

The American Correctional Association: A Conspiracy of Silence *Little Rock Reed & Ivan Denisovich*¹

As a member of the American Correctional Association (ACA), I believe I have a responsibility to uphold the principles set forth in the ACA's Code of Ethics. In particular, the Code of Ethics requires that as a member of the ACA I must "respect and protect the civil rights of all clients," I must "report without reservation any corrupt or unethical behavior which could affect either a client or the integrity of the organization," and I must "respect the public's right to know, and will share information with the public with openness and candor."

To this end, I am duty-bound to disclose the information contained in this article, as it reveals what I believe constitutes rampant human rights abuses against all of the ACA's clients, as well as a colossal fraud against the people of America.

My colleague and co-author who has assisted me in preparing this article also firmly believes in the ACA's Code of Ethics, but is precluded from the ACA's membership due to his status as a prisoner and unwilling "client" of the ACA.

Little Rock Reed

The American Correctional Association (ACA) is the largest accrediting agency for juvenile and adult prisons in the United States. Many citizens and organizations believe that the ACA, rather than promoting professionalism within the correctional field and protecting prisoners' rights as it claims, is in the practice of promoting the correctional-industrial complex and assisting prison officials in covering up pervasive human rights abuses against prisoners and their families.

The purpose of this article is to examine the ACA's true practices and motives.

The ACA is a not-for-profit corporation formed in the state of New York in 1954². Its constitution lists twenty-two purposes and objectives, amongst which are:

#8) "To promote the improvement of laws governing the criminal justice and correctional process for adult offenders...."

#9) "... to safeguard the constitutional and other rights of personnel and offenders in the criminal justice and juvenile justice correctional process."

#10) "To foster a code of ethics applicable to... [everyone]... throughout the correctional field."

#11) "To devise, implement and promote a program of accreditation for correctional departments, agencies, institutions, programs and services."

#12) "To develop and promote effective standards for the care, custody, training and treatment of offenders in all age groups and all areas of the correctional field...."

#13) "To publicize and interpret correctional standards to the public in order to obtain the understanding and participation of citizens."

These are purposes and objectives that all citizens, even prisoners, would concur with as noble, practical and fair if achieved and adhered to. However, these purposes and objectives have been subjectively interpreted (and in fact entirely ignored when convenient) when the interests of the ACA take precedence over the just and humane treatment of the men, women and children caught in the jaws of a

voracious and ever-expanding high-profit industry called "corrections" in the United States.

As in all cases of organizational growth in a capitalistic system, money is the bottomline factor in survival. The ACA has built a profitable niche for itself on the backs of prisoners and taxpayers, priding itself as the accrediting body that safeguards the constitutional rights of prisoners and on the promotion of effective standards for the care and treatment of offenders of all ages. A standard criminal investigatory technique is to "follow the money," and as we do, it becomes glaringly obvious where the true interests of the ACA lie.

For instance, in 1989-90, the ACA reported that \$1.1 million (or nearly 20%) of its income-producing activities came from accreditation fees it charged correctional agencies to evaluate and then, if "standards were met," to grant officials accreditation. With such a significant portion of its income dependent upon accreditation fees, it is in the best interests of the ACA to see its market expand in size, while also being malleable enough in its accreditation process to have the ACA's customers believe such "certification" is possible and in their own best interests as well. Public officials, as exemplified by the vast number of systems that seek certification, reason that the investment in accreditation by the ACA more than pays off as a type of "litigation insurance" when the conditions of their institutions are challenged in court. In such prison condition cases, the courts have used ACA standards and the fact that the institutions under litigation were previously "accredited" as a basis for their rulings (*Prison Legal News*, 1995). In every case in which an accredited prison was sued, the Attorney General's office prominently cited ACA accreditation in its defense of the institutional status quo.

The correctional-industrial complex is one of the fastest growing markets of the U.S. economy, and the ACA, as we shall see, has firmly established its presence in this money-making endeavor of concrete, barbed wire and misery.

Since 1980, the imprisoned population in the U.S. has grown over 300% to over 1 million in 1994 (Bureau of Justice Statistics, 1995). The national prison population is currently expanding at the rate of 1,300 prisoners per week, or an average of three new medium size prisons every seven days (Gillard & Beck, 1994). Correspondingly, the total national correctional budget to support this expansion has grown from \$2.5 billion in 1972 (Halleck & Witte, 1977) to over \$34 billion in 1992 (*The Nation*, 1994), one natural result of which has been the increase in the number of prisons from 694 in 1984 (Innes, 1986) nearly doubling by 1990 to 1,207 institutions (Stephan, 1992).³

Over the past decade, criminal justice spending has become the fastest growing budgetary item, expanding from 5.4 to 7.5 percent of public expenditures (Mandel, et al., 1993). This growth in an era of relatively shrinking treasuries must come at the expense of other programs and services.⁴ As criminal justice scholar Todd Clear explains, "the get-tough movement has made punishment the only growth industry in government today" (Cline, 1993). At the national level, for example, federal spending on education shrunk by 25 percent over a ten year period, while criminal justice spending increased by 29

percent (Chambliss, 1991). At the state level, California has repeatedly raised in-state tuition and cut back on post-secondary programs in order to fund its unprecedented prison expansion (Brown, 1995). In fact, states are now spending more on prisons to lock people up than on universities to educate them (Brazaitis, 1993). The hiring and training of correctional employees, observes Meredith DeHart of the U.S. Census Bureau, is "the fastest growing function ... out of everything government does" (Meddis & Sharp, 1994).

