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# THE BLACK PRISONER AS VICTIM

By HAYWOOD BURNS

HAYWARD BURNS attended Harvard University and graduated as an Honors Student in History in 1962. He then attended Cambridge University, England, on a Lionel deJersey Harvard Studentship. After a year's study at Cambridge, he spent three years at Yale University Law School, where he earned his law degree in 1966. Mr. Burns was a former law clerk to U.S. District Court Judge Constance B. Motley, a former member of the firm of Paul, Weis, Goldberg, Firking, Wharton and Garrison, and, Assistant Counsel, NAACP, Legal Defense Fund. Presently he is the Executive Director of the National Conference of Black Lawyers and a member of the faculty of the New York University Law School.

*"The degree of civilization in a society can be judged by entering its prisons."*  
DOSTOEVSKY — *The House of The Dead*

*"Don't be shocked when I say I was in prison. You're still in prison. That's what America means: prison."*

EL-HAJ MALIK SHABAZZ (*Malcolm X*)

MANY HAVE OFTEN AGREED with Dostoevsky that the degree of civilization of a nation can be judged by its prisons. Measured by this standard, this country falls far short of the mark. Coast to coast, with too few exceptions, America's jails and prisons are crumbling, inadequate structures, understaffed overcrowded, unfit for human habitation. They are, in fact, a national disgrace.

There are, of course, reasons why individuals are still being housed in jails built at the time of the American Revolution, thrown with two other persons into cells built for one person, subjected to indignities and humiliations from insufficiently trained, insensitive prison guards. These reasons basically add up to a lack of caring on the part of the public. Prisoners are part of America's invisible population. They are shunted off behind the gray stone walls where they can be more readily forgotten or ignored, making it easier to pretend that many of the serious social problems they represent do not exist. But beyond

apathy, there is vengeance. For those who are apt to think about prisoners at all, are more apt to have a negative or antagonistic attitude toward them, often with the hostility born of the vindictive desire to punish other human beings because they are evil, and because of their "crimes against society."<sup>1</sup> It is the prevalence of attitudes such as these that is largely responsible for the pittance of our national wealth that is allocated to Corrections. Perhaps even more telling, however, is the way in which the money that is available is spent. Ninety-five (95%) percent of the country's entire correction effort is spent on holding people in (and down) — on custodial costs: walls, bars, guards — with only the remaining meager five (5%) percent to cover rehabilitation efforts: education, job training and health services.<sup>2</sup>

1. See, Karl Menninger, *THE CRIME OF PUNISHMENT* 3-15 (Viking Compass, ed., 1969).

2. Ramsey Clark, *CRIME IN AMERICA* 213 (1970). See also President's Commission on Law Enforcement and the Administration of Justice, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* (1968).

From penal institutions of every size and description across the country come reports of corrections officers who overstep their authority, misuse their power, and often in the most vicious and wanton fashion inflict summary punishment upon inmates who are in their charge.<sup>3</sup>

These problems — inadequate facilities, inequitable bail, unfair administrative procedures, physical and psychological brutality — make up the lot of thousands of men and women caged behind American bars. For the black prisoner, however, there is a peculiar racial dimension to these problems. To understand the black prisoner's plight, it is necessary to look beyond the general surveys and critiques of American prison conditions and view his situation through the prism of race.

**I**N THE FIRST INSTANCE it is important to note that non-whites make up a disproportionate number of the nation's prison population. In California over 40%.<sup>4</sup> In New York, more than 70%.<sup>5</sup> Thus the described burdens of an oppressive prison system are disproportionately borne by non-whites. This is likewise true of the victims of the money-bail system. Under this system it is the poor who are sentenced by their poverty to long terms in jail awaiting trial though convicted of no crime. Again, a disproportionate number of the poor are non-white. On the other hand, those who administer the prison system, who are responsible for the custody, care and rehabilitation of inmates are disproportionately white. In New York, for example, it is reported that despite the fact that close to some ¾ of the prisoners are non-white, some 98% of the corrections officials over them are white.<sup>6</sup>

For the black prisoner the general problems of lack of administrative fairness and brutality are compounded by the racism rampant in many penal institutions. Complete racial segregation within prison systems is less widespread than it used to be,<sup>7</sup> but reports of systematic discrimination persist — speci-

ally with regard to exclusion of blacks from certain preferred prison work assignments and programs. Further, the personal racism — conscious or unconscious — of prison authorities works to the distinct disadvantage of blacks enmeshed in prison administrative proceedings. This is particularly true where the decision maker is not required to articulate the grounds of his decision or is free to exercise a series of options without close detailed standards as to their exercise. Much racism can be cloaked behind the rubric of "administrative discretion." It is particularly hard for black inmates who are outspoken and who refuse to adopt the proper degree of servility expected of them when they are placed in the position of having prison officials make decisions about them that will ultimately affect their lives. The indeterminate sentence especially as employed in California is supposed to be a progressive bit of penology. It is often in fact a dangerous weapon in the hands of hostile guards who are always capable of imagining, provoking, or exaggerating some or other prison infraction until the incident becomes the basis in whole or in part for the prolongation of a one year to life sentence, on the ground that the

