mondragon (Taos/Laguna), the administrator of Native American Affairs for the New Mexico Department of Corrections. Mr. Mondragon discussed the history of the Native American programming in the New Mexico Department of Corrections, going back to the mid-1970s when the first sweat lodge was built in the maximum security Santa Fe Penitentiary. The spiritual practices of the Native Americans incarcerated in New Mexico have been protected for many years by the *Native American Counseling Act*, a law which encourages the development of culturally relevant educational programs, and which protects the free exercise of Native American religion. There are many pueblos and tribes represented in New Mexico, thus a wide variety of religious practices are accommodated. The wearing of long hair by all Native American prisoners is permitted because the state recognizes the spiritual significance of tribal hairstyles. Each prison has a sweat lodge, and the prisoners are allowed access to certain herbs and items deemed to be sacred, including ceremonial drums, the sweat lodge, cedar, sage, sweet grass, corn pollen, corn husks, tobacco, kinnikinnick, eagle feathers, headbands, and more. Moreover, Native American spiritual leaders are treated with the same dignity and respect afforded Christian chaplains.

Mr. Mondragon joined Reed in urging other states to look to New Mexico as a model. Prison officials experienced with Native programs in their prisons are familiar with virtually every conceivable concern that a prison administrator should have when confronted with a Native American religious request. In short, none of these practices that have been maintained in the New Mexico Department of Corrections have caused any problems with the smooth and efficient running of the prisons, and they build morale and a sense of responsibility among Native American prisoners. This is very important to the Native American population.

At the conclusion of the “Major Address,” Gennaro Vito, president of the ACJS, introduced Reed’s resolution to the Academy and gave it his absolute endorsement. Reed then chaired two panels that included presentations by various Native American spiritual leaders, including Lenny Foster, director of the Navajo Corrections Project and author of New Mexico’s *Native American Counseling Act*; Terry Knight (Ute), a sun dance leader and road man for the Native American Church who has worked with prisoners in the state of Colorado; Selo Black Crow (Lakota), traditional elder who has gone into many prisons to pray with prisoners; Alfreda Bear Track (Lower Brule), a spiritual advisor to women in the Lakota way; and Donald Bear Track Sr. (Southern Cheyenne), a road man and sundance leader whose teenage son was murdered by white men in a hate crime. Mr. Bear Track feels strongly that his ceremonial ways have kept him from becoming consumed with hatred at the loss, and he wants all Native prisoners to have the same opportunity to heal through their ceremonials.

Other panellists included Robert Doyle and Peter D’Errico, lawyers currently representing a class action on behalf of the Native American prisoners incarcerated in the state of Massachusetts. The State keeps an Indian word for its name, but refuses to allow Indians to pray in their traditional ways, according to Doyle and D’Errico. But Massachusetts is not alone in this respect. Many states, such as Texas, Ohio, Indiana, Pennsylvania, New York, Alabama, Mississippi and others refuse to allow Native American prisoners to practice their traditional religious beliefs. In fact, according to Reed, many prisons will not allow a Native spiritual leader to enter the walls, yet Christian volunteers are able to enter virtually every prison and jail in the United States. Additionally, many states require prisoners to cut their hair in violation of their religious beliefs.

For example, all Native prisoners in California were ordered on January 1, 1998, to either cut their hair or receive extended prison terms and solitary confinement, according to Reed. The California officials claim that forced haircuts will build character and morale. Mr. Foster refers to forced haircuts as “spiritual castration.”⁸

Hal Pepinsky, a retired lawyer and tenured professor at Indiana University with many books to his credit, told the story of how he became a key witness in the extradition case of Little Rock Reed. Pepinsky

testified that Reed's parole officer, Ron Mitchell, assured him (Pepinsky) that the APA would not comply with constitutional 2nd statutory requirements of due process in Reed's parole revocation proceedings. Pepinsky told those at the conference that, from a peacemaker's perspective, if we want prisons to be safe, we must listen to what people like Reed have to say.