From this brief overview, we can see that the correctional industry is big and business is good. In 1995 at the 125th annual Congress of Correction -- the ACA's jamboree -- 500 "correctional professionals" of all stripes and 500 vendors gathered for what journalist Alan Prendergast (1995) called "a flag-waving, back patting, gladhanding tribute to the growing power and prestige of the booming prison industry." As Cathy Perry, the account manager for Access Catalogue Company, which sells approved personal items to prisoners, comments, "Business is great" (Prendergast, 1995). Supporting this industry as the central conduit between seller and buyer, in 1992 alone, the ACA made \$1.4 million from the sale of advertising in its glossy bimonthly publication *Corrections Today*,⁵ from renting its mailing list⁶, and from construction reports (source: ACA's 1992 IRS form 990), a sum representing one-fifth of the ACA's income producing activities for the year.

Another significant source of the ACA's revenue comes from its subsidiary, the Commission on Accreditation for Corrections. The Commission was formed in 1978 and by 1990 involved approximately 80% of all federal and state adult and juvenile correctional agencies. According to the Commission (1990), the ACA's accreditation process: ... offers [agencies] the opportunity to evaluate their operations against national standards, remedy deficiencies, and upgrade the quality of correctional programs and services. The recognized benefits from such a process include improved management, a defense against lawsuits through documentation and the demonstration of a 'good faith' effort to improve conditions of confinement, increased accountability and enhanced public credibility for administrative and line staff, a safer and more humane environment for personnel and offenders, and the establishment of measurable criteria for upgrading programs, personnel, and physical plant on a continuing basis.

The cost for the valuative seal of approval process is nearly \$8,000 for accreditation and yearly reaccreditation for prisons with populations of 500 or less.⁷ For larger size institutions, the fees are determined on a "case by case basis" (Commission, 1990). This process resulted in the ACA generating in excess of \$1.4 million for 1992 in the performance of 244 accreditation reviews, and in 1993 performing 236 accreditation reviews for some \$1.7 million in fees, and \$1.6 million in 1994 in accreditation fees (source: I.R.S. tax returns for those years). These sums represent approximately 20 percent of the ACA's yearly income-producing activities. By 1995, "... more than 1,200 jails and prisons have invested millions in training and renovation in an effort to meet ACA standards, in the belief that accreditation will improve security and staff morale, insulate them from lawsuits, and upgrade their image" (Prendergast, 1995).⁸

With all this training, upgrading, standardization and accreditation, one would believe that the nation's correctional facilities were state of the art and the envy of penology the world over. However, as we shall see, such is not the case.

The public is constantly bombarded by propagandistic articles like "Must Our Prisons be Resorts?" in the "world's most widely read magazine" (Bidinotto, 1994), and well-reported political sloganeering like Senator Phil Gramm's (R-TX) bombastic lament of "... stop building prisons that are like Holiday Inns" (Corn, 1995), manipulating the citizenry to believe that life is good behind bars.

Criminologist Kevin Wright (1987), however, maintains that "the American prison system stands in sharp [contrast] against the ideals on which it was founded, often characterized by severe overcrowding, unsanitary and even dangerous conditions, violence, brutality, and corruption." Another criminologist, Harold Pepinsky (1995) states:

Nowhere on this continent is the battleground bloodier and more raw than in U.S. prisons, in 'control units'⁹ for activist prisoners in particular. Prison activists and jailhouse lawyers are routinely receiving extended imprisonment, getting beaten and assassinated in prisons across the United States and Canada for merely asserting their legitimate first amendment rights and attempting to expose the true nature of prisons.

Assistant Attorney General of Arizona, Andrew Payton Thomas who is hardly a "bleeding heart liberal," presents a view eerily similar to that of the criminologists: "We must wonder what the early prison reformers would say upon peering into our nation's prisons today," comments Thomas (1995), "and whether they would consider them an improvement over the houses of horror they frequented some two centuries ago."

Meanwhile, according to organizations such as the ACLU's National Prison Project and the Center for Advocacy of Human Rights, the broad majority of prisons in the United States are in violation of the Universal Declaration of Human Rights, the International Covenant on Civil Political Rights, and the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Jones, 1993, and Reed, 1995). Additionally, a recent European commission found the American Prison system to be the "most barbarous" of the western industrialized nations (Vidal, 1994). It is of little wonder, then, but of major concern and marketing strategy for the ACA, that forty-two states, districts and protectorates are under court order or consent decree to limit populations and/or improve conditions (Koren, 1993/94).

Even after massive multi-billion dollar building booms, by 1990 with \$11.5 billion spent on cell construction that year alone, state prisons were on average packed to 125 percent of capacity and the federal system over 136 percent of design, while California's 120,000 prisoners were serving their sentences wedged in prisons crammed beyond 190 percent of design capacity (Gillard & Beck, 1994). According to Alvin Bronstein, executive director of the ACLU's National Prison Project (1995), the prison populations in Texas and California alone will exceed that of all western European countries combined within three years. It is no wonder, then, that since 1990 the ACA has "adjusted" its touted standards, reducing the minimum

required cell space for prisoners "... from 70 unencumbered square feet of floor space per [prisoner] to 25 square feet, which can also include furniture -- an acknowledgement that many double-celled prisons couldn't meet the higher standards" (Prendergast, 1995). It is revealing to note that the reduced floor space approved by the revised ACA standards is less in square footage than the Humane Society requires for a large dog (Stuller, 1995).

On August 6, 1982, David Bazelon, Senior Circuit Judge for the U.S. Court of Appeals for the District of Columbia, resigned from the ACA's Board of Commissioners of the Commission on Accreditation for Corrections. In his Memorandum of Resignation, Judge Bazelon stated:

I will soon complete two years of my 5-year term in the Commission....

