

*Bill Newman*

## Marionizing Massachusetts

**P**RISONS SLEEP. I LEARNED THIS on my first visit to a maximum security penitentiary, MCI-Walpole, as a law student, in 1972.

After the riots there that year, I volunteered as a civilian observer and was assigned to the graveyard shift. We civilians walked the catwalks on the tiers and tried not to invade the privacy of the men in the cages. We would glance at those forms under their coarse blankets, but then quickly shift our eyes and stare mostly at the walls across from the windowless cells. Those walls, sixty feet high and ten feet thick, were slopped with a frieze of food and human feces.

By 3:00 or 4:00 a.m., dream-noises and the cicada sound of beds creaking from masturbating or shifting bodies would now and then disturb the night. Mostly it was quiet.

By 7:00, however, the volume was cranking up: a non-stop cacophony of arguing or jiving or mindless mouthing off for want of anything else to do, banging and hollering and hooting, one inmate louder than the next, competing by the unwritten rule that he who screams the loudest wins the argument and makes it to the next moment feeling victorious over someone, about something. In Walpole, then, as in most prisons, the incessant noise, with only minor lulls, would ratchet up all day until the lights dimmed, the sounds—at long last—subsided, and the institution would again sleep.

Prisoners who know how to do time understand the importance of capturing sleep. Between the guards' shutting off the lights and turning them on again, some 28,000 seconds go by. A sleepless night can mean counting every one or lying in the dark with thoughts pinging in your head like loose coins in a dryer.

Eleven o'clock—  
time to get  
locked down  
again . . .

*The Massachusetts Review*

. . . it's  
time to sleep  
dream and be  
away from  
here.<sup>1</sup>

Sometimes something amorphous and unidentified steals the night's sleep. More often, some reality of being inside triggers restlessness: an appeal lost, a visit missed, a parole application denied; or hearing that an inmate twice your size has promised to soap up your anus and rape you during your next shower. Sometimes news from outside is the cause:

a hard con . . .  
has just read  
about his children's death  
in a newspaper  
more than a week old . . .

later that night  
I'll lie awake  
pretending  
not to hear him  
sobbing  
in his pillow . . .<sup>2</sup>

In his book *In Constant Fear*, Peter Remick, doing time at Walpole for armed robbery, wrote: "The majority of the inmates want a safe institution where they can sleep without fear of someone knifing them to death. They want to walk the prison corridor without fear of being beaten on the head with lead pipes and steel bars. They want to know that other inmates won't pull knives and demand their canteen tickets, radios and TVs or attack them sexually."<sup>3</sup> Fear of HIV infection, of course, compounds the fear of sexual attacks. Male prisoners commit over 200,000 rapes on other male prisoners every year. Seven percent of Massachusetts inmates are HIV positive.<sup>4</sup>

For 299 Massachusetts inmates in medium security prisons the night of October 31, 1995, brought neither sleep nor fitfulness but squads of riot-gearred guards who stormed into their cells, rousted them up, handcuffed them, shackled their feet, and

## *Marionizing Massachusetts*

marched them through the corridors and out the prison gates. After being chained in a bus, driven to Logan Airport, and loaded into an L-1011 cargo jet, the inmates by dawn were all locked inside the Dallas County jail.

The transfers to Texas represented logic of a sort. The jail business there, run by private corporations, is booming. But they've temporarily overbuilt, so they have put out For Rent signs and are leasing jail space, mostly to nearby states. After the arrival of the 299, a Dallas County Sheriff's Department spokesman said, "We were gratified to get a contract [and] frankly astounded that it [was with] Massachusetts—it's 2,000 miles away."<sup>5</sup>

Massachusetts Governor William Weld justified the transfers as freeing up cells needed to hold other prisoners in medium security. He failed to mention that his administration had caused the space crunch by refusing to transfer to minimum security those inmates whom the Department of Corrections has determined could be safely incarcerated in less restrictive settings. Weld also did not address the question of whether the transfer policy ultimately makes sense.