3. See, George Jackson, SOLEDAD BROTHER (1970); Etherilge Knight, BLACK VOICES FROM PRISON (1970); Prisoners Solidarity Day Committee, PRISONERS CALL OUT: FREEDOM (1971), detailing the experiences of black inmates in Auburn (New York) Prison who charge that they have been the victims of a campaign of systematic brutality following their participation in a Black Solidarity Day demonstration within the prison in November 1970. Former Attorney General Ramsey Clark details an extreme example as revealed by the 1966 investigations of the Cummins and Tucker prison farms in Arkansas: "Allegations, at least partially verified and largely credible, included the murder of inmates, brutal beatings and shootings. Shallow graves with broken bodies were uncovered. Food unfit to eat was regularly served. Forced homosexuality was openly tolerated. Extortion of money by wardens and sexual favors from families of inmates to protect their helpless prisoner relatives from physical injury or death were alleged. Torture devices included such bizarre items as the "Tucker telephone," components of which were an old telephone, wiring and a heavy battery. After an inmate was stripped, one wire was fastened to his penis, the other to a wrist or ankle, and electric shocks were sent through his body until he was unconscious." Clark, *supra* n.2, 213.

4. Ridenour, "Who Is A Political Prisoner," 1 Black Law Journal 17 (1971).

5. *Sostre v. McGinnis*, 319 F.Supp. 863 at 876-77.

6. *Id.*

7. See, *Washington v. Lee*, 263 F. Supp. 327, 331 (M.D. Ala. 1966).

inmate is "not ready" yet. It is all the more dangerous when the guard in question is actuated by racial animus.<sup>8</sup>

The brutality problem has racial vectors, not only because of the extent to which a guards' racism may stimulate him to act out his antipathy to blacks violently, but because the racism can become so pervasive that racist guards and racist white prisoners team up in their attacks upon the non-white prisoners. The fact that one is guard and the other is prisoner makes no difference. They have found common ground; in a microcosm of much in the larger society, they are bound together only by the whiteness of their skin and the depth of their anti-black feeling. That is enough. They attack.<sup>9</sup>

**A**PART FROM THE RACISM that he finds in the prisons, the situation of the black prisoner must be viewed differently from that of others because of the role that racism has played in getting so many blacks into jail in the first place. The Kerner Commission told the nation something most blacks have known for a long time — America is a country permeated by racism.<sup>10</sup> The law like other institutions has not been able to escape this racism. Rather than transcend the racism of the society, the law, like other institutions, often reflects it. In fact, the law has been the vehicle by which the generalized racism in the society has been made particular, and converted into the policies and standards of social control that govern our lives. In this kind of social context "anti-social" acts by blacks otherwise denominated as criminal, may be signs of health or at least signs of life. They may be acts of self-preservation, evidences of a refusal to acquiesce in a system which by calculation and design is bent on the destruction of non-white peoples, and which, daily, accomplishes that mission. This is not to over romanticize black prisoners to say that every black man and woman in prison is necessarily a race hero — but many are. That there are not even more blacks be-

hind bars may often be no more than an indication of lives of "getting by," made up of a string of bitter accommodations and stale compromises with oppression. Our American history begins with our capture and imprisonment in the baccaroons — the fetid slave pens erected on the coast of West Africa to hold blacks until their imprisonment as cargo in the dark holds of the slave ships which would carry them (those who lived) to imprisonment in the American social system of slavery. Our struggle through slavery, Jim Crow, discrimination, and modern racism has been for liberation from these prisons. Every major social indicator reflects that we still have not made it. Regardless of which side of the bars you are on, if you are black and American you are, as Malcolm said, in prison — the prison of racism, the prison of exploitation, the prison of governmental repression. Some victims are just more obvious than others. We are all victims.

**A**SIGNIFICANT DEVELOPMENT in recent times has been the increased awareness on the part of black prisoners of the nature and extent of their victimization. A growing political awareness in the prisons has fomented acute social analysis that is often unrivaled among so-called "free" blacks walking around outside the prison walls. Though a great number of black prisoners have arrived at their political conclusions through independent study and informal group discussion, the politicalization of the black prisoner has also been aided greatly by the organized efforts of the Nation of Islam (Black Muslims) and more recently, the Black Panther Party. As prisoners become more and more conscious of the social and political ramifications of their situation and are able to exchange

8. See, Mitford, "Kind and Usual Punishment in California," *The Atlantic*, March 1971.

9. See, Jackson, *supra* n.3. For a varied and provocative description of black prison life as seen through the eyes of several black prisoners, see, *The Black Scholar* April-May 1971.

10. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDER 10 (Bantam ed. 1968).

destructive negative self images for new senses of dignity and pride, they become less willing to accept passively the dehumanizing conditions of American prisons as an immutable given. Responses have come in various forms. In the past year major jail or prison rebellions have flared in almost every part of the country. There has been as well an upsurge in litigation on prison conditions and prisoners' rights, as inmates, sometimes on their own and sometimes through efforts of civil rights and civil liberties organizations, turn to the courts seeking vindication.<sup>11</sup>

Great attempts at self help are being made through the organization of black groups within the prisons. Afro-American Societies springing up at various institutions engage in a wide range of programs from studying black history and culture to carrying out political activity directed at their grievances. A survey of activity within the nation's prisons reveals that black prisoners are not only men and women on the move, but increasingly they are moving from a basis of group solidarity with concerted action.

Prisoners are being aided now by support groups on the outside which, through a variety of techniques, address different aspects of the prisoner's dilemma. There are those, for example, who concentrate on alleviating the prolonged pretrial incarceration by providing bail for the indigent accused from a revolving bail fund. A pool of money is raised from which bail for individual prisoners is posted. When the bail is returned, the money goes back into the pool to bail other prisoners out. Simultaneously attempts are constantly being made to increase the size of the pool. The revolving bail fund approach has been pioneered by the Women's Bail Fund of New York City in efforts to assist inmates in New York's Women's House of Detention — most of whom are black and Puerto Rican.<sup>12</sup>

Other outside groups concentrate on helping inmates who are serving sentences. They may even form an outside

organization which becomes an adjunct of a group already existing in the prison. These outside support groups are limited according to the latitude permitted them by the various prison authorities, but they attempt to form a communications link with those on the inside. They visit the inmates, hold classes for them, contact and assist inmates' families, carry out tasks for inmates in the outside world that imprisonment makes impossible, and attempt to inform others about the realities of prison life. One group that has achieved a notable degree of success in using this approach is a black organization in Rhode Island, affiliated with the Afro-American Society in the Rhode Island state prison.<sup>13</sup>

Still other groups focus their energies on assisting the man or woman just coming out of prison. For many ex-prisoners this is a critical period. If he or she can be assured of some assistance in finding a job, food, clothes, shelter as well as sensitive, sympathetic, supportive people the adjustment to the outside world is less difficult and the chances of returning to prison less great. This has been one of the major thrusts of the Fortune Society, an East Coast based group that has been in operation for a little more than three years. The work of the Fortune Society is directed and carried out largely by ex-inmates.<sup>14</sup>

**P**RESENT OUTSIDE EFFORTS in assisting the imprisoned are far from adequate — especially the black prisoner, whose problems are, after all, special. The black community cannot afford to share the

11. Though many organizations have taken an interest in litigating questions of prisoners' rights, some of the most important work in this field is currently being done by lawyers in the Corrections Project of the NAACP Legal Defense and Education Fund, under the direction of Stanley Bass, Esq., 10 Columbus Circle, New York, New York 10019.

12. The Women's Bail Fund may be contacted at Box 637, Cooper Station, New York, New York 10003.

13. The External Committee of the Afro-American Society of the Adult Correctional Institution may be contacted c/o Rev. Benny Smith, 53 Cypress Street, Providence, R.I. 02906.

14. The Fortune Society may be contacted at 1545 Broadway, New York, New York 10036.

distance and the hostility which much of the dominant society reserves for those in prison. We must not be in a position of having others define for us who our friends and who our enemies are, which *persona is non grata*. Some of the finest talent of an oppressed people is always to be found in the prisons of the oppressor. For the strength of our community we must redeem from human waste as many of our imprisoned brothers and sisters as possible. We must address the problems of the American penal system because of the historic threat it has represented and continues to represent to significant portions of our youth. The fight for the humanity and dignity of those of us who are behind bars is part and parcel of our overall fight for liberation. For we —

those on both sides of the wall — are the common victims of a social system that demands of us to be less than we are. Any quest for black justice is incomplete that does not include within its scheme the black prisoner. We must not take the judgment of a criminal society as to who the real criminals are. Black voices from within the prison walls are growing louder now, as brothers and sisters, despite cruel hands that would twist and maim, are straightening themselves out, wending their way to health, strength and eventually, power — power with which to confront the afflictions of prison life and beyond, the larger injustices of America. The voices are calling to us for help. It is a call which, in this uncivilized land, must not go unheeded.

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