During my tenure, I have repeatedly called on the Commission to make some fundamental reforms in its fact-finding procedures and in its relationship with the corrections community. The Commission has repeatedly refused to take the meaningful steps to guarantee its independence and to insure the integrity of its decisions. The Commission therefore broke faith with the public and has betrayed the promise of accreditation (Bazelon, 1982).

In his Memorandum, Judge Bazelon stated that "... the history of corrections in America, I believe, is best characterized as a conspiracy of silence between corrections officials and the public." He pointed out that the federal courts "... have begun to back away from enforcing the eighth amendment's ban against cruel and inhumane prison conditions." In this climate, Bazelon continued, "... the concept of accreditation is especially vital, for it offers one of the few hopes for rational and humane reform in corrections. The real promise of accreditation is that the conspiracy of silence between corrections officials and the public can be replaced with a partnership for reform."

Bazelon pointed out that when he was asked to join the Commission, he believed that its accreditation program "... was fulfilling this noble promise," but that it was now apparent that it had no intention of fulfilling this promise. He explained that shortly after joining the Commission, he discovered that the ACA's *Statement of Principles*' promise of "public participation" in the accreditation process was not being kept. "The public is systematically excluded from every stage of the Commission's work," he noted. He went on to quote the ACA's executive director at the time, Anthony Trivisono, who warned his colleagues at its annual meeting in 1982 that "... the Commission will fold in one year's time if this opening of the process is permitted to exist." Similarly, Commissioner B. James George warned that openness would be "sheer suicide" for the ACA. Judge Bazelon also cited Robert Fosen, the Commission's executive director, as arguing that if information about prison conditions is to be broadcast to the public, "... all kinds of persons will be critical" and this "will simply upset ... [our] integrity." Judge Bazelon (1982) correctly noted that the premise of these remarks, "... that either accreditation is run the way that prison officials want it run, or else, is an insult to the public."

In addition to criticizing the ACA's systematic exclusion of the public's scrutiny and participation in the accreditation process, Bazelon set forth detailed facts substantiating his claims that:

- (1) The Commission's audit techniques and deliberative procedures are inherently unreliable;
- (2) The Commission is unwilling to accommodate constructive criticism and the possibility of meaningful change;
- (3) The Commission's priorities are fundamentally flawed;
- (4) The Commission has pervasive conflicts of interest with the facilities it is charged with monitoring; and,
- (5) The Commission has permitted the accreditation movement to be transformed into a propaganda vehicle for corrections authorities.

According to the facts set forth in Judge Bazelon's Memorandum, there are no actual audits conducted by the ACA of the facilities to whom it sells accreditation. The only evidence considered by the Commission is the self-evaluation of the applicant institutions and the report of an audit team that refuses to interview prisoners unless they are pre-selected by prison officials. Moreover, the Commission has stated that its first priority is not to insure that its minimum standards of accreditation are complied with by the facilities it sells accreditation to, but to simply "... encourage as many facilities to join the accreditation process as possible." The fact seems to be that if the prison has the money, it will have the ACA's accreditation, regardless of how brutal and/or substandard the prison's conditions. Judge Bazelon noted that in the words of the Commission's own former chairman and treasurer, Gary Blake, if a more active role in investigation were played, "I think we could kiss the whole process of accreditation goodbye."

Bazelon (1982) stated that time and time again he has seen or heard of instances in which corrections officials have used their accreditation by the ACA "... to deflect public criticism and scrutiny of their management, to boost their standing with governors and legislators, to ward off judges and lawsuits, and to pat themselves on the back. They have used it to paper over the crisis in corrections with certificates of 'excellence.' They have used it, in short, for their own propaganda purposes."

Little has changed since Judge Bazelon so ethically, indignantly and publicly resigned from the ACA's Board of Commissioners on Accreditation over a decade ago.¹⁰ It was the Southern Ohio Correctional Facility's (SOCF) accreditation process beginning in 1990, for example, that encouraged policies and conditions to become so brutal and repressive that on Easter Sunday 1993 the prison erupted in a riot -- the longest prison siege in American history, resulting in millions of dollars in damage, the serious injury of forty individuals, and the killing of ten people (Reed, 1995). By 1992, Lucasville managed to achieve accreditation on its third try (according to Commission [1990] standards, the ACA fee to accredit SOCF was then in excess of \$25,000). In fact, the prison achieved 100% compliance with mandatory ACA standards (Prendergast, 1995). "Fourteen months later, in April of 1993, the Lucasville uprising claimed the lives of nine [prisoners] and one guard" (*ibid*).

While SOCF was undergoing the accreditation process, prisoners who attempted to approach the ACA inspectors with complaints of conditions violating ACA standards were threatened with solitary

confinement.¹¹ "When the inspectors came," writes one SOCF prisoner (Freddie 1994), they were steered to areas where they would not come into contact with other than 'model inmates' [corroborators, informants and the like] dressed in new clothes, sanitized areas of the prison, and only the best 'politician guards' in view, rather than the Ninja Turtles -- or goon squads." This prisoner also noted that the very day of the inspection, the population was fed cereal containing dead and live roaches. Nevertheless, the prison received maximum scores by the inspectors. Another prisoner at SOCF recalls that during the inspection the ACA auditing team "never did walk into my cell block. They went to the honor block, which has telephones and privatized single-man cells that are open all day." The majority of the prisoners did not have access to even those menial conditions.

One major recommendation by an earlier ACA inspection team to accredit SOCF was that the population of the prison be lowered to 1,630 prisoners. Once this reduction was accomplished, the inspectors concluded that "... personal safety is not much of an issue as it once was ..." at the facility (Prendergast, 1995). By the time of the Easter Sunday rebellion, the population had increased to 1,819 prisoners.