Sooner or later, all the transferees will get out. Their Texas incarceration will have cut them off from family and friends and the community to which they will return. They will experience additional doses of depression and rage, and they will be precluded from a gradual reintegration into society through work release or parole.

None of this affects Bill Weld's thinking. On criminal justice issues, the governor, a former federal prosecutor, acts no better—but probably not much worse, either—than other politicians. His position—send all criminals to jail, preferably for as long as possible—creates simple and effective Reaganesque sound bites. He expresses a sentiment overwhelmingly endorsed by an outraged electorate fearful of crime, fed up with perceived liberal mollycoddling, and disdainful of complicated sociological explanations. People want to feel safe in their homes and on their streets. They want those predators taken away.

By contrast, proposals such as alternative sentences, rehabilitation, community service, restitution, house arrest, drug treatment, abolition of mandatory minimums, shorter sentences, increased probation and parole services, education for inmates (an education is the greatest single deterrent to crime, but the 1994

## *The Massachusetts Review*

federal crime bill prevents inmates from working toward a college degree)—these make a politician seem to be siding with criminals. Most elected officials have concluded that even if the Welds of the world are wrong on this issue, they cannot sail against the wind. Just ask Bill Clinton.

Besides, Weld's stand rests upon a modicum of truth. Society, for everyone's protection, must isolate some prisoners: sociopaths who have been stealing since they were old enough to crawl and grab; men (94 percent of inmates are male) filled with unremitting and uncontrollable rage who gratuitously slice into people's bodies with a glass shard, a knife or a penis.

But by and large we are not locking up dangerous people. Only 15 percent of federal and 32 percent of state inmates are incarcerated for violent crimes. Prisons are bulging with persons sentenced for drug and property offenses.

Overwhelmingly, the imprisoned are poor (33 percent were unemployed prior to entering jail), and disproportionately they are people of color. More African-American men are incarcerated than are enrolled in colleges and universities. 50.8 percent of the prison population is black, 7.7 percent Hispanic. At the present rate, by the year 2010 an absolute majority of African-American males between 18-40 will be serving time in prison and camps.<sup>6</sup>

Although the image of Michael Dukakis handing Willie Horton a get-out-of-jail-free pass for a weekend furlough perpetuates the image of Massachusetts treating lawbreakers too leniently, in truth the Commonwealth has enlisted fully in the national war on crime and criminals. As a Massachusetts lawmaker, Weld represents not the exception but the rule.

Massachusetts, many people are surprised to learn, has some of the most severe sentencing laws in the country. For example, in most states a life sentence for murder permits parole eligibility after fifteen or twenty years. By contrast, a life sentence in Massachusetts for murder one means imprisonment for life without any possibility of parole. Three-strikes-and-you're-out laws, currently in political vogue, are old hat here. For this entire century Massachusetts law has stipulated that a third incarceration for a serious offense means the maximum possible penalty—either twenty years or life for most felonies. And average prison sentences in the Commonwealth rank among the country's longest.

## *Marionizing Massachusetts*

Richard Nixon declared a war on crime during his 1972 presidential campaign. That war has been waged much as the Vietnam War was—with body counts as the sole standard for success.

By that criterion, we have won. In 1972 America was incarcerating 200,000 of our own; by 1984—400,000; by 1991—1,000,000; and by 1994—1,500,000. An additional 4,000,000 are on probation or parole—for a total of 5.5 million Americans enmeshed in the criminal justice system.

With an incarceration rate between five and eight times that of Canada and Western European countries, the United States today locks up a greater percentage of its population than any other nation in the world. And every week the United States puts 1,524 new prison cells on line and 2,000 more people behind bars. By the year 2000, our prison population is expected to exceed 2,000,000.