Barry Wilford, a lawyer representing the Ohio Association of Criminal Defense Lawyers ("OACDL"), made a presentation to the effect that, if Ohio succeeds in its efforts against Reed, "it will be a dark day in this country." He urged everyone to get involved in a letter-writing campaign to the Ohio governor because he feels the Ohio governor is the only one who can save Reed from a tortuous fate.

The last panelist to speak was Reed's wife, Leanna Brownlee-Reed (Navajo). She hopes the power of their Native ceremonies will protect Reed from the Ohio governor, and she calls on everyone for prayers and support. She and her husband were blessed with a baby son, Jasper Cole, last November. This ongoing extradition case and harassment have caused them a lot of stress.⁹ Their combined stress has led to more than one domestic explosion (yes, Little Rock is a real person). But they continue to endure and to do their best to raise their son in a loving, peaceful environment. They will be glad when they can have peace and go on with their lives. One thing is certain in all this: Reed's free speech activities have proven to be sound, legitimate and effective. To use the words of his detractors, he is "well orchestrated."¹⁰ To be quite frank, if I were any of the government officials that Reed has criticized in the course of his free speech activities. I, too, would want him to be silent.

And What of the Future?

It is difficult to predict what the Supreme Court will do.¹¹ I personally do not think that the high court will agree to hear Reed's case, even though Udall has such broad official support in urging it to do so. However, on the slight chance that they do hear the case, I must admit that it could be bad news for Reed. The U.S. Supreme Court has historically taken the position that fugitives' allegations of mistreatment and constitutional violations in the demanding state must be fought in the demanding state and not the asylum state - even in cases earlier this

century when black prisoners were being returned to states where they would face lynch mobs. The court has cited the supremacy of federal law over state rules.

While reviewing one extradition case, I made a startling discovery. As Reed's attorney, it is my obligation to inform him of all the possibilities in his case, no matter how negative. I called Reed to my office and informed him that it is not unheard of for the Supreme Court to at once grant *certiorari* and decide the case, *per curium*. Ordinarily, if the high court decides to hear a case, the whole process of briefings, oral arguments and decision can take one or two years, but there have been instances of summary action by the court, particularly in cases where the law is well defined and absolute (which the states are arguing it is). I pointed to a case I found - an extradition case in which the high court virtually instantly reversed asylum for the accused and sent him back to prison in Georgia with stunning speed. Could this happen to Reed? Could a single Supreme Court Justice decide Reed's fate *ex parte*, with no briefing and no oral argument?

Reed has recently spoken to a member of the American Bar Association ("ABA"), who was doing an interview with him for the June issue of the *ABA Journal*, and he told Reed that a *per curium* decision is a very realistic possibility. This prospect has created a level of apprehension in Reed that he has not felt in a long time. As a result, it prompted him to make the major decision to go underground. He knows that New Mexico and Ohio are monitoring the Court to discover - they hope before Reed - whether or not the Court has granted review, and, if so, whether they did so *per curium*. Reed has no intention of giving them a head start. After all, the next knock on his door could be the state and federal police. I tried to talk Reed out of leaving. I think it is an extreme measure, but I certainly understand Reed's concerns. Ohio has clearly demonstrated that it will stop at nothing to bring Reed back.

And even if the high court refuses to hear the case, or grants *certiorari* and rules in favour of Reed, he will still be confined to the state of New Mexico. For this reason, he says that he intends to draw international attention to his case by seeking and obtaining political asylum in other countries. He recently commented to me, "Wouldn't it be

the most poetic justice for all American political prisoners if Nelson Mandela grants me asylum in South Africa?"