Prior to, and after the inspection, the ACA received written complaint after written complaint from prisoners and outsiders such as a massive letter-writing campaign from the public interest group Citizens United for the Rehabilitation of Errants (CURE) regarding the institution's blatant disregard for ACA standards, demanding an investigation into the brutal conditions; conditions that shortly thereafter erupted into the bloody and avoidable uprising. The ACA, however, summarily dismissed those outcries, choosing instead to admonish those who protested not to interfere with the accreditation process (Reed, 1995).

Now, after the riot and after half of the state's prisons received the ACA's accreditation (Prendergast, 1995)¹², the director of the Ohio prison system, Reginald Wilkinson, has been elected to serve as the ACA's president-elect, a position that would apparently place Wilkinson in an ethical conflict of interest -- at least a conflict between the supposedly independent stance of the ACA to impartially evaluate, monitor and certify the operation of Ohio's Prisons to ensure standards compliance.

Then, again, such interlinked, conflicting relationships in the field of corrections is not uncommon. Fifteen of the eighteen members of the ACA's Board of Governors are primarily employed as correctional administrators, parole and probation supervisors, jail deputies, and as the chair of a state senate's select oversight committee on corrections (source: ACA's roster of 1994-96 Board of Governors). In Ohio, as a telling example, the architect who designed SOCF is the uncle of the contractor who built it (and seven other jail facilities in the state), who is the brother of Ohio Governor George Voinovich, who is the direct supervisor of the prison director and president-elect of the ACA, which certifies Ohio prisons (Prendergast, 1995) as being in compliance with ACA standards.

Yet another significant source of the ACA's income is derived from government grants: \$1.1 million in 1990, \$1.5 million in 1992, and

\$1.8 million in 1993 (source: ACA's IRS form 990),¹³ averaging 18 percent of the ACA's total revenue for those years. These government grants concomitant with accreditation fees from government agencies and marketing income focusing on governmental groups amounts to nearly 60 percent of the ACA's total income, while membership dues and assessments compose only seven percent of total revenue. Many critics of the ACA note that with a constituency so heavily invested in the correctional-industrial complex's expansion, "... the association has avoided taking a stand on numerous controversial corrections issues, such as the use of control units and privatization of prisons, preferring to blandly urge the development of a 'balanced approach' to corrections" (Prendergast, 1995).¹⁴

A more egregious example of the ACA's failure to live up to its charter principles -- specifically "to safeguard the Constitutional and other rights of personnel and offenders"¹⁵ -- involves the U.S. Supreme Court case of *Hudson v. McMillan*. This case involved a Louisiana state prisoner who was brutally beaten by two guards while chained in leg irons and handcuffs, all the while being observed by a lieutenant who cautioned the guards "... not to have too much fun." A U.S. court of appeals ruled that the prisoner had no viable claim under the Eighth Amendment's ban on cruel and unusual punishment because a cracked dental plate, loosened teeth and split upper lip did not constitute a "significant injury." The prisoner's petition for writ of Certiorari (appeal) was granted and Alvin Bronstein was appointed to represent him before the Supreme Court.

On November 13, 1991, Bronstein presented Hudson's case before the court, arguing that "significant injury" should not be a requirement to substantiate an Eighth Amendment claim. "His argument was supported by an impressive group of amici [friends of the court who file supporting information briefs]. The office of the U.S. Solicitor General not only filed an amicus brief, but also argued a portion of the case ..." in support of the prisoner (Bernat, 1992). Additionally, Americans for Effective Law Enforcement, Human Rights Watch and two prisoners' rights groups also filed as amici in the case on behalf of Hudson.

Although the beating of a prisoner is in complete violation of ACA's published standards, when invited to join as an amicus on behalf of the prisoner, the ACA declined. ACA then-president Helen Corrothers wrote to Bronstein claiming that the ACA executive committee rejected the two invitations to get involved because the committee felt it was not "in the best interest of the ACA" (Bernat, 1992). Bronstein then wrote to all the members of the ACA Standards Committee expressing his consternation:

I thought I should share with you the fact that, once again, the ACA leadership has demonstrated that ACA standards are not professional correctional standards. Rather, they are a collection of words and phrases relied on selectively by various officials when it serves their interest (e.g. as a defense to conditions lawsuits, as a means of getting funds from the legislature). The ACA Executive Committee action -- non-action might be a better description -- makes a sham of the whole standards and accreditation process.

It was only after the Supreme Court ruled against the Louisiana Department of Corrections, and presumably after Bronstein's admonishing letter as well, that ACA executive director James Gondles editorialized that "... as corrections professionals, we are duty-bound to speak out against the use of force except as a last resort" (Giari, 1992). Better late than never, as the saying goes.

Another example of the ACA's failure to live up to its claim to protect the constitutional rights of prisoners is its refusal to urge accredited prisons to respect the religious rights of Native American prisoners. The committee has received numerous complaints of the absolute deprivation of American Indian religious freedom in numerous prisons. As a general rule, the ACA's executive officers will not acknowledge receipt of such correspondence, regardless of the source.