Massachusetts has taken its share of prisoners in this war. In 1980 the Commonwealth had 5,667 citizens locked up; in 1985—8,637; in 1990—13,946; and in 1995—21,994. For the year 2000 the projected number approaches 27,000.<sup>7</sup>

In addition to its lengthy sentencing laws and a soaring prison population, Massachusetts also has maintained prison conditions that rank among America's worst. Both state and federal courts repeatedly have found that the Commonwealth's penal institutions violate the constitution's Eighth Amendment guarantee against cruel and unusual punishment.

The Charles Street Jail case<sup>8</sup>, decided in 1973, was the first Massachusetts lawsuit in which prisoners alleged that their conditions of confinement violated the constitutional guarantee. During the case, federal Judge Arthur Garrity, without prior warning to jail officials, took his law clerk and spent a night there. His rulings reflect that visit.

Judge Garrity found that all the floor space in his cell was filled up by the toilet, sink and double bunk, and that the "iron-slatted cots which have no springs, are covered by old, worn and often soiled mattresses which have no protective cover and are in deplorable and unhealthy condition." He noted that "toilets and sinks in the cells are corroded, filth-encrusted and often a serious health hazard." He was struck by the "fecal smell [that] emanates from many toilets." He observed that "roaches and water bugs are prevalent [and] rats are a serious, continuing problem." He commented on the dirt from shoes that "flows

## *The Massachusetts Review*

down into the food.”

The judge was deeply disturbed that “the jail as a whole poses a serious fire hazard.” His sense of decency was also offended by “inmates’ mental health problems [being] aggravated by the cramped quarters and enforced idleness.” And he found that twenty hours a day in a cage barely big enough for one, occupied by two, “with regular inadvertent contact inevitably exacerbating tensions and creating interpersonal friction,” violated the Eighth Amendment’s prohibition. Judge Garrity, among his remedial orders, required an end to double bunking.

In the twenty years since Garrity’s decision, a majority of Massachusetts jails and prisons have been sued for violating the constitutional minimums: Deer Island, Salem, Lawrence, as well as the houses of correction in Plymouth, Norfolk, Bristol, Barnstable, Middlesex, Worcester and Hampden Counties. Similar suits have been brought against the state prisons at Bridgewater, Concord, and Walpole.

The lawsuit against the Essex County jail presents a paradigm. In that case, decided in 1983, the Massachusetts Supreme Judicial Court began by stating: “*The facts are not disputed,*” and then went on to describe the conditions:

*The jail [has] no flush toilets, sinks, or running water. Rather, prisoners are provided with five gallon metal or plastic containers into which they must urinate and defecate. Most of the metal buckets are old and rusted, while the plastic ones turn black with use. The prisoners, housed two, three, and sometimes four, men to an eight foot by eight foot cell, must keep these buckets in their cells, with two men sharing a bucket. Many of the buckets do not have covers and others have covers which do not fit tightly. The prisoners generally are allowed to empty the buckets once in a twenty-four hour period. Accordingly, the inmates must smell and breathe air permeated with the odor of their waste. Moreover, prisoners confined to their cells take three meals a day next to these buckets.*

The statement of undisputed facts continued:

*Some prisoners are confined to their cells between seventeen and twenty-four hours a day. To empty the buckets, the prisoners must carry them to the “Bucket Room” where they wait in line to dump them in a sink. . . . Only unpressurized cold water is provided to wash the buckets, although a liquid sanitizer may*

## *Marionizing Massachusetts*

*be poured into them after they are emptied. Accordingly, the buckets have become "feces encrusted." The odor during this process is described as unbearable. This bucket room is directly next to the [shower] room . . . and the odor from the human waste filters into the showers as well.<sup>9</sup>*

Since then, the need to reform Massachusetts jail conditions has continued. An independent 1993 management study of the Franklin County Jail, for example, found that the institution was operating at 207 percent of capacity; slop buckets were still being used in some cells; and the jail was meeting only two percent of the recommended standards:

[T]he jail can be viewed as a disaster waiting to happen. . . . The entire building complex is outdated and substandard. . . . In a fire . . . smoke [would] billow up uninhibited into all of the detention areas . . . the inmates would be trapped in cells manually locked as smoke overcame them and corrections officers. . . .<sup>10</sup>

Despite sometimes barbaric conditions, federal judges (two-thirds of whom were appointed by presidents Reagan and Bush) generally has stonewalled prisoners' claims that their conditions of confinement violate the Eighth Amendment. Indeed, even dangerous overcrowding (the one area in which courts in some measure still honor the Eighth Amendment) has not remained sacrosanct against the competing clamor to lock up more people.