ENDNOTES

1. Stevan Douglas Looney is an attorney and partner of Crider, Bingham & Hurst, P.C. Albuquerque, New Mexico. He is representing Little Rock Reed before the United States Supreme Court in *State of New Mexico v. Timothy "Little Rock" Reed*, U.S. Supreme Court case no. 97-1217; the New Mexico Supreme Court decision is reported at 124 N.M. 129, 947 P.2d 86 (1997).
2. Six weeks prior to his parole expiration date, Reed was falsely charged with a misdemeanor of "terroristic threatening." He immediately notified his parole officer, as per his parole requirements. Moreover, the complainant, Steve Devoto and his wife, Dinah, admitted to the APA prior to the issuance of the APA warrant for Reed, that the charge was false. In fact, Mrs. Devoto testified that Reed's parole officer, Ron Mitchell, told her that the highest-ranking officials of the APA and Ohio Department of Corrections intended to use the false charge to get Reed back in prison because they were fed up with his speech activities.
3. This statement is similar to an interview he gave *ABC* during the actual riot. An extremely edited version was aired across the country at a time when the Ohio officials were telling the media that to ensure the safety of the media, the media could not have access to the prisoners. The Ohio officials later admitted to the Columbus Dispatch that they were quite agitated that Reed, a "fugitive from justice," had appeared on national television to speak about the riot.
4. Reed will not identify the white man, as it was all a matter of privacy from the very beginning as far as he was concerned. Nevertheless, Reed says he is sure that Tate took the man's threats seriously, as he was already serving two consecutive life sentences for murder.
5. In fact, collective complaints by prisoners are prohibited in Lucasville and every other prison I know of in the United States; Reed's comrade, John Perotti, who was just returned to Lucasville for his speech activities, can provide any interested persons with overwhelming documentation of how the prison officials retaliate against those prisoners who advocate for humane conditions inside the walls. John and others have spent many years in solitary confinement solely and expressly for getting prisoners to sign petitions in non-violent efforts to get the administration to address their legitimate complaints in a good faith manner; as a result, most prisoners are scared to sign their names to petitions asking for better treatment.
6. "The American Correctional Association: A Conspiracy of Silence," by Little Rock Reed and Ivan Denisovich, *Journal of Prisoners on Prisons*, Vol. 6, No. 2 (1995).

7. Reed says that the President of the ACA threatened to sue Reed if the report was ever published. However, Reed has never been sued for libel or slander. He contends that this is because if any government official ever tried to sue him, it will enable Reed to prove his allegations to a jury - and that is what his detractors do not want.
8. Most states justify the forced cutting of hair on the assertion that prisoners can hide contraband in their hair; however a survey conducted by the Native American Prisoners' Rehabilitation Research Project, which Reed directed from 1986 until 1993, indicates that, according to the prison officials of the United States and Canada, there has never been a documented instance in which contraband was found in a prisoner's hair.
9. In fact, Reed was detained without access to a court in the Albuquerque city jail for 30 days on the instructions of Udall's office. This was while the New Mexico Supreme Court was deciding his case. During this admittedly unlawful detention, Leanna suffered a miscarriage because of the stress. They have both suffered post traumatic stress as a result of this untoward action against them, and, understandably, they both live in a state of apprehension, unable to trust the government to do what is right or to comply with the law.
10. The New Mexico Attorney General's office, representing Ohio in its appeal to the New Mexico Supreme Court, called Reed "well-orchestrated and self-serving." His personal sacrifices over the years, including extended imprisonment, solitary confinement, beatings, sensory deprivation, and the continued harassment of his family and disruption of their lives, fly in the face of the claim that he is self-serving. In fact, he has never received compensation for his tireless advocacy for the rights of others, but has put up his own money to maintain the work he has done. This, by any reasonable standard, is not a man who is self-serving.
11. As the NLG's press release notes, these issues would never have come before the courts to begin with had former New Mexico governor Bruce King investigated and granted asylum to Little Rock. However, King was advised by Udall's office that he had no such authority. This was false, as the New Mexico Supreme Court decision makes clear.