The abuses of the accreditation process have become so widespread and well-known within the industry that in December 1994 the Center for Advocacy of Human Rights (CAHR) initiated an investigation of the ACA and ACA accredited prisons. As of mid-1995, the investigation involved the direct participation of hundreds of prisoners (primarily jailhouse lawyers) and outside supporters representing dozens of ACA accredited prisons in 43 states. The continuing investigation has revealed ongoing violations of the ACA's Standards for Adult Correctional institutions within virtually every prison that has been investigated. In many cases, these violations are also in conflict with state and federal laws, as well as international human rights law. For example, while the ACA's standards regarding "access to courts", "access to law library" and "access to counsel" expressly state that these particular standards are mandatory under constitutional law, some prisoners in virtually every ACA accredited prison being investigated by CAHR are denied such access. In fact, in many cases, such access is not only denied, but prisoners are commonly subjected to reprisals for their legitimate attempts to rectify the situation, another violation of the ACA's standards.¹⁶

The overwhelming majority of ACA standards are nonmandatory. Nevertheless, according to ACA policy, accredited prisons are supposed to comply with 90% of the nonmandatory standards. The CAHR has been unable to locate any ACA accredited prison which is actually in compliance with 90% of the nonmandatory standards. This is a direct result of the ACA's lack of effective auditing and monitoring procedures, as well as prison and ACA officials' willful exclusion of the public and prisoners from effective participation in the accreditation and monitoring processes. While the materials distributed by the ACA indicate that prisoners and the public will have some input into the monitoring of ACA accredited prisons, the CAHR's investigation has revealed, as Bazelon claimed in 1982, that this is quite contrary to the truth. In fact, with few exceptions, prisoners are uniformly denied access to the Standards for Adult Correctional Institutions so that they may evaluate their prison's compliance or noncompliance with the standards.

Meanwhile, ACA officials have been writing to some prisoners that if they want access to the Standards they must get written permission from the warden (which is seldom given) and then go through an

attorney to obtain a copy. In one instance, Lisa Parker, representing the ACA, recently wrote to a prisoner who wished to purchase a copy of the Standards as well as ACA's policy manual. She informed the prisoner that he must go through an attorney to purchase the Standards and that under no circumstances may any prisoner see the ACA's policies. These practices are contrary to the ACA's claim that they encourage prisoners and the public to have input into the accreditation and monitoring processes. Prisoners are also denied membership in the very association that promotes the standards that govern their lives. When prisoners apply for ACA membership, either their applications are rejected outright and dues returned, or if processed and later identified as prisoners, their prorated dues are returned and they are advised that they can join the ACA when they are no longer prisoners.

The CAHR and other organizations have written the ACA seeking information, some of which the ACA is required by law to provide upon request. However, the ACA will not provide the information. For example, on May 8, 1995, and again on October 20, 1995, the CAHR wrote to the ACA's treasurer, Charles Kehoe, asking for a copy of the ACA's "... most recent financial statement, as well as the last three I.R.S. 1990 tax returns." Although state law in Maryland (where the ACA is headquartered) requires non-profit organizations to provide this information to the public within thirty days of the request, Kehoe will not acknowledge receipt of the requests nor provide the information sought. Interestingly, according to Jennifer Light (1995), public information officer for the Maryland Secretary of State, the ACA has refused to file with the Secretary of State financial statements required by law. Numerous requests by the Secretary of State to comply with the law have been ignored by the ACA (Dunn, 1995).

Another example of the ACA's failure to live up to its "Code of Ethics" -- particularly its principle that "members will respect the public's right to know, and will share information with the public with openness and candor" -- is demonstrated in further information it has refused to disclose to the public. For example, on September 13, 1995, Deborah Garlin, attorney and president of The Center for Advocacy of Human Rights, sent the following letter to each member of the ACA's Board of Governors and executive committee.

We address this correspondence to you in your capacity as a member of the American Correctional Association's Board of Governors. We are also sending a similar letter to each of the other members of the ACA's Board of Governors. Our reason for this is that over this past year we have addressed correspondence to some of the ACA's executive committee members, including Bobbie Huskey (President), James Gondles (Executive Director) and Charles J. Kehoe (Treasurer), either seeking information which we believe the ACA claims to disclose to the general public (or is lawfully required to disclose to the public), or complaining of human rights abuses that appear to be taking place within prisons that are accredited by the ACA. Neither Mr. Gondles, Ms. Huskey nor Mr. Kehoe have ever acknowledged receipt of any of our correspondence to them.

If this particular correspondence should be referred to someone other than yourself, we ask that you please forward it to the appropriate ACA official(s) and notify us of who it has been forwarded to for response. Thank you.

Basically, we are seeking information regarding the ACA, and we will gladly pay the expenses of obtaining such information if you will notify us of the specific costs for processing. The information we seek is as follows:

1. The names and addresses of each adult correctional facility/prison in the United States that is either accredited by the ACA or undergoing the accreditation process.
2. The names and addresses of each adult correctional facility/prison in the United States that has ever had its accreditation revoked by the ACA for noncompliance with the appropriate Standards.
3. Is there a contract entered into between the ACA and the adult correctional facilities/prisons that the ACA accredits? If so, may we review a standard copy of said contract?¹⁷
4. What are the required fees that the ACA charges adult correctional facilities/prisons to obtain and maintain the ACA's accreditation?
5. Are the prisoners in ACA-accredited adult correctional facilities/prisons provided access to the ACA's applicable Standards and "Standards Compliance Checklists" in order to determine for themselves whether or not the ACA's auditing officials are misled by prison officials regarding compliance with the Standards?
6. When prisoners wish to complain of ACA-Standards and human rights violations within adult correctional facilities/prisons which are ACA-accredited, who are the appropriate ACA officials that should receive such complaints, and what specific action, if any, does ACA policy require be taken to determine the validity of the complaints?
7. Could you please provide the names and mailing addresses of the current members of your Committee on Legal Issues?
8. We would also like to purchase the current edition of the ACA's Standards for Adult Correctional Institutions. Please let us know what the cost will be and how to order.