In 1989, shortly before Charles Street finally closed and the new jail opened, corrections officials petitioned the court for permission to double-bunk inmates in the new facility. The district court and the court of appeals both rejected that petition, but in 1992 the United States Supreme Court reversed and placed its imprimatur on double bunking in the new Suffolk County jail.<sup>11</sup> We had come close to full circle.

For the past twenty years Massachusetts has been building additional prison space as fast as lawmakers can find funds to appropriate. In 1995, however, the Massachusetts legislature balked at Governor Weld's request for a \$705 million bond issue to build 5,000 new cells. The governor castigated the recalcitrants, claiming that "the legislature didn't want to charge into

the future.” Weld may well have been right.

And the legislature may well have been too. A 1994 Massachusetts House of Representatives study concluded that “The [governor’s] construction program [alone] could cost the Commonwealth \$150 million annually and a billion dollars over the life of the bonds, and would not reduce overcrowding.” The report cited as one basis for its conclusion that the “attempt to build . . . out of the overcrowding crisis fails to differentiate between violent criminals, and other[s] for whom alternatives to traditional incarceration should be considered.”

That study confirms the paradoxical history of prison construction in America: building jails never reduces overcrowding for long because the criminal system always fills every institution beyond capacity. Massachusetts prisons currently are operating at 150% of capacity. If all of Weld’s prisons are built, the prisons still will be operating at 150% of capacity.

And locking up all those people does not ameliorate the crime problem. We warehouse hundreds of thousands of nonviolent rehabilitatable individuals in institutions where they are brutalized both psychologically and physically. Ultimately, we release them—jobless, without skills, uneducated, broke, disconnected from their families and communities, their mental health problems unnoticed, their substance abuse untreated, and burdened with the stigma of being ex-cons. The released, not surprisingly, commit more crimes. As the grates on apartment windows, triple deadbolt locks on front doors, walled communities, and the proliferation of alarms on almost everything demonstrate, all we are accomplishing by senselessly imprisoning others is further imprisoning ourselves.

And at great expense: it costs Massachusetts between \$50,000-\$100,000 to build a cell and \$29,604 per year to imprison an inmate in one.<sup>12</sup> During the past four years, every line in the state budget has remained flat or headed down, except one, the Department of Corrections’. That budget has shot up 40 percent even though studies have concluded—virtually unanimously—that increasing incarceration does not decrease crime.

Jails are packed, not because crime has increased (crime rates have changed little in the past five years), but rather because lawmakers have mandated lengthier sentences, diminished or abolished parole, and enacted mandatory minimums, which



## *Marionizing Massachusetts*

prohibit suspended sentences and probation. Massachusetts has mandatory minimum sentences for drunk driving, almost all drug crimes, gun offenses, and dozens of others.

The United States Supreme Court enshrined these sentences in its 1989 decision upholding the federal sentencing guidelines. (“Guidelines” is a misleading euphemism. Under federal law the guidelines are essentially mandatory.) Here’s how the sentencing scheme works.

The defendant is assessed points for the severity of the crime, his past criminal history, the amount of damage he caused, and the degree of planning. The judge computes the sum and then deducts points for pleading guilty (“accepting responsibility”). He then transposes the number onto a chart that yields a limited range for a permissible penalty. The citizen caught up in unfortunate circumstances and the sociopath thus receive approximately the same sentence.