We apologize for inconveniencing you with this request for information; however, we believe it is necessary as part of an investigation we are conducting regarding ACA-accredited prisons which appear to be misleading the ACA about their compliance with the ACA's applicable Standards. If and when our investigation has resulted in significant documented findings that some ACA-accredited prisons are in fact misleading the ACA's auditing team(s) about their compliance with ACA Standards, we will promptly notify you in an effort to establish dialogue regarding the matter. If such be the case, it is our sincere desire to work in a spirit of cooperation with the ACA so that prison officials' abuses of the accreditation and monitoring processes may be corrected.

Thank you very much for your consideration of these matters. We look forward to hearing from you soon.

Two of the twenty-four ACA officers/board members who received this letter acknowledged receipt, stating that they were forwarding the letter to executive director James Gondles for response. This is apparently what compelled Gondles to acknowledge receipt of the CAHR's correspondence for the first time in two years. However, he refused to provide any of the information requested, with the exception of information on purchasing a copy of the ACA's Standards. *Openness and candor* indeed.

The CAHR's investigation has revealed and continues to reveal that prisoners in just about every accredited prison are subjected to brutal and inhumane treatment, including unsanitary conditions; sensory deprivation; denial of essential medical care which in many cases has

resulted in death; entirely ineffective grievance procedures; beatings; interference with privileged legal mail; withholding of publications which criticize prison practices and condition, etc. Additionally, the CAHR's investigation has revealed that: 1) prisoners who complain about non-compliance with the ACA's Standards are commonly transferred to non-accredited prisons in an apparent attempt to silence their criticisms; 2) prisoners and outside supporters who complain of violations are generally ignored by both prison and ACA officials; 3) alleged violations are seldom, if ever, investigated by the ACA, and when they are investigated, the investigations generally exclude interviews with prisoners who are not pre-selected by the prison officials and no meaningful corrective action is taken by the ACA.

In one recent case, a Florida prison warden actually acknowledged that his prison is in violation of numerous mandatory standards, and justified it on the grounds that the standards can be ignored since the purchase of accreditation is "voluntary". This has been found to be the standard explanation given by prison officials when they receive queries of any kind regarding the prison's accreditation, a position which appears directly contrary to Gondles' (1993) testimony that "... accreditation is based upon an applicant correctional facility's demonstration of compliance with correctional facility standards adopted by the ACA.... ACA's sole authority is to deny accreditation to any facility found not to be in compliance with ACA standards." It is interesting to note, also, that the CAHR has been unable to locate any prison that has had its accreditation revoked once granted.

Almost every accredited prison refuses to provide prisoners with access to the ACA's Standards, and virtually every prison denies prisoners access to the prison's standards compliance "Checklist" so that the prisoners may determine whether or not the ACA is being deceived by unscrupulous prison officials about standards compliance. Moreover, by the ACA's own admission, when complaints of noncompliance are received by the ACA, the ACA will only conduct an on-site monitoring visit after providing the prison officials with advance notice that the ACA intends to conduct a monitoring visit. This affords all prison officials who are in violation of the standards an opportunity to cover up their violations prior to the monitoring visit.

The ACA may contend that the prisons it has sold accreditation to are, in fact, in compliance with the ACA's Standards, as many of the Standards merely require that the prison seeking accreditation promulgate policies which cover the fundamental rights of prisoners. For example, the Standard regarding "grievance procedures" merely requires that "... there is a written inmate grievance procedure that is made available to all inmates and that includes at least one level of appeal." The comment which accompanies the standard states:

A grievance procedure is an administrative means for the expression and resolution of inmate problems. The institution's grievance mechanism should include provisions for the following: written responses to all grievances, including the reasons for the decision; response within a prescribed, reasonable time limit, with special provisions for responding to emergencies; supervisory review of grievances; participation by staff and inmates in the procedure's design and operation; access by all

inmates, with guarantees against reprisals; applicability over a broad range of issues; and means for resolving questions of jurisdiction.

The comment is nothing more than a comment. In other words, while the comment states that the "... grievance mechanism should include ... participation by ... inmates in the procedure's design and operation," as well as "guarantees against reprisals," the fact of the matter is, no accredited prison's grievance procedure in this country has been designed with the actual input or participation of prisoners. Prisoners who utilize the grievance procedure are commonly subjected to reprisals for utilizing the procedure, including beatings, solitary confinement, etc. But these facts do not constitute a violation of the Standard itself, as the actual Standard -- as opposed to the comment -- merely requires that "... there is a written inmate grievance procedure that is made available to all inmates and that includes at least one level of appeal." In other words, once the procedure is placed in writing, the Standard has been and continues to be complied with by the written policy's mere existence. Violation of the written policy does not constitute a violation of the ACA Standard.

But this is fundamentally deceptive. When the prison has written the policies corresponding with the ACA's Standards, then the ACA sells the prison a letter of accreditation which is then used by the prison to obtain more funding from federal, state and private sources. These letters of accreditation state that the accreditation is based on an "independent" evaluation. Independent? The ACA is not an "independent" investigator or evaluator for two reasons: 1) because the evaluators are being paid (with our tax dollars) by the prison officials who are being evaluated; and 2) because the prison officials being "evaluated" are invariably either members, associates or affiliates of the ACA, with absolutely no exceptions. As you will recall, for example, every Ohio prison that has received the ACA's accreditation is under the directorship of the ACA's president-elect. *Independent?*

The standard practices of the ACA and ACA accredited prisons are producing what we believe to be detrimental effects on both prisoners and socio-economic conditions within the United States. It is the kind of practices described above which cause prisoners to lose all respect for the government and the people that the prison and ACA officials allegedly represent. When such respect is nonexistent, disregard for the government and the people (and their laws) logically follows, thus creating the kind of social disorder and violence that we see every day in the news and in our environments; disregard and violence that is understandably perceived by groups such as prisoners as not only justifiable, but imperative. The prisoners who rebelled at SOCF in 1993, Santa Fe in 1980 and Attica in 1971, for example, clearly believed that their actions were inevitable, as all their previous nonviolent attempts to have legitimate grievances corrected had fallen on deaf ears or had been met with administrative hostility and brutalization.

As U.S. District Judge Karlton of the Eastern District of California so aptly cautioned not long ago when considering how the Supreme Court has admonished the courts to "... defer to the discretion of prison officials" when confronted with prisoners' complaints:

I pause here only long enough to note that such [an admonishment] does not even allow the possibility of malevolence. I know nothing in the history of prison administration in this country to provide such utter confidence. Moreover, this [admonishment] does not recognize that extreme deprivations and perceived unfairness may themselves create profound security problems, as the histories of prison rebellions from Attica to the recent incidents involving Haitian detainees clearly demonstrate. It may well be that considerations of this sort are initially for the responsible prison authorities, and that their determinations should be treated with deference. Nonetheless, as has been observed, deference to supposed expertise may be no more than a fiction (1987).

It is clear that ACA and corrections officials are not being held accountable to the public for their misdeeds. It could be cogently argued that the practices of the ACA are in violation of the 1970 *Racketeering Influenced Corrupt Organizations Act* (RICO). Since under the RICO Act only two linked actions are required to establish a racketeering pattern -- any act or threat indictable under fifty or so state and federal laws, such as fraud of public monies -- and conspiracy can be established by a wide range of circumstantial evidence, the ongoing promotion of the essentially meaningless accreditation process costing taxpayers millions of dollars apparently makes the American Correctional Association vulnerable to such an indictment.¹⁸ In light of the apparent deception with which they have been dealing with and manipulating the public, it appears that it would be appropriate and in the public interest for Congress to conduct an investigation and public hearings on the matter. Such action is imperative if, in using Judge Bazelon's words, the "conspiracy of silence between corrections officials and the public can be replaced with a partnership for reform."

ENDNOTES

¹ Little Rock Reed is a Native American rights activist and former political prisoner. On Human Rights Day, December 10, 1995, his book, *The American Indian in the White Man's Prisons: A Story of Genocide* (UnCompromising Books, 1993), was named as an Outstanding Book on the subject of human rights in North America by the Gustavus Center for the Study of Human Rights in North America. Sponsors for the award were the National Interreligious Commission on Human Rights, the National Organization for Women, Free Inquiry, the National Conference of Christians Jews, the National Association for the Advancement of Colored People, the National Urban League, the Unitarian Universalist Association, Project Censored, B'nai B'rith, and the Fellowship of Reconciliation.

Ivan Denisovich is the non de plume of a prisoner. For reasons of personal safety his true identity is being withheld. The name is taken from the title character in Aleksandr Solzhenitsyn's seminal work *One Day in the Life of Ivan Denisovich*, concerning existence in the Soviet gulag system.

² The grandfather of the ACA was chartered in New York in 1871 as the National Prison Association of the United States of America. In 1909 the name was changed to the American Prison Association, and in 1954 the current title was adopted.

³ These numbers represent state prisons only and exclude federal, county and private institutions, which number into the thousands of facilities.

⁴ Actually, most prisons contract with private companies for slave labor. Prisoners are required to work full-time for little or no pay, the proceeds of which benefit private companies. If the proceeds were shifted to benefit the public rather than private corporations, prison labor would significantly reduce, if not eliminate, the need for tax moneys to be spent on prisons.

⁵ Since the late 1980s, advertising revenue in *Corrections Today* has tripled (Meddis & Sharp, 1994).

⁶ Interestingly, in 1994, the ACA had to mail an apology letter to its 20,000 plus members, explaining the circumstances surrounding the sale of the association's mailing list to *Prison Life* magazine, an act that apparently many members complained of as inappropriate when they received a free copy of *Prison Life* (Gondles, 1994).

⁷ Approximately 2/3 of correctional facilities have populations of less than 500 prisoners (Stephan, 1992).

⁸ The actual number of institutions that have been accredited is difficult to determine. The ACA has refused to disclose the figure. Estimates range from ten (Mohr, 1995) to twenty-five percent (Sullivan, 1995), with a higher percentage of the nation's private prisons receiving accreditation.

⁹ A 'control unit' is a specific unit within a prison or an entire prison which subjects the individual to severe sensory deprivation and isolation as a means of brainwashing. Proliferating across the country, control units were designed after the brainwashing chambers used on American POWs in North Korean and Chinese prison camps in order to achieve effective brainwashing and social control. While prison officials publicly state that control units are used for the most violent criminals, studies have indicated that they are used primarily to silence religious leaders, political dissidents, jailhouse lawyers and writers who are critical of prison policies and practices. The Federal Bureau of Prisons (BOP) established its first control unit and accompanying "treatment program" modeled after these brainwashing chambers with the erection of the U.S. Penitentiary in Illinois, following a conference in which Dr. Edgar H. Schein encouraged the prison officials to do so. Without exception, each brainwashing technique described by Dr. Schein was a violation of the constitution and international human rights treaties. To rationalize his position (which was adopted and implemented by the GOP), Dr. Schein stated, "These Chinese methods [of brainwashing] are not so mysterious, not so different and not so awful, once we separate the awfulness of the Communist ideology and look simply at the methods used." In other words, it is politically correct to be "communists" as long as we call ourselves "democratic." Following Schein's presentation, then-director of the BOP, James Bennett, stood before his subordinates and stated that the BOP provides a "... tremendous opportunity to carry on some of the experimenting to which [Dr. Schein has] alluded." He urged them to "... undertake some of the techniques Dr. Schein discussed," and he assured them that BOP headquarters in Washington "... are anxious to have you undertake

these things: do things perhaps on your own -- undertake a little experiment of what you can do with the Muslims...." Indeed they did. Today the GOP and every state prison system has a control unit in which political prisoners/leaders are confined. For an in-depth examination of the origins and current use of control units, see the *Journal of Prisoners on Prisons* (1993) Vol. 4:2. Also see, T. Kisslinger (1995).