Most judges and lawyers have concluded that the national experiment with mandatory minimums has failed. As the Massachusetts House of Representatives Special Committee reported in November 1995:

Minimum mandatory sentences do not function as a deterrent to drug-related crime. Mandatory minimums do not facilitate the dispensation of justice. On the contrary, they obscure justice by creating a judicial philosophy which states that the crime will be tailored to the punishment and not vice versa. As they are presently written, current laws do not curb the legitimate problem of prison overcrowding. Instead, they exacerbate it. The Committee has unearthed countless instances in which the period of incarceration for a non-violent first-time offender was so severe that a secondary phenomena was established: prison space which should be reserved for the incarceration of those individuals posing the greatest menace to society are needlessly occupied.<sup>13</sup>

Similarly, United States Supreme Court Chief Justice William Rehnquist recently stated:

Mandatory sentences are perhaps a good example of the law of unintended consequences. There is a respectable body of opinion which believes that these mandatory minimums impose unduly harsh punishment for first time offenders. [They also] have led to an inordinate increase in the federal prison

## *The Massachusetts Review*

population and will require huge expenditures to build new prison space. . . . A majority of federal judges in a recent survey went on record opposing the current regime of sentencing criminal defendants. . . .<sup>14</sup>

Massachusetts' 1993 Truth in Sentencing Bill nonetheless emulates the federal scheme. That Massachusetts law abolished deductions for good behavior, effectively eliminated parole for state prisoners, and established a state sentencing commission with a mandate identical to that of the administrative body which wrote the federal guidelines. The law, cloaked by legislators in the guise of reform, in actuality only brought us closer to one-size-fits-all sentencing. That size is large.

Judges, of course, traditionally have considered punishment as one—but only one—of the legitimate objectives of sentencing. The other purposes have been rehabilitation and specific deterrence (imposing a sanction that diminishes the possibility of that defendant committing another crime); incapacitation (protecting society while the offender is incarcerated); and general deterrence (setting an example that will stop others from similar criminal behavior). After weighing these factors, a judge would craft an appropriate sentence. No longer. A judge increasingly does not need wisdom in order to dispense justice. All he needs is an adding machine.

With results like these: eighteen years ago I represented a 22-year-old who was dealing drugs to support his own use. He did forty-five days in jail, completed drug rehabilitation, and then went on to graduate from college. Today, my law partner and I are representing on appeal a young man in similar circumstances. He was 25 years old when, in order to support his own habit, he sold some drugs. Because of the guidelines, he was sentenced to twenty-five years and is scheduled to be released when he is 47 years old.

Lengthy incarcerations for individuals in circumstances like these have caused a rapid rise in the prison population which has in turn required an updated penological model. Massachusetts prison officials found that paradigm in Marion, a federal prison in Illinois that in 1984 was ordered placed in permanent "lockdown."

Marion in a sense constitutes a large-scale experiment in

## *Marionizing Massachusetts*

sensory deprivation. Under Marion's model, prisoners are confined to their cells 23 hours a day. Authorities allow prisoners out three times a week for "exercise." Arms shackled and legs chained, an inmate shuffles from his cell into a cage on wheels, just big enough for a man to fit inside. A guard rolls that cage inside another, larger one. Inside the cage there may be a basketball hoop. The prisoner can play basketball—alone. Prisoners call the cage the "run," or the "pound." So do the guards.

But the guards don't talk to the prisoners, and the prisoners, sealed behind hermetically-closed triple-plated steel doors, can't talk to each other. They cannot see outside their cells. Meals on trays are slid into the cell through what looks like a mailslot.

In 1994, Marion moved, lock, stock, and barrel, to Florence, Colorado. Like Marion, Florence is quiet. From time to time, from one of the 1,400 iron doors opening and closing, a metallic echo resonates. But in this above-ground mausoleum these are the only sounds.

The lockdown at Marion spawned a lawsuit by prisoners claiming a violation of the Eighth Amendment. According to one correctional officer's testimony, some guards often and arbitrarily conducted what they logged as "rectal searches" that in reality amounted to rape. Others bragged about how far they had shoved their riot batons up inmates' rectums.