¹⁰ As the National Advisor to the Citizens United for the Rehabilitation of Errants, Maygene Giari (1995) comments, "Most of the criticisms leveled against the [ACA's] accreditation process in the 1970s and 1980s are still as valid today as they were then."

¹¹ During a South Carolina ACA accreditation process, two prisoners in one institution who succeeded in talking to the audit team were subsequently locked up in a control unit later that day (South Carolina CURE, 1995).

¹² Accredited even though the system is crammed to 182 percent of capacity with 43,000 prisoners in system designed for 26,000 (Prendergast, 1995).

¹³ These figured are rounded.

¹⁴ While the ACA avoids taking a stand on controversial issues that may offend potential purchasers of accreditation, it has been known to get involved, though subliminally, in some controversial issues when its own profiteering interests and longevity are at stake. For example, in her research paper entitled "Propaganda: Misleading the Public for Political Gain", Maygene Giari (1995) pointed out that in politician's efforts to form public opinion that more prisons are necessary for public safety, a National Institute of Justice (NIJ) study by Edwin Zedlewski, "Making Confinement Decisions", drew on a number of studies "... to show that it is far cheaper to build more prisons than to use alternative penalties or early release to relieve prison crowding." As Giari points out, Zedlewski cited a Rand Corporation study (also made for the NIJ) that found inmates averaged between 187 and 287 crimes a year, not counting drug deals. He estimated that to cost of prison construction, amortized over the lifetime of the institution, amounts to about \$5,000 a year. Adding \$15,000 a year for the cost of imprisonment in a medium-security prison, he figured the total cost of a year's imprisonment for one inmate would be \$20,000. On the other hand, with the cost of crime estimated at \$2,300 per crime, the "typical" inmate who committed only the lower figure of 187 crimes per year would be responsible for \$430,000 in costs of crime. Thus, according to Zedlewski's figures, sentencing 1,000 more offenders to prison would cost only an additional \$25 million per year, but would prevent about 187,000 felonies costing approximately \$430 million over the same period of time (Zedlewski, 1987).

Criminologists challenged the validity of Zedlewski's cost-benefit analysis. He misused the material from the Rand study, giving the impression that the "typical" criminal commits such a shocking number of crimes. The Rand study was not a survey of a typical prison population. The survey covered only robbers and burglars in prison, and such offenders represent only about 45% of all prison admissions. These prisoners were asked to report the number of crimes they had

committed in the two years before they were sentenced to prison. Zedlewski reinterpreted this to mean the number of crimes they had committed after release. Moreover, the median number of crimes they admitted was 15 per year, not between 187 and 287.

The figure of \$2,300 as the cost for each crime has been challenged as inflated, and grossly misleading when applied to all repeat offenders. Furthermore, Zedlewski under-estimated the costs of imprisonment and prison construction. In any case, offenders who commit 187 crimes a year would be more likely to be housed in maximum-security prisons, which cost a lot more than medium security.

Zedlewski's study came out in 1987, but despite the criticisms leveled against it, NIJ Director James Stewart reissued it again in 1988. It was resurrected yet again in 1989 in the professional journal *Corrections Today* (published by the ACA), in an article by Richard Abell (1989), Assistant Attorney General in charge of the Office of Justice Programs. Abell [and the ACA] proposed that criminal justice professionals use Zedlewski's study as the basis for making decisions on building more prisons. Advocates of "Three Strikes" laws at state and federal levels in 1993-94 once again repeatedly cited the "savings" that would result from life sentences for third time offenders. Such claims became so frequent that Rand Corporation issued a fact sheet saying that neither the number of crimes committed by the supposedly "average" criminal nor the purported cost of those crimes is born out by Rand studies.

¹⁵ Referring to prisoners as the ACA's "clients", the ACA's Code of Ethics states that "[m]embers will respect and protect the civil and legal rights of all clients", and that "[e]ach member will report without reservation any corrupt or unethical behavior which could effect either a client or the integrity of the organization.

¹⁶ According to the editor of the *Prison Legal News*, within days after distribution of the April 1995 edition, in which the CAHR had an extensive article published in which it urged prisoners to participate in the investigation of the ACA, an ACA representative called the publisher in an attempt to obtain *Prison Legal News*' mailing list. Although the request was denied, dozens of letters between the CAHR and prisoners who subscribe to the *Prison Legal News* have mysteriously disappeared, including correspondence between the authors of this article.***

¹⁷ In fact, the ACA does enter into a contract with every agency it accredits. Prisoners are third party (direct) beneficiaries to the contracts. As such, they may bring an action directly against the ACA and the prison officials to enforce the promise made for their benefit. It was discussion of this possibility, as well as the possibility of an organized filing of numerous lawsuits against the ACA to be consolidated into a nationwide class action alleging ACA violations for fraud and other laws, which apparently concerned the ACA officials about the article CAHR had published in the *Prison Legal News* as discussed above.

¹⁸ The application of the RICO Act has consistently expanded since its inception 25 years ago. Currently, companies have employed RICO to charge unions, either trying to organize their work forces or negotiate new compensation packages with racketeering efforts (Baker, 1995).

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