At times, guards shackled prisoners in their cells and beat them with steel tipped boots and three-foot riot bludgeons. They also operated on shackled inmates with rib spreaders, equipment that separates rib cartilage and inflicts searing pain but breaks no bones and leaves no evidence of bruising. The rib spreader is part of regular-issue equipment.

Of course, according to federal officials, beatings are in the eye of the beholder. The assistant warden opined that a prisoner was not "beaten" unless the prison hospitalized him in an intensive care unit. A kick to the stomach of a handcuffed prisoner did not amount to "abuse or beating."

In a ruling on the prisoners' claims, the federal Seventh Circuit Court of Appeals first recited the facts:

Inmates are forbidden to socialize with each other or to participate in group religious services. Inmates who . . . misbehave . . . are sometimes tied spread-eagle on their beds, often for hours at a stretch. [I]nmates returning to their cells are subject[ed] to a rectal search [even though the inmate has not been

## *The Massachusetts Review*

in contact with any other human being. Visits in Marion are “no contact,” conducted by telephone through thick, bullet-proof glass with guards monitoring the conversation]. A paramedic inserts a gloved finger into the inmate’s rectum and feels around for a knife or other weapon or contraband. . . .

The Court then articulated part of the inmates’ legal argument:

The [prisoners] argue that the conditions . . . are even worse than depicted above because guards frequently beat prisoners and conduct the rectal searches in an unnecessarily brutal, painful and humiliating manner. . . . These allegations [and others] aroused the [condemnation] of Amnesty International.<sup>15</sup>

Then came the “but.” The appellate court, after reciting the constitutional mantra that ostensibly governs Eighth Amendment jurisprudence—that prisons must reflect “society’s evolving standards of decency”<sup>16</sup>—held that Marion was close enough. The prisoners lost, and the lockdown continued.

As for an inmate being transferred to Marion, the same court ruled that a prisoner has no constitutional right to challenge the system’s decision to place him anywhere it wants. “These conditions [at Marion] in no way constitute additional punishment [and are not significantly different] from normal confinement.”<sup>17</sup>

Larry E. Dubois, the regional director of the federal Bureau of Prisons, had ordered the permanent Marion lockdown. On July 15, 1991, he received a career advancement when Governor Weld appointed him Commissioner of the Massachusetts Department of Corrections.

Shortly after arriving, Dubois replicated Marion—in the state penitentiary’s Departmental Disciplinary Unit. Similar isolation units now have been built at the new Hampden County House of Corrections in Ludlow. The ACLU of Massachusetts currently is suing the state over its cloning of Marion at the state prison. The suit asserts that the extreme sensory deprivation and resulting psychological torture violate the state’s constitutional prohibition against cruel or unusual punishment.

Once previously the ACLU of Massachusetts sued over conditions at the disciplinary cellblock of the state’s maximum security prison. The First Circuit Court of Appeals’ recitation

## *Marionizing Massachusetts*

of the facts in that case sounds familiar, including a description of “walls caked with dirt, grime, and human excrement,” floors “covered with garbage and debris,” showers that “were filthy and moldy” and “stank.”<sup>18</sup> In that litigation, the court decided Massachusetts corrections officials might have to clean up their act at Walpole a little but essentially ruled that “evolving standards of decency” had not developed to the point where these punitive and primitive conditions would be considered cruel or unusual. Federal judges, the appellate court ruled, need not dirty their hands by getting involved in the prison’s physical and administrative mess.

After the federal court sanctioned conditions in the disciplinary unit, prison officials not only perpetuated its operation but also, under Dubois’ guidance, incorporated Marion’s isolation model. Officials have expanded use of that model from one or two small units so that the structure now predominates as the overall form of institutional control at Walpole. Today, one half of the prisoners in Massachusetts’ maximum security prison are locked down 23-24 hours on any given day.

Across the Commonwealth, even in the jails and prisons with lower security ratings, the model of gruelling isolation demonstrates Marion’s pernicious and dendritic effect: prison officials build jails with concrete pods instead of a yard with dirt and grass; deny prisoners privacy in their cells; curtail visits; monitor all phone calls; prohibit family photographs on cell walls; increase imposition of solitary confinement; eliminate avocations; and incessantly promulgate petty regulations.

A few years ago, a client came to live with my family and me after spending three years in prison. In the mornings I sometimes would see her standing at the window in her room, her eyes closed, the sun on her face. She told me, “Inside, you just never get to do this. Never.”

We may yet see reformation of the Massachusetts penal system. If it comes, it will not reflect an ascendancy of liberalism or humanism, but rather the political clout of pragmatic conservatism such as that articulated by Tommy G. Thompson.

Thompson, the conservative Republican governor of Wisconsin, who has cut spending and taxes and overhauled his state’s welfare programs, also has set down as policy that because of their cost and ineffectiveness he will build no more prisons. That

## *The Massachusetts Review*

conservative's rationale recently received prominent coverage on the front page of the *New York Times*, which went on in the same story to report:

An unusual grouping—including wardens [and] correctional officials . . . is advocating new ways of handling criminals. . . . The thrust of [the] efforts is centered on something called “restorative justice,” a spiritual notion that a crime affects more than just a criminal. The response to crime must include the victim, society and the community as well. . . . Joseph Lehman, Commissioner for Corrections in Maine, said: “I’ve been talking restorative justice in Maine for years. . . . With restorative justice, we hold offenders accountable and make the victim the center of the criminal justice process. The corrections system ought to first assess the amount of coercive authority necessary to insure public safety, but once you’ve disposed of that, we can hold the offender accountable, making him right the harm he has done the victim and the community, in a punishment that is as much as possible visible to the public and related to the harm done.”<sup>19</sup>

To date, penal reform in Massachusetts has not meant restorative justice. Rather, it has meant semantic alterations: a fetter is referred to as a “security restraint”; guards are called “correctional officers”; wardens—“superintendents”; prisons—“correctional institutions”; solitary confinement—“segregation”; and Walpole has been bucolically renamed Cedar Junction. But the reality is still a harsh captivity for many and greater safety for almost no one.

The Massachusetts Supreme Judicial Court has defined the prohibition against cruel or unusual punishment as forbidding “the infliction of pain or loss without necessity.”<sup>20</sup> If this definition were functional rather than theoretical, one half of Massachusetts prisoners, according to the Department of Corrections, would be safely released immediately to less restrictive alternatives.<sup>21</sup> Massachusetts then would be able to institute a criminal justice system predicated upon restitution and community service, a system in which the primary purpose of incarceration would be to protect the public.

If, however, electoral politics continues to prevent restoration of justice to the criminal justice system, the body politic may arrive, not at Governor Thompson’s conclusion, but rather at John Edgar Wideman’s. In his introduction to Mumia Abu-

## *Marionizing Massachusetts*

Jamal's book *Live From Death Row*, Wideman writes,

In 1981 in my research for . . . [*Brothers and Keepers*], I discovered a chilling fact. My country, the United States of America, ranked third among the nations of the world in the percentage of its citizens it imprisoned. Only Russia and South Africa surpassed us.

Who would have guessed that, thirteen years later, the powerful governments of two of the top three incarcerating nations would have been overturned by internal revolutions. We're number one now. And in spite of the warning implicit in the fate of governments that choose repression over reform, we're building more prisons as fast as we can.<sup>22</sup>

The time has come for us to escape from the political expediency of mindlessly incarcerating; to raze prisons instead of building them; and to uncage people who pose no danger. We should do this because a society wired together by prisons and police cannot flourish. We should do it because sensible penology and rationale fiscal policies require it.

And for one further reason: "We [should] do it," in Diane DiPrima's words, "for the stars . . . that they may look on earth and not be ashamed."<sup>23</sup>

### NOTES

<sup>1</sup>Tracie McGuinness, "Goodnight My Love," *The World Split Open*, Vol. 2 (Cultural Images Group, Northampton, Mass., 1992), p. 76.

<sup>2</sup>Henry Johnson, from "Mask of Stone," *The Light from Another Country: Poetry from American Prisons* (ed. Joseph Bruchac) (Greenfield Review Press, 1984), p. 151.

<sup>3</sup>Peter Remick, *In Constant Fear* (Reader's Digest Press, New York, 1975), p. 179.

<sup>4</sup>Alan M. Dershowitz, *The Abuse Excuse* (Little Brown & Co., 1994), pp. 279-280.

<sup>5</sup>"State Officials Transfer 299 Prisoners to Texas," and "Lawmaker Rules Out More Inmate Transfers," *Union News* (Springfield, Mass.), Nov. 1 and Nov. 22, 1995 AP stories.

<sup>6</sup>Statistics in immediately preceding paragraphs are from "Facts About Prisons and Prisoners," The Sentencing Project, Washington, D.C., 1994, and John Irwin and James Austin, *It's About Time: America's Imprisonment Binge* (Wadsworth Publishing Co., 1994).

## *The Massachusetts Review*

<sup>7</sup>“The Department of Corrections—‘The Next Budget-Buster,’” Report of the Commonwealth of Massachusetts House Post Audit and Oversight Bureau, July, 1994, p. 7.

<sup>8</sup>*Inmates of Charles Street Jail v. Eisenstadt*, 360 F.Supp. 677 (D.Mass. 1973).

<sup>9</sup>*Michaud v. Sheriff of Essex County*, 390 Mass. 523, 524-525 (1983).

<sup>10</sup>Franklin County Jail and House of Correction Requirement Analysis Study—Final Report (Alternative Corrections Methods, Sandwich, Mass., 1994), pp. 7, 14.

<sup>11</sup>*Rufo v. Inmates of Suffolk Jail*, 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992).

<sup>12</sup>“The Department of Corrections—‘The Next Budget-Buster,’” *supra* at p. 10.

<sup>13</sup>Report of Special Committee of the House Established to Make an Investigation and Study of the Mandatory Criminal Sentencing Laws and the Overall Effect on the Prison Population in the Commonwealth, November 2, 1995, pp. 1, 2.

<sup>14</sup>Remarks of Chief Justice William H. Rehnquist at the National Symposium on Drugs and Violence in America, June 18, 1993.

<sup>15</sup>*Bruscino v. Carlson*, 854 F.2d 162, 164 (7th Cir. 1988) *cert. denied*, 491 U.S. 907.

<sup>16</sup>*Rhodes v. Chapman*, 452 U.S. 337, 346 (1981) quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

<sup>17</sup>*Caldwell v. Miller*, 790 F.2d 589, 604-605 (7th Cir. 1986) *cert. denied*, 456 U.S. 983.

<sup>18</sup>*Blake v. Hall*, 668 F.2d 52, 56 (1st Cir. 1981) *cert. denied*, 456 U.S. 983.

<sup>19</sup>“Crowded Jails Spur New Look at Punishment,” *New York Times*, Dec. 25, 1995 (Karen DeWitt), pp. 1, 16.

<sup>20</sup>*Commonwealth v. O’Neal (II)*, 369 Mass. 242, 247 n. 5 (1975).

<sup>21</sup>Michael W. Furcien, Ph.D., Deputy Director of Research, Massachusetts Department of Corrections, “Testing the Implementation of a Point-Based Classification System: A Comparison of DOC Initial Classifications with the NIC Model Systems Approach,” presented at the 1989 Annual Meeting of the American Society of Criminology.

<sup>22</sup>Mumia Abu-Jamal, *Live From Death Row* (Addison-Wesley, Reading, Mass., 1995), pp. xxvi-xxvii.

<sup>23</sup>Diane DiPrima, “April Fool Birthday Poem for Grandpa,” in *Revolutionary Letters* (City Lights Books, 1979), pp. 5